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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 900

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This rule amends the regulation issued by OPM for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to the Uniform Federal Accessibility Standards (UFAS). Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

EFFECTIVE DATE: August 23, 1990.

ADDRESSES: Copies of this notice are available on tape for persons with impaired vision. They may be obtained from the EEO Division, OPEEO, U.S. Office of Personnel Management, 1900 E Street N.W., Room 2439, Washington, DC 20415; (202) 606-2460.

FOR FURTHER INFORMATION CONTACT: John E. Gimperling at (202) 606-2460 (voice/TDD). This is not a toll free number.

SUPPLEMENTARY INFORMATION: On July 6, 1989 (54 FR 28426), OPM published a proposed rule that would amend its existing regulation for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to UFAS. OPM received no comments. It decided to adopt the rule as final.

Background

Section 504 (29 U.S.C. 794) provides in part that—

> No otherwise qualified individual with handicaps in the United States * * * shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance * * *.

OPM's current section 504 regulation for federally assisted programs requires that new construction be designed and built to be accessible and that alterations of facilities be made in an accessible manner. It states that OPM "will adopt the Architectural and Transportation Barriers Compliance Board's (ATBCB) 'Minimum Guidelines and Requirements for Accessible Design' when they are issued in final form." The rule suggests that in the interim, new construction or alteration be in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped" published by the American National Standards Institute (ANSI A117.1-1961). As detailed below, the ATBCB issued its guidelines in 1982. The revision set forth in this document will reference UFAS, which is consistent with the ATBCB's guidelines.

On August 7, 1984, UFAS was issued by the four agencies establishing standards under the Architectural Barriers Act (49 FR 31528 (see discussion *infra*). The Department of Justice (DOJ), as the agency responsible under Executive Order 12250 for coordinating the enforcement of section 504, has recommended that agencies amend their section 504 regulations for federally assisted programs or activities to establish that, with respect to new construction and alterations, compliance with UFAS shall be deemed to be in compliance with section 504. Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

Background of Accessibility Standards

The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and federally funded buildings to be designed, constructed, and altered in accordance with accessibility standards. It also designates four agencies (the General Services Administration, the Departments of Defense and Housing and Urban Development, and the United States Postal Service) to prescribe the accessibility standards. Section 502(b)(7) of the Rehabilitation Act of 1973, as amended, directed the Architectural and Transportation Barriers Compliance Board (ATBCB) to issue minimum guidelines and requirements for these standards. 29 U.S.C. 792(b)(7). The guidelines [1] now in effect are found at 36 CFR part 1190.[2]

In 1984, the four standard-setting agencies issued UFAS as an effort to minimize the differences among their Barriers Act standards, and among those standards and accessibility standards used by the private sector. The General Services Administration (GSA) and Department of Housing and Urban Development (HUD) have incorporated UFAS into their Barriers Act regulations (*see* 41 CFR subpart 101-19.6 and 24 CFR part 40, respectively). In order to ensure uniformity, UFAS was designed to be consistent with the scoping and technical provisions of the ATBCB's minimum guidelines and requirements, as well as with the technical provisions of ANSI A117.1-1980. ANSI is a private, national organization that publishes recommended standards on a wide

[1] The minimum guidelines were established on August 4, 1982 (47 FR 33884), and amended on September 14, 1988 (53 FR 35510), February 3, 1989 (54 FR 5444), and August 23, 1989 (54 FR 34977).

[2] The ATBCB Office of Technical Services is available to provide technical assistance to recipients upon request relating to the elimination of architectural barriers. Its address is: U.S. ATBCB, Office of Technical Services, 1111 18th Street NW., Suite 500, Washington, DC 20036. The telephone number is (202) 653-7834 (voice/TDD). This is not a toll free number.

variety of subjects. The original ANSI A117.1 was adopted in 1961 and reaffirmed in 1971. The current edition, issued in 1986, is ANSI A117.1–1986. The 1961, 1980, and 1986 ANSI standards are frequently used in private and by State and local governments.

The final rule amends the current regulation implementing section 504 in programs or activities receiving Federal financial assistance from OPM to refer to UFAS.

OPM has determined that it will not require the use of UFAS, or any other standard, as the sole means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible. To do so would unnecessarily restrict recipients' ability to design for particular circumstances. In addition, it might create conflicts with State or local accessibility requirements that may also apply to recipients' buildings and that are intended to achieve ready access and use. It is expected that in some instances recipients will be able to satisfy the section 504 new construction and alteration requirements by following applicable State or local codes, and vice versa.

Some facilities may be covered by both section 504 and the Architectural Barriers Act. Nothing in this rule relieves recipients whose facilities are covered by the Barriers Act and that Act's implementing regulations from complying with the requirements of UFAS or any other Barriers Act standard or requirements that may be in effect.

Effect of Amendment

OPM's current section 504 rule requires that new facilities be designed and constructed to be readily accessible to and usable by persons with handicaps and that alterations be accessible to the maximum extent feasible. The amendment does not affect these requirements but merely provides that compliance with UFAS with respect to buildings (as opposed to "facilities," a broader term that encompasses buildings as well as other types of property) shall be deemed compliance with these requirements with respect to those buildings. Thus, for example, an alteration is accessible "to the maximum extent feasible" if it is done in accordance with UFAS. It should be noted that UFAS contains special requirements for alterations where meeting the general standards would be impracticable or infeasible (*see, e.g.*, UFAS sections 4.1.6(1)(b), 4.1.6(3), 4.1.6(4), and 4.1.7).

The amendment also includes language providing that departures from particular UFAS technical and scoping requirements are permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the building. Allowing these departures from UFAS will provide recipients with necessary flexibility to design for special circumstances and will facilitate the application of new technologies that are not specified in UFAS. As explained under "Background of Accessibility Standards," OPM anticipates that compliance with some provisions of applicable State and local accessibility requirements will provide "substantially equivalent" access. In some circumstances, recipients may choose to use methods specified in model building codes or other State or local codes that are not necessarily applicable to their buildings but that achieve substantially equivalent access.

The amendment requires that the alternative methods provide "substantially" equivalent or greater access, in order to clarify that the alternative access need not be precisely equivalent to that afforded by UFAS. Application of the "substantially equivalent access" language will depend on the nature, location, and intended use of a particular building. Generally, alternative methods will satisfy the requirement if in material respects the access is substantially equivalent to that which would be provided by UFAS in such respects as safety, convenience, and independence of movement. For example, it would be permissible to depart from the technical requirement of UFAS section 4.10.9 that the inside dimensions of an elevator car be at least 68 inches or 80 inches (depending on the location of the door) on the door opening side, 54 inches, if the clear floor area and the configuration of the car permits wheelchair users to enter the car, make a 360° turn, maneuver within reach of controls, and exit from the car. This departure is permissible because it results in access that is safe, convenient, and independent, and therefore substantially equivalent to that provided by UFAS.

With respect to UFAS scoping requirements, it would be permissible in some circumstances to depart from the UFAS new construction requirement of one accessible principal entrance at each grade floor level of a building (see UFAS section 4.1.2(8)), if safe, convenient, and independent access is provided to each level of the new facility by a wheelchair user from an accessible principal entrance. This departure would not be permissible if it required an individual with handicaps to travel an extremely long distance to reach the spaces served by the inaccessible entrances or otherwise provided access that was substantially less convenient than that which would be provided by UFAS.

It would not be permissible for a recipient to depart from UFAS's requirements that, in new construction of a long-term care facility, at least 50% of all patient bedrooms be accessible (see UFAS section 4.1.4(9)(b)), by using large accessible wards that make it possible for 50% of all beds in the facility to be accessible to individuals with handicaps. The results is that the population of individuals with handicaps in the facility will be concentrated in large wards, while able-bodied persons will be concentrated in smaller, more private rooms. Because convenience for persons with handicaps is therefore compromised to such a great extent, the degree of accessibility provided to persons with handicaps is not substantially equivalent to that intended to be afforded by UFAS.

It should be noted that the amendment does not require that existing buildings leased by recipients meet the standards for new construction and alterations.[3] Rather, it continues the current Federal practice under section 504 of treating newly leased buildings as subject to the program accessibility standard for existing facilities.

UFAS contains specific requirements for additions to existing buildings (see UFAS section 4.1.5). The amendment references UFAS only for "design, new construction, or alteration of buildings," and does not mention additions specifically. For purposes of section 504, an addition is considered "new construction" or "alteration." Thus, the lack of reference to additions in the rule should not be read to exempt additions from the accessibility requirements.

[3] This will be the case even if UFAS is revised to be consistent with a 1988 amendment to the ATBCB minimum guidelines to provide minimum guidelines and requirements for accessible leased facilities. On September 14, 1988 (53 FR at 35510), the ATBCB amended its minimum guidelines to establish requirements for standards for buildings leased by the Federal Government. 36 CFR 1190.34 (1989). The requirements apply to leased buildings even if they are not altered. Section 1190.34(a) requires that any building or facility that is to be leased by the Federal Government, without having been designed or constructed in accordance with its specifications, comply with the standards for new construction (§ 1190.31), incorporate the features listed in the standards for alterations (§ 1190.33(c)), or, if no such space is available, be altered to include certain accessible elements and spaces. These requirements will be incorporated into UFAS and will apply to buildings covered by the Architectural Barriers Act. However, existing buildings leased by recipients are not covered by the Act unless the buildings are to be altered.

Buildings under design on the effective date of this amendment will be governed by the amendment if the date that bids were invited falls after the effective date. This interpretation is consistent with GSA's Barriers Act regulation incorporating UFAS, at 41 CFR subpart 101-19.6.

The revision includes language modifying the effect of UFAS section 4.1.6(1)(g), which provides an exception of UFAS 4.1.6, *Accessible buildings: Alterations.* Section 4.1.6(1)(g) of UFAS states that "mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from the requirements of 4.1.6." Particularly after the development of specific UFAS provisions for housing alterations and additions, UFAS section 4.1.6(1)(g) could be read to exempt alterations to privately owned residential housing, which is not covered by the Architectural Barriers Act unless leased by the Federal Government for subsidized housing programs. This exception, however, is not appropriate under section 504, which protects beneficiaries of housing provided as part of a federally assisted program. Consequently, the amendment provides that, for purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries, or result in the employment or residence therein of persons with handicaps.

This exception does not apply to a room merely because it contains mechanical equipment. For instance, the exception shall not be read to exempt from the requirements of UFAS a "mechanical room" with a photocopier, control mechanisms and operating equipment for a large heating and air conditioning system, and controls for a security system. Since the room would be frequented by employees, it is not excepted from UFAS. In this case, the control mechansims, including switches, thermostats, and alarms, used by employees should be on an accessible path and mounted at the proper height.

The revision also provides that whether or not the recipient opts to follow UFAS in satisfaction of the ready access requirement, the recipient is not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structrual member. This provision does not relieve recipients of their obligation under the current regulation to ensure program accessibility.

This document has been reviewed by DOJ. It is an adaptation of a prototype prepared by DOJ under Executive Order 12250 of November 2, 1980. The ATBCB has been consulted in the development of this document in accordance with 28 CFR 41.7.

The regulation is not a major rule within the meaning of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 5 CFR Part 900

Administrative practice and procedure, Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Government employees, Grant programs, Handicapped, Intergovernmental relations, Investigations, Loan programs.

For the reasons set forth in the preamble, 5 CFR part 900 is amended as follows:

PART 900—[AMENDED]

1. The authority citation for subpart G of part 900 is revised to read as follows:

Authority: 29 U.S.C. 794.

2. Section 900.705, paragraph (f) is revised to read as follows:

§ 900.705 Program accessibility.

* * * * *

(f)(1) Effective as of August 23, 1990. Design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

Constance Berry Newman,
Director.

[FR Doc. 90-17269 Filed 7-23-90; 8:45 am]
BILLING CODE 6325-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0704]

Delegation of Authority to Staff Director of Division of Banking Supervision and Regulation to Approve Issuance of the List of Foreign Margin Stocks

July 18, 1990.

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising paragraph (c)(18) of § 265.2 of its Rules Regarding Delegation of Authority (12 CFR 265.2(c)) to delegate to the Staff Director of the Division of Banking Supervision and Regulation the authority to approve issuance of the list of foreign margin stocks and to conform the reference in paragraph (c)(18) to the recent revision of Regulation T (12 CFR Part 220).

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Scott Holz, Attorney, Division of Banking Supervision and Regulation, (202) 452-2781. For the hearing impaired *only,* Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson, (202) 452-3544.

SUPPLEMENTARY INFORMATION: On March 21, 1990, the Board approved amendments to Regulation T (55 F.R. 11158) to permit the marginability of certain foreign securities and to accommodate settlement and clearance of transactions in foreign securities. Foreign stocks that meet the Board's criteria for marginability will appear on a new list of foreign margin stocks to be published in conjunction with the Board's quarterly list of OTC margin stocks. The Board is revising the paragraph delegating authority to the Staff Director of the Division of Banking Supervision and Regulation to approve issuance of the OTC margin stock list by adding authority to approve the issuance of the list of foreign margin stocks.

The March 1990 amendments to Regulation T also included a renumbering of the provisions of § 220.17, concerning the lists of OTC margin stocks and foreign margin stocks. The citation to provision of 220.17 of Regulation T contained in the Board's Rules Regarding Delegation of Authority is being changed to conform to the new numbering of that Regulation T section.

Public Comment

The provisions of 5 U.S.C 553(b) regarding notice, public comment, and deferred effective date were not followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of the section. The Board's expanded rule making procedures have not been followed for the same reason.

List of Subjects in 12 CFR Part 265

Authority delegations (government agencies), Banks, Banking Federal Reserve System.

For the reasons set forth above, 12 CFR part 265 is amended as follows:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation of part 265 continues to read as follows

Authority: Sec. 11(k), 38 Stat. 261 and 80 Stat. 1314; 12 U.S.C. 248(k).

2. Section 265.2 is amended by revising paragraph (c)(18) to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(c) * * *

(18) Under the provisions of sections 207.6(d), 220.17(f), and 221.7(d) of this chapter (Regulations G, T, and U, respectively) to approve issuance of the lists of OTC margin stocks and foreign margin stocks and to add, omit, or remove any stock in circumstances indicating that such change is necessary or appropriate in the public interest.

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 18, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-17200 Filed 7-23-90; 8:45 am]

BILLING CODE 6210-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3812-9]

Georgia; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Georgia has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Environmental Protection Agency (EPA) has reviewed Georgia's application and has made a decision, subject to public review and comment, that Georgia's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Georgia's hazardous waste program revisions. Georgia's application for program revision is available for public review and comment.

DATES: Final authorization for Georgia shall be effective September 24, 1990, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Georgia's program revision application must be received by the close of business August 23, 1990.

ADDRESSES: Copies of Georgia's program revision application are available during 8 a.m. to 4 p.m. at the following addresses for inspection and copying: Georgia Department of Natural Resources, Land Protection Branch, Room 1154, 205 Butler Street SE., Floyd Towers East, Atlanta, Georgia 30334; 404/656-2833; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460; 202/382-5926; U.S. EPA Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365; 404/347-4216. Written comments should be sent to Narindar Kumar at the address listed below.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404) 347-2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. The State of Georgia has received final authorization for the July 15, 1985, HSWA Codification Rule.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-266 and 124 and 270.

B. Georgia

Georgia initially received final authorization on August 21, 1984. Georgia received authorization for revisions to its program on September 18, 1986. On June 30 and October 14, 1988, Georgia submitted program revision applications for additional program approvals. Today, Georgia is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Georgia's application, and has made an immediate final decision that Georgia's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Georgia. The public may submit written comments on EPA's immediate final decision up until August 23, 1990. Copies of Georgia's application for program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Georgia's program revisions shall become effective September 24, 1990, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) A withdrawal of the immediate final

decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Georgia is today seeking authority to administer the following Federal requirements promulgated between July 1, 1985–June 30, 1989 for Non-HSWA Clusters II, III, & IV and July 1, 1985–June 30, 1989 for HSWA Clusters I and II.

Provision	FR reference	Federal promulgation date	State authority
• Listing of Spent Pickle Liquor (KO62)	51 FR 19320	May 28, 1986	391-3-11-.07(1)
• Liability Coverage	51 FR 25350	July 11, 1986	391-3-11-.05(1)
• Standards for Hazardous Waste Storage and Treatment Tank Systems	51 FR 25422	July 14, 1986	391-3-11-.02(1)
			391-3-11-.07(1)
			391-3-11-.08(1)
			391-3-11-.10(1)
			391-3-11-.11(3)(e)
			391-3-11-.05(1)
			391-3-11-.10(2)
			391-3-11-.11(3)(g)
• Correction to Listing of Commercial Chemical Products and Appendix VII Constituents	51 FR 28296	August 6, 1986	391-3-11-.07(1)
• Revised Manual SW-846; Amended by Reference	52 FR 8072	March 16, 1987	391-3-11-.02(1)
			391-3-11-.11(13)
• Closure/Post-closure Care for Interim Status Surface Impoundments	52 FR 8074	March 19, 1987	391-3-11-.10(1)
• Definition of Solid Waste; Technical Corrections	52 FR 21306	June 5, 1987	391-3-11-.07(1)
			391-3-11-.10(3)
• Amendments to Part B Information Requirements for Land Disposal Facilities	52 FR 23447	June 22, 1987	391-3-11-.11(3)(g)
• List (Phase I) of Hazardous Constituents for Groundwater Monitoring	52 FR 25942	July 9, 1987	391-3-11-.10(2)
			391-3-11-.11(3)(g)
• Identification and Listing of Hazardous Waste	52 FR 26012	July 10, 1987	391-3-11-.07(1)
• Listing of Spent Pickle Liquor; Clarification	52 FR 28697	August 3, 1987	391-3-11-.07(1)
• Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee	52 FR 44314	November 18, 1987	391-3-11-.05(1)
• Hazardous Waste Miscellaneous Units	52 FR 46946	December 10, 1987	391-3-11-.02
			391-3-11-.5(1)
			391-3-11-.10(2)
			391-3-11-.11(3)(g)
• Listing of TDI, TDA, DNT	50 FR 42936	October 23, 1985	391-3-11-.07(1)
• Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces	50 FR 49164	November 29, 1985	391-3-11-.07(1)
			391-3-11-.10(1)
			391-3-11-.10(2)
			391-3-11-.10(3)
• Spent Solvents Listing	50 FR 53315	December 31, 1985	391-3-11-.07(1)
• EDB Waste Listing	51 FR 5330	February 13, 1986	391-3-11-.07(1)
• Four Spent Solvents Listing	51 FR 6541	February 25, 1986	391-3-11-.07(1)
• Small Quantity Generators	51 FR 10174	March 24, 1986	391-3-11-.07(1)
			391-3-11-.02(1)
			391-3-11-.08(1)
			391-3-11-.09
			391-3-11-.11(1)(a)
			391-3-11-.11(3)(b)
• Paint Filter Test; Correction	51 FR 19176	May 28, 1986	391-3-11-.10(1)
• Hazardous Waste Tank Systems	51 FR 25422	July 14, 1986	391-3-11-.02(1)
			391-3-11-.07(1)
			391-3-11-.08(1)
			391-3-11-.10(2)
			391-3-11-.05(1)
			391-3-11-.10(1)
			391-3-11-.11(3)(g)
			391-3-11-.11(3)(e)
• Biennial Reports; Correction	51 FR 28556	August 8, 1986	391-3-11-.10(1)
			391-3-11-.10(2)
• Exports of Hazardous Waste (with the exception of 262.53 "Notification of Intent to Export").	51 FR 28664	August 8, 1986	391-3-11-.07(1)
			391-3-11-.08(1)
			391-3-11-.08(2)
			391-3-11-.09
• Standards for Generators—Waste Minimization Certifications	51 FR 35190	October 1, 1986	391-3-11-.08(1)
			391-3-11-.08(2)
• Listing of EBDC	51 FR 37725	October 24, 1986	391-3-11-.07(1)
• Land Disposal Restrictions	51 FR 40572	November 7, 1986	391-3-11-.02
			391-3-11-.07(1)
			391-3-11-.07(2)
			391-3-11-.08(1)
			391-3-11-.09
			391-3-11-.10(1)
			391-3-11-.10(2)
			391-3-11-.11(3)(g)
			391-3-11-.11(5)(c)
			391-3-11-.11(7)(d)
			391-3-11-.16
• Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces; Technical Corrections.	52 FR 11819	April 13, 1987	391-3-11-.07(1)
			391-3-11-.10(3)
• Land Disposal Restrictions; Corrections	52 FR 21010	June 4, 1987	391-3-11-.10(2)
			391-3-11-.10(1)
			391-3-11-.16

Provision	FR reference	Federal promulgation date	State authority
● California List Waste Restrictions	52 FR 25760	July 8, 1987	391-3-11-.08(1) 391-3-11-.10(2) 391-3-11-.10(1) 391-3-11-.16 391-3-11-.11(7)(d) 391-3-11-.11(3)(e)
● Exception Reporting for Small Quantity Generators of Hazardous Waste	52 FR 35894	September 23, 1987	391-3-11-.08
● HSWA Codification Rule	52 FR 45788	December 1, 1987	391-3-11-.10(2) 391-3-11-.10(1) 391-3-11-.11(1)(a) 391-3-11-.11(5)(f) 391-3-11-.11(3)(b) 391-3-11-.11(3)(g) 391-3-11-.11(7)(c)
● California List Waste Restrictions; Technical Corrections	52 FR 41295	October 27, 1987	391-3-11-.02 391-3-11-.16

Georgia is not seeking authorization to operate in Indian Lands.

C. Decision

I conclude that Georgia's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Georgia is granted final authorization to operate its hazardous waste program as revised.

Georgia now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Georgia also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Georgia's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 16, 1990.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 90-17254 Filed 7-23-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-369; RM-6847]

Radio Broadcasting Services; Twin Lakes, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Twin Lakes Broadcasting, Inc., substitutes Channel 290C3 for Channel 288A at Twin Lakes, Iowa, and modifies its license for Station KTLB to specify operation on the higher powered channel. Channel 290C3 can be allotted to Twin Lakes in compliance with the Commission's minimum distance separation requirements and can be used at Station KTLB's present transmitter site. The coordinates for this allotment are North Latitude 42-32-09 and West Longitude 94-40-48. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 4, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-369, adopted June 29, 1990, and released July 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended for Twin Lakes, Iowa, by removing Channel 288A and adding Channel 290C3.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-17087 Filed 7-23-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-28; RM-5896, RM-6345]

Radio Broadcasting Services; Weed and Mt. Shasta, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 272C1 for Channel 265A at Weed, California, and modifies the Class A license of Florence M. Gaskey for Station KWHO(FM), as requested, to specify operation on the higher powered channel, thereby providing that community with an expanded coverage FM service (RM-5896). See 53 FR 5287, February 23, 1988. Additionally, Channel 300C1 is substituted for Channel 237A at Mt. Shasta, and the Class A license of Shasta Cascade Broadcasting Corporation for Station KEDY(FM) is modified to specify operation on the higher powered channel, thereby providing that community with an expanded coverage FM service (RM-6345). Coordinates for Channel 272C1 at Weed are 41-21-12 and 122-15-35. Coordinates for Channel 300C1 at Mt. Shasta are 41-19-09 and 122-18-35. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 4, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-28, adopted June 29, 1990, and released July 18, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73: Radio Broadcasting

47 CFR PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Mt. Shasta, California by removing Channel 237A and adding Channel 300C1, and for Weed, California by removing Channel 265A and adding Channel 272C1.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau

[FR Doc. 90-17089 Filed 7-23-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS-102; Notice No. 4]

RIN 2137-AB54

Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Interpretation and availability of guidelines.

SUMMARY: On December 18, 1989, RSPA issued a final rule partially granting petitions for reconsideration of the November 21, 1988 final rule requiring operators of pipeline facilities for the transportation of natural gas or hazardous liquids and operators of liquefied natural gas facilities to have an anti-drug program for employees who perform certain sensitive safety-related functions covered by the pipeline safety regulations. In response to numerous requests, this notice sets forth RSPA's interpretation of 49 CFR 199.9, and provides information on how to obtain copies of guidance documents RSPA has issued to assist operators in complying with part 199.

ADDRESSES: Copies of the documents referenced in this notice may be obtained by writing or telephoning the Office of Pipeline Safety, Research and Special Programs Administration, room 8417, 400 Seventh Street SW., Washington, DC 20590-0001; (202) 366-4595.

FOR FURTHER INFORMATION CONTACT: Mr. Cesar De Leon, Assistant Director for Regulation, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001; (202) 366-1640.

SUPPLEMENTARY INFORMATION: On November 21, 1988, RSPA published a final rule (53 FR 47084) entitled "Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations." The rule requires pipeline operators to have an anti-drug program which includes pre-employment, post-accident, random, and reasonable cause drug testing, and an Employee Assistance Program (EAP) for education and training regarding the effects and consequences of drug use. On April 13, 1989, RSPA published a notice of delay in the implementation dates (54 FR 14922) to permit reevaluation of its rule in light of Supreme Court decisions, and to consider several petitions for reconsideration. The implementation dates were delayed to April 20, 1990, for operators with more than 50 employees subject to testing, and to August 21, 1990, for operators with 50 or fewer such employees. RSPA issued a final rule partially granting the petitions for reconsideration on December 18, 1989 (54 FR 51842).

Since publication of the November 1988 final rule, RSPA has received numerous requests for interpretations of 49 CFR part 199. In September 1989, RSPA issued "Guidelines For Implementing An Anti-Drug Program For Pipeline Personnel," (correction issued June 13, 1990), and in April 1990, issued "Additional Guidelines For Implementing An Anti-Drug Program For Pipeline Personnel." RSPA also responded by letter to many of the requests for interpretations, and in April 1990, issued a compilation of the questions and answers entitled, "Most Frequently Asked Questions Concerning the Implementation of 49 CFR part 199." ("Questions") Although these documents have been widely distributed, RSPA believes it is important to publish notice in the **Federal Register** of their availability from the Office of Pipeline Safety at the address noted above under **"ADDRESSES."**

One issue that has been raised and was addressed in the "Questions," is the meaning of 49 CFR 199.9. Section 199.9 provides that an operator may not knowingly use as an employee any person who fails a drug test required by 49 CFR part 199 and the Medical Review Officer determines that there is no legitimate medical explanation for the positive test result. Section 199.9(b) states that this prohibition does not apply, however, to a person who has:

(1) Passed a drug test under DOT Procedures;

(2) Been recommended by the medical review officer for return to duty in accordance with § 199.15(c); and

(3) *Not failed a drug test required by this part after returning to duty.* (Emphasis added)

Several persons have written to RSPA inquiring if the language in § 199.9(b)(3) is intended to mean that a person may fail a DOT-required drug test and be returned to duty only once, and that any subsequent drug test failure means a permanent removal from the covered

position. Such an interpretation, these persons suggested, could result in a lifetime bar from covered positions in the pipeline industry. RSPA's response to one of those letters, which was reprinted in the "Questions," was that "199.9(b)(3) requires that the employee be removed from the covered position without the opportunity for future reinstatement." That statement was incorrect and the "Questions" guidance document will be revised in accordance with the following paragraph.

Interpretation of 49 CFR 199.9

Under § 199.9(a)(1), an employee who tests positive must be removed from the covered position. It is at the operator's discretion whether to terminate the employee, move the employee to a non-covered position, or offer the employee the opportunity for rehabilitation and subsequent return to duty. If the employee subsequently returns to duty and again tests positive, the operator must again remove the employee from the covered position. However, it was not RSPA's intention in drafting § 199.9(b) to limit the number of times that an employee could test positive, and subsequently be reinstated to that or any other covered position, after a negative retest and a return-to-duty recommendation from the Medical Review Officer. Upon a subsequent positive test, the operator has the same alternatives available in dealing with the employee, i.e., termination, moving the employee to a non-covered position, or offering an opportunity to return to duty.

Issued: July 18, 1990.

George W. Tenley, Jr.

Director, Office of Pipeline Safety.

[FR Doc. 90-17238 Filed 7-23-90; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 91046-0006]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of prohibition of retention of groundfish.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), is prohibiting further retention of Atka mackerel by vessels fishing in the Bering Sea and Aleutian Islands subareas (BSAI). This action is necessary to prevent the total allowable catch (TAC) for Atka mackerel in the BSAI from being exceeded before the end of the fishing year. The intent of this action is to assure optimum use of groundfish while conserving Atka mackerel stocks.

EFFECTIVE DATE: Noon, Alaska local time (A.l.t.), July 19, 1990, through December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The Fishery Mangement Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone within the BSAI under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council (Council) and was implemented by regulations appearing at 50 CFR 611.93 and part 675.

Under § 675.20(a)(9), when the Regional Director determines that the TAC of any target species or of the "other species" category has been achieved prior to the end of a fishing year, the Secretary will publish a notice requiring that target species or the "other species" to be treated in the same manner as prohibited species, as described in § 675.20(c), for the remainder of the fishing year. The TAC for Atka mackerel was increased to 21,000 metric tons on June 26, 1990 (55 FR 26450; June 28, 1990). The Regional Director had determined that the TAC of Atka mackerel for vessels in the BSAI has been reached. Therefore, he is issuing this notice requiring Atka mackerel be treated in the same manner as a prohibited species and prohibiting retention of Atka mackerel by vessels in the BSAI from noon A.l.t., July 19, 1990, through the remainder of this fishing year.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide notice and comment on this notice or to delay its effective date. The TAC for Atka mackerel in the BSAI will be exceeded unless this notice is effective immediately.

This action is taken under the authority of 50 CFR 675.20(a)(9) and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: July 19, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-17255 Filed 7-19-90; 1:20 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 142
Tuesday, July 24, 1990

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

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants, and Children (WIC): Nonfunding Mandates of the Child Nutrition and WIC Reauthorization Act of 1989

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: This notice restores language unintentionally deleted in the Nonfunding Mandates of the Child Nutrition and WIC Reauthorization Act of 1989, published in the Federal Register on July 9, 1990 (55 FR 2803).

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Acting Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division at (703) 756-3730.

In proposed rule document 90-15503, beginning on page 28033 in the issue of Monday, July 9, 1990, make the following correction:

On page 28044, in the third column, section 14 of the preamble to the proposed rule should read as follows:

14. Deletion of Reference to OMB Circular A-90 (Section 246.24(a))

OMB Circular A-90, which addressed the Federal responsibilities for oversight of grantee information systems, was superseded by OMB Circular A-130 in 1986. Circular A-130 covers Federal agency requirements, and as such, does not pertain to the administration of the WIC Program as addressed through 7 CFR part 246. Therefore, the reference in § 246.24(a) to OMB Circular A-90 is deleted.

Dated: July 13, 1990.

George A. Braley,

Acting Administrator Food and Nutrition Service.

[FR Doc. 90-16992 Filed 7-23-90; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF THE TREASURY

Departmental Offices

31 CFR Part 1

Privacy Act of 1974; Notice of Proposed Rule Exempting a System of Records from Certain Requirements

AGENCY: Departmental Offices, Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a proposed amendment to 31 CFR 1.36 to exempt a new system of records, the FinCEN Data Base, Treasury/DO .200, from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with legal prohibitions against the disclosure of certain kinds of information, and to protect certain information on individuals maintained in the system of records.

DATES: Comments must be received no later than August 23, 1990.

ADDRESSES: Please submit comments to Department of the Treasury, Office of the Deputy Assistant Secretary (Law Enforcement), Room 4330, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Persons wishing to review the comments should make an appointment with the Office of the Deputy Assistant Secretary (Law Enforcement) at 566-5054.

FOR FURTHER INFORMATION CONTACT: Stephen R. Kroll, Chief Counsel, Financial Crimes Enforcement Network, 3833 North Fairfax Drive, Arlington, VA, 22203, (202) 235-0520.

SUPPLEMENTARY INFORMATION: By Treasury Department Order No. 105-08, issued on April 25, 1990, the Secretary of the Treasury established the Office of the Director, Financial Crimes Enforcement Network ("FinCEN"), in the Office of the Assistant Secretary (Enforcement). FinCEN's mission is to provide a governmentwide, multisource intelligence and analytical network in support of the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes by Federal, State, local, and foreign law enforcement agencies.

Among FinCEN's principal responsibilities are (1) to maintain a governmentwide data access service, with access, in accordance with legal requirements, to (A) information collected by Treasury, including report information filed under the Bank Secrecy Act and section 6050I of the Internal Revenue Code; (B) information regarding national and international currency flows; (C) other records and data maintained by other Federal, State, local and foreign agencies, including financial and other records developed in specific cases; and (D) other privately and publicly available information; and (2) to analyze and disseminate the available data to (A) identify possible criminal targets to appropriate Federal, State, local, and foreign law enforcement agencies; (B) support ongoing criminal financial investigations and prosecutions and related proceedings, including civil and criminal tax forfeiture proceedings; (C) identify possible instances of non-compliance with the Bank Secrecy Act to Federal agencies with delegated responsibility for Bank Secrecy Act compliance; (D) evaluate and recommend possible uses of special currency reporting under 31 U.S.C. 5326; and (E) determine emerging trends and methods in money laundering and other financial crimes.

Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury is publishing separately a notice of a new system of records, the FinCEN Data Base, Treasury/DO .200, to be maintained by FinCEN. FinCEN is establishing this system of records to implement the mandate set forth in Treasury Department Order No. 105-08.

Under 5 U.S.C. 552a(j)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a "if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of

identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision."

Under 5 U.S.C. 552a(k)(1), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system or records relates to matters specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

Finally, under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a "if the system of records is investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section."

The Department of the Treasury is hereby giving notice of a proposed rule to exempt the FinCEN Data Base from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2) and the authority vested in the Assistant Secretary for Enforcement by 31 CFR 1.23(c). The reasons for exempting the system of records from each provision of 5 U.S.C. 552a for which an exemption is proposed are set forth in the rule itself.

As required by Executive Order 12291, it has been determined that this proposed rule is not a "major" rule and, therefore, does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not have significant economic impact on a substantial number of small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department of the Treasury has determined that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of subjects in 31 CFR Part 1

Privacy.

Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 of Subpart C is amended by adding the following text immediately preceding the heading THE INTERNAL REVENUE SERVICE:

§ 1.36 Systems exempt in whole or in part from Provisions of 5 U.S.C. 552a and this part.

* * * * *

OFFICE OF THE ASSISTANT SECRETARY FOR ENFORCEMENT

Notice of Exempt System

(a) *In general.* The Assistant Secretary of the Treasury for Enforcement exempts the system of records entitled "FinCEN Data Base" (Treasury/DO .200) from certain provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

(b) *Authority:* 5 U.S.C. 552a (j) and (k); 31 CFR 1.23(C).

(c) *General exemptions under 5 U.S.C. 552a(j)(2).* Pursuant to 5 U.S.C. 552a(j)(2), the Assistant Secretary for Enforcement hereby exempts the FinCEN Data Base system of records, maintained by the Financial Crimes Enforcement Network ("FinCEN"), an office reporting to the Assistant Secretary for Enforcement, from the following provisions of the Privacy Act of 1974:
5 U.S.C. 552a(c) (3) and (4);
5 U.S.C. 552a(d) (1), (2), (3) and (4);
5 U.S.C. 552a(e) (1), (2) and (3);
5 U.S.C. 552a(e)(4) (G), (H) and (I);
5 U.S.C. 552a(e) (5) and (8);
5 U.S.C. 552a(f); and
5 U.S.C. 552a(g).

(d) *Specific exemptions under 5 U.S.C. 552a(k)(1).* To the extent that the system of records may contain information subject to the provisions of 5 U.S.C. 552(b)(1) regarding national defense and foreign policy information classified pursuant to Executive order, the Assistant Secretary for Enforcement hereby exempts the FinCEN Data Base system of records from the following provisions of 5 U.S.C. 552a pursuant to 5 U.S.C. 552a(k)(1):
5 U.S.C. 552a(c)(3);
5 U.S.C. 552a(d) (1), (2), (3), and (4);
5 U.S.C. 552a(e)(1);
5 U.S.C. 552a(e)(4) (G), (H), and (I); and
5 U.S.C. 552a(f).

(e) *Specific exemptions under 5 U.S.C. 552a(k)(2).* To the extent that the exemption under 5 U.S.C. 552a(j)(2) does not apply to the FinCEN Data Base, the Assistant Secretary for Enforcement hereby exempts the FinCEN Data Base system of records from the following provisions of 5 U.S.C. 552a pursuant to 5 U.S.C. 552a(k)(2):
5 U.S.C. 552a(c)(3);
5 U.S.C. 552a(d) (1), (2), (3), and (4);
5 U.S.C. 552a(e)(1);
5 U.S.C. 552a(e)(4) (G), (H), and (I); and
5 U.S.C. 552a(f).

(f) *Reasons for exemptions under 5 U.S.C. 552a (j)(2) and (k)(2).* (1) 5 U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the FinCEN Data Base would allow individuals to learn whether they have been identified as suspects or subjects of investigation. As further described in the following paragraph access to such knowledge would impair FinCEN's ability to carry out its mission, since individuals could (i) take setps to avoid detection, (ii) inform associates that an investigation is in progress, (iii) learn the nature of the investigation, (iv) learn whether they are only suspects or identified as law violators, (v) begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records, or (vi) destroy evidence needed to prove the violation.

(2) 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f) (2), (3) and (5) individuals access to records pertaining to them. The application of these provisions to the FinCEN Data Base would compromise FinCEN's ability to provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the FinCEN Data Base would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension: By (A) discovering the facts which would form the basis of their arrest, (B) enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and (C) learning that criminal investigators had reason to believe that a crime was about to be committed, they could delay the commission of the crime or commit it at a location which might not be under surveillance.

(ii) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations so as to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover,

disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide criminal investigators with valuable information unless they believe that their identities will not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair FinCEN's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the FinCEN Data Base could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the FinCEN Data Base for the reasons outlined in (i) through (iv) of this paragraph, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with FinCEN and thus would restrict FinCEN's access to information necessary to accomplish its mission most effectively.

(vi) Finally, the dissemination of certain information that FinCEN may maintain in the FinCEN Data Base is restricted by law.

(3) 5 U.S.C. 552a(d) (2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules propose to exempt the FinCEN Data Base from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in (2) above, these provisions should not apply to the FinCEN Data Base.

(4) 5 U.S.C. 552(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules propose to exempt the FinCEN Data Base from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reasons set out in paragraph (3) above, this provision ought not apply to the FinCEN Data Base.

(5) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of records available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of law enforcement agencies outside the Department of the Treasury to make effective use of information provided by FinCEN. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for arrest.

(ii) Moreover, providing accountings to the subjects of investigations would alert them to the fact that FinCEN has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of FinCEN's information-gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the FinCEN Data Base could compromise FinCEN's ability to provide useful information to law enforcement agencies since revealing sources for the information could (i) disclose investigative techniques and procedures, (ii) result in threats or reprisals against informers by the subjects of investigations, and (iii) cause informers to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term "maintain," as defined in 5 U.S.C. 552a(a)(3), includes "collect"; and "disseminate." The application of this provison to the FinCEN Data Base could impair FinCEN's ability to collect and disseminate valuable law enforcement information.

(i) At the time that FinCEN collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish a FinCEN purpose.

(ii) In many cases, especially in the early stages of investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(iii) Not all violations of law discovered by FinCEN analysts fall within the investigative jurisdiction of the Department of the Treasury. To promote effective law enforcement, FinCEN will have to disclose such violations to other law enforcement agencies, including State, local, and foreign agencies, that have jurisdiction over the offenses to which the information relates. Otherwise, FinCEN might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to FinCEN's attention during the collation and analysis of information in its records.

(8) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the FinCEN Data Base would impair FinCEN's ability to collate, analyze, and disseminate investigative, intelligence, and enforcement information.

(i) Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informers. It is usually not feasible to

rely upon the subject of the investigation as a source for information regarding his criminal activities.

(ii) An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(iii) In certain instances, the subject of a criminal investigation is not required to supply information to criminal investigators as a matter of legal duty.

(iv) During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(9) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, the agency's authority for soliciting the information; whether disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information; the routine uses that may be made of the information; and the effects on the individual of not providing all or part of the information. The FinCEN Data Base should be exempted from this provision to avoid impairing FinCEN's ability to collect investigative, intelligence, and enforcement data.

(i) Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress.

(ii) If it became known that the undercover officer was assisting in a criminal investigation, that officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation.

(iii) Individuals often feel inhibited in talking to a person representing a criminal law enforcement agency but are willing to talk to a confidential source or undercover officer whom they believe not to be involved in law enforcement activities.

(iv) Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation.

(v) Finally, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation reveals that the subject was not involved in any criminal activity.

(10) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

(i) Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate," application of this provision to the FinCEN Data Base would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict FinCEN's ability to disseminate information pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness, or completeness prior to collection of the information. In disseminating information to law enforcement and regulatory agencies, it is often impossible to determine accuracy, relevance, timeliness, or completeness prior to dissemination, because FinCEN may not have the expertise with which to make such determinations.

(ii) Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(11) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The FinCEN Data Base should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The FinCEN Data Base should be exempted from this provision to the extent that the civil remedies may relate to provisions of 5 U.S.C. 552a from which these rules propose to exempt the FinCEN Data Base, since there should be no civil remedies for failure to comply with provisions from which FinCEN is exempted. Exemption from this provision will also protect FinCEN from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative, intelligence, law enforcement data.

(g) *Exempt information included in another system.* Any information from a system of records for which an exemption is claimed under 5 U.S.C. 552a(j) or (k) which is also included in another system of records retains the same exempt status such information has in the system for which such exemption is claimed.

* * * * *

Dated: July 3, 1990.

Linda M. Combs,

Assistant Secretary of the Treasury (Management).

[FR Doc. 90-17214 Filed 7-23-90; 8:45 am]

BILLING CODE 4810-25

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 82 and 83

RIN 3067-AB62

Federal Crime Insurance Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule increases the Federal Crime Insurance Program (FCIP) rates which apply to commercial properties located in eligible states. It also authorizes reclassification of commercial businesses and separate classifications for burglary and robbery premiums. Definitions of alarm systems are modified to enforce a higher and more effective standard of protection.

DATES: Comments must be received on or before September 24, 1990.

ADDRESSES: Persons wishing to comment should submit comments in duplicate to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Washington, DC 20472. Telephone Number: (202) 646–4107.

FOR FURTHER INFORMATION CONTACT: Kimber A. Wald, Federal Emergency Management Agency, Federal Insurance Administration, Donohoe Building, 500 C Street SW., room 433, Washington, DC 20472, Telephone Number (202) 646–3440.

SUPPLEMENTARY INFORMATION: These amendments to the FCIP regulations are the result of the experience gained over the past nineteen years the Program has been in operation.

The current commercial rating program under the FCIP was instituted in 1985. That change was instituted to more closely realign the Program with the underwriting and rating methods used by the private insurance sector. The Program was expanded at that time from 3 classes to 6 premium classes. Premium class relativities were based on industry rating values, the amount of insurance relativities, gross receipts classifications, and the philosophy of a single countrywide rating territory. At that time, the entire rating structure was adjusted to produce a 35% revenue level increase.

In 1987, rates were uniformly increased by 10% and risk and alarm classifications were revised. In 1988, the assignment of business classes to premium classes was reviewed and changed. In 1989, another uniform rate increase of 5% was made.

In spite of the above revisions, in order to approach a more self-sustaining status, the Federal Insurance Administration will need to impose an overall rate increase of approximately 15% to offset heavy losses under commercial coverage and the higher-than-average administrative expenses associated with operating a single-line residual market program.

However, inasmuch as the enabling legislation that authorized the Program requires that crime insurance be made available at affordable rates for purposes of comparison, the FIA has maintained an ongoing study of rating of crime insurance coverages provided by the voluntary insurance market.

In this regard, the recent study conducted by FCIP's servicing carrier, NCSI, and its actuary, Tillinghast, indicate that the Insurance Services Office (ISO) advisory rates have increased five times since 1985, a rate of increase far in excess of FCIP rates. However, although a substantial FCIP rate increase would be appropriate, the Administrator proposes a rate increase of only 15%, the maximum allowable by recent controlling legislation, and for commercial classes only. Residential risk experience has been self-sustaining and therefore, is not subject to an increase.

To provide an incentive for hazard mitigation, the Federal Crime Insurance Program allows rate credits for various types of alarm systems. However, experience has demonstrated that to maintain the integrity of these credits, it is necessary to reinforce the definitions of the alarm descriptions to assure that the discounts are given only to properly qualified installations which will prevent or reduce the likelihood of loss. FCIP studies have shown that Underwriters Laboraties, Inc. (UL) is the most competent organization that quality controls most providers, manufacturers and servicing companies involved in the burglary protection field. Consequently, this rule would require UL certification of Central Station Alarm Systems when repetitive losses indicate a growing problem for a specific risk.

The inability of many alarm systems to reduce losses arises from the fact that some insureds have installed alarms which they purchased from department stores, hardware stores, electronic stores or drug stores. Many times these insureds, not having the training necessary to correctly put the equipment in service, installed the apparatus but were unable to make its operation reliable. In addition, other business owners who had silent or local alarms installed by alarm companies subsequently found that regular maintenance was not supplied and repair of a malfunctioning alarm was difficult to obtain.

Some of the Central Station systems, in an effort to reduce the price of their installation, have eliminated a basic requirement of an effective system-they did not have "line security" in the hook up. Without line security, the phone wire or electric lines could be cut, and the alarm rendered useless. Of course, with line security such a disruption would trigger the alarm. This will be a requirement in order to qualify as a Central Station System.

Another oversight with respect to some Central Stations with Guard Response has resulted from the failure to supply the guards with keys to the premises. An alarm sounds, the guards respond but cannot enter the property until the owner comes to the site from home or picks up the message on his telephone answering service, which on a weekend may mean a considerable delay.

So that the current insureds may have sufficient time to meet these tightened requirements, we are notifying insureds and their alarm companies directly by mail. FCIP will require that the insured have an alarm company complete a certificate outlining the type equipment, its operation, and the service it supplies.

These efforts are designed to assure that the protective devices upon which the Program's insureds must rely are able to provide the enhanced protection of which they should be capable. Such improved protection can reduce losses and may also help make it possible for insureds to qualify for crime insurance protection under the overall property protection policies offered in the private insurance market.

The Tillinghast actuarial study also recommended a number of changes to the commercial business classifications due to poor loss experiences. These changes are set forth in § 83.24(d).

FEMA has determined, based upon an Environmental Assessment, that the proposed rule does not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket files and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

The proposed rule does not have a significant economic impact on a substantial number of small entities and has not undergone regulatory flexibility analysis.

The proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, and hence, no regulatory analysis has been prepared.

FEMA has determined that this proposed rules does not contain a collection of information requirements as described in section 3504(b) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 82, 83

Federal crime insurance program.

Accordingly, 44 CFR parts 82 and 83 are amended as follows:

PART 82—PROTECTIVE DEVICE REQUIREMENTS

1. The authority citation for part 82 continues to read as follows:

Authority: 12 U.S.C. 1749bbb, *et seq*; Reorganization Plan No. 3 of 1978; EO 12127.

Subpart A—General

2. In § 82.1 paragraph (b)(c) (i) and (j) are revised and paragraph (n) is added to read as follows:

§ 82.1 Definitions.

* * * * *

(b) *Central station, supervised service alarm system* means a silent alarm system that is professionally installed and is regularly maintained, that is constantly in operation, that is equipped with a telephone and electricity line security mechanism that activates the alarm if either line is cut, and which signals upon any breach of a door, window (including storefront windows and unbarred skylights), or other accessible opening to the protected premises, at a private sentry or guard headquarters that is attended and monitored 24 hours a day, that dispatches guards to the protected premises for which they have keys immediately upon the activation of the alarm, that periodically checks the operation and effectiveness of the system, and that notifies law enforcement authorities as soon as a breach of the premises is confirmed;

(c) *Central Station, Supervised Alarm System (without guard dispatch)* means a silent alarm system that is professionally installed and is regularly maintained that is constantly in operation, that is equipped with a telephone and electricity line security mechanism that activates the alarm if either line is cut, and which signals upon any breach of a door, windows (including store front windows and unbarred skylights), or other accessible openings to the protected premises, at an office of the law enforcement authorities or at an office of an independent agency, located at a distance from the protected property, which has trained operators continually on duty twenty-four (24) hours a day to receive signals and to notify law enforcement authorities as soon as any breach of the premises is confirmed;

* * * * *

(i) *Local alarm system* means an alarm system that is professionally installed and is regularly maintained, that signals loudly at the premises by means of one or more tamper-protected sounding devices upon any breach of a door, window (including storefront windows and unbarred skylights), or other accessible opening to the protected premises;

(j) *Silent alarm system* means an alarm system that is professionally installed and is regularly maintained, that signals at a location other than the location where it is installed upon any breach of a door, window (including storefront windows and unbarred skylights, or other accessible opening to the protected premises;

* * * * *

(n) *Central station, supervised service alarm system* that is professionally installed and is regularly maintained, and is certified by Underwriters Laboratory (U/L) means a silent alarm system that is constantly in operation, that is equipped with a telephone and electricity line security mechanism that activates the alarm if either line is cut, and which signals upon any breach of a door, window (including storefront windows and unbarred skylights), or other accessible opening to the protected premises, at a private sentry or guard headquarters that is attended and monitored 24 hours a day, that dispatches guards to the protected premises for which they have keys immediately upon the activation of the alarm, that periodically checks the operation and effectiveness of the system, and that notifies law enforcement authorities as soon as a breach of the premises is confirmed;

3. Section 82.2 is amended to add new paragraphs (d) and (e).

§ 82.2 Purpose of protective device requirements.

* * * * *

(d) As a further control on claims frequency and severity, the following minimum protective device requirements apply if the policyholder has had 2 or more claims each for a payment of $500 or more, in the immediate 3 years preceding the period ending 4 months prior to renewal.

Premium class	Protective device code
6	A
5	A
4	C
3	C
2	C
1	N/A

(e) For those policyholders with no claims in the immediate 3 years preceding the period ending 4 months prior to renewal, protective device requirements are liberalized as follows:

Premium class	Protective device code
6	C
5	C
4	D
3	E
2	E
1	N/A

4. Section 82.5(b) is revised to read as follows:

§ 82.5 Inspection of commercial premises.

* * * * *

(b) Coverage under a commercial crime insurance policy indemnifying against burglary losses shall not commence unless it is determined that the premises sought to be insured complies with all applicable protective device requirements. Provided, that all commercial premises whose exterior doors and accessible openings are found upon inspection to be protected by central station supervised service alarm systems or silent alarm systems (as those systems are defined in paragraphs (b), (c), (i), (j) and (n) § 82.1) shall not be required to comply with the provisions of paragraphs (b) and (e) of § 82.31 pertaining to the protection of those exterior doors and accessible openings by such devices as bars, grillwork, and other physical barriers. The benefit of this provision, therefore, applies also to commercial premises which, because of their particularly high risk inventories of merchandise continue to be required by paragraphs (f) (1) and (2) of § 82.31 to have exterior doors and accessible openings protected by specific types of alarm systems, namely, supervised service alarm systems for the highest risk inventories and silent alarm systems for less high risk inventories.

5. Section 82.31(f) is revised in its entirety to read as follows:

§ 82.31 Minimum standards for industrial and commercial properties.

* * * * *

(f) The following types of establishments whose inventories pose a particularly serious risk shall, as a minimum, in addition to the requirements of paragraphs (a), (b) and (d) of this section be protected by the type of alarm system indicated. If the system specified in paragraphs (f)(1) and (f)(2) of this section is not available in the community in which the premises are located, the type of system specified in paragraph (f)(3) of this section shall be permitted.

(1) Central Station (with Guard dispatch) supervised service alarm system shall be required for the following businesses:

(i) Beer/Wine (wholesale)
(ii) Boutiques
(iii) Cameras/Photo/Film Processing
(iv) Clothing Childrens 12 & Under
(v) Clothing Mfg./Tailoring
(vi) Clothing Men's
(vii) Clothing Women's
(viii) Drug Stores
(ix) Drugs (wholesale)

(x) Electrical Appliances/Parts
(xi) Food Stuffs (wholesale)
(xii) Gasoline Service Station
(xiii) Gift Store/Costume Jewelry
(xiv) Jewelry
(xv) Leather Products
(xvi) Liquor Stores
(xvii) Pawn Brokers
(xviii) Precious Metals/Electroplating (retail)
(xix) Radio/TV/Electronic Equip.
(xx) Record Shop
(xxi) Savings & Loans/Banks
(xxii) Shoe Stores
(xxiii) Tobacco Dealers (wholesale)
(xxiv) Used Clothing/Shoe Repair/Thrift Stores
(xxv) Variety/Department Stores

(2) Central Station (without Guard dispatch) supervised service alarm system shall be required for the following businesses:

(i) Antique Stores
(ii) Art Supplies
(iii) Auto Parts—no service
(iv) Beauty & Health Supplies
(v) Beer/Wine with Food (Retail)
(vi) Candy/Nuts Stores
(vii) Dry Goods—Textile/Sewing
(viii) Furniture/Home Furnishings
(ix) Furriers
(x) Grocery Stores/Deli/Health Food Stores
(xi) Guns/Ammunition
(xii) Liquor (wholesale)
(xiii) Meat/Poultry/Fish Dealers
(xiv) Motorbikes/Bicycles
(xv) Music Stores/Instruments
(xvi) Pet Stores/Kennels
(xvii) Precious Metals/Electroplating (storage)
(xviii) Sports Goods/General
(xix) Tobacco Dealers (retail)
(xx) Wig Shops

(3) Silent or Local Alarm system shall be required for the following businesses:

(i) All Risks Not Otherwise Classified
(ii) Amusement Enterprises
(iii) Art Galleries
(iv) Auto Parts—sales/service
(v) Beach Concessions
(vi) Beauty/Barber Shops
(vii) Billiard/Pool Parlors
(viii) Building Contractors/Materials
(ix) Check Cashing/Money Exchange/Collectors
(x) Clubs (serving alcohol)
(xi) Coin/Stamp Shop
(xii) Discos/Dance Halls/Pavilions
(xiii) Distributors—Variety/Nonalcoholic
(xiv) Donut/Pastry/Coffee Shop (seated)
(xv) Dry Cleaners
(xvi) Fast Food/Bakery/Donut (carryout)
(xvii) Fine Arts
(xviii) Flea Markets/Auction Houses
(xix) Florists
(xx) Fruit/Newspaper Stands
(xxi) Funeral Homes
(xxii) Garages/Auto Repair
(xxiii) Golf & Other Prof. Sports Shops
(xxiv) Hardware/Housewares
(xxv) Health Clubs/Massage Parlors
(xxvi) Hobby/Toys/Novelty
(xxvii) Hotel/Motel/Apartments
(xxviii) Industrial Materials/Metal Work
(xxix) Laundaries
(xxx) Marine/Aircraft—Sales/Service
(xxxi) Medical Supplies
(xxxii) Nursing/Convalescent Homes
(xxxiii) Office Suppleis/Equipment
(xxxiv) Parking/Rental Cars/Car Wash/Taxi Office
(xxxv) Photographers Studios
(xxxvi) Professional Services
(xxxvii) Radio/TV/Elec Eq. (service only)
(xxxviii) Realty/Insurance/Travel/Employment Agency
(xxxix) Restaurant/Caterer
(xl) Schools/Day Care
(xli) Security/Locksmiths/Alarms
(xlii) Specialized Clothing-Sportswear/Lingerie
(xliii) Stationery/Books/Printing/Paper
(xliv) Tavern/Bar/Lounge
(xlv) Vending Machines

PART 83—COVERAGES, RATES, AND PRESCRIBED POLICY FORMS

6. The authority citation for part 83 continues to read as follows:

Authority: 12 U.S.C. 1749bbb *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

7. Section 83.24(d) is revised in its entirety to read as follows:

§ 83.24 Classification of commercial risks.

* * * * *

(d) Following are minimum alarm requirements for various classifications of businesses:

Code	Business description	Class		Alarm type
		Burglary	Robbery	
A1	NOC	3	4	D
02	Amusement Enterprises.	2	3	D
B1	Antique Stores	3	4	C
C1	Art Galleries	3	4	D
33	Art Supplies	5	5	C
D1	Auto Parts—no service.	2	2	C
03	Auto Parts—sales/service.	2	2	D
47	Beach Concessions.	3	4	D
32	Beauty/Barber Shops.	2	2	D
41	Beauty & Health Supplies.	3	4	C
C6	Beer/Wine with Food (Retail).	5	5	C
F1	Beer/Wine (wholesale).	6	6	B
04	Billiard/Pool Parlors.	3	4	D
70	Boutiques	6	6	B
05	Bowling Lanes/Skating Rinks.	2	3	E
34	Building Contractors/Materials.	2	3	D
06	Cameras/Photo/Film Processing.	5	5	B
43	Candy/Nuts Stores	3	4	C
G1	Check Cashing/Money Exchange/Collectors.	4	6	D
J1	Churches/Charities/Public Properties.	1	1	E
36	Clothing Childrens 12 & Under.	5	2	B
I1	Clothing Mfg./Tailoring.	3	6	B
22	Clothing Men's	6	5	B
30	Clothing Women's	6	6	B
07	Clubs (serving alcohol).	3	4	D
K1	Coin/Stamp Shop	3	4	D
08	Discos/Dance Halls/Pavilions.	2	3	D
50	Distributors—Variety/Nonalcoholic.	2	4	D
C5	Donut/Pastry/Coffee Shop (seated).	3	4	D
09	Drug Stores	5	4	B
L1	Drugs (wholesale)	5	6	B
10	Dry Cleaners	5	5	D
38	Dry Goods—Textile/Sewing.	3	4	C
11	Electrical Appliances/Parts.	5	5	B
E1	Fast Food/Bakery/Donut (carryout).	4	3	D
39	Fine Arts	2	3	D
78	Flea Markets/Auction Houses.	2	3	D
40	Florists	2	4	D
M1	Food Stuffs (wholesale).	3	5	B
N1	Fruit/Newspaper Stands.	4	3	D
45	Funeral Homes	2	3	D
421	Furniture/Home Furnishings.	4	3	C
12	Furriers	5	5	C
13	Garages/Auto Repair.	3	3	D
14	Gasoline Service Station.	5	4	B
44	Gift Store/Costume Jewelry.	6	4	B
15	Golf & Other Prof. Sports Shops.	2	3	D
16	Grocery Stores/Deli/Health Food Stores.	5	5	C
17	Guns/Ammunition	6	6	C
46	Hardware/Housewares.	3	4	D
C2	Health Clubs/Massage Parlors.	2	3	D
80	Hobby/Toys/Novelty.	3	4	D
48	Hotel/Motel/Apartments.	2	3	D
01	Industrial Materials/Metal Work.	2	3	D

Code	Business description	Class		Alarm type
		Burglary	Robbery	
18	Jewelry	3	6	B
19	Laundries	2	3	D
52	Leather Products	6	4	B
20	Liquor Stores	2	2	B
P1	Liquor (wholesale)	4	2	C
37	Marine/Aircraft—Sales/Service.	3	4	D
21	Meat/Poultry/Fish Dealers.	2	3	C
54	Medical Supplies	2	2	D
Q1	Motorbikes/Bicycles.	3	4	C
56	Music Stores/Instruments.	3	4	C
35	Nursing/Convalescent Homes.	2	3	D
C3	Office Supplies/Equipment.	2	3	D
58	Parking-Rental Cars/Car Wash/Taxi Office.	2	2	D
23	Pawn Brokers	4	2	B
76	Pet Stores/Kennels.	3	4	C
R1	Photographers Studios.	2	3	D
S1	Precious Metals/Electroplating (storage).	6	6	C
C8	Precious Metals/Electroplating (retail, wholesale, mfg.).	4	2	B
74	Professional Services.	2	2	D
24	Radio/TV/Electronic Equip.	6	5	B
C4	Radio/TV/Elec Eq. (service only).	2	3	D
62	Realty/Insurance/Travel/Employment Agency.	2	3	D
T1	Record Shop	5	4	B
25	Restaurant/Caterer	3	4	D
26	Savings & Loans/Banks.	4	3	B
66	Schools/Day Care	2	3	D
64	Security/Locksmiths/Alarms.	2	4	D
68	Shoe Stores	6	5	B
H1	Specialized Clothing-Sportswear/Lingerie.	4	2	D
U1	Sports Goods/General.	5	2	C
60	Stationery/Books/Printing/Paper.	3	4	D
27	Tavern/Bar/Lounge.	4	4	D
V1	Taxi/Limousines (robbery only).	2	3	E
28	Theatres	2	3	E
29	Tobacco Dealers (retail).	5	5	C
C9	Tabacco Dealers (wholesale).	3	4	B
72	Used Clothing/Shoe Repair/Thrift Stores.	5	5	B
W1	Variety/Department Stores.	6	6	B
X1	Vending Machines	2	3	D
Y1	Wig Shops	5	2	C

8. In Section 83.25 paragraphs (e) and (f) are revised in their entirety to read as follows:

§ 83.25 Commercial crime insurance rates.

* * * * *

(e) The following tables shall be used to determine rates for commercial risks.

FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, SEPTEMBER 1990

Amount of insurance	Annual Premiums—Gross Receipts											
	Less than $100,000 option		$100,000 to $199,999 option		$200,000 to $299,999 option		$300,000 to $499,999 option		$500,000 to $999,000 option		$1,000,000 or greater option	
	1	2	1	2	1	2	1	2	1	2	1	2
Class 1:												
$1,000	$88	$128	$132	$192	$132	$192	$176	$256	$220	$320	$352	$512
$2,000	161	229	242	344	242	344	322	458	403	573	644	916
$3,000	234	330	351	495	351	495	468	660	585	826	936	1,321
$4,000	302	422	453	634	453	634	604	845	755	1,056	1,207	1,690
$5,000	343	477	515	716	515	716	686	955	858	1,194	1,373	1,910
$6,000	375	525	562	787	562	787	750	1,050	937	1,312	1,500	2,099
$7,000	394	557	591	835	591	835	788	1,114	986	1,392	1,577	2,227
$8,000	412	591	618	887	618	887	824	1,183	1,030	1,478	1,647	2,365
$9,000	419	602	628	902	628	902	838	1,203	1,047	1,504	1,676	2,406
$10,000	431	625	647	937	647	937	862	1,249	1,078	1,562	1,725	2,499
$11,000	464	681	696	1,021	696	1,021	928	1,362	1,159	1,702	1,855	2,724
$12,000	488	727	733	1,091	733	1,091	977	1,454	1,221	1,818	1,954	2,908
$13,000	500	749	750	1,123	750	1,123	1,000	1,498	1,250	1,872	1,999	2,995
$14,000	506	760	759	1,140	759	1,140	1,012	1,521	1,265	1,901	2,024	3,041
$15,000	513	772	770	1,158	770	1,158	1,026	1,544	1,283	1,930	2,052	3,087
Class 2:												
$1,000	106	154	158	230	158	230	211	307	264	384	422	614
$2,000	193	275	290	412	290	412	386	550	483	687	773	1,100
$3,000	281	396	421	594	421	594	562	793	702	991	1,124	1,585
$4,000	362	507	543	760	543	760	724	1,014	906	1,267	1,449	2,028
$5,000	412	573	618	859	618	859	824	1,146	1,030	1,432	1,647	2,292
$6,000	450	630	675	945	675	945	900	1,260	1,125	1,574	1,799	2,519
$7,000	473	668	710	1,002	710	1,002	946	1,336	1,183	1,670	1,892	2,673
$8,000	494	710	741	1,064	741	1,064	988	1,419	1,236	1,774	1,977	2,839
$9,000	503	722	754	1,083	754	1,083	1,005	1,444	1,257	1,805	2,011	2,888
$10,000	517	750	776	1,124	776	1,124	1,035	1,499	1,294	1,874	2,070	2,998
$11,000	557	817	835	1,226	835	1,226	1,113	1,634	1,391	2,043	2,226	3,269
$12,000	586	872	879	1,309	879	1,309	1,172	1,745	1,465	2,181	2,344	3,490
$13,000	600	899	900	1,348	900	1,348	1,200	1,797	1,500	2,246	2,399	3,594
$14,000	607	912	911	1,369	911	1,369	1,214	1,825	1,518	2,281	2,429	3,650
$15,000	616	926	923	1,389	923	1,389	1,231	1,852	1,539	2,316	2,463	3,705
Class 3:												
$1,000	119	160	178	240	178	240	238	320	297	400	475	640
$2,000	217	286	326	430	326	430	435	573	544	716	870	1,146
$3,000	316	413	474	619	474	619	632	826	790	1,032	1,264	1,651
$4,000	407	528	611	792	611	792	815	1,056	1,019	1,320	1,630	2,112
$5,000	463	597	695	895	695	895	927	1,194	1,158	1,492	1,853	2,387

FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, SEPTEMBER 1990—Continued

Amount of insurance	Annual Premiums—Gross Receipts											
	Less than $100,000 option		$100,000 to $199,999 option		$200,000 to $299,999 option		$300,000 to $499,999 option		$500,000 to $999,000 option		$1,000,000 or greater option	
	1	2	1	2	1	2	1	2	1	2	1	2
$6,000	506	656	759	984	759	984	1,012	1,312	1,265	1,640	2,024	2,624
$7,000	532	696	798	1,044	798	1,044	1,064	1,392	1,331	1,740	2,129	2,784
$8,000	556	739	834	1,109	834	1,109	1,112	1,478	1,390	1,848	2,224	2,957
$9,000	565	752	848	1,128	848	1,128	1,131	1,504	1,414	1,880	2,262	3,006
$10,000	582	781	873	1,171	873	1,171	1,164	1,562	1,455	1,952	2,328	3,123
$11,000	626	851	939	1,277	939	1,277	1,252	1,702	1,565	2,128	2,504	3,405
$12,000	659	909	989	1,363	989	1,363	1,319	1,818	1,648	2,272	2,637	3,635
$13,000	675	936	1,012	1,404	1,012	1,404	1,350	1,872	1,687	2,340	2,699	3,744
$14,000	683	950	1,025	1,426	1,025	1,426	1,366	1,901	1,708	2,376	2,732	3,802
$15,000	693	965	1,039	1,447	1,039	1,447	1,385	1,930	1,732	2,412	2,770	3,859
Class 4:												
$1,000	128	166	191	250	191	250	255	333	319	416	510	666
$2,000	234	298	350	447	350	447	467	596	584	745	934	1,191
$3,000	339	429	509	644	509	644	679	859	849	1,073	1,358	1,717
$4,000	438	549	657	824	657	824	875	1,098	1,094	1,373	1,751	2,196
$5,000	498	621	746	931	746	931	995	1,241	1,244	1,552	1,991	2,483
$6,000	544	682	815	1,023	815	1,023	1,087	1,364	1,359	1,706	2,174	2,729
$7,000	572	724	857	1,086	857	1,086	1,143	1,448	1,429	1,810	2,287	2,895
$8,000	597	769	896	1,153	896	1,153	1,194	1,538	1,493	1,922	2,389	3,075
$9,000	607	782	911	1,173	911	1,173	1,215	1,564	1,518	1,955	2,430	3,128
$10,000	625	812	938	1,218	938	1,218	1,250	1,624	1,563	2,030	2,501	3,248
$11,000	672	885	1,009	1,328	1,009	1,328	1,345	1,770	1,681	2,213	2,690	3,541
$12,000	708	945	1,062	1,418	1,062	1,418	1,416	1,890	1,770	2,363	2,833	3,781
$13,000	725	973	1,087	1,460	1,087	1,460	1,450	1,947	1,812	2,434	2,899	3,894
$14,000	734	988	1,101	1,483	1,101	1,483	1,467	1,977	1,834	2,471	2,935	3,954
$15,000	744	1,003	1,116	1,505	1,116	1,505	1,488	2,007	1,860	2,508	2,976	4,014
Class 5:												
$1,000	132	173	198	259	198	259	264	346	330	432	528	691
$2,000	242	309	362	464	362	464	483	619	604	773	966	1,237
$3,000	351	446	527	669	527	669	702	892	878	1,115	1,404	1,783
$4,000	453	570	679	855	679	855	906	1,140	1,132	1,426	1,811	2,281
$5,000	515	645	772	967	772	967	1,030	1,289	1,287	1,611	2,059	2,578
$6,000	562	708	843	1,063	843	1,063	1,125	1,417	1,406	1,771	2,249	2,834
$7,000	591	752	887	1,128	887	1,128	1,183	1,503	1,478	1,879	2,365	3,007
$8,000	618	798	927	1,198	927	1,198	1,236	1,597	1,544	1,996	2,471	3,193
$9,000	628	812	942	1,218	942	1,218	1,257	1,624	1,571	2,030	2,513	3,249
$10,000	647	843	970	1,265	970	1,265	1,294	1,687	1,617	2,108	2,587	3,373
$11,000	696	919	1,043	1,379	1,043	1,379	1,391	1,839	1,739	2,298	2,783	3,677
$12,000	733	982	1,099	1,472	1,099	1,472	1,465	1,963	1,832	2,454	2,930	3,926
$13,000	750	1,011	1,125	1,516	1,125	1,516	1,500	2,022	1,874	2,527	2,999	4,044
$14,000	759	1,026	1,139	1,540	1,139	1,540	1,518	2,053	1,898	2,566	3,036	4,106
$15,000	770	1,042	1,154	1,563	1,154	1,563	1,539	2,084	1,924	2,605	3,078	4,168
Class 6:												
$1,000	151	158	227	237	227	237	303	316	378	395	605	632
$2,000	277	283	415	424	415	424	554	565	692	707	1,107	1,131
$3,000	402	408	604	611	604	611	805	815	1,006	1,019	1,610	1,630
$4,000	519	521	778	782	778	782	1,038	1,042	1,297	1,303	2,075	2,085
$5,000	590	589	885	884	885	884	1,180	1,178	1,475	1,473	2,360	2,357
$6,000	644	648	967	971	967	971	1,289	1,295	1,611	1,619	2,578	2,590
$7,000	678	687	1,017	1,031	1,017	1,031	1,355	1,374	1,694	1,718	2,711	2,748
$8,000	708	730	1,062	1,095	1,062	1,095	1,416	1,459	1,770	1,824	2,832	2,919
$9,000	720	742	1,080	1,114	1,080	1,114	1,440	1,485	1,800	1,856	2,880	2,969
$10,000	741	771	1,112	1,156	1,112	1,156	1,482	1,542	1,853	1,927	2,965	3,083
$11,000	797	840	1,196	1,260	1,196	1,260	1,594	1,681	1,993	2,101	3,189	3,361
$12,000	840	897	1,259	1,346	1,259	1,346	1,679	1,794	2,099	2,243	3,358	3,589
$13,000	859	924	1,289	1,386	1,289	1,386	1,718	1,848	2,148	2,310	3,437	3,696
$14,000	870	938	1,305	1,407	1,305	1,407	1,740	1,876	2,175	2,346	3,479	3,753
$15,000	882	952	1,323	1,429	1,323	1,429	1,764	1,905	2,205	2,381	3,528	3,810

Option 1: Burglary only.
Option 2: Robbery only.
Option 3: A combination of coverages under options 1 and 2 in uniform or varying amounts. The premium for option 3 is the sum of the rates for amounts of coverage selected under options 1 and 2.

Discounts on these rates are afforded for businesses with alarm systems/safes. A discount of 10% is given for policies with option 3.

(f) If the premises are protected by an acceptable burglar alarm system, class E safe, supervised safe alarm system, holdup alarm or armored car service, premium discounts shall be permitted as follows:

I. Burglary Credits

PREMISES ALARM SYSTEM

Code	Safe alarmed		Safe not alarmed	
	Class E or better	Other/ safe	Class E or better	Other/ none
E None	.80	.95	.85	100
D Local or silent*	.70	.75	.75	.90
C Central station wo/ Guard	.65	.75	.70	.80
B Central station w/Guard/ Keys	.60	.70	.65	.75
A Central station (UL) approved	.55	.65	.60	.70

*Professionally installed with maintenance.

Note: Multiply the burglary premium by the appropriate factor.

II. Robbery Credits

PROTECTION SERVICE

Hold up buttons	Armored Car	None
Yes	.85	.90
No	.95	1.00

Note: Multiply the robbery premium by the appropriate factor.

Package Discount

Apply a factor of .90 to the total premium if both burglary and robbery are purchased.

Harold T. Duryee,

Federal Insurance Administrator.

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BILLING CODE 6718-21-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018-AA71

Refuge-Specific Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to amend certain regulations in 50 CFR part 32 that pertain to migratory game bird, upland game, and big game hunting on individual national wildlife refuges. Refuge hunting programs are reviewed annually to determine whether the regulations governing individual refuge hunts should be modified, deleted or added to. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitats may warrant modifications to ensure the continued compatibility of hunting with the purposes for which the individual refuges involved were established and, to the extent practical, make refuge hunting programs consistent with State regulations.

DATES: Comments must be received on or before August 23, 1990.

ADDRESSES: Address comments to: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 670-ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert Karges, U.S. Fish and Wildlife Service, Division of Refuges, 1849 C Street NW., MS 670-ARLSQ, Washington, DC 20240; Telephone (703) 358-2043.

SUPPLEMENTARY INFORMATION: 50 CFR part 32 contains provisions governing hunting on national wildlife refuges. Hunting is regulated on refuges to (1) Ensure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) ensure the safety of refuge users and neighbors. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting regulations may be issued only after a wildlife refuge is opened to migratory game bird, upland game, or big game hunting through publication in the **Federal Register**. These regulations may list the wildlife species that may be hunted, seasons, bag limits, methods of hunting, descriptions of open areas, and other provisions. Previously issued refuge-specific regulations for migratory game bird, upland game, and big game hunting are contained in 50 CFR 32.12, 32.22, and 32.32 respectively. Some of the proposed amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of this proposed rulemaking to seek public input regarding these proposed amendments. Accordingly, interested persons may submit written comments to the Assistant Director, Refuges and Wildlife (address above) by the end of the comment period. All substantive comments will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting plans are developed for each refuge prior to opening it to hunting. In many cases, refuge-specific hunting regulations are included in the hunting plan to ensure the compatibility of the hunting programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and Refuge Recreation Act is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Continued compliance is ensured by annual review of hunting programs and regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect

on the economy of $100 million or more; or a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The proposed amendments to the codified refuge-specific hunting regulations would make relatively minor adjustments to existing hunting programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. The benefits accruing to the public are expected to exceed by a large margin the costs of administering this rule. Accordingly, the Department of the Interior has determined that this proposed rule is not a "major rule" within the meaning of E.O. 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB under #1018–0014 Economic and Public Use Permits. These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Paperwork Reduction Act

The Service has approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB as cited below:

Type of information collection	OMB approval No.
Economic and public use permits	1018–0014

Public reporting burden for this form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and the Endangered Species Act of 1973.

(16 U.S.C. 1531–1543) is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Refuge-specific hunting regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The changes proposed in this rulemaking would not substantially alter the existing uses of the refuges involved.

Information regarding hunting permits and the conditions that apply to individual refuge hunts and maps of the hunt areas are available at refuge headquarters or can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife, Service, 1002 Northeast Holladay Street, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas.

Assistant Regional Director—Refuges and Wildlife U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303; Telephone (404) 331–0833.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; Telephone (617) 965–9222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska (Hunting on Alaska refuges is in accordance with State regulations. There are no refuge-specific hunting regulations for these refuges).

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3538.

List of Subjects in 50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

Accordingly, it is proposed to amend part 32 of chapter I of title 50 of the Code of Federal Regulations as set forth below:

1. The authority citation for part 32 would continue to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.12 would be amended by revising paragraphs (d)(1) and (d)(3); adding paragraphs (d)(2)(iv), and (f)(7)(vii); revising paragraphs (k)(2), (m), (q), (u)(2), (u)(3), (u)(4), (u)(5) and (u)(6); redesignating paragraph (y)(1) as (y)(2); adding new paragraph (y)(1); removing paragraphs (cc)(2)(v) and (vi) revising paragraphs (dd)(3) and (hh)(11)(v); adding paragraphs (hh)(4)(v) and (hh)(11)(vii); revising paragraphs (mm)(1)(ii), (mm)(5)(vi), (mm)(7)(i) and (v); adding paragraphs (mm)(1)(vii), (mm)(5)(vii) and (mm)(7)(vi); revising paragraphs (pp) and (qq) (4)(ii) and (v); adding new paragraph (qq)(4)(vii), revising paragraphs (qq)(5)(iv), (qq)(6) and (qq)(7)(iii) and (iv) as follows:

§ 32.12 Refuge-specific regulations; migratory game birds.

* * * * *

(d) *Arizona and California—(1) Cibola National Wildlife Refuge.* Hunting of geese, ducks, coots, moorhens, mourning and white winged doves is permitted on designated areas

of the refuge subject to the following conditions:

(i) Non-toxic shot, is required for all migratory game bird hunting. It is prohibited to possess migratory game bird with lead shot in possession.

(ii) Legal weapon shall be shotgun only.

(iii) Special Use Permits are required for all hunting guides.

(iv) Hunting is not permitted within 50 yards of any road or levee or within 250 yards of any farm worker.

(v) Neither hunters nor dogs may enter closed areas to retrieve game.

(vi) Pit or permanent blinds are not permitted.

(vii) Migratory game bird hunting will cease at 3:00 p.m. each day.

(viii) The following additional restrictions apply to Zone IIA:

(A) During the Arizona waterfowl season, Farm Unit 2 is closed to dove hunting until noon each day.

(B) In Farm Unit 2, waterfowl hunters must remain within 50 feet of designated stations while hunting except when actively retrieving downed birds.

(C) During the goose season, the Hart Mine Marsh Area is closed to hunting until 10 a.m. daily.

(D) Hunters are restricted to 10 shells per day, except in the Hart Mine Marsh area.

(2) *Havasu National Wildlife Refuge.* * * *

(iv) Waterfowl, coot, and dove hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(3) *Imperial National Wildlife Refuge.* Hunting of mourning and white-winged doves, ducks, coots, gallinules, geese and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Pits and permanent blinds are not permitted.

(ii) Waterfowl, coot, and dove hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(f) *California*—* * *

(7) *Lower Klamath National Wildlife Refuge.* * * *

(vii) Only nonmotorized boats and boats with electric motors are permitted in Units 4c, d, e, and f.

* * * * *

(k) *Illinois*—* * *

(2) *Crab Orchard National Wildlife Refuge.*

(i) Waterfowl hunting is permitted on the controlled areas of Grassy Point, Carterville and Greenbriar land areas, plus Orchard, Turkey, and Sawmill and Grassy Islands, from sunrise to posted closing times each day during the goose season. Waterfowl hunting in these areas, including lake shorelines, is permitted only from existing refuge blinds during the goose season. Hunters must comply with the special rules posted at the blind drawing site.

(ii) All hunters are prohibited from possessing alcoholic beverages in the hunting areas.

(iii) Outside of the controlled goose hunting areas, only portable or temporary blinds may be used. Blinds may not be located beyond the shoreline of refuge waters, must be removed or dismantled at the end of each day's hunt, and must be located a minimum of 100 yards apart.

* * * * *

(m) *Illinois, Iowa and Missouri—Mark Twain National Wildlife Refuge.* * * *

(1) On the Big Timber Division, including Turkey and Otter Islands, only temporary wood or brush blinds are permitted. Blinds cannot be locked or otherwise sealed against public entry. Blinds are open to the public on a first-come, first-served basis if not occupied 30 minutes after the start of the legal shooting hours.

(2) On the Gardner Division, waterfowl and coot hunting is permitted only from blinds constructed on sites posted by the Illinois Department of Conservation.

* * * * *

(q) *Maine—Rachel Carson National Wildlife Refuge.* Hunting of ducks, geese, coots, woodcock and snipe is permitted on designated areas on the refuge subject to the following condition: Boats, decoys and portable blinds, must be moved from the refuge after each day's hunt.

* * * * *

(u) *Mississippi* * * *

(2) *Hillside National Wildlife Refuge.* Hunting of mourning doves, ducks, coots, snipe and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(3) *Mathews Brake National Wildlife Refuge.* Hunting of ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(4) *Morgan Brake National Wildlife Refuge.* Hunting of ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(5) *Noxubee National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(6) *Panther Swamp National Wildlife Refuge.* Hunting of ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(y) *Nevada*—(1) *Ash Meadows National Wildlife Refuge.* Hunting of geese, ducks, coots, moorhens, snipe, and dove is permitted on designated areas of the refuge.

* * * * *

(dd) *North Carolina*—* * *

(3) *Mattamuskeet National Wildlife Refuge.* Hunting of swans, ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(3) *Mattamuskeet National Wildlife Refuge.* Hunting of swans, ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(hh) *Oregon*—* * *.

(4) *Cold Springs National Wildlife Refuge*—* * *

(v)The refuge is closed from 10:00 p.m. to 5:00 a.m.

* * * * *

(11) *Umatilla National Wildlife Refuge.** * *

(v) Hunters may not possess or use more than 20 shells per day.* * *

(vii) The refuge is closed from 10:00 p.m. to 5:00 a.m. except for the Hunter Check Station parking lot, which is open each morning two hours prior to State shooting hours for waterfowl.

* * * * *

(mm) *Texas (1) Anahuac National Wildlife Refuge.** * *

(ii) The refuge unit located north of Onion Bayou and Jackson Ditch, known as the East Unit, is open to hunting only on designated days of the week. Notice of actual hunting days is issued as provided in 50 CFR 25.31. * * *

(vii) Only shotguns are permitted.

* * * * *

(5) *McFaddin National Wildlife Refuge.* * * *

(vi) Use of airboats is permitted only in accordance with guidelines issued as provided in 50 CFR 25.31.

(vii) Only shotguns are permitted.

* * * * *

(7) *Texas Point National Wildlife Refuge.* * * *

(i) Hunting is permitted only on designated days of the week. Notice of actual hunting days is issued as provided in 50 CFR 25.31. * * *

(v) Use of airboats is permitted only in accordance with specific guidelines issued as provided in 50 CFR 25.31.

(vi) Only shotguns are permitted.

* * * * *

(pp) *Virginia—Chincoteague National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required on the non-guided public hunting areas on Wildcat Marsh and Morris Island.

(2) On Wildcat Marsh, compartments 1–4 are reserved for guided hunting only, with refuge designated commercial guides.

(3) Permanent blinds are not permitted in public hunting areas.

(4) Permanent blinds are permitted in compartments 1–4 on Wildcat Marsh during the season but must be removed within ten (10) days following the end of the season.

(5) Blind sites are limited to one party of hunters, with a maximum of 4 hunters per party.

(6) Hunters shall possess and use while in the field only non-toxic shot.

(7) Public hunting is permitted only on Thursday, Friday, and Saturday during the Virginia waterfowl season.

* * * * *

(qq) *Washington—* * * *

(4) *McNary National Wildlife Refuge.* * * *

(ii) In the McNary Division hunting area, public entry is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Years Day. * * *

(v) Hunters may not enter or be on the refuge between one hour after sunset and 5:00 a.m. or leave decoys or other personal property on the refuge overnight. * * *

(vii) Hunters may not possess or use more than 20 shells per day.

(5) *Ridgefield National Wildlife Refuge.* * * *

(iv) Hunters may not use or possess more than 20 shells per day.

(6) *Toppenish National Wildlife Refuge.* Hunting of geese, ducks, coots and snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only within 50 feet of designated blind sites except when shooting to retrieve crippled birds.

(ii) Hunters may not use or possess more than 20 shells per day.

(7) *Umatilla National Wildlife Refuge.* * * *

(iii) The refuge is closed from 10:00 p.m. to 5:00 a.m. No decoys or other personal property may be left on the refuge overnight.

(iv) Hunters may not use or possess more than 20 shells per day.

* * * * *

3. Section 32.22 would be amended by revising paragraphs (c)(1), (h)(4), (k), (l)(2), and (q)(4)(iv); adding paragraph (q)(8)(iv); revising paragraph (r), (v)(2), (v)(3), (v)(4), (v)(6) and (v)(7); redesignating paragraph (z)(1) and (2) as (z)(2) and (3) respectively; adding new paragraph (z)(1); removing paragraphs (bb)(2)(i) through (iii); adding new paragraphs (bb)(2)(i) through (iv) and revising paragraph (00)(2) as follows:

§ 32.22 Refuge-specific regulations; upland game.

* * * * *

(c) *Arizona and California—(1) Cibola National Wildlife Refuge.* Hunting of quail and cottontail rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) The legal weapon shall be shotguns and bows and arrows.

(ii) Non-toxic shot is required for Farm Unit 2 and the Island Unit.

(iii) During the Arizona waterfowl season, hunting of quail and rabbit is not permitted in Farm Unit 2 until noon.

(iv) Hunting of cottontail rabbit is permitted from September 1, through the last day of the respective State's quail season.

(v) Hunting is permitted from one half-hour before sunrise to 3:00 p.m. daily.

(vi) Hunting is not permitted within 50 yards of any road or levee or 250 yards of any farm worker.

* * * * *

(h) *Florida—* * * *

(4) *St. Vincent National Wildlife Refuge.* Hunting of racoon is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(k) *Illinois—Crab Orchard National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

(1) Upland game hunting is not permitted in the controlled goose hunting areas during the permitted waterfowl hunting hours.

(2) No rifles may be used with ammunition larger than .22 caliber rim fire, except balck powder weapons up to and including .40 caliber may be used.

* * * * *

(l) *Illinois, Iowa, and Missouri—Mark Twain National Wildlife Refuge.* * * *

(2) Hunting of squirrel is permitted on the Keithsburg Division from September 1 through September 15.

* * * * *

(q) *Louisiana—* * * *

(4) *D'Arbonne National Wildlife Refuge—* * * *

(iv) Lead shot is permitted only on designated portions of the refuge.

* * * * *

(8) *Upper Ouachita National Wildlife Refuge.* * * *

(iv) Lead shot is permitted only on designated portions of the refuge.

* * * * *

(r) *Maine—Rachel Carson National Wildlife Refuge.* Hunting of upland game birds, grey squirrel, cottontail rabbit, snowshoe hare, fox and coyote is permitted on designated areas of the Refuge subject to the following conditions: Fox and coyote may be hunted only during the state deer season.

* * * * *

(v) *Mississippi—* * * *

(2) *Hillside National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(3) *Mathews Brake National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(4) *Morgan Brake National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(6) *Panther Swamp National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(7) *Yazoo National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon, opossum and furbearers is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(z) *Nevada—(1) Ash Meadows National Wildlife Refuge.* Hunting of quail and rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting of jackrabbit is permitted only during the regular State season for cottontail rabbit.

* * * * *

(bb) New York— * * *

(2) Montezuma National Wildlife Refuge.

(i) All hunters must possess and return at day's end, a valid daily hunt permit card.

(ii) A Special Use Permit is required for night hunting of furbearers.

(iii) Hunting is permitted from the close of refuge deer season through the close of the respective state season.

(iv) Shotguns only are permitted, except that .22 caliber rimfire firearms may be used to take furbearers at night.

* * * * *

(oo) *Wisconsin*— * * *

(2) *Necedah National Widlife Refuge.* Hunting of wild turkey, ruffed grouse, gray squirrel, fox squirrel, cottontail rabbit, snowshoe hare, and raccoon only is permitted on designated areas of the refuge subject to the following conditions:

(i) During the state waterfowl hunting season, guns must be unloaded or cased in the retrieval zone of Refuge Area 5.

(ii) During the spring turkey hunting season only, persons having an unexpired State Spring Turkey Permit in possession may enter and hunt wild turkeys in Refuge Area 3.

(iii) Refuge Area 3 is open to hunting after the State deer gun season through the end of the respective state seasons or until February 28, whichever occurs first.

* * * * *

4. Section 32.32 would be amended by revising paragraphs (h)(5), (i)(5), (s)(2) and (3), (n)(1) and (2), (r)(4) (i) and (ii), (r)(9) H(i) and (ii), (t)(2), (y)(2), (y)(3), (y)(4), (y)(5), (y)(6), (y)(7) and (ff)(2)(i) and (ii); adding (ff)(2)(iii); removing (gg)(2)(vi); redesignating (gg)(2)(vii) as (gg)(2)(vi); revising (gg)(5), (nn)(1), (nn)(3), (nn)(4) and (rr)(2); revising (rr)(3)(ii) through (vi); removing (rr)(3)(vii); revising (tt)(3)(i) and adding (tt)(3)(iv) through (vi) as follows:

§ 32.32 Refuge—specific regulations; big game.

(h) *Florida*— * * *

(5) *St. Vincent National Wildlife Refuge.* Hunting of whitetailed and sambar deer, turkey and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(i) *Georgia*— * * *

(5) *Piedmont National Wildlife Refuge.* Hunting of whitetailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(1) *Illinois—Crab Orchard National Wildlife Refuge.*

* * * * *

(2) Hunters using the Closed Area are required to check in at the refuge visitor contact station prior to hunting and must comply with the special rules provided to them.

(3) Deer hunting is not permitted in the controlled goose hunting areas during the permitted waterfowl hunting hours.

* * * * *

(n) *Illinois, Iowa, and Missouri—Mark Twain National Wildlife Refuge.* * * *

(1) Hunting is permitted on the Gardner and Big Timber Division, including Turkey and Otter Island.

(2) Hunting of anterless deer only is permitted on the Delair Division during a portion of the State season and/or during specially designated dates subject to the following conditions: Permits are required, hunters must be 16 years of age or older, and hunting hours will be 7:00 a.m. until 3:00 p.m.

* * * * *

(r) *Louisiana*— * * *

(4) *D'Arbonne National Wildlife Refuge*— * * *

(i) Either-sex deer hunting with firearms is permitted for two consecutive days beginning with the first day of the Union Parish either-sex season and the following Friday and Saturday.

(ii) Two consecutive days of either-sex deer hunting with muzzleloaders and archery will be permitted beginning the first Saturday in December.

* * * * *

(9) *Upper Ouachita National Wildlife Refuge.* * * *

(i) Either-sex deer hunting with firearms is permitted for two consecutive days beginning with the first day of the Union Parish either-sex season and the following Friday and Saturday.

(ii) Two consecutive days of either-sex deer hunting with muzzleloaders and archery will be permitted beginning the first Saturday in December.

* * * * *

(t) *Maine*— * * *

(2) *Rachel Carson National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge.

* * * * *

(y) *Mississippi*— * * *

(2) *Hillside National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(3) *Mathews Brake National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(4) *Morgan Brake National Wildlife Refuge.* Hunting of white-tail deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(5) *Noxubee National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(6) *Panther Swamp National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(7) *Yazoo National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(ff) *New York*— * * *

(2) *Montezuma National Wildlife Refuge*

(i) All hunters must possess and return at day's end, a valid daily hunt permit card.

(ii) Hunting of deer is permitted on designated portions of the refuge by archery, shotgun, or muzzleloader only during established refuge seasons set within the general State deer season.

(iii) Hunters during the refuge firearms season, must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches of solid-colored blaze orange clothing or material.

* * * * *

(gg) *North Carolina*— * * *

(2) *Great Dismal Swamp National Wildlife Refuge.* * * *

(vi) Hunting and/or possession of loaded firearms on refuge roads and road rights-of-way is prohibited.

* * * * *

(5) *Pungo National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(nn) *Tennessee—(1) Chickasaw National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(3) *Hatchie National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the

refuge subject to the following condition: Permits are required.

* * * * *

(4) *Lower Hatchie National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(rr) *Virginia*— * * *

(2) *Chincoteague National Wildlife Refuge.* Hunting of sika deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Dogs are not permitted.

(iii) During the State firearms season, hunters must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

(3) *Great Dismal Swamp National Wildlife Refuge.* * * *

(ii) Only shotguns, 20 gauge or larger, loaded with buckshot and/or rifled slugs, and bows and arrows, are permitted.

(iii) Dogs are not permitted.

(iv) Hunters must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

(v) Hunting and/or possession of loaded firearms on refuge roads including road rights-of-way is prohibited.

(vi) Hunters are required to sign in and sign out.

* * * * *

(tt) *Wisconsin*— * * *

(3) *Necedah National Wildlife Refuge.* * * *

(i) Hunting with a loaded rifle or shotgun within 50 feet of the centerline of all refuge roads or trails, as shown on the refuge hunting leaflet or discharging these weapons from, across, down, or alongside these roads and trails is prohibited.

* * * * *

(iv) Refuge Areas 1, 2, 4, 5, and 6 are open to deer hunting during the State gun and both early and late archery seasons.

(v) Refuge Area 3 is open to deer hunting during the State gun and late archery season.

(vi) Target or practice shooting is not permitted.

* * * * *

Dated: June 18, 1990.

Bruce Blanchard

Director, Fish and Wildlife Service

[FR Doc. 90-17233 Filed 7-23-90; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 55, No. 142
Tuesday, July 24, 1990

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 COMMERCE

National Oceanic and Atmospheric Administration

Buffer Zone Around Principle Steller Sea Lion Rookeries; Determinations on Exemption Requests

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

ACTION: Notice of determination on two requests for exemptions to the 3-mile buffer zone.

SUMMARY: Two requests for exemptions to the 2-nautical-mile buffer zone established around principle Steller sea lion rookeries have been received by NMFS's Alaska Regional Office. The request for an exemption from the Chirikof Cattle Company was granted on July 6, 1990, and the request from the Afognak Wilderness Lodge was denied on July 6, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Zimmerman, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802 (907-586-7233).

SUPPLEMENTARY INFORMATION:

Background

On April 5, 1990, NMFS published an emergency interim rule (55 FR 12645) that added Steller (northern) sea lions to the Threatened Species List under the Endangered Species Act. This emergency interim rule contained several protective regulations, to be codified at 50 CFR 227.12(a), including the establishment of buffer zones around 32 sea lion rookeries in the Gulf of Alaska and the Aleutian Islands. These buffer zones prohibit the approach of any vessel within 3 nautical miles of these rookeries or the approach of any person on land not privately owned within one-half statutory mile or within sight of the listed rookery sites, whichever is greater.

The emergency interim rule gives the Director, Alaska Region, NMFS, (Regional Director) with the concurrence of the Assistant Administrator for Fisheries, NOAA, the authority to grant exemptions to the prohibitions of the rule (50 CFR 227.12(a)(6)). Exemptions allowing entry into buffer zones may be granted only if (1) The activity will not have a significant adverse impact on Steller sea lions, (2) the activity has been conducted historically and traditionally in the buffer zones, and (3) there is no feasibly available and acceptable alternative to, or site for, the activity. The Alaska Region, NMFS, has received formal exemption requests from the Chirikof Cattle Company and from the Afognak Wilderness Lodge.

Chirikof Cattle Company

On June 5, 1990, Mr. Wayne McCrary, of the Chirikof Cattle Company, Chirikof Island, Alaska, submitted to the Alaska Region a written request for exemption to allow entry into the buffer zone around the sea lion rookeries on Chirikof Island. The information supplied by Mr. McCrary and discussions with NMFS staff who are familiar with Chirikof Island all indicate that the Chirikof Cattle Company request meets the conditions required for granting an exemption:

(1) Granting this exemption should not have any significant, adverse impact on the sea lion rookery. Ranching activities do not occur in the buffer area, rather they are primarily on the northern (opposite) portion of the island. The exemption was requested to allow access to the ranch manager's house, which is located just within the buffer area on the southwestern side of the island. The house's location and the topography in the immediate area, however, partially hide it from the sea lions on the rookery. Disburbance of sea lions on the rookery has not been a problem.

(2) There is a long historical record of use of the island by the company. The Cattle Company, a family operation, has had a lease from the U.S. Bureau of Land Management to graze cattle on Chirikof Island since 1930.

(3) There appears to be no reasonable and feasible alternative to the use of this house.

For these reasons, the Alaska Region granted this exemption to the Chirikof Cattle Company. In the letter of authorization dated July 6, 1990, to the Chirikof Cattle Company, the Regional Director stressed that all human activities on Chirikof Island, including all ranching activities, all deliveries of supplies, and all movement of personnel to and from the island, whether by air or by sea, are to be conducted as far away from the sea lion rookeries as is possible and that no disruption or disturbance of the sea lions on the rookery is allowed.

Afognak Wildernness Lodge

On June 5, 1990, Roy and Shannon Randall, of Afognak Wilderness Lodge, Seal Bay, Alaska, submitted to the Alaska Region a written request for exemption to allow entry into the buffer zone around the sea lion rookeries on Marmot Island. Mr. Roger Smith of Kodiak, Alaska, submitted a letter of recommendation on behalf of the Randalls. Sea lion rookeries on Marmot Island have been a major attraction for guests during the 17 years that the Randalls have owned and operated th' Afognak Wilderness Lodge.

On July 6, 1990, the Alaska Region denied the Afognak Wilderness Lodge request because it does not meet the legal requirements for granting an exemption. Alternative sites are available for viewing sea lions at haulouts rather than at the Marmot Island Rookeries and guests at Afognak Wilderness Lodge have access to alternative wildlife experiences, as well.

Dated: July 17, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

[FR Doc. 90-17174 Filed 7-23-90; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Meeting; Department of Defense Clothing and Textiles Board

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Deputy Director for Acquisition Management, Defense Logistics Agency, announces a forthcoming meeting of the

Department of Defense Clothing and Textiles (DoD C&T) Board.

DATES: Date and Time: August 15, 1990, 0900–1600.

ADDRESSES: Defense Logistics Agency, Cameron Station, Room 3B247, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Paula Metcalf, Quality Assurance Specialist, Product Quality Management Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, VA, (202) 274–7141.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will focus on improvements to DoD acquisition of clothing and textile products.

Charles R. Henry,

Deputy Director (Acquisition Management).

[FR Doc. 90–17167 Filed 7–23–90; 8:45 am]

BILLING CODE 3820–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Qualifications Requirements.

ADDRESSES: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John O'Neill, Office of Federal Acquisition Policy, (202) 501–3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

The solicitation provision at FAR 52.209–1, Qualifications Requirements, requires offerors who have met the qualifications requirements to identify the offeror's name, the manufacturer's name, the item name, and the test number.

This information will be used by contracting officers to identify those offerors that have already met the qualifications requirements.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *7,882*; responses per respondent, *100*; total annual responses, *788,200*; hours per response, *.084*; and total response burden hours, *66,209*.

Obtaining copies of proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0083, Qualifications Requirements.

Dated: July 16, 1990.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 90–17168 Filed 7–23–90; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et. seq.) The listing does not include a collection of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by August 23, 1990. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Mangement and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171..

SUPPLEMENTARY INFORMATION: The energy information collections submitted to OMB for review were:

1. Economic Regulatory Administration
2. ERA–766R
3. 1903–0073
4. Recordkeeping Requirements of DOE's Allocation and Price Rules
5. Extension
6. Recordkeeping
7. Mandatory
8. Businesses or other for profit
9. 250 recordkeepers
10. 3 year retention period
11. 10 hours per recordkeeper
12. 2,500 hours
13. The ERA–766R requires firms in all segments of the oil industry to maintain only those records essential to the orderly and timely completion of the oil pricing enforcement program. Firms not having such records would be exempt from the recordkeeping requirements of 10 CFR 210.1.

and

1. Energy Information Administration
2. EIA–876/E
3. 1905–0068
4. Residential Transportation Energy Consumption Survey
5. Revision

6. Triennially
7. Voluntary
8. Individuals or households
9. 3,000 respondents
10. 3,000 responses
11. 15 minutes per response
12. 750 hours
13. Forms EIA-876/E will provide information on the number and types of vehicles per household, annual mileage, gallons of fuel consumed, fuel type used, price paid for fuel, annual fuel expenditures and fuel efficiency as measured by miles-per-gallon. Data will be published. Respondents are households.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 722(b), and 790a.

Issued in Washington, DC, July 18, 1990.

Yvonne Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90-17257 Filed 7-23-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP90-1730-000 et al.]

Kentucky West Virginia Gas Co. et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Kentucky West Virginia Gas Co.

[Docket No. CP90-1730-000]

July 13, 1990.

Take notice that on July 9, 1990, Kentucky West Virginia Gas Company (Kentucky West), P.O. Box 1388, Ashland, Kentucky 41105-1388, requests authorization in Docket No. CP90-1730-000 to suspend temporarily firm sales service to the City of Paintsville Kentucky (Paintsville), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Consistent with Article VII of a stipulation and agreement filed July 9, 1990, in Docket Nos. TQ89-1-46-000, *et al.*, Kentucky West proposes to suspend sales service to Paintsville under the service agreement dated August 20, 1987, for ten years beginning October 1, 1990, and shall continue to be suspended for as long as Paintsville receives all or substantially all of its natural gas supplies from third parties. It is indicated that to the extent sufficient surplus supplies are available to it, Kentucky West would agree to waive the temporary suspension and make sales to Paintsville at the then-effective Rate Schedule GSS rates if Paintsville's third-party suppliers experience an emergency gas failure during the suspension period.

Comment date: July 23, 1990, in accordance with Standard Paragraph F at the end of this notice.

2. Trunkline Gas Co., Southern Natural Gas Co.

[Docket Nos. CP90-1722-000 and CP90-1723-000]

July 13, 1990.

Take notice that Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251-1642, and Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86-586-000 and Docket No. CP88-316-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

APPENDIX

[Docket No. CP90-1722-000, *et al.*]

Docket number (date filed)	Shipper name	Peak day average day annual Mcf	Receipt [2] points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP90-1722-000 (7-11-90)	Unifield Natural Gas Group, Limited Partnership.	30,000 2,000 730,000	IL, LA, TN, TX, OLA, OTX.	IN	4-1-90, PT, Interruptible.	ST90-3504-000, 4-1-90.
CP90-1723-000 (7-11-90)	Phibro Energy, Inc.	100,000 15,300 [3] 5,584,500	OTX, OLA, TX, LA, MS, AL.	MS, LA	5-4-90, IT, Interruptible.	ST90-3019-000, 5-5-90.

[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] Southern's quantities are in MMBtu.

3. United Gas Pipe Line Co.

[Docket No. CP90-1691-000]

July 13, 1990.

Take notice that on July 6, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-1691-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon by sale to Boral Bricks, Inc. (Boral Bricks) approximately 946 feet of 2-inch lateral pipeline formerly serving Boral Bricks in Section 5, T7-R8E, Lincoln County, Mississippi pursuant to United's blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that this lateral line was originally certificated in Docket No. G-232. According to United, sales service to Boral Bricks was abandoned in Docket No. CP86-742-000 and the

metering station was abandoned pursuant to authority granted in Docket No. CP90-201-000. United states that the meter station that was abandoned in Docket No. CP90-201-000 and was located on the lateral line to be conveyed was replaced with a domestic meter by Entex, Inc. (Entex), a local distribution Company, who resells to Boral Bricks. United states that Entex proposes to move this domestic meter to the tap location upstream of the lateral line proposed to be conveyed. Therefore, United avers that the proposed abandonment would not result in any loss of service by Entex, and that Entex is the only customer served by this line.

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Stingray Pipeline Co.

[Docket No. CP90-1684-000]

July 13, 1990.

Take notice that on July 6, 1990, Stingray Pipeline Company (Stingray), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-1684-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Continental Natural Gas, Inc. (Continental), a marketer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Stingray would perform the proposed interruptible transportation service for Continental, pursuant to a transportation service agreement dated March 27, 1989. The transportation agreement is effective for a primary term of one month from the initial date of service and month-to-month thereafter until terminated by either party upon at least 30 days prior notice. Stringray proposes to transport 50,000 MMBtu of natural gas on a peak day; 15,000 MMBtu on an average day; and on an annual basis 5,475,000 MMBtu of natural gas for Continental. Stingray proposes to receive the subject gas at various existing points of receipt in Louisiana, Offshore Louisiana and Offshore Texas system. Stingray will then transport and redeliver the gas to Holly Beach, OXY-NGL Plant located in section 35-T15S-R13W, Cameron Parish, Louisiana and Stingray-HIOS Exchange (EHI-A330) located Offshore Texas. No new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Stingray commenced such self-implementing service on May 1, 1990, as reported in Docket No. ST90-3039-000.

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. ANR Pipeline Co.

[Docket Nos. CP90-1713-000 [2] and CP90-1714-000]

July 13, 1990.

Take notice that on July 10, 1990, ANR Pipeline Company (Applicant) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act; all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

APPENDIX IX

[Docket No. CP90-1713-000, *et al.*]

Docket number (date filed)	Applicant	Shipper name	Peak Day [1] average annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related [2] dockets
CP90-1713-000 7-10-90	ANR Pipeline Company, 500 Renaissance Center, Detroit, MI 48243.	Kaztex Energy Management, Inc.	32,584 32,584 11,893,160	LA, OK KS, TX Off. TX Off. LA	WI, MI	5-10-90, ITS	CP88-532-000 ST90-3227-000
CP90-1714-000 7-10-90	ANR Pipeline Company, 500 Renaissance Center, Detroit, MI 48243.	Kaztex Energy Management, Inc.	75,000 75,000 27,375,000	LA, OK KS, TX IL, IN WI, KY Off. LA Off. TX	WI, MI	5-10-90, ITS	CP88-532-000. ST90-3274-000.

[1] Quantities are shown in dekatherms unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

6. Columbia Gulf Transmission Co.

[Docket Nos. CP90-1717-000, CP90-1718-000, CP90-1719-000, CP90-1720-000]

July 13, 1990.

Take notice that on July 10, 1990, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-239-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

APPENDIX

[Docket No. CP90-1717-000, *et al.*]

Docket number (date filed)	Shipper name	Peak Day[3] average annual	Points of[4]		Start up date rate schedule service type	Related[2] docket contract date
			Receipt	Delivery		
CP90-1717-000 (7-10-90)	Delta Pipeline Company	10,000 4,000 1,460,000	LA, OLA	LA, MS, OLA, TN	6-1-90, ITS-1 & ITS-2, Interruptible.	ST90-3334-000, 4-1-90.
CP90-1718-000 (7-10-90)	Paragon Gas Company	11,000 5,000 1,825,000	OLA	OLA	6-1-90, ITS-2, Interruptible.	ST90-3333-000, 6-1-90.
CP90-1719-000 (7-10-90)	Catamount Natural Gas, Inc.	100,000 30,000 10,950,000	LA, OLA	LA, LA, TN	6-5-90, ITS-1 & ITS-2, Interruptible.	ST90-3485-000, [5] 12-1-88.
CP90-1720-000 (7-10-90)	Centran Corporation	100,000 70,000 25,550,000	KY, LA, OLA	KY, LA, MS, TN, OLA	6-1-90, ITS-1, & ITS-2, Interruptible.	ST90-3486-000, 12-22-88, [6] 11-1-88.

[2] If an ST docket is shown, 120-day transportation service was reported in it.
[3] Quantities are shown in MMBtu.
[4] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[5] ITS-1 agreement amended 4-17-90; ITS-2 agreement amended 1-22-90.
[6] ITS-1 and ITS-2 amended 2-28-90.

7. United Gas Pipe Line Co., Inland Gas Co., Inc.

[Docket Nos. CP90-1690-000 and CP90-1693-000]

July 13, 1990.

Take notice that on July 6, 1990, the above listed companies filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[4]

A summary of each transportation service which inludes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

APPENDIX

[Docket No. CP90-1690-000, *et al.*]

Docket number (date filed)	Applicant	Shipper name	Peak Day[1] average annual	Points of		Start up date rate schedule	Related[2] dockets
				Receipt	Delivery		
CP90-1690-000 (7-6-90)	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251.	Midcon Marketing Corporation.	154,500 154,500 56,392,500	LA	FL, MS	5-1-90, FTS	CP88-6-000. ST90-3491-000.

APPENDIX—Continued

[Docket No. CP90-1690-000, *et al.*]

Docket number (date filed)	Applicant	Shipper name	Peak Day[1] average annual	Points of		Start up date rate schedule	Related[2] dockets
				Receipt	Delivery		
CP90-1693-000 (7-6-90)	Inland Gas Company, Inc., P.O. Box 1180, Ashland, KY 41105-1180.	Mountain Enterprises, Inc.	1,000 400 84,000	KY	KY	5-21-90, ITS	CP89-779-000. ST90-3302-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

8. Texas Eastern Transmission Corp.

[Docket No. CP90-1716-000]

July 13, 1990.

Take notice that on July 10, 1990, Texas Eastern Transmission Corporation (Applicant) filed in the above referenced docket, a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of a shipper under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice request which is on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to the transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket number and initiation date of the 120-day transaction under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for the shipper under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX

[Docket No. CP90-1716-000, *et al.*]

Docket number (date filed)	Applicant	Shipper name	Peak Day[1] average annual	Points of		Start up date rate schedule	Related[2] dockets
				Receipt	Delivery		
CP90-1716-000 (7-10-90)	Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77252-2521.	Southern Illincis Hosp. Services.	268 268 97,820	Off. LA, TX, LA, MS.	IL	5-4-90, IT-1	CP88-136-000. CP88-136-007. ST90-3243-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

9. Texas Eastern Transmission Corp.

[Docket No. CP90-1721-000]

July 13, 1990.

Take notice that on July 11, 1990, Texas Eastern Transmission Corporation (Applicant) filed in the above referenced docket, a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of a shipper under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice request which is on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to the transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket number and initiation date of the 120-day transaction under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for the shipper under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX IX

[Docket No. CP90-1721-000, *et al.*]

Docket number (date filed)	Applicant	Shipper name	Peak day [1] average annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP-90-1721-000 (7-11-90)	Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77252-2521.	Arkla Energy Marketing Company.	50,000 50,000 18,250,000	MS; AR	MS	4-1-90, IT-1	CP88-136-000. CP88-136-007. ST90-3684-000.

10. Amerada Hess Corp.

[Docket No. CI80-169-002, et al.]

July 13, 1990.

Take notice that on May 18, 1990, Amerada Hess Corporation (Amerada Hess) of P.O. Box 2040, Tulsa, Oklahoma 74102, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for authorization as successor-in-interest to TXP Operating Company (TXP) to continue the service authorized under the certificates previously issued to TXP listed in the Appendix hereto and requesting that Amerada Hess be substituted for TXP in any proceedings related to those dockets. Amerada Hess also requests that TXP's rate schedules listed in the Appendix hereto be redesignated as those of Amerada Hess, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Effective January 1, 1989, TXP assigned its interests in certain properties to Amerada Hess. As a result Amerada Hess has acquired all of the interests of TXP in the properties subject to the certificates issued to TXP in the dockets listed in the Appendix hereto.

Comment date: August 1, 1990, in accordance with Standard Paragraph J at the end of this notice.

APPENDIX

TXP operating company FERC gas rate schedule No.	Certificate docket No.	Purchaser and location
29	CI80-169	United Gas Pipe Line Company, High Island Block 312, Offshore Texas.
30	CI80-244	ANR Pipeline Company, High Island Block 312, Offshore Texas.

APPENDIX—Continued

TXP operating company FERC gas rate schedule No.	Certificate docket No.	Purchaser and location
33	CI80-376	Trunkline Gas Company, High Island Block 312, Offshore Texas.
35 and 81	CI82-410 and CI82-404.	Texas Eastern Transmission Corporation, East Cameron Block 336, Offshore Louisiana.
83	CI89-480-000	Texas Gas Transmission Company, Eugene Island Block 342, Offshore Louisiana.

11. Amerada Hess Corp.

[Docket No. CI67-458-000, *et al.*]

July 16, 1990.

Take notice that on June 13, 1990, Amerada Hess Corporation (Amerada Hess) of P.O. Box 2040, Tulsa, Oklahoma 74102, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for authorization as successor-in-interest to The Louisiana Land and Exploration Company (LL&E) and LLOXY Holdings, Inc. (LLOXY) to continue the service authorized under the certificates previously issued to LL&E and LLOXY listed in the Appendix hereto and requesting that Amerada Hess be substituted for LL&E and LLOXY in any proceedings related to those dockets. Amerada Hess also requests that LL&E's and LLOXY's rate schedules listed in the Appendix hereto be redesignated as those of Amerada Hess, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Effective January 1, 1989, LL&E and LLOXY assigned their interests in certain properties to Amerada Hess. As a result Amerada Hess has acquired all of the interests of LL&E and LLOXY in the properties subject to the certificates issued to LL&E and LLOXY in the dockets listed in the Appendix hereto.

Comment date: August 2, 1990, in accordance with Standard Paragraph J at the end of this notice.

APPENDIX

The Louisiana Land and Exploration Company FERC gas rate schedule No.	Certificate docket No.	Purchaser and location
1	CI67-458	Texas Gas Transmission Corporation, Lake Pagie Field, Terrebonne, Parish, Louisiana.
37	CI80-4	Transcontinental Gas Pipe Line Corporation, Raceland Field, LaFourche Parish, Louisiana.

LLOXY Holdings, Inc. FERC gas rate schedule No.	Certificate docket No.	Purchaser and location
10	CI80-21	Texas Eastern Transmission Corporation, East Cameron Block 352/353, Offshore Louisiana.
12	CI80-465	United Gas Pipe Line Company, High Island Block A-555, Offshore Texas.

12. Transcontinental Gas Pipe Line Corp.

[Docket No. CP90-1711-000]

July 16, 1990.

Take notice that on July 10, 1990, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP90-1711-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157-205) for authorization to install an additional point of delivery for a certain existing gas sales customer and a certain existing transportation customer, and to construct and operate certain appurtenant facilities under Transco's blanket certificate issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Public Service Electric and Gas Company (PSE&G) is currently a sales and transportation customer of Transco under various rate schedules. It is further stated that pursuant to approval on September 29, 1989, of Transco's August 7, 1989 Revised Stipulation and Agreement in Docket No. CP88-68 *et al.*, PSE&G has a total firm transportation entitlement of 417,749 Mcf per day. Transco states that New Jersey Natural Gas Company (New Jersey Natural) is an existing firm and interruptible transportation customer of Transco. It is stated that pursuant to an interruptible transportation agreement dated March 1, 1988, New Jersey Natural has an interruptible transportation entitlement of 178,000 Mcf per day. It is stated that such transportation service for New Jersey Natural is rendered pursuant to Transco's blanket certificate issued in Docket No. CP88-328-000. Transco indicates that its existing tariff does not prohibit the addition of the proposed delivery point.

It is stated that Transco has agreed to install facilities at a new point of delivery for PSE&G located at approximate Milepost 6.75 on the 42-inch Lower New York Bay Extension (Main Line C), hereinafter referred to as the Sayreville Delivery Point. The proposed Sayreville Delivery Point would be designed for a maximum daily rate of up to 264,000 Mcf per day. Transco states that neither PSE&G's total firm transportation allocation nor New Jersey Natural's interruptible entitlement would be altered from its current level. It is stated that Transco has sufficient system capacity to accomplish deliveries at the Sayreville Delivery Point without detriment or disadvantage to Transco's other gas sales customers. Further, the addition of the Sayreville Delivery Point would have no effect on Transco's peak day or annual volumetric deliveries to PSE&G and New Jersey Natural would continue to have their sales and transportation entitlements as stated hereinabove. Transco states that PSE&G requires service at the Sayreville Delivery Point as soon as possible and New Jersey Natural would require service at this point later in 1990.

Transco states that the Sayreville Delivery Point was originally proposed as a new delivery point in the Niagara Cogen Project Application in Docket No. CP89-710-000, currently pending before the Commission. Transco states that although authorization for construction of the Sayreville Delivery Point is sought in this prior notice application, Transco has reflected the volumes required for service in the Niagara Cogen Project in the total volumes stated herein. Transco requests that such delivery point remain a part of the Niagara Cogen Project Application, as such delivery point must be authorized as a point of delivery for service in that docket.

It is further stated that Transco would construct, install, own and operate at the Sayreville Delivery Point a 20-inch valve tap connection, two measuring and regulating stations and other appurtenant facilities. It is stated that the costs of construction of the abovementioned facilities are listed in Exhibit Z-2 to Transco's request, which total $2,188,000. Transco states that costs associated with the facilities for PSE&G, except for costs attributable to the service to be provided pursuant to the Niagara Cogen Project, shall be directly reimbursed by PSE&G. Costs associated with the facility for New Jersey Natural shall be directly reimbursed by New Jersey Natural. The construction, installation and operation of such facilities would comply with the environmental requirements set forth in § 157.206(d) of the Regulations, it is stated.

Comment date: August 30, 1990, in accordance with Standard Paragraph G at the end of the notice.

13. Texas Gas Transmission Corp.

[Docket Nos. CP90-1731-000 and CP90-1732-000]

July 16, 1990.

Take notice that on July 12, 1990, Texas Gas Transmission Corportation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[5]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: August 30, 1990, in accordance with Standard Paragraph G at the end of the notice.

[5] These prior notice requests are not consolidated.

APPENDIX

[Docket No. CP90-1731-000, *et al.*]

Docket number (date filed)	Applicant	Shipper name	Peak Day[1] average annual	Points of		Start up date rate schedule	Related[2] dockets
				Receipt	Delivery		
CP90-1731-000 (7-12-90)	Texas Gas Transmission, Corporation, 3800 Frederica Owensboro, KY 42301.	Centran Corp	30,000 18,000 7,300,000	Offshore LA, LA, TX, IN, KY.	LA	6-14-90, IT	CP88-686-000. ST90-3604-000.
CP90-1732-000 (7-12-90)	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	Coastal Gas Marketing Co.	150,000 75,000 27,375,000	Offshore LA, LA, TX, IN, IL, OH, KY.	LA	6-15-90, IT	CP88-686-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

14. Colorado Interstate Gas Co.

[Docket No. CP90-1712-000]

July 16, 1990.

Take notice that on July 10, 1990, Colorado Interstate Gas Compnay (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90-1712-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to add two delivery points for service to Peoples Natural Gas Company Division of UtiliCorp United, Inc. (Peoples), an existing sales customer of CIG. CIG proposed to add these delivery points pursuant to its blanket certificate issued in Docket No. CP83-21-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG states that it proposes to add the Colorado Springs North City Gate located in section 29, Township 13 South, Range 65 West, and Colorado Springs South City Gate located in section 17, Township 14 South, Range 65 West, both in El Paso County, Colorado, to its service agreement with Peoples. CIG requests authority for a maximum sales and transportation daily volume obligation at both new delivery points of 3,000 Mcf equivalent of natural gas. It is stated that both delivery points are existing sales delivery points for the City of Colorado Springs (City). CIF states that it has been advised that after purchasing gas from CIG at the above delivery points, Peoples will have this gas transported by the City to the facilities of Peoples. This sale of Peoples was formerly by the City, it is stated.

CIG states that no change in Peoples' total daily or annual entitlement is proposed by this request. CIG further states that it believes that it would experience no significant impact on its peak day or annual sales resulting from the addition of the proposed delivery points and the anticipated deliveries resulting from the proposal would be accommodated by CIG's existing transmission system without detriment or disadvantage to CIG's other customers.

Comment date: August 30, 1990, in accordance with Standard Paragraph G at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if on motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filled and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the

appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-17196 Filed 7-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP90-12-005 and CP89-1554-004]

Colorado Interstate Gas Co.; Tariff Filing

July 17, 1990.

Take note that on July 13, 1990, Colorado Interstate Gas Company ("CIG") tendered for filing the following tariff sheets to its FERC Gas Tariff Original Volume No. 3, to be effective August 1, 1990:

First Revised Sheet No. 94
First Revised Sheet No. 95
First Revised Sheet No. 96
First Revised Sheet No. 97
Original Sheet No. 97A
Original Sheet No. 97B
First Revised Sheet No. 100
First Revised Sheet No. 101

CIG states that the purpose of this filing is to eliminate the presently effective "challenge" procedure under which certain interruptible service is curtailed and to replace that procedure with a procedure that will allow those interruptible shippers who do receive service during times of curtailment to continue to receive service subject to certain conditions.

CIG states that copies of its filing were served on all holders of CIG's Volune No. 3 Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 24, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-17192 Filed 7-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-178-004]

Colorado Interstate Gas Co.; Compliance Filing

July 17, 1990

Take note that Colorado Interstate Gas Company ("CIG") on July 13, 1990, tendered for filing the following tariff sheets to revise its FERC Gas Tariff Original Volume No. 1, to be effective August 1, 1990:

Sixth Revised Sheet No. 61G12
Third Revised Sheet No. 61G12-A
Original Sheet No. 61G12-F

CIG states that the above-referenced tariff sheets are being filed in compliance with the Commission's Orders issued in Docket Nos. RP89-178, *et al.*, and that the sheets reflect new Buyout-Buydown costs incurred by CIG from its former pipeline supplier, Northwest Pipeline Corporation.

CIG states that copies of its filing were served upon all of the parties to these proceedings and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 24, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-17193 Filed 7-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-41-000]

Paiute Pipeline Co.; Proposed Change in FERC Gas Tariff

July 17, 1990.

Take notice that on July 16, 1990, Paiute Pipeline Company (Paiute) tendered for filing First Revised Sheet No. 11 of its FERC Gas Tariff, Original Volume No. 1, for the purpose of recovering the additional fixed charge allocations of take-or-pay buyout and buydown costs assigned to Paiute by its upstream pipeline supplier, Northwest Pipeline Corporation (Northwest).

Paiute states that the instant filing reflects its flowthrough of direct billed fixed charge allocations of take-or-pay buyout and buydown costs from three separate Northwest Order No. 500 cost recovery proceedings. On January 1, 1990, Northwest's filing in Docket No. RP90-50-000 was accepted by the Commission, reflecting Northwest's recovery of $1,620,642 of take-or-pay buyout and buydown costs of which $29,533 was direct billed to Paiute by Northwest. Thereafter on April 1, 1990, the Commission accepted Northwest's filing in Docket No. RP90-90-000 reflecting Northwest's recovery of an additional $873,489 of take-or-pay buyout and buydown costs. Pursuant to the Commission's action in Docket No. RP90-90-000, Paiute was direct billed by Northwest $15,912. Most recently, on July 1, 1990, the Commission accepted Northwest's filing in Docket No. RP90-118-000 implementing the recovery of an additional $4,839,128 in Order No. 500 take-or-pay buyout and buydown costs. Paiute's allocation of costs related to Northwest's Docket No. RP90-118-000 is $88,124.

Paiute's First Revised Sheet No. 11 of its FERC Gas Tariff, Original Volume No. 1, reflects the recovery of $133,569, representing the sum of the three direct billed take-or-pay buyout and buydown costs discussed above pursuant to the specific tariff procedures accepted by the Commission in Docket Nos. RP89-245-000,001.

In the instant filing, Paiute also requests that the Commission address an apparent inconsistency in its directives concerning Paiute's approved tariff procedure for recovery of direct billed take-or-pay buyout and buydown costs. Paiute's tariff sheets, as accepted by the Commission on October 27, 1989, required Paiute to file to track changes in its upstream pipeline supplier's Order No. 500 cost recovery rates within a 30-day time period. This Commission approved provision is inconsistent with the Commission's later order of February 23, 1990 in Docket No. RP89-245-001 requiring Paiute to file to track any such changes made by Northwest within a 15-day time period. For the Commission's consideration in clarifying this apparent inconsistency, Paiute noted that its pipeline supplier, Northwest operates on a 30-day billing

cycle. Paiute is not actually billed for the charges until the billing cycle which follows the Commission's acceptance of the new amounts is completed. Therefore, Paiute respectfully requested that the Commission, in its clarification of this inconsistency, specifically allow Paiute the 30-day time currently contained in its tariff for filing to track changes in its upstream supplier's Order No. 500 equitable sharing cost recovery rates.

Paiute has requested the Commission to waive the applicable provisions of section 4 of the Natural Gas Act and § 154.222 of the Commission's Regulations to permit its filing herein to become effective as of August 1, 1990.

Paiute states that copies of the filing were served on Paiute's jurisdictional sales customers, interested parties and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214. All such motions or protests should be filed on or before July 24, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-17195 Filed 7-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-4-17-000]

Texas Eastern Transmission Corp.; Proposed Changes In FERC Gas Tariff

July 17, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 16, 1990, tendered for filing as part of its FERC Gas Tariff, six copies each of the tariff sheets:

Fifth Revised Volume No. 1

2nd Sub 23rd Revised Sheet Nos. 50.1 and 50.2
2nd Sub 22nd Revised Sheet Nos. 50.3 and 50.4
2nd Sub 16th Revised Sheet Nos. 50A.1, 50B.1, 50C.1 and 50D.1
2nd Sub 15th Revised Sheet Nos. 50A.2, 50B.2 and 50D.2
2nd Sub 15th Revised Sheet No. 51
2nd Sub Ninth Revised Sheet Nos. 51A, 51B, 51C and 51D

Original Volume No. 2

Substitute First Revised Thirty-Sixth Revised Sheet No. 235
Substitute First Revised Twenty-Eighth Revised Sheet No. 241
Substitute First Revised Thirty-Sixth Revised Sheet No. 322

Texas Eastern states that the above substitute tariff sheets are proposed to be effective August 1, 1990 and are being filed to replace the tariff sheets filed on June 29, 1990 in Texas Eastern's Regular Quarterly PGA filing pursuant to 18 CFR 154.308.

Texas Eastern states that in the June 29th PGA filing that it had pending before the Commission tariff sheets filed May 25, 1990 in compliance with orders issued February 23, 1990 and April 25, 1990 in Docket Nos. RP88-67-024, *et al.* and RP88-67-030, *et al.* to be effective, in part, on August 1, 1990. The June 29th tariff sheets were predicated in part, upon the May 25th compliance filing being in effect on August 1, 1990. Texas Eastern stated that in the event the tariff sheets filed May 25, 1990 did not become effective on August 1, 1990, Texas Eastern would file substitute tariff sheets to reflect the correct underlying rates and appropriate changes. By Order dated July 9, 1990 the Commission accepted the May 25th compliance filing, to be effective no earlier than September 1, 1990. As a result, Texas Eastern is making the instant filing of substitute tariff sheets which reflects the utilization of the applicable base unit costs and procedures in the underlying rates. In addition, Texas Eastern will, at a later date, make a filing to revise the May 25th compliance filing to reflect the August 1, 1990 PGA filing.

Texas Eastern states that these revised tariff sheets filed herewith reflect a Demand-1 decrease of $.074/dth with no change in Demand-2, and a commodity decrease of $.2267 per Dt, representing the change in Texas Eastern's projected quarterly cost of purchased gas from Texas Eastern's last scheduled PGA filing effective May 1, 1990 in Docket No. TQ90-2-17.

The proposed effective date of the above tariff sheets is August 1, 1990.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-17194 Filed 7-23-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-25-NG]

Elizabethtown Gas Co.; Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of an application filed by Elizabethtown Gas Company (Elizabethtown) on April 11, 1990, as amended June 29, 1990, for authorization to import up to 10,000 Mcf per day of Canadian natural gas over an initial term of 15 years. The proposed imports would be purchased from Western Gas Marketing Limited (WGML), a subsidiary of TransCanada Pipelines Limited (TCPL). Also, WGML could offer and Elizabethtown could purchase an additional 5,000 Mcf per day on a best-efforts basis.

The requested volumes would be delivered to Elizabethtown at the Niagara import point of Tennessee Gas Pipeline Company (Tennessee) near Niagara Falls, New York, and transported in the United States by Tennessee, National Fuel Gas Supply Corporation and Transcontinental Gas Pipe Line Corporation. On June 15, 1990, the Federal Energy Regulatory Commissin (FERC), in FERC Docekt No. CP89-7-001, issued a Final Environmental Impact Statement (FEIS) which included an evaluation of the facilities proposed to be constructed in order to deliver the proposed imports to Elizabethtown.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., August 23, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Lot Cooke, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8116.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Elizabethtown, a wholly owned subsidiary of NUI Corporation, is a local distribution company providing natural gas and mixed gas service in central and northwestern New Jersey. Elizabethtown's rates and services are subject to the jurisdiction of the New Jersey Board of Public Utilities.

On October 30, 1989, Elizabethtown and WGML entered into a precedent agreement obligating the parties to enter into a gas sales contract, substantially in the form of the *pro forma* gas sales contract attached to the precedent agreement, upon receipt and acceptance of all necessary regulatory authorizations and consummation of all necessary transportation arrangements.

Deliveries of gas under the gas sales contract would commence on the later of November 1, 1991, or when all regulatory authorizations had been received and transportation facilities constructed. WGML would sell and deliver to Elizabethtown up to 10,000 Mcf per day (daily contract quantity) on a firm basis over a 15-year term from the date of initial deliveries. The gas sales contract would continue to effect beyond the 15-year period for so long as all necessary authorizations were effective, subject to termination by either party on twelve months notice. The annual contract quantity would be the product of the daily contract quantity and the number of days in the relevant contract year (approximately 3,650 MMcf annually). The total contract quantity would be 54,790 MMcf of natural gas.

The gas sales contract contains an annual triggering quantity which is 60 percent of the annual contract quantity. If Elizabethtown takes less than the annual triggering quantity over a combined two-year period, WGML's sole remedy is to reduce the daily contract quantity by the amount Elizabethtown is deficient. There are no take-or-pay provisions.

In addition, the gas sales contract provides for Elizabethtown to purchase from WGML up to 5,000 Mcf per day of natural gas in excess of the daily contract quantity on a best-efforts basis. Any purchases of excess gas would be used in determining the annual triggering quantity.

Elizabethtown could also increase the firm daily contract quantity by up to 5,000 Mcf per day by notifying WGML in writing. Such daily contract quantity increase would be effective 25 months after receipt of notice, subject to required regulatory authorizations.

Pursuant to the gas sales contract, Elizabethtown would purchase gas on the basis of a two-part demand/commodity rate. The demand charge would consist of: (1) The demand toll application to the firm transportation of the gas on TCPL's and NOVA Corporation of Alberta's pipeline systems, and (2) a supply reservation charge reflecting WGML's costs in securing a gas supply, maintaining and administering such gas supply and arranging for the transportation of the gas.

The commodity charge would be calculated by subtracting the demand charge from an adjusted base price. The adjusted base price would be seasonably differentiated and recalculated monthly. During the winter season (November-March) the adjusted base price would be indexed to the weighted average cost of long-term firm gas supplies purchased by Elizabethtown. The adjusted base price during the summer season (April-October), for purchases up to a 30 percent load factor, would be indexed to the average cost of all gas supplies purchased by Elizabethtown. For those summer purchases in excess of a 30 percent load factor, the commodity charge would be the lessor of the spot gas price or the No. 6 fuel oil price in Elizabethtown's market.

In addition, Elizabethtown would pay any demand and commodity charges, on an as-billed basis, equal to the charge for transportation on TCPL's pipeline system as approved by Canada's National Energy Board applicable to the provision of deliveries at pressures in excess of 400 kilopascals at the Niagara delivery point.

The gas sales contract allows for yearly renegotiation of the pricing provisions upon written notice, and for arbitration if renegotiation does not result in a mutually agreeable resolution. Furthermore, TCPL has warranted WGML's performance under the gas sales contract.

The decision on this application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters to be considered in making a public interest determination in a long-term import proposal such as this include the need for the gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because the price of the gas is competitive and its Canadian supplier is reliable. Parties opposing the import arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. The FERC, on June 15, 1990, issued an FEIS on the impacts of constructing and operating proposed facilities related to this project. The DOE will independently review the results of the FERC environmental evaluation on these facilities in the course of making its own environmental determination. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application, must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding,

although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Elizabethtown's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on July 17, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary For Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-17256 Filed 7-23-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-140000; FRL 3769-6]

Availability of Enforcement Response Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the revised Enforcement Response Policy (ERP) for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This policy, which was issued on July 2, 1990, will be used by the Agency to determine the appropriate civil penalty or other enforcement action to be taken in response to violations of FIFRA. The FIFRA ERP is for use by EPA personnel only, for Federal actions.

ADDRESSES: Persons interested in receiving a copy of the FIFRA ERP should contact: FIFRA ERP, Pesticide Enforcement Policy Branch, Office of Compliance Monitoring (EN-342), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Daniel A. Helfgott, Office of Compliance Monitoring (EN-342), 401 M St., SW., Washington, DC 20460, (202) 382-7825.

SUPPLEMENTARY INFORMATION: On July 2, 1990, the EPA issued an updated FIFRA Enforcement Response Policy (ERP). Once the documentation of a FIFRA violation is complete, the FIFRA ERP will be used by the Agency to select the appropriate enforcement response in consideration of the type and severity of the FIFRA violation. The types of enforcement responses described in the ERP include:

(1) Notices of Detention under FIFRA section 17(c).

(2) Notices of Warning under FIFRA sections 9(c)(3) and 14(a)(2).

(3) Stop Sale, Use, or Removal Orders under FIFRA section 13(a).

(4) Seizures under FIFRA section 13(b).

(5) Injunctions under FIFRA section 16(c).

(6) Civil administrative penalties under FIFRA section 14(a).

(7) Denials, suspensions, modifications, or revocations of Federal applicator certifications under 40 CFR part 171.

(8) Criminal referrals under FIFRA section 14(b).

(9) Recalls.

Also described in the FIFRA ERP is the EPA's policy on "Settlement With Conditions" for civil penalties assessed for violations of FIFRA.

The July 2, 1990 FIFRA ERP supersedes the following previously issued documents:

(1) The FIFRA Civil Penalty Assessment Guidelines published in the Federal Register on July 31, 1974 (39 FR 27711).

(2) The 1983 Level of Action Policy published as section 2 of chapter 5 of the FIFRA Compliance/Enforcement Guidance Manual.

(3) The June 8, 1981 Guidance for the Enforcement of the Child-Resistant Packaging Regulation.

(4) The June 11, 1981 FIFRA Enforcement Response Policy-Interim Penalty Guidelines.

Except for the civil penalty assessment matrix, the February 10, 1986 FIFRA section 7(c) Enforcement Response Policy remains in effect.

Dated: July 17,1990.

Connie A. Musgrove,

Acting Director, Office of Compliance Monitoring, Office of Pesticides and Toxic Substances.

[FR Doc. 90-17253 Filed 7-23-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

July 18, 1990.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0130.

Title: Private Fixed, Mobile, and Radiolocation Services Supplementary Information to FCC Form 574.

Form Number: FCC Form 574B.

Action: Extension.

Respondents: Individuals or households, state or local governments, businesses or other for-profit (including

small businesses), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 300 Responses; 300 Hours.

Needs and Uses: The FCC Form 574B is a supplement to FCC Form 574, and must be filed by HF applicants to provide additional data to enable the FCC to comply with treaty agreements and report data to the International Telecommunications Union to aid in resolution of disputes between member nations. The FCC will collect and maintain the data. Treaty personnel will report the data as required.

OMB Number: 3060-0444.

Title: 800 MHz Construction Letter.

Form Number: FCC Form 800A.

Action: Revision.

Respondents: Individuals or households, businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 4,000 Responses; 4,000 Hours.

Needs and Uses: In accordance with FCC Rules, licensees are required to complete FCC Form 800A to verify that a station has been placed in operation. The data is used by Commission staff to determine whether the licensee is entitled to their authorization to operate.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-17205 Filed 7-23-90; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 17, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0400.

Title: Tariff Review Plan (TRP).

Action: Revision.

Respondents: Businesses or other for-profit.

Frequency of Response: Annually.

Estimated Annual Burden: 40 Responses; 6,000 Hours.

Needs and Uses: Certain local exchange carriers (LECs) are required annually to submit a Tariff Review Plan in partial fulfillment of cost support material required by 47 CFR 61.38. The information in the TRP is used by the FCC to determine whether the charges offered are just and reasonable as the Act requires. The plans are examined in order to determine if the charges offered are done so in a just and reasonable manner. If the information were not filed, the FCC would not be able to carry out its responsibilities as required by the Act.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-17206 Filed 7-23-90; 8:45 am]

BILLING CODE 6712-01-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.: 202-010987-012.

Title: United States/Central America Liner Association.

Parties:

Crowley Caribbean Transport, Inc.
Sea-Land Service, Inc.
Seaboard Marine Ltd.
Crowley Trailer Marine Transport, Corp.

Synopsis: The proposed amendment would authorize the conference chair to call meetings and the members to adopt and revise parliamentary procedure. The parties have requested a shortened review period.

Agreement No.: 203-011194-002.

Title: Intermodal Transportation Association—UIIA—Agreement (Foreign).

Parties:

Naviera Pacifico, C.A.
Topgallant Group, Inc.
Trans Africa Line
Cedar Star Line
Safbank Lines, Ltd.
The Bank Lines, Ltd.

Synopsis: The proposed amendment would add Neptune Orient Lines, Ltd. as a party to the Agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: July 18, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-17161 Filed 7-23-90; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Princess Cruise Lines Inc. and Astramar S.P.A., 10100 Santa Monica Blvd., Los Angeles, CA 90067-4189.

Vessl: CROWN PRINCESS.

Dated: July 19, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-17223 Filed 7-23-90; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's

implementing regulations at 46 CFR part 540, as amended:

Princess Cruise Lines Inc. and Astramar S.P.A., 10100 Santa Monica Blvd., Los Angeles, CA 90067-4189.

Vessel: REGAL PRINCESS.

Dated: July 19, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-17224 Filed 7-23-90; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 90-21]

Transportation Services, Inc., et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Transportation Services, Incorporated as agent for Sea-Land Service Inc. and Crowley Caribbean Transport, Inc. ("Complainant") against American Import Co. ("Respondent") was served July 18, 1990. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing and refusing to remit ocean freight charges lawfully assessed pursuant to the applicable tariff for shipments of containerized pine handles from Honduras to the United States between December 1988 and November 1990.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by July 18, 1991, and the final decision of the Commission shall be issued by November 15, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 90-17219 Filed 7-23-90; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 90-20]

Transportation Services, Inc., et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Transportation Services, Incorporated as agent for Sea-Land Service, Inc. and Crowley Caribbean Transport, Inc. ("Complainant") against Amerwood International, Inc. ("Respondent") was served July 18, 1990. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing and refusing to remit ocean freight charges lawfully assessed pursuant to the applicable tariff for shipments of containerized pine dowels from Honduras to the United States between December 1988 and November 1989.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by July 18, 1991, and the final decision of the Commission shall be issued by November 15, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 90-17220 Filed 7-23-90; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 90-22]

Transportation Services, Inc., et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Transportation Services, Incorporated as agent for Crowley Caribbean Transport, Inc. ("Complainant") against Idwell, Thompson & Matheous, Inc. ("Respondent") was served July 18, 1990. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing and refusing to remit ocean freight charges lawfully assessed pursuant to the applicable tariff for shipments of containerized frozen beef from Honduras to the United States between December 1988 and January 1989.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by July 18, 1991, and the final decision of the Commission shall be issued by November 15, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 90-17221 Filed 7-23-90; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 90-19]

Transportation Services, Inc., et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Transportation Services, Incorporated as agent for Sea-Land Service, Inc. and Crowley Caribbean Transport, Inc. ("Complainant") against Southseas Trading Corp. ("Respondent") was served July 18, 1990. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing and refusing to remit ocean freight charges lawfully assessed pursuant to the applicable tariff for shipments of containerized refrigerated produce from El Salvador to the United States between June 1988 and April 1990.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements,

affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by July 18, 1991, and the final decision of the Commission shall be issued by November 15, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 90-17222 Filed 7-23-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 15, 1990

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 15, 1990.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity is continuing to expand moderately. Total nonfarm payroll employment increased more slowly in March and April after sharp advances earlier in the year; its average growth thus far this year has been above that in the second half of 1989, in part because of the hiring of temporary workers for the census. In April, the civilian unemployment rate moved up to 5.4 percent. Industrial production declined in April, reflecting what appears to be a temporary cutback in the manufacture of motor vehicles. Consumer spending has been sluggish on balance in recent months; outlays for goods have been weak while expenditures for services have remained strong. Business spending for equipment has been rising, but construction activity, both residential and nonresidential, appears to have weakened after a temporary boost early in the year. The nominal U.S. merchandise trade deficit narrowed somewhat in January and February from its average rate in the fourth quarter. Consumer prices continued to rise at a faster pace in March than in 1989; producer prices were down somewhat further in April, reflecting additional unwinding of the earlier surge in prices of food and energy. The latest data on employment costs suggest some deterioration in underlying trends.

Short-term interest rates have declined a little on balance since the Committee meeting on March 27, while rates in long-term debt markets have risen slightly over the period. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies declined considerably over the intermeeting period.

Growth of M2 slowed in April and that of M3 remained relatively weak. Through April, expansion of M2 and M3 was a little above the midpoint and around the lower end, respectively, of the ranges established by the Committee for 1990.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 3 to 7 percent and 2½ to 6½ percent respectively, measured from the fourth quarter of 1989 to the fourth quarter of 1990. The monitoring range for growth of total domestic nonfinancial debt was set at 5 to 9 percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Taking account of progress toward price stability, the strength of the business expansion, the behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, slightly greater reserve restraint or slightly lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from March through June at annual rates of about 4 and 3 percent respectively. The Chairman may call for Committee consulation if it appears to the Manger for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 6 to 10 percent.

By order of the Federal Open Market Committee, July 17, 1990.

Normand Bernard,

Assistant Secretary, Federal Open Market Committee.

[FR Doc. 90-17204 Filed 7-23-90; 8:45 am]

BILLING CODE 6210-01-M

[1] Copies of the Record of policy actions of the Committee for the meeting of May 15, 1990, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

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

The notifications 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)).

Notice 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 August 7, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Ira Hoberman, Lakewood, New Jersey; to acquire 1.9 percent of the voting shares of First State Bancorp, Howell, New Jersey, and thereby indirectly acquire First State Bank, Howell, New Jersey.

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

1. Joseph H. Framptom, Jeane B. Framptom, Joseph B. Framptom, Emily K. Framptom, Conner B. Frampton, and Caroline H. Framptom, all of Paducah, Kentucky; to acquire up to an additional 2.5 percent of the voting shares of Paducah Bank shares, Inc., Paducah, Kentucky, for a total of 25.21 percent, and thereby indirectly acquire The Paducah Bank and Trust Company, Paducah, Kentucky.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Alfred Robert Abboud, Houston, Texas; to acquire 1.56 percent of the voting shares of First City Bancorporation of Texas, Inc., Houston, Texas, and thereby indirectly acquire First City, Texas-Alice, Alice, Texas; First City, Texas-Aransa Pass, Aransa Pass, Texas; First City, Texas-Austin, Austin, Texas; First City, Texas-Beaumont, Beaumont, Texas; First City, Texas-Bryan, Bryan, Texas; First City Bank-Sioux Falls, Sioux Falls, Texas; First City, Texas-Corpus Christi, Corpus Christi, Texas; First City, Texas-Dallas, Dallas, Texas; First City, Texas-El Paso, El Paso, Texas; First City, Texas-Graham, Graham, Texas; First City, Texas-Houston, Houston, Texas; First City, Texas-Kountze, Kountze, Texas; First City, Texas-Lake Jackson, Lake Jackson, Texas; First City, Texas-Lufkin, Lufkin, Texas; First City, Texas-Madisonville, Madisonville, Texas; First City, Texas-Midland, Midland, Texas; First City, Texas-Orange, Orange, Texas; First City, Texas-San Angelo, San Angelo, Texas; First City, Texas-San Antonio, San Antonio, Texas; First City, Texas-Sour Lake, Sour Lake,

Texas; First City, Texas-Tyler, Tyler, Texas.

Board of Governors of the Federal Reserve System, July 18, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-17202 Filed 7-23-90; 8:45 am]

BILLING CODE 6210-01-M

Interbanc Financial Group, 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 August 17, 1990.

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

1. Interbanc Financial Group, Inc., Fort Lauderdale, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Interbanc Savings and Loan Association, Fort Lauderdale, Florida, which will convert to a bank.

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

1. Old National Bancorp, Evansville, Indiana; to merge with SBT Bancorp, Inc., Mt. Carmel, Illinois, and thereby indirectly acquire Security Bank and Trust Company, Mt. Carmel, Illinois.

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

1. First National Insurance Agency, Inc., Exeter, Nebraska; to acquire an additional 8.4 percent of the voting shares, for a total of 51.0 percent, of First National Bank in Exeter, Exeter, Nebraska, for a total of 51 percent.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. First Canadian Bancorp, Inc., Canadian, Texas; to acquire 100 percent of the voting shares of Lipscomb Bancshares, Inc., Higgins, Texas, and thereby indirectly acquire First National Bank in Higgins, Higgins, Texas.

Board of Governors of the Federal Reserve System, July 18, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-17201 Filed 7-23-90; 8:45 am]

BILLING CODE 6210-01-M

Valley Holding Co.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has 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.

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 August 17, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Valley Holding Company, Ronan, Montana; to engage *de novo* in the sale of credit life and health and accident insurance in conjunction with the lending function at Valley Bank of Ronan pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in Lake County, Sander County, Missoula County, and Flathead County, Montana.

Board of Governors of the Federal Reserve System, July 18, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-17203 Filed 7-23-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-697-N]

Medicare and Medicaid Programs; ICD-9-CM Coordination and Maintenance Committee Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) Coordination and Maintenance Committee. The public is invited to participate in the discussion of the topic areas.

DATES: The meeting will be held on Thursday, July 26, 1990, from 9 a.m. to 4 p.m. Eastern Daylight Savings Time.

ADDRESSES: The meeting will be held in room 337A/339A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrice Robins, (301) 966-9364.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both

diagnoses and surgical procedures for Medicare, Medicaid, and all other health-related DHHS programs. The work of th ICD-9-CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use in Federal programs.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modifications, updating, and use in Federal programs. It is co-chaired by the National center for Health Statistics and the Health Care Financing Administration.

The Committee holds public meetings to present proposed coding changes and other educational issues. The meetings provide an opportunity for input concerning these issues to representatives of organizations active in medical coding, as well as physicians, medical record administrators, and other members of the public. The Committee encourages the public to participate in these meetings. After considering the comments presented at the public meetings, the Committee makes recommendations concerning the proposed changes to the Director of NCHS and the Administrator of HCFA for their approval.

At this meeting, the Committee will discuss: balloon dilation of the prostate, spinal bone growth stimulator, harvesting and retrieval of ovum (egg) and implantation of embryo into fallopian tube, extracranial-intracranial (EC-IC) arterial bypass surgery, holter monitoring, gastrointestinal hemorrhage, urinary dysfunction, prolonged pregnancy, addenda for volumes 1 and 2, and other topics.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance Program; No. 13-774, Medicare—Supplementary Medical Insurance)

Dated: July 11, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-17162 Filed 7-23-90; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

National Practitioner Data Bank; User Fee

The Health Resources and Services Administration (HRSA), Public Health Service (PHS), Department of Health and Human Services (DHHS), is announcing the fee that will be charged entities and individuals authorized to request information from the National Practitioner Data Bank when the Data Bank becomes operational. The date that the Data Bank will open for operation will be announced through a separate Notice in the **Federal Register**.

The Data Bank is authorized by the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99-660, as amended (42 U.S.C. 11101 et seq.). Section 427(b)(4) of the Act authorizes the establishment of fees for the costs of processing requests for disclosure and of providing such information. In the fiscal year 1991 budget request, proposed appropriations language would authorize user fees to cover the full cost of operating the Data Bank and would authorize the fees collected to remain available until expended.

Final regulations at 45 CFR part 60, published in the **Federal Register** on October 17, 1989, set forth the criteria and procedures for information to be reported to and disclosed by the Data Bank. Section 60.3 of these regulations should be consulted for the definition of terms used in this announcement. These regulations govern the reporting and disclosure of information concerning:

(1) Payments made for the benefit of physicians, dentists, and other health care practitioners as a result of medical malpractice actions and claims; and

(2) Certain adverse actions taken regarding the licenses, clinical privileges, and membership in professional societies of physicians and dentists.

In accordance with §§ 60.10 and 60.11 of the regulations, information in the Data Bank will be available to the following persons, entities, or their authorized agents:

(1) A hospital that requests information at the time a physician, dentist, or other health care practitioner applies for a position on its medical staff (courtesy or otherwise), or for clinical privileges at the hospital.

(2) A hospital that requests information concerning a physician, dentist, or other health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital.

(3) A physician, dentist, or other health care practitioner who requests information concerning himself or herself.

(4) Boards of Medical Examiners or other State licensing boards.

(5) Health care entities which have entered or may be entering employment or affiliation relationships with a physician, dentist, or other health care practitioner, or to which the physician, dentist, or other health care practitioner has applied for clinical privileges or appointment to the medical staff.

(6) An attorney, or individual representing himself or herself, who has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist, or other health care practitioner who is also named in the action or claim. Provided, that this information will be disclosed only upon the submission of evidence that the hospital failed to request information from the Data Bank as required by § 60.10(a) of the regulations, and may be used solely with respect to litigation resulting from the action or claim against the hospital.

(7) A health care entity with respect to professional review activity.

(8) A Federal agency authorized to request information from the Data Bank. The agency must employ or otherwise engage under arrangement (e.g., such as a contract) the services of a physician, dentist, or other health care practitioner, or have the authority to sanction such practitioners covered by a Federal program and enter into a memorandum of understanding with DHHS regarding its participation in the Data Bank.

(9) A person or entity requesting information in a form which does not permit the identification of any particular health care entity, physician, dentist, or other health care practitioner.

As stated in § 60.12(c)(1) of the regulations, "A request for information from the Data Bank will be regarded as also an agreement to pay the associated fee." Effective on the date the Data Bank opens, a fee of *$2.00* will be charged for each request for information concerning a physician, dentist, or other health care practitioner. Individuals and entities (including Federal entities) authorized to request information from the Data Bank will be charged a fee either when information regarding a particularphysician, dentist, or other health care practitioner is disclosed to them, or when they are informed by the Data Bank that it has not record on a particular physician, dentist, or other health care practitioner.

When a request is for information on more than one physician, dentist, or other health care practitioner, the total fee will be $2.00 times the number of individuals about whom information is being requested. (For example, if a hospital submits a request for information about each of the 30 physicians comprising its medical staff, the fee would be: $2.00 × 30 = $60.00.) Individuals requesting

informationconcerning themselves will not be charged the fee, in accordance with the Department's Privacy Act regulations (45 CFR Part 5b).

In determining the amount of this fee, HRSA applied the criteria set forth in § 60.12(b) of the regulations, which include such cost factors as computer search time, time of computer programmers, photocopying, and postage; an 18-month projection of such costs provided by the Data Bank contractor, which applied U.S. General Accounting Office-approved accounting methods indetermining these costs; and, an 18-month projection of the volume of queries that the Data Bank would receive from individuals and entities authorized to request information from it. As a result, the costs of processing requests and providing information was determined to be $2.00.

It should be noted that information will not be released in response to queries during the 30-day period after a report has been accepted by the Data Bank. During this period, information is placed in a "suspended status" pending validation of its accuracy by the reporting entity and the subject of the report. If an individual or entity requests information from the Data Bank during the 30-day "suspended status," the requester will be informed of this status and advised to resubmit the request after the date specified by the Data Bank (viz., the 31st day after the report was accepted by the Data Bank andplaced in "suspended status"). Requests resubmitted between the 31st and 60th days after the report was accepted by the Data Bank will not be charged a second fee for the resubmitted request.

It should also be noted that, during the Data Bank's initial period of operation, it will not have the capacity to accept reports from a person's or entity's authorized agent. It is anticipated that the Data Bank can develop this capacity in about 6 months after it opens if it is considered a desirable feature by entities. The date that the Data Bank is able to accept such reports will be announced in the **Federal Register**. Authorized agents will be able to request information from the Data Bank effective with its opening.

The Data Bank will not be prepared to process during its first year of operation, requests for "aggregate information," i.e., information in a form which does not permit the identification of any particular health care entity, physician, dentist, or other health care practitioner. The Secretary will announce in the **Federal Register** at a later date the fee that will becharged entities and individuals requesting "aggregate information" from the Data Bank.

The Data Bank will send responses to requests for information by first class mail, U.S. Postal Service, only.

Entities and individuals requesting information from the Data Bank will be billed monthly. Failure to make payments when due will result in the addition of interest and late charges. Interest and late charge penalties will be applied in accord with provisions at 45 CFR 30.13 ("Interest, administrative costs and late payment penalties") in the DHHS regulations dealing with the collection and disposition of debts owed to the United States.

Users will be required to submit checks for payment due, made payable to the U.S. Department of Health and Human Services, to:

National Practitioner Data Bank, P.O. Box 6048, Camarillo, California 93011-6048

The fee charged will be reviewed periodically, and revised as necessary, based upon experience. Any changes in the fee will be announced in the **Federal Register** and will be effective on the date of publication.

Dated: July 18, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90-17212 Filed 7-23-90; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-040-00-4410-08]

Beaver River Resource Area, UT; Environmental Statements Availability

AGENCY: Bureau of Land Management (BLM), Utah, Interior.

ACTION: This Notice of Availability is to advise the public that the environmental assessment and proposed planning amendment for the Cedar/Beaver/Garfield/Antimony RMP for the Beaver River Resource Area to allow the State of Utah to select 160 acres as authorized by the Utah Enabling Act, dated July 17, 1894 (28 Stat. 109), is available for public review.

The lands being considered as suitable for the State to select under the Enabling Act in the planning amendment are described as follows:

Salt Lake Meridian

T. 34 S., R. 13 W.,

Sec. 35, SE¼.

Containing 160.00 acres in Iron County, Utah.

The existing plan does not identify these lands as suitable for disposal. However, because of the resource values, public values, and objectives involved, the public interest may be well served by providing these lands to the State.

A 30-day period for the planning amendment will commence with the publication of this Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Sheridan Hansen, Beaver River Resource Area Manager, 444 South Main, Cedar City, Utah 84720, (801)-586-2458.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The proposed planning amendment is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provisions of 43 CFR 1610.5-2. Protests must be received by the Director of the BLM, 18th and C Streets, NW, Washington, DC 20240, within 30 days after the date of publication of this Notice of Availability for the proposed planning amendment.

Dated: July 17, 1990.

James M. Parker,

State Director.

[FR Doc. 90-17218 Filed 7-23-90; 8:45 am]

BILLING CODE 4310-02-M

[NV-030-00-5101-09-XXXX]

Intent To Prepare Environmental Impact Statement; Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement on a rights-of-way for water and gas pipelines located in northern Washoe County, Nevada.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management, Carson City District, Lahontan Resource Area, will be directing the preparation of an EIS to be prepared by a third party contractor on the impact of proposed Washoe County right-of-way for water and gas pipelines for a project transporting groundwater from the Fish Springs Ranch area in northern Washoe County to the metropolitan area of Washoe County, referred to as the Truckee Meadows Project, proposed on public and private lands.

DATES: Written comments will be accepted until August 23, 1990.

ADDRESSES: Written comments should be sent to Mike Phillips, Area Manager, Lahontan Resource Area; Carson City District Office; Bureau of Land Management; 1535 Hot Springs Road, Suite 300; Carson City, Nevada 89706-0638.

FOR FURTHER INFORMATION CONTACT: Write to the above office or call Dave Loomis at (702) 885-6100.

SUPPLEMENTARY INFORMATION: Washoe County, Nevada has submitted a Right-of-Way Application to the Bureau of Land Management (BLM) for the purpose of constructing and maintaining a 36-inch diameter buried water pipeline from private property known as the Fish Springs Ranch on the Nevada side of Honey Lake Valley, 31 miles north of Reno; and, a 6-inch diameter buried natural gas pipeline from west of Wadsworth, Nevada to intersect the water pipeline route at Bedell Flat, at which point it would parallel the water pipeline north to Fish Springs Ranch.

The purpose of the 38-mile pipeline is to transport up to 17,500-acre feet (5.54 billion gallons) of water annually to be utilized by Washoe County within the Truckee Meadows area. Applications to transport the water from Fish Springs Ranch for use in the Truckee Meadows have been submitted to the Nevada State Engineer, who has noticed a hearing for June 21 and 22, 1990, and July 19, 20 and 21, 1990 in the Washoe County Commission Chambers, Reno, Nevada. As a result of the hearing, the State Engineer, who is responsible for the appropriation of waters within the State of Nevada, will rule on the applications. Processing of the preliminary draft EIS will be contingent upon Washoe County receiving a favorable ruling by the State Engineer on its applications for interbasin transfer.

The County is pursuing this water source for the Truckee Meadows to supplement existing and growing demand consistent with Washoe County's master plan. The County has pursued the Truckee Meadows Project as a reliable source of water in concert with its local planning objectives.

The proposed water pipeline traverses approximately 35 miles of BLM administered lands in the Lahontan Resource Area of BLM's Carson City District. Another 2.8 miles of the proposed water pipeline route traverses private lands.

Two pump stations, occupying about one-third acre each, would be constructed. One station, which includes a 500,000-gallon storage tank, would be located on private lands at the beginning of the pipeline. The other would be located on BLM administered lands in Bedell Flat near the halfway point of the pipeline. Two storage tanks, with a capacity of 2.5 million gallons each, will be constructed on public lands near the pipeline terminus east of Lemmon Valley. The pump stations will be operated with energy provided by natural gas. Production wells will be located in the area of the Fish Springs Ranch.

Construction of the pipeline is estimated to take six months with construction estimated to begin in the late spring of 1991. Cost of the pipeline project is estimated at $78 million. During the construction phase, the project would employ approximately 100 people. When completed, operation, maintenance and security personnel would total about 10 employees.

The natural gas pipeline will be approximately 57 miles in length, of which 20 miles will parallel the water pipeline. From its origin at the Paiute Natural Gas Pipeline near Wadsworth, to the water pipeline, construction would be adjacent to existing roads to the extent practicable. The gas pipeline would traverse approximately ten miles of BLM administered lands before intersecting the water pipeline right-of-way at Bedell Flat in Washoe County.

The scoping process for the EIS will include: (1) Identification of issues to be addressed; (2) identification of viable alternatives; and (3) notification of interested groups, individuals and agencies so that additional information concerning these issues can be obtained. Public hearing(s) will be conducted on the Draft Environmental Impact Statement.

Dated: July 17, 1990.

Fred Wolf,

Acting State Director, Nevada.

[FR Doc. 90-17260 Filed 7-23-90; 8:45 am]

BILLING CODE 4310-HC-M

[ID-010-00-3110-10-8004; IDI-16452]

Exchange of Public and Private Lands in Owyhee County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—IDI-16452; exchange of public and private lands in Owyhee County, Idaho.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 [43 U.S.C. 1716]:

Boise Meridian

T. 6 S., R. 5 E.,
Sec. 11: S½SW¼;
Sec. 12: SE¼SW¼;
Sec. 13: SW¼NE¼, E½NW¼, SE¼SW¼, W½SE¼, SE¼SE¼;
Sec. 14: SE¼NW¼, E½NW¼SE¼, NW¼NW¼SE¼, NE¼SE¼.
T. 8 S., R. 1 E.,
Sec. 27: NE¼SE¼, S½SE¼;
Sec. 34: NE¼, N½SE¼, SE¼SE¼.
Aggregating 910 acres, more or less in Owyhee County, Odaho.

In exchange for the above lands, the BLM proposes to acquire the following described private lands from Raymond and Bonnie Colyer:

Boise Meridian

T. 9 S., R. 3 E.,
Sec. 19: E½E½;
Sec. 20: NW¼NW¼;
Sec. 30: E½NE¼, N½SE¼.
T. 10 S., R. 2 E.,
Sec. 3: SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 10: SW¼NE¼, E½NW¼, NW¼SE¼.
Aggregating 680 acres, more or less in Owyhee County, Idaho.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705. Objections will be reviewed by the State Director, who may sustain, modify, or vacate this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: John Sullivan at (208) 334-1582. The Environmental Assessment/Land Report is also available for review at the above address.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire private inholdings containing riparian and bighorn sheep habitat, and open space values, while disposing of scattered tracts of public land that are difficult and uneconomic to manage. Over half of the acreage being acquired lies adjacent to the Little Jacks Creek Wilderness Study Area. Acquisition of these inholdings will further the objectives of BLM's Recreation 2000, Fish and Wildlife 2000, and riparian/wetlands initiatives, and will greatly improve management efficiency and effectiveness. The public interest will be well served by the completion of this exchange.

Publication of this notice in the **Federal Register** segregates the public

lands from operation of the public land laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

The exchange will be completed on an equal value basis. Full equalization of values will be achieved through acreage adjustment and/or cash payment in an anount not to exceed 25 percent of the value of the lands being transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. The United States reserves to itself a right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 956).

2. The patent will be issued subject to those rights for a road held by the Owyhee County Road and Bridge Department, its successors or assigns, under the authority of Section 8 of the Act of July 26, 1866, Revised Statute 2477 (43 U.S.C. 932, 14 Stat. 253); Serial No. IDI-20724.

Dated: June 28, 1990.

J. David Brunner,

District Manager.

[FR Doc. 90-17176 Filed 7-23-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-942-00-4730-12]

Idaho: Filing of Plats of Survey

The plats of survey of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., July 16, 1990.

The plat representing the dependent resurvey of portions of the south boundary, subdivisional lines, and meanders of the Snake River, and the subdivision of sections 32 and 34, T. 9 S., R. 18 E., Boise Meridian, Idaho, Group No. 688, was accepted July 2, 1990.

The plat representing the dependent resurvey of portions of the south and west boundaries, subdivisional lines, and meanders of the Snake River, and subdivision of certain sections, T. 1 S., R. 1 W., Boise Meridian, Idaho, Group No. 741, was accepted July 2, 1990.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about these lands should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: July 16, 1990.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 90-17165 Filed 7-23-90; 8:45 am]

BILLING CODE 4310-GG-M

[UT-942-00-4214-10; U-65685]

Proposed Withdrawal and Opportunity for Public Meeting; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposed to withdraw 33,323.80 acres of public land in Tooele County, to protect the natural geologic and recreation values of the Bonneville Salt Flats. This notice closes the land for up to 2 years from surface entry mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by October 22, 1990.

ADDRESSES: Comments and meeting requests should be sent to the Utah State Director, BLM, P.O. Box 45155, Salt Lake City, Utah 84145-0155.

FOR FURTHER INFORMATION CONTACT: Michael Barnes, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155. (801) 539-4119.

SUPPLEMENTARY INFORMATION: On July 6, 1990, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Salt Lake Meridian

T. 1 N., R. 16 W.,
Sec. 6, Lost 1-7, S½NE¼, SE¼NW¼, E½ SW¼.
T. 2 N., R. 16 W.,
Sec. 20, all;
Sec. 21, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, Lots 1-4, S½ N½, S½;
Sec. 31, Lots 1-4, S½ N½, S½;
Sec. 33, NW¼.
T. 1 N., R. 17 W.,
Sec. 1, Lots 1-4, S½N½, S½;
Sec. 2, Lots. 1-4, S½N½, S½;*
Sec. 3, Lots 1-4, S½N½, S½;
Sec. 4, Lots 1, 2, S½NE¼, S½;
Sec. 8, E½, SW¼;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, W½;
Sec. 14, all;
Sec. 15, all;
Sec. 16, all;
Sec. 17, all;
Sec. 18, Lots 3, 4, E½, E½SW¼;
Sec. 19, Lots 1-4, E½W½, E½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 26, W½;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, Lots 1-4, E½W½, E½;
Sec. 31, Lots 1-4, E½W½, E½;
Sec. 32, all;*
Sec. 33, all;
Sec. 34, all;
Sec. 35, W½.
T. 2 N., R. 17 W.,
Sec. 25, all;
Sec. 26, SE¼;
Sec. 34, SE¼;
Sec. 35, all;
Sec. 36, all.
T. 1 N., R. 18 W.,
Sec. 24, E½, SW¼;
Sec. 25, all;
Sec. 26, E½, SW¼;
Sec. 34, E½, SW¼;
Sec. 35, all;
Sec. 36, N½, N½S½, W½SW¼SW¼, E½ SW¼SE¼, SE¼SE¼;
Sec. 36, E½SW¼SW¼, SE¼SW¼, W½ SW¼SE¼;**
T. 1 S., R. 17 W.,
Sec. 3, Lots 3, 4, S½NW¼, SW¼;
Sec. 4, Lots 1-4, S½N½, S½;
Sec. 5, Lots 1-4, S½N½, S½;
Sec. 6, Lots 1-7, S½NE¼, SE¼NW¼, E½ SW¼, SE¼;
Sec. 7, Lots 1, 2, NE¼, E½NW¼;
Sec. 8, N½;
Sec. 9, N½.
T. 1 S., R. 18 W.,
Sec. 1, Lots 1, 2, E½SW¼NE¼, SE¼NE¼, NE¼SE¼, E½SE¼SE¼;
Sec. 3, Lots 1-4, SW¼NE¼, W½SE¼NE¼, S½NW¼, NE¼SW¼, W½SW¼, W½ NW¼, SE¼;
Sec. 4, Lots 1-4, S½N½, S½;
Sec. 5, SE¼;
Sec. 8, all;
Sec. 9, N½NE¼, W½SW¼NE¼, NW¼, W½NE¼SW¼, NW¼SW¼, W½SW¼ SW¼;

*Indicates State of Utah lands.

**Indicates private land inholdings.

The area described contains 33,403.80 acres in Tooele County.

The purpose of the withdrawal is to protect the Bonneville Salt Flats Special Recreation Management Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Utah State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection the the proposed

withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Utah State Director at the above indicated address, within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: July 16, 1990.

James M. Parker,

State Director.

[FR Doc. 90-17217 Filed 7-23-90; 8:45 am]

BILLING CODE 4310-DQ-M

Bureau of Reclamation

Central Valley Project, California, Realty Action; Competitive Sale of Federal Land

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described tract of land has been identified for disposal under the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), at no less than the appraised fair market value. The Bureau of Reclamation will accept bids on the land described below and will reject any bids for less than $76,000, the appraised value.

DATES: September 26, 1990.

FOR FURTHER INFORMATION CONTACT: Bill Grangood, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630; telephone (916) 988-1707.

SUPPLEMENTARY INFORMATION: The property is described as a tract of land in the Rancho de los Americanos being a portion of Tract One as described in the Grant Deed recorded in Book 69-10-21 at page 25 and a portion of Tract One as described in Book 69-05-02 at page 753, both Official Records of Sacramento County, CA, containing an area of 1.90 acres, more or less.

The land will be offered for sale through the competitive bidding process. A sealed bid sale will be held at the Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA on September 26, 1990, at which time the sealed bids will be opened. Sealed bids will be accepted at the Folsom Office until close of business on September 25, 1990. Reclamation may accept or reject any and all offers, or withdraw any land or interest in land for sale if, in the opinion of the Regional Director, consummation of the sale would not be fully consistent with the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), or other applicable laws. Should the land remain unsold, it may be reoffered for sale at a later date as determined by the Regional Director. In order to promote full and free competition, the bid forms required for this sale contain a statement that the purchases price has been determined independently by the bidder; this statement must accompany each sealed bid.

The sale of the land is consistent with the Bureau of Reclamation land use planning, and it was determined that the public interest would best be served by offering this land for sale.

Resource clearances consistent with the National Environmental Policy Act requirements have been completed and approved. A Categorical Exclusion Checklist is available for public review at the Folsom office.

The quitclaim deed issued for the land sold will be subject to easements or rights-of-way existing or of record in favor of the public or third parties.

For a period of 60 days from the date of this notice, interested parties may submit comments to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825. Any adverse comments will be evaluated by the Regional Director who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Realty Action will become the final determination of the Department of the Interior.

Dated: July 6, 1990.

Neil W. Schild,

Acting Regional Director, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 90-17213 Filed 7-23-90; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Availability of Draft Recovery Plan for Stephanomeria Malheurensis (Malheur Wirelettuce) for Review and Comment

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Malheur wirelettuce. This species occurs in a single locality approximately 26 miles south of Burns, Oregon. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 24, 1990, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may examine a copy during normal business hours at the Boise Field Station, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise Idaho, 83705 or the Portland Regional Office, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232-4181. Written comments and materials regarding the plan should be addressed to Mr. Charles Lobdell at the above Boise, Idaho address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Portland, Oregon address.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Parenti at the above Boise, Idaho address (telephone 208-334-1931 or 8-554-1931).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will

consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Malheur wirelettuce is known to occur in nature at only a single locality approximately 26 miles south of Burns, Oregon, at the South Narrows Area of Critical Environmental Concern on Bureau of Land Management (Bureau) land.

The principle causes of its decline are habitat modifications associated with the invasion of exotic species (cheatgrass), grazing by native herbivores, and fire. Recovery efforts for the Malheur wirelettuce will focus on maintaining and enhancing the existing population by searching for and securing any new populations found and reestablish additional plantings at the Narrows Area of Critical Environmental Concern. Several public and private entities are cooperating in the Malheur wirelettuce recovery program, including the Bureau, Boise State University, Malheur Field Station, Berry Botanic Garden and High Desert Conferees.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f)

Dated: July 18, 1990.

William E. Martin,

Acting Regional Director.

[FR Doc. 90-17216 Filed 7-23-90; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-469 (Preliminary)]

High-Information Content Flat Panel Displays and Subassemblies Thereof From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping 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 antidumping investigation No. 731-TA-469 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(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 Japan of high-information content flat panel displays and subassemblies thereof, however provided for in the Harmonized Tariff Schedule of the United States (HTS) [1], that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by September 4, 1990.

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: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202-252-1180), 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 July 18, 1990 by the Advanced Display Manufacturers Association, Washington, DC.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 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.

Public Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresess 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 public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public 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 and Business Proprietary Information Service List

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 parties that are authorized to receive such information under a protective order.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on August 7, 1990 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202-252-1180) not later than August 3, 1990 to arrange for their appearance. Parties in support of the imposition of

[1] High-information content (HIC) flat panel displays are electronic devices which are designed to display information or images when integrated into such enduser systems as consumer electronics, office automation, or measuring instruments. The covered displays have 120,000 or more addressable pixels and are no greater than 4 inches in depth. The tariff classification for high-information content flat panel displays includes but is not limited to the following Harmonized Tariff Schedule of the United States (HTS) provisions: subheadings 8471.92.30 and 8471.92.40 and headings of chapters 84, 85, and 90.

antidumping 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 August 10, 1990 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). If briefs contain business proprietary information, a nonbusiness proprietary version is due August 13, 1990. 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 August 14, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs. A nonbusiness proprietary version of such additional comments is due August 15, 1990.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: July 20, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-17342 Filed 7-23-90; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 89-12]

Medic-Aid Pharmacy; Revocation of Registration

On January 10, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Medic-Aid Pharmacy (Respondent) of 11320 Dexter Street Collingwood, Detroit, Michigan 43206, proposing to revoke the pharmacy's DEA Certificate of Registration AM9607334, and to deny any pending applications for the renewal of such registration as a retail pharmacy under 21 U.S.C. 823(f). The Order to Show Cause alleged that the pharmacy's continued registraton is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Adminstrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Ann Arbor, Michigan on July 26, 1989. On March 19, 1990, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed and, on April 27, 1990, the administrative law judge transmitted the record in this proceeding to the Acting Administrator. The Acting Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

Respondent pharmacy is located in an inner-city area of Detroit. Alfred Silverman, R.Ph. is the owner and managing pharmacist. Mr. Silverman testified that when he opened the pharmacy, he realized that there was substantial abuse of drugs in that area.

During the investigation of a wholesale drug distributor, DEA Investigators discovered that the Respondent pharmacy had made several large purchases of controlled substances from the distributor. Specifically, between February 1986 and February 1987, Respondent purchased approximately 176,500 dosage units of Tylenol with codeine #4, a Schedule III narcotic controlled substance, or its equivalent, and between January 1986 and March 1987, Respondent purchased approximately 3,236 four-ounce bottles of codeine-base cough syrups, which are Schedule V controlled substances.

As a result of these purchases, DEA Investigators served an administrative inspection warrant at Respondent pharmacy on May 13, 1987. An audit was conducted of eleven controlled substances covering the period January 1, 1986, through May 12, 1987. The audit revealed shortages for Doriden and Tussionex Liquid, both Schedule III controlled substances. While conducting the audit, the Investigators noted that 11,835 prescriptions for the audited substances were filled during the audit period (12,601 perscriptions if refilled prescriptions are included), which included (not considering refills) 6,686 prescriptions for acetaminophen with codeine 60 mg., and 2,656 prescriptions for acetaminophen with codeine 30 mg.

A review of Respondent's dispensing records revealed that individuals received controlled substances on a regular basis over an extended period of time in excess of what is recommended by the Physican's Desk Reference. Individuals were dispensed controlled substances before the drugs obtained pursuant to their previous prescription or refill should have run out. Individuals were dispensed large quantities of Tylenol with codeine #4 and Doriden, a combination of drugs which is highly abused on the street as a heroin substitute. In June 1987, abuse of Tylenol with codeine in the Detroit area was so great that the manufacturer of the brand name products voluntarily restricted the amount of codeine products its customers could purchase.

Further review of Respondent's dispensing records revealed that Respondent pharmacy dispensed controlled substances to individuals known as "doctor shoppers." These individuals would bring prescriptions issued by numerous different doctors for the same controlled substance to be filled at Respondent.

Additionally, the audit revealed, that if a patient requested, Respondent would dispense the original prescription, as well as all of the authorized refills, on the same day. As a result, customers were able to obtain large quantities of controlled substances at one time. The DEA Investigator who testified at the hearing in this matter stated that during all of her investigations of retail pharmacies, she had never before observed the practice of dispensing the original prescription and all of the refills simultaneously.

DEA Investigators also discovered that Respondent pharmacy filled approximately 380 controlled substance prescriptions purportedly signed by a

Dr. Erwin Williams of the James Couzens Medical Center. The medical center did not exist and Dr. Erwin Williams died in either late 1985 of January or February 1986. A review of the computer printout of prescriptions filled by Respondent revealed that a large majority of those purportedly issued by any doctor named Williams were dated after February 1986, and most of these prescriptions were filled after May 31, 1986, the date Dr. Erwin Williams' DEA registration expired.

A professor of pharmacology at the University of Michigan reviewed certain of Respondent's records and determined that Respondent did not meet the minimum standards of pharmacy practice. As he stated in his report, "[t]he prescriptions presented should have indicated to the pharmacist(s) that the medications were not being used for legitimate medical purposes even though the prescriptions may have been written by licensed physicians." The professor further stated that, "[m]inimum action that should have been taken by the pharmacist(s) should have been to not dispense the prescriptions and report the physicians and patients to the proper authorities, and since this was not done the pharmacist(s) did not meet minimum standards of practice."

After the execution of the administrative inspection warrant in May 1987, Respondent continued to order large quantities of highly abused substances. For the period January 1 to June 30, 1988, Respondent ranked third in the State of Michigan in purchases of codeine-base products.

Alfred Silverman testified at the hearing in this matter that he believed that a pharmacist's "duty is to serve the community for the community's welfare and to do that by filling the prescriptions as written by the physician in the manner and form that the physician has recommended or written," and "to make sure that he dispenses what it is that the doctor wrote for and that the patient has an understanding of what they're taking." He further testified that he never questioned a doctor's prescribing Doriden and Tylenol with codeine simultaneously because "that's within his province and his prerogative."

The Administrator may revoke a DEA Certificate of Registration and deny any pending application for such registration, if he determines that the continued registration would be inconsistent with the public interest. 21 U.S.C. 823(f) and 824(a)(4). Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered: (1) The recommendation of the appropriate State licensing board or disciplinary authority. (2) The applicant's experience in dispensing, or conducting research with respect to controlled substances. (3) The applicant's conviction record under Federal or State law relating to the manufacture, distribution, or dispensing of controlled substances. (4) Compliance with applicable State, Federal, or local laws relating to controlled substances. (5) Such other conduct which may threaten the public health or safety." It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of the factors, and give each factor the weight he deems appropriate. See, *Henry J. Schwarz Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87–47, 53 FR 23465 (1988); *David E. Trawick, D.D.S.*, Docket No. 86–69, 53 FR 5326 (1988).

In this case, the first and third factors do not apply. However, there is extensive evidence relating to Respondent's dispensing practices and compliance with state and Federal law relating to controlled substances, and thus the second and fourth factors are relevant.

The administrative law judge noted that 21 CFR 1306.04(a) provides that:

> A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a *corresponding responsibility* rests with the pharmacist who fills the prescription. . . . [Emphasis supplied.]

The administrative law judge, in her opinion, cited several cases in which United States Courts of Appeal held that, contrary to Alfred Silverman's view, pharmacists have a responsibility, with respect to controlled substances, to do more than merely fill prescriptions as written by the physician. Indeed, the "corresponding responsibility" of a pharmacist means, among other things, that a pharmacist is obligated to refuse to fill a prescription if he knows or has reason to know that the prescription was not written for a legitimate medical purpose.

The administrative law judge concluded that the record establishes that Respondent filled prescriptions for customers who received controlled substances in quantities far exceeding those recommended by the Physician's Desk Reference; too frequently; and for excessive periods of time. Customers received the same controlled substances from several different physicians. This circumstance alone should have aroused Alfred Silverman's suspicions as the validity of their prescriptions. Furthermore, many of these customers received both Tylenol with codeine #4 and Doriden, a combination which Alfred Silverman should have known was highly abused. Finally, Respondent filled hundreds of controlled substance prescriptions purportedly issued by a physician who was, in fact, dead.

The administrative law judge concluded that it is not necessary to find that Alfred Silverman in fact knew that many prescriptions presented to him were not written for a legitimate medical purpose, for there is no question that a conscientious pharmacist would have been suspicious of these prescriptions and would have refused to fill them. There is also no question that Alfred Silverman's filling of these prescriptions demonstrated an utter disregard for his responsibility as a DEA registrant. Additionally, Alfred Silverman's refusal to acknowledge the impropriety of his dispensing practices, and his ordering of large quantities of many of the substances at issue in this proceeding, even after the initiation of the investigation, give rise to the inference that Respondent is not likely to act more responsibly in the future.

The administrative law judge concluded that Respondent's continued registration is not in the public interest and recommended that its DEA Certificate of Registration be revoked and any pending applications be denied. The Acting Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety. The number of controlled substance prescriptions filled by Respondent, as well as the frequency, duration, combination of drugs and prescribing physicians, screamed for Respondent to recognize that these were not legitimate prescriptions. Instead, Respondent filled these prescriptions without question. Such total disregard for the public health and safety will not be tolerated.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AM9607334, previously issued to Medic-Aid Pharmacy, be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective August 23, 1990.

Dated: July 17, 1990.

Terrence M. Burke,

Acting Administrator.

[FR Doc. 90-17178 Filed 7-23-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Occupational Safety and Health Administration
Notice of Alleged Safety and Health Hazards, OSHA—7 Form
1218-0064
On occasion
Individuals or households
16,500 respondents; 4,686 total burden hours; 40 average minutes per response
The OSHA-7 Form is used by employees to report unheathful and/or unsafe conditions in the workplace. Employee reports are authorized by section 8(f) of the Occupational Safety and Health Act. The information is used by OSHA to evaluate the alleged hazardous working conditions and to schedule an inspection or respond in another manner, as appropriate.

Employment Standards Administration
Certificate of Medical Necessity
1215-0113; CM-893
Annually
Businesses or other for-profit; non-profit institutions; small businesses or organizations
10,000 respondents; 4,000 total hours; 20-40 min. per response; 1 form
This form is completed by the miner's doctor and is used by DCMWC to determine if the miner beneficiary meets the specific impairment standards to qualify for durable medical equipment; home nursing care and/or pulmonary rehabilitation.

Mine Safety and Health Administration
Application for Use of Explosive Materials and Blasting Units (30 CFR 22606)
1219-0095
On Occasion
Businesses or other for-profit; small businesses or organizations
7 respondetns; 1 hour per response; total reporting burden; 7 hours
In the absence of permissible explosives or blasting units having adequate blasting capacity for metal and nonmetal hassy mines, this standard provides procedures by which mine operators shall notify MSHA of all nonapproved exlosive materials and blasting units to be used prior to their use in underground gassy metal and nonmtal mines.

MSHA uses this information ensure that safe practices are followed, and to determine that the procedures and safeguards used protect the safety of all persons in the mine during ignition and operation of a retort.

Reinstatement

Pension and Welfare Benefits Administration
Suspension of Benefits Regulation
1210-0048
Other (Whenever benefits are suspended)
Business or other for-profit; Small businesses or organizations
59,771 responses; 14,943 hours; .25 hours per response
DOL Regulation § 2530.203-3 allows a plan to suspend an individual's pension benefits if the individual continues to work or returns to work. The plan is required to notify the individual during the first calendar month or payroll period in which the plan withholds payment of the reasons for the suspension.

Signed at Washington, DC, this 19th day of July, 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90-17245 Filed 7-23-90; 8:45 am]

BILLING CODE 4510-29-M

Employment and Training Administration

[TA-W-24,420]

Maine Woods Livermore Falls Division Livermore Falls, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 29, 1990 applicable to all workers of Maine Woods, Livermore Falls Division, Livermore Falls, Maine. The notice was published in the **Federal Register** on July 12, 1990 (55 FR 28699).

The Department also issued a certification, TA-W-20,348 for the same worker group on January 20, 1988 which expired on January 20, 1990.

The Department, on its own motion, is amending TA-W-24,420 by deleting the April 27, 1989 impact date and inserting a new impact date of January 20, 1990 in order to delete the overlap period for coverage in the two certifications. The amended notice applicable to TA-W-24,420 is hereby issued as follows:

All workers of Maine Woods, Livermore Falls Division, Livermore Falls, Maine who became totally or partially separated from employment on or after January 20, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 18th day of July 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-17246 Filed 7-23-90; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period July 1990

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,426; Raw Hide Fleshing Machinery Corp., Macungie, PA

TA-W-24,386; V.J. Fashions, Inc., Union City NJ

TA-W-24,300; Sombur Machine & Tool Co., Port Huron, MI

TA-W-24,406; Vincenzo Fashions, Newark, NJ

TA-W-24,400; R.M.R. Corp., Elkton, MD

TA-W-24,338; Eleni Fashions, Inc., Newark, NJ

TA-W-24,390; Martec, Inc., Wallingford, CT

TA-W-24,288; Ervite Corp., Erie, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-24,412; Chrysler Corp., Stickney Rd Assembly Plant, Toledo, OH

Increased imports did not contribute importantly to workers separations at the firms.

TA-W-24,337; Cinch Connectors, Pocahontas, AR

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24,411; Bowman Transportation, Gadsden, AL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-24,507; Magee's Enterprises, Alma, WA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-24,445; Lake Shore, Inc., Marquette, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,415; Datacard Addressograph, Holmesville, OH

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-24,379; Garfield Sportswear, Inc., Garfield, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,458; Suits Drilling Corp., Enid, OK

Certification was issued covering all workers separated on or after May 15, 1989.

TA-W-24,385; Joseph Frank, Inc., Passaic, NJ

A certification was issued covering all workers separated on or after April 11, 1989.

TA-W-24,427; Viner Brothers, Inc., Presque Isle, ME

A certification was issued covering all workers separated on or after April 20, 1989.

TA-W-24,430; Apertus Technologies/ Lee Data Corp., Eden Prairie, MN

A certification was issued covering all workers separated on or after May 2, 1989.

TA-W-24,405; Supercraft Coats, Garfield, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,402; Rosaria's Sportswear, PA

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,407; Warrenton Rubber Co., Warrenton, GA

A certification was issued covering all workers separated on or after April 23, 1989 and before November 30, 1989.

TA-W-24,394; Napco Security Systems, Pine Brook, NJ

A certification was issued covering all workers separated on or after February 16, 1990 and before June 16, 1990.

TA-W-24,432; Arthur Winer, Gary, IN

A certification was issued covering all workers separated on or after May 17, 1989.

TA-W-24,392; N & R Fashions, Paterson, NJ

A certification was issued covering all workers separated on or after April 11, 1989.

TA-W-24,419; La Fashions, Hoboken, NJ

A certification was issued covering all workers separated on or after April 21, 1989.

TA-W-24,382; General Motors Corp., Hydramatic Div., Three River, MI

A certification was issued covering all workers separated on or after May 5, 1990.

TA-W-24,403; S & F Madewell, Passaic, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,336; The Chamberlain Group, Inc., Nogales, AZ

A certification was issued covering all workers separated on or after April 19, 1989.

TA-W-24,366; Arcadia Fashions, Paterson, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,362; Action Tungsram, Inc., East Brunswick, NJ

A certification was issued covering all workers separated on or after January 1, 1990 and before July 1, 1990.

TA-W-24,413; Clair Manufacturing Co., Thurmont, MD

A certification was issued covering all workers separated on or after January 1, 1990.

TA-W-24,334; The Chamberlain Group, Inc., Hot Springs, AR

A certification was issued covering all workers separated on or after April 19, 1989.

TA-W-24,335; The Chamberlain Group, Inc., Malvern, AR

A certification was issued covering all workers separated on or after April 19, 1989.

TA-W-24,358; Vandel Services, Inc., East Newark, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,367; Conca D'oro, Paterson, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,365; Andre Fashions, Passaic, NJ

A certification was issued covering all workers separated on or after May 11, 1989.

TA-W-24,364; American Design & Fashion, Inc., Passaic, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

I hereby certify that the aforementioned determinations were issued during the month of July 1990. Copies of these determinations are available for inspection in room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 18, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-17247 Filed 7-23-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24, 317]

Kreamer Textiles, Womelsdorf, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Kreamer Textiles, Womelsdorf, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-24, 317; Kreamer Textiles Womelsdorf, Pennsylvania (July 13, 1990)

Signed at Washington, DC this 17th day of July 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-17248 Filed 7-23-90; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-90-97-C]

Pontiki Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Pontiki Coal Corporation, Caller No. 801, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its No. 1 Mine (I.D. No. 15-08413) located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals in the return aircourse be examined on a weekly basis.

2. Due to adverse roof conditions, seals in the return aircourse cannot be safely examined. To require certified persons to make weekly examinations would result in a diminution of safety.

3. As an alternate method, petitioner proposes that—

(a) An air monitoring station would be established to monitor the air quality and quantity passing in front of the seals;

(b) The air quality and quantity would be continusously monitored by a mine-wide monitoring and control system installed on the surface. Any alarms would be promptly investigated and appropriate corrective action would be taken; and

(c) The sensors used to monitor the air quantity and quality would be examined and calibrated weekly.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 23, 1990. Copies of the petition are available for inspection at that address.

Dated: July 17, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-17243 Filed 7-23-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-71-C]

U.S. Steel Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

U.S. Steel Mining Company, Inc., 600 Grant Street, Pittsburgh, Pennsylvania 15219-4776 has filed a petition to modify the application of 30 CFR 75.1400(c) (hoisting equipment; general) to its Oak Grove Mine (I.D. No. 01-00851) located in Jefferson County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms, or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. The size and weight of a manufactured brakecar installed on the mine's 27 degree slope would result in a diminution of safety.

3. As an alternate method, petitioner proposes to use a mantrip hoist at the mine as follows:

(a) The hoist would be used only as an alternate mantrip. The elevator would be used as the primary means of transporting employees in and out of the mine;

(b) Only three mantrip cars attached to the control car would be raised or lowered at a time. The combined weight of these cars is far less than the breaking strength of the hoist rope;

(c) In addition to coupling to the control car, a safety rope would be affixed to the control car and all three mantrip cars when the mantrips are being raised or lowered; and

(c) The hoist rope would be x-rayed every 90 days to ensure the integrity of the rope has not been compromised.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 23, 1990. Copies of the petition are available for inspection at that address.

Dated: July 17, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-17244 Filed 7-23-90; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Postponement of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Annuities of the Advisory Council on Employee Welfare and Pension Benefit Plans scheduled to be held at 9 a.m. Thursday and Friday, July 26-27, 1990, in Room S-4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210, has been rescheduled to meet at 9:00 a.m., Tuesday, August 21, 1990, in Room C-2313 U.S. Department of Labor Building.

This nine member Working Group was formed by the Advisory Council to study issues relating to Annuities for employee welfare plans covered by ERISA.

The purpose of the August 21, meeting is to focus on the following issues:

(1) Whether objective criteria can or should be formulated to guide both fiduciaries and participants in determining whether a prudent annuity provider selection process has been followed.

(2) Whether certain types of actual or potential conflict of interest circumstances can be identified which are or should be the basis for requiring a fiduciary to seek independent advice (or an independent fiduciary) for purposes of making an annuity provider selection, and/or whether certain actual or potential conflict of interest circumstances can be identified which require that a particular annuity provider be barred from serving as a particular plan's annuity provider.

(3) Whether the appropriate ERISA agency (or agencies) can or should issue a formal list of approved ERISA annuity providers as a method of legal control or safe-harbor with respect to annuity provider selection.

(4) Any collateral fiduciary concerns that may flow from the above, *e.g.*, fiduciary insurance problems.

(5) If the Work Group's deliberations indicate that there is some flaw in ERISA'c current fiduciary rules that needs legislative amendment in order for the fiduciary standards to regulate adequately the selection of annuity providers, the Work Group will address the matter.

The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before August 16, 1990 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before August 16, 1990.

Signed at Washington, DC this 19th day of July, 1990.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 90-17211 Filed 7-23-90; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 90-54]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting; change in meeting location and revised agenda.

Federal Register Citation of Previous Announcement: 55 FR 29120, Notice Number 90-51, July 17, 1990.

Previously Announced Times and Dates of Meeting: August 15, 1990, 8:30 a.m. to 5 p.m. (to be held at Airbus Service Company, Inc.); and August 16, 1990, 8:30 a.m. to 4:30 p.m. (to be held at Miami Viscount Hotel).

Changes in the Meeting Location: Location changed to Capital Gallery, room 303, 600 Maryland Avenue, SW., Washington, DC 20024.

Dates: August 15, and 16, 1990.

Agenda: Changed as Follows:

Agenda:

August 15, 1990
8:30 a.m.—Report Preparation.
5 p.m.—Adjourn.
August 16, 1990
8:30 a.m.—Report Preparation.
4:30 p.m.—Adjourn.

Contact Person for More Information: Mr. Ray Hood, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2745.

Dated: July 18, 1990.

Marvin J. Odesky,

Special Assistant to the Associate Administrator for Management.

[FR Doc. 90-17207 Filed 7-23-90; 8:45 am]

BILLING CODE 7510-01-M

[Notice (90-53)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Solar System Exploration Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: Inc accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science

and Applications Advisory Committee, Solar System Exploration Subcommittee.

DATES: August 7, 1990, 12 noon to 5 p.m.; August 8, 1990, 8:30 a.m. to 5 p.m.; and August 9, 1990, 8:30 a.m. to 12 noon.

ADDRESSES: California Institute of Technology, Buwalda Room, 151 Arms Building, 1201 E. California Boulevard, Pasadena, CA 91109.

FOR FURTHER INFORMATION CONTACT: Dr. Geoffrey A. Briggs, Code SL, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1588).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with an advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Solar System Exploration Subcommittee provides advice to the Solar System Exploration Division concerning long-range planning in solar system exploration. The Subcommittee will meet to discuss international relations, advanced planning issues, and future plans for the Subcommittee. The Subcommittee is chaired by Dr. Laurence Soderblom and is composed of 23 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda:

Tuesday, August 7
- 12 noon—Introduction.
- 12:15 p.m.—Program Perspective Including Space Exploration Initiative Status.
- 2:30 p.m.—Status of Approved Programs.
- 5 p.m.—Adjourn.

Wednesday, August 8
- 8:30 a.m.—Status of Approved Programs.
- 1 p.m.—Status of Advanced Programs.
- 5 p.m.—Adjourn.

Thursday, August 9
- 8:30 a.m.—Research and Analysis Initiatives.
- 10:30 a.m.—1991-1992 Strategic Planning.
- 12 noon—Adjourn.

Dated: July 18, 1990.

Marvin J. Odesky,

Special Assistant to the Associate Administrator for Management, National Aeronautics and Space Administration.

[FR Doc. 90-17198 Filed 7-23-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Task Group on Delegate Education, White House Conference Advisory Committee; Meeting

Date and Time: August 14, 1990, Tuesday, Noon-8:00 p.m.; August 15, 1990, Wednesday, 9:00 a.m.-4:00 p.m.

Place: Doubletree Hotel, Two Commerce Place, Nashville, Tennessee 37219, 615/244-8200.

Status: All meetings are open.

Matters To Be Discussed: Opening Remarks—William G. Asp, Chairman, Review of delegate education plan, Recommended roles for state library agencies, Support of others.

Special provisions will be made for handicapped individuals by contacting Christina Carr Young, 1-202-254-5100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Christina Carr Young, Assistant Director for Delegate Education, White House Conference on Library and Information Services, 1111 18th Street NW., Suite 302, Washington, DC 20036; 1-202-254-5100.

Date: July 17, 1990.

Mary Alice Hedge Reszetar,

NCLIS Associate Executive Director, Designated Federal Official.

[FR Doc. 90-17175 Filed 7-23-90; 8:45 am]

BILLING CODE 3165-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the Dance Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on August 7, 1990, from 9 a.m.-5:30 p.m. in room M14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 7 from 4 p.m.-5:30 p.m., time permitting. The topic will be policy issues.

The remaining portion of this meeting on August 7 from 9 a.m.-4 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-17163 Filed 7-23-90; 8:45 am]

BILLING CODE 7537-01-M

Meeting of the Media Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Media Arts Centers Section) to the National Council on the Arts will be held on August 13-14, 1990, from 9 a.m.-6 p.m. and on August 15 from 9 a.m-5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public on August 13 from 9 a.m.-9:30 a.m. and on August 15 from 2 p.m.-5:30 p.m. The topics will be introductory remarks, and guidelines/policy discussion.

The remaining portions of this meeting on August 13 from 9:30 a.m.-6 p.m., on August 14 from 9 a.m.-6 p.m., and on August 15 from 9 a.m.-2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in

confidence to the agency by grant applicants. In accordance with the determination of the Chariman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonee M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 90-17164 Filed 7-23-90; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Director, Division of Personnel and Management, National Science Foundation, Room 1800 G Street NW., Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Mr. John Wilkinson or Ms. Barbara Patala at the above address or (202) 357-7857.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Permanent Membership

Frederick Bernthal, Deputy Director, Chairperson Jeff Fenstermacher, Assistant Director for Administration, Executive Secretary

Rotating Membership

Adriaan M. de Graff, Head, Special Programs in Materials Research Section, Division of Materials Research, Directorate for Mathematical and Physical Sciences

Lynn Preston, Deputy Division Director of Cross-Disciplinary Research, Directorate for Engineering

Donald F. Heinrichs, Section Head, Oceanographic Technology Program, Division of Ocean Sciences, Directorate for Geosciences

Charles T. Owens, Head, Information and Analysis Section, Division of International Programs, Directorate for Scientific, Technological and International Affairs

W. Franklin Harris, Executive Officer, Directorate for Biological, Behavioral and Social Sciences

Terence Porter, Director, Division of Research Career Development, Directorate for Science and Engineering Education

Constance K. McLindon, Director, Office of Information Systems, Office of the Director

Charles N. Brownstein, Executive Officer, Directorate for Computer and Information Science and Engineering

Dated: July 18, 1990.

Margaret L. Windus,

Director, Division of Personnel and Management.

[FR Doc. 90-17208 Filed 7-23-90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Improved Light Water Reactors; Meeting

The Subcommittee on Improved Light Water Reactors will hold a meeting on August 8, 1990, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, August 8, 1990—1:00 p.m. Until the Conclusion of Business

The Subcommittee will review the NRC and industry proposals for the completeness of designs issue.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangement can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and NUMARC regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised on any changes in schedule, etc., which may have occurred.

Dated: July 17, 1990.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 90-17237 Filed 7-23-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co. et al., Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 39 to Facility Operating License No. NPF-62 issued to the Illinois Power Company (IP), and Soyland Power Cooperative, Inc. (the licensee) for operation of the Clinton Power Station, Unit 1, located in DeWitt County, Illinois. The amendment was effective as of the date of issuance.

The amendment changed the Technical Specifications related to Surveillance Requirement 4.4.3.2.1 for Reactor Coolant System leakage detection. The change indicates that the drywell floor and equipment drain sump

leak detection system instrumentation does not include direct quantitative indication of sump level and that the drywell atmospheric radioactivity leak detection system instrumentation does not quantify leakage.

The application for the amendment copies 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 Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** of February 18, 1988 (53 FR 4917). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to this action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) The application for amendments dated October 30, 1987; (2) Amendment No. to License No. NPF-62; and (3) the Environmental Assessment and Finding of No Significant Impact dated July 2, 1990 (55 FR 28470). All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC., and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 16th day of July 1990.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-17234 Filed 7-23-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-59, issued to the Power Authority of the State of New York (the licensee), for operation of the James A. FitzPatrick Nuclear Power Plant located in Oswego County, New York.

The amendment would increase the number of spent fuel assemblies which may be stored in the spent fuel pool (SFP) from 2244 assemblies to 2797 assemblies. The additional 553 fuel assemblies would be stored in five new storage rack modules to be installed in the SFP. The Technical Specification changes would affect Technical Specification section 5.5.B on page 246 and the Bases on page 246a.

The SFP was reracked using high density racks following approval of Amendment No. 55, dated June 18, 1981, which also increased the SFP capacity to 2244 assemblies. Projections now indicate that full core discharge capability will be lost at the scheduled 1991 refueling outage. The increased storage capacity will extend this capability for a full-core off load by six years to 1997 and extend the loss of normal batch off load capability to 2001, from the current projected batch off load date of 1995.

In addition, the Bases on page 246a would be changed to delete the 3.2% delta-k margin comment, add Reference 3 (the report from Holtec International dated February 1989 which was submitted with this amendment application), and correct Reference 1 by changing the date of the report from 1986 to 1978.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 23, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and 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. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126. 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 1 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 pre-hearing 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. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the

hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW Washington, DC 20555, by the above date. Where petitions are filed during the last 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 Robert A. Capra: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019, 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 detemination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no signficant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662, October 15, 1985) to 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely reqeust for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G, apply.

For further details with respect to this action, see the application for amendment dated May 31, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Dated at Rockville, Maryland, this 16th day of July, 1990.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects—III, Office of Nuclear Reactor Regulations.

[FR Doc. 90-17235 Filed 7-23-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Revision; Rule 15c3-1 File No. 270-197

Forms Under Review by Office of Managment and Budget

Agency Clearance Officer: Kenneth A. Fogash, Deputy Executive Director, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 5th Street NW., Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval a revision of Rule 15c3-1 under the Securities Exchange Act of 1934 (15 U.S.C. 78 (a) *et seq.*), which would prohibit broker-dealers from making distributions of net capital over a certain amount to affiliated parties without notifying the Commission; give the Commission the authority to prohibit withdrawals of net capital from a broker-dealer under certain circumstances; and amend the early warning levels to prohibit withdrawal of net capital at an earlier stage than now permitted. Seven thousand respondents incur an average

burden of 9.86 minutes to comply with the rule.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative summary or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 5th Street, NW., Washington, DC 20549-6004, and Gary Waxman, Clearance Officer, Office of Managment and Budget, Paperwork Reduction Project (3235-0200), room 3228, New Executive Office Building, Washington, DC 20543.

Dated: July 17, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17184 Filed 5-23-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28216; [File No. SR-DTC-90-09]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Depository Trust Co. Relating to Foreign Currency Payment Service

July 17, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 28, 1990, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a new service enabling DTC participants to exercise through DTC the option of receiving a dividend/interest or principal payment either in a foreign currency (outside DTC) or in U.S. dollars (within DTC) as permitted by the terms of certain DTC-eligible issues.

After notifying participants of the availability of the subject service for a payment, participants with a position in the issue as of the record date for the payment would have a specified number of days within which to instruct DTC to: (i) Decrease by a stated quantity the participant's record date position for such record date, and (ii) advise the issuer's paying agency to pay directly to the participant the payment due on such quantity in the foreign currency in which the security is denominated.[1] Participants with record date positions who do not submit such instructions would be allocated payments in U.S. dollars through DTC in accordance with DTC's normal procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under DTC's present procedures, there is no provision for participants to use DTC's facilities to exercise the option, where available under the terms of an issue, to receive, ex-DTC, dividend/interest or principal payments in the foreign currency in which the security is denominated, rather than to receive the payment through DTC in U.S. dollars. Instead, in order to exercise such an option, a participant must withdraw physical certificates from the depository and arrange for processing of the foreign currency payment directly with the paying agent. In order to achieve, once again, the benefits of immobilization, such a participant would be required to re-deposit the certificates after payment has been made. The proposed rule change would eliminate the inefficiencies and costs for participants associated with the physical movement of certificates solely to exercise the foreign currency payment option and would help remove an impediment to the issuance of foreign-currency denominated issues in book-entry-only ("BEO") form.

The proposed rule change is consistent with the requirements of section 17A(b)(3) of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed service was requested by some participants in their responses to DTC's May 12, 1988 program agenda proposals memorandum. More recently, underwriters of foreign-currency denominated issues to be distributed in BEO form through DTC, CEDEL and Euroclear have requested that DTC develop the subject service.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be

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[1] The form of instructions to be used by participants will provide for the participant to identify the bank account to which the paying agent should send the foreign currency payment. The hard-copy form of the Foreign Currency Payment ("FCP") Instructions for interest payments was included as an exhibit to the filing.

available for inspection and copying at the principal office of DTC. All submissions should refer to file number SR-DTC-90-09 and should be submitted by August 14, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17182 Filed 7-23-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28207; File No. SR-NASD-90-37]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to OTC Bulletin Board Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 12, 1990, the National Association of Securities Dealers, Inc., ("NASD") filed with the Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On May 1, 1990, the Commission issued an order approving operation of the NASD's OTC Bulletin Board service ("Service") for a pilot term of one year.[1] The Service provides an electronic quotation medium for NASD members to enter and display quotations in non-NASDAQ securities in which they register as market makers. With respect to every foreign security or ADR quoted in the Service, individual market makers are permitted to update their displayed quotations only twice daily, once between 9 and 9:30 a.m. e.t. and once between noon and 12:30 p.m. e.t. Domestic securities quoted in the Service are not subject to this update restriction.

The NASD hereby submits, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, a proposed rule change to expand the Service's morning period for quotation updates in foreign securities/ADRs by one-half hour. This would produce a morning update period running from 8:30 to 9:30 a.m. e.t. During this period, individual market makers will still be limited to one update per foreign security or ADR. All other obligations applicable to Service market makers remain unchanged.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections, (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposal is to extend, by one-half hour, the morning window for quotation updates by Service market markers registered in foreign securities or ADRs. Several market makers utilizing the Service have informally advised the NASD staff that the current period is insufficient to permit the entry of updates in all affected securities. These market makers have noted that much of the 9-9:30 period is dedicated to updating quotations in the NASDAQ and NASDAQ/NMS issues in which they are also registered. Inserting updated quotations in NASDAQ/NMS issues by 9:30 a.m. e.t. is particularly critical because of the Small Order Execution System ("SOES") obligations that attach to such market making commitments. Hence, this task represents a significant operational priority during the period immediately preceding the daily opening of the market.

Moreover, the Service is designed to carry over a market maker's quotation in a security from the previous market session unless that quotation is superseded by an update. Currently, if a firm does not update its quote in a foreign security or ADR by 9:30 a.m., it is precluded from doing so until noon of that day. Consequently, a stale quote remains in Service for at least 2½ hours before the market maker has another opportunity to correct the situation. Although the original quote is not designated as firm, it is unlikely to reflect the market maker's current trading interest based upon orders received or news announced following the previous day's close.

In light of these factors, the NASD believes that it is appropriate to expand the morning window for quotation updates by Service market makers in foreign securities/ADRs to one hour, 8:30-9:30 a.m. E.T. on each business day the NASD exception report employed to monitor market makers' compliance with the update restriction will be modified accordingly.

The NASD relies on subsections (6) and (11) of Section 15A(b) of the Act as the statutory basis for this administrative rule change. Subsection (6) requires, *inter alia*, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and that they be structured to protect investors and the public interest generally. Subsection (11) authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter. Such rules should produce fair and informative quotations, prevent misleading quotations, and promote orderly procedures for collecting and disseminating quotations. The NASD submits that its proposed modification of the Service is fully consistent with the foregoing statutory provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that Commission approval of the instant rule will not create and competitive burden. The proposed modification of the morning update window will not produce any additional operational burdens or otherwise impeded access to the Service by current or prospective market makers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD did not solicit or receive written comments on this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

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[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124 (May 8, 1990).

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 14, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: July 16, 1990.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 90-17187 Filed 7-23-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28210; File No. SR-NASD-89-9, Amdt. No. 2]

Self-Regulatory Organizations; Amendment to Proposed Rule Change by National Association of Securities Dealers, Inc., Relating To Limit Order Capabilities for the Small Order Execution System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 28, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") an amendment to the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change requests permanent approval of the limit order processing capability for the NASD's Small Order Execution System ("SOES"),[1] and the amendments to the proposed rule change describe enhancements to the system that would permit, in certain circumstances, matching and full or partial execution of limit orders.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD's Small Order Execution System is designed to improve the efficiency of executing transactions in NASDAQ securities through the use of data processing and communications techniques. The addition of limit order processing capability serves the purpose of providing members (and in particular members not having proprietary systems with such capability) with the ability to enter and store limit orders. The system does not impose priorities for execution of customer limit orders vis a vis members' proprietary transactions. Members are, therefore, responsible for ensuring that customer limti orders are handled in a manner consistent with members' obligations to their customers. The NASD believes that those obligations are as set forth in Notice to Members 85-12 dated February 15, 1985, and in the opinion and order of the Commission: In Re E.F. Hutton, Co., Inc. Securities Exchange Act Release No. 25887 (July 6, 1988).

In response to concerns articulated by the Commission in its order approving the Limit Order File on a pilot basis,[2] the Association is proposing several modifications to current processing. Foremost among the proposed modifications is the ability to permit, in certain circumstances, matching and full or partial execution of customer limit orders at prices which are between the highest bid or lowest offer reflected in the NASDAQ system.[3]

The proposed Limit Order File capability would provide market makers with notice that matching orders are resident in the system and allow them an opportunity to execute one or both sides of a matched order within a prescribed time frame. If neither order is executed, the system thereafter would execute them against each other. Enhancements to the SOES Limit Order File would include: alerts regarding the presence of matching limit orders, a take-out procedure to allow market makers to execute limit orders without changing their quote, and the matching/execution function.

1. Alert

The proposed alert will bring to the SOES market maker's attention those limit orders that are priced within the inside (i.e., within the best bid and offer available at that moment) and that potentially match another order already pending on the Limit Order File. For example, if an order is entered which cannot be executed (because it is away from the inside), but whose price is equal to or better than the price of a previously entered order on the other side, an alert message will be displayed on the market maker's screen to indicate a potential match.

2. Take-out

The Limit Order File take-out function will be a new feature added to SOES which will allow market makers to execute limit orders at a specific price without changing their quotes. Any active SOES market maker who has an open quote and available exposure in an issue may take out shares in that issue.

Market makers will be able to review a summary of resident limit orders in each security, and enter take-out orders specifying the side of the market (Buy/Sell), the number of shares to be taken out, and the price at which the market maker is willing to execute. The system will receive the take-out, screen it for accuracy, and execute orders from the

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[1] Notice of the proposed rule change as modified by Amendment No. 1 was given by the issuance of a Commission release [Securities Exchange Act Release No. 27638 (January 19, 1990) and by publication in the Federal Register (55 FR 2723; January 26, 1990)].

[2] *See* Release 34c-26476, dated January 19, 1989, 54 FR 3881 (January 26, 1989).

[3] Future proposed enhancements to the limit order file include stop loss and stop/limit order capability, execution report identifiers and dividend processing.

file at the take-out price. Orders will be executed on a price/time priority—first in/first out, on a full or partial basis, at the take-out price.

Take-outs will not interfere with the regular processing of SOES limit orders. Orders will continue to be executed against the inside, as long as there is available size in the market maker's exposure limit, while the take-out is being processed.

3. Matching

If, after five minutes, none of the matched orders have been executed, either as a result of a change to the inside, or because a market maker has entered a take-out, the orders on the file will be matched and executed. Matches will include partial execution of orders that match or improve price, but do not match in size. Trades that are the result of a system order match will have a special identifier on both order entry firms' Executed Order Scans, and the indicator will also be incorporated in the execution report in the NASDAQ screen.

The Association believes that the proposed enhancements to the SOES Limit Order File will improve the system's ability to execute effectively customer limit orders by permitting matching of orders entered between the spread, with an opportunity for market maker interaction. The enhancements to the Limit Order File are scheduled to be implemented in December 1990, following Commission approval of the instant filing and a Notice To Members alerting membership of the modifications. The NASD believes that the proposal is consistent with provisions of section 15A under the Act, and in particular section 15A(b)(6) thereunder, which provides that the rules of the Association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934, as amended. Indeed, the proposed enhancements should increase competition by allowing potentially matching orders to interact, and by improving overall the scope and operations of the SOES Limit Order File.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 14, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: July 16, 1990.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-17188 Filed 7-23-90; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34-28217; File No. SR-NYSE-90-30]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to New Listing Criteria

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 20, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, and II below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add section 703.19 to the NYSE Listed Company Manual ("Manual") to provide listing guidelines to accommodate securities not otherwise covered under existing sections of the Manual.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

(a) *Listing Guidelines.* In today's financial markets, issuers and underwriters increasingly are proposing to list new types of securities. These securities may contain features

[1] The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

[2] Generally, the current listing guidelines for securities are found in section 102 (Domestic Companies) and section 103 (Non-U.S. Companies) of the Manual.

borrowed from more than one category of currently listed securities, and their specific form will depend upon the particular objectives being sought as well as general market conditions (*e.g.*, fixed face amount debt securities incorporating an opportunity, at maturity, to receive an amount in excess of par based upon the performance of an index; equity securities issued by a U.S. subsidiary of a non-U.S. company which afford full access to dividend payments; warrants to purchase debt securities and "out" rights issued by a listed company affiliate which allow holders to put their common stock back to the issuer at the initial public offering price on a specific date after the initial public offering).

In this regard, during the past several years, the Exchange has added provisions to its listing criteria to accommodate securities that could not be readily categorized under the Exchange's traditional listing guidelines for common and preferred stocks, bonds, debentures, and warrants. For example, the Exchange recently has adopted specific listing guidelines covering contingent value rights ("CVRs"),[3] and currently has pending with the Commission a proposed rule change regarding listing guidelines for index warrants.[4]

Accordingly, the Exchange desires to provide flexibility in its guidelines in order to accommodate such multi-faceted and/or multi-purpose issues without continually having to add new provisions to its listing criteria. The guidelines set forth in proposed § 703.19 are intended to provide the desired flexibility to enable the Exchange to consider the listing of new securities on a case-by-case basis, in light of the suitability of the issue for auction market trading. The guidelines set forth in proposed § 703.19, however, are not intended to accommodate the listing of securities that raise significant new regulatory issues, and, therefore, would require a separate filing with the Commission pursuant to Rule 19b–4 under the Act.[5]

The numerical listing criteria in proposed § 703.19 are intended to accommodate listed companies in good standing, their subsidiaries and affiliates, and non-listed entities which meet the Exchange's original listing standards.[6] Such issuers generally will be expected to meet the earnings and net tangible assets criteria set forth in § 102.01 or § 102.02 (Domestic Companies) and 103.01 (Non-U.S. Companies) of the Manual.

The distribution criteria for equity, as set forth in proposed § 703.19, require that domestic companies have a public distribution of 1.1 million trading units with a minimum aggregate market value of $18 million.[7] An issue must have a minimum of 2,000 round-lot holders, or in the alternative 2,200 holders together with an average monthly trading volume of 100,000 shares. The distribution criterion for debt securities requires a minimum public market value of $5 million.

In addition, the Exchange will apply the guidelines for continued listing set forth in § 802.00 of the Manual to § 703.19 securities when appropriate (*e.g.*, debt/equity characteristics).

(b) *Membership Circular.* Securities listed for trading under proposed § 703.19 are likely to possess characteristics common to both debt and equity instruments. For this reason, prior to trading securities admitted to listed under § 703.19, the Exchange will evaluate the nature and complexity of the issue and , if appropriate, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities particular to handling transactions in such securities. In determining whether such a membership circular is necessary, the Exchange will consider such characteristics of the issue as unit size and term; cash-settlement, exercise or call provisions; characteristics that may affect payment of dividends and/or appreciation potential; whether the securities are primarily of retail or institutional interest; and such other features of the issue that might entail special risks not normally associated with securities currently listed on the Exchange.

(2) Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement of Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–90–30 and should be submitted by August 14, 1990.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposal to add § 703.19 to its Manual is consistent with the requirements of the Act and the rules

[3] *See* Securities Exchange Act Release No. 28072 (May 30, 1990), 55 FR 23166 (June 6, 1990) (File No. SR–NYSE–90–15); § 703.18 of the Manual.

[4] *See* Securities Exchange Act Release No. 27796 (March 13, 1990), 55 FR 10340 (March 20, 1990) (noticing File No. SR–NYSE–90–07).

[5] The Commission notes that securities that have raised significant new regulatory issues in the past include Americus Trusts [*See* Securities Exchange Act Release No. 21863 (March 18, 1985), 50 FR 11972 (March 26, 1985) (File No. SR–Amex–84–35)]; currency warrants (*See* Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987) (File No. SR–Amex–87–15) (proposal to list warrants on foreign currencies)]; index warrants (*See* Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39832 (October 12, 1988) (order approving File No. SR–Amex–87–27) (listing guidelines for foreign currency and index warrants) and Securities Exchange Act Release No. 27565 (December 22, 1989), 55 FR 376 (January 4, 1990) (File No. SR–Amex–89–22) (proposal to list index warrants based on the Nikkei Stock Average)]; and unbundled stock units ("USUs") (*See* File Nos. SR–NYSE–88–39 and 88–40 (proposals to list USUs and constituent securities, subsequently withdrawn by the NYSE)).

[6] *See* §§ 102.01–102.03 and 103.00–103.05 of the Manual for the Exchange's original listing standards.

[7] The distribution criteria in proposed § 703.19 are comparable to those set forth in §§ 102.01, 102.03, 103.01 and 103.05 of the Manual. The aggregate market value of issuers listed under proposed § 703.19 will be comparable to those standards set forth in §§ 102.01, 102.03 and 103.01 and 103.05 of the Manual.

and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.[8] In particular, the Commission believes the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, or dealers. In this regard, the Commission believes that the proposed guidelines applicable to the listing of new, innovative securities will provide the flexibility desired by the NYSE, while helping to ensure that only the more financially substantial companies are eligible to have their new products listed on the Exchange. Proposed § 703.19, therefore, should provide a more efficient and expedient process for listing new securities, and will protect investors and the public interest by ensuring that the financial products listed on the Exchange have met predetermined financial criteria set forth by the Exchange,[9] an important consideration due to the additional or contingent financial obligations created by these instruments.

In addition, the Commission believes that the portion of proposed § 703.19 relating to the membership circular addresses the additional regulatory concerns raised by these products. These novel products, by combining features of debt, equity, and securities derivative products, may be more risky and complex than straight stock, bond, or equity warrants. The Commission believes, therefore, that the portion of the proposed rule change requiring the Exchange to evaluate the nature and complexity of each issue in order to determine whether to distribute a membership circular indicating member firm compliance responsibilities will provide the NYSE with the ability to address, in a flexible manner, any potential sales practice problems and questions that may arise in connection with these new issues. Moreover, the Commission believes that the distribution of this circular should help to ensure that only customers with an understanding of the specific risks attendant to the trading of particular securities products trade these products on their brokers' recommendations. In this regard, the membership circular requirement will help to ensure that investors and the public interest are protected when the new products are traded on the Exchange.

Finally, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act because it relates only to those securities which are similar to products currently listed for trading on the Exchange. If a new product raises novel or significant regulatory issues, the NYSE must file a proposed rule change so that the Commission would have an opportunity to review the regulatory structure for the product.[10]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission recently approved a substantially similar proposed rule change submitted by the American Stock Exchange ("Amex") which adopted listing criteria for hybrid securities.[11] The Commission believes that any differences between the two proposals do not warrant the postponement of approval of the NYSE proposal. The differences between the two proposals center around the distribution criteria, and the criteria set forth in the NYSE proposal parallel the NYSE's original listing standards which already have been approved by the Commission after careful consideration.[12] Furthermore, the Exchange has stated that several issuers have expressed interest in listing certain new types of hybrid securities products on the NYSE.[13] Because the Amex proposal to list hybrid products has been approved by the Commission,[14] a greater delay in the ability of issuers to list these securities on the NYSE may adversely affect competition between the exchanges, a result detrimental to exchange market trading.

In addition, the Commission recently approved an NYSE proposal and a Midwest Stock Exchange ("MSE") proposal to adopt listing criteria to trade CVRs, which are akin to the type of hybrid products the NYSE proposal would include.[15] The Commission did not receive any comments on those proposals or on the Amex hybrid products filing.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[16] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 18, 1990.

Margaret H. McFarland,

Deputy Secretary.

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[8] 15 U.S.C. 78f (1982).

[9] This standard, however, would not preclude the NYSE from submitting specific standards for other companies to have similar securities traded on the Exchange.

[10] *See* note 5, *supra.*

[11] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8624 (March 8, 1990) (order approving File No. SR-Amex-89-29). The NYSE proposal differs from the Amex proposal in the following four material ways: (1) The NYSE evaluates net tangible assets available to common stock while the Amex uses "stockholder equity"; (2) the NYSE distribution criterion looks to round lot holders, or alternatively all holders together with average monthly trading volume, while the Amex requires a minimum number of holders; (3) the NYSE proposal contains no minimum price per share criterion either for original or continued listing while Amex provides for a minimum redemption price per unit; (4) the NYSE provides a debt listing standard based upon minimum public market value and the Amex has no such listing criterion. *See* File Nos. SR-NYSE-90-30 and SR-Amex-89-29 to compare the actual listing criteria of both proposals.

[12] Compare section 102 of the Manual to the NYSE proposal set forth in File No. SR-NYSE-90-30.

[13] *See* File No. SR-NYSE-90-30 (submitted to the Commission on June 20, 1990).

[14] *See* note 13, *supra.*

[15] *See* Securities Exchange Act Release No. 28072 (May 30, 1990) (approving the NYSE proposal to list CVRs on the Exchange); Securities Exchange Act Release No. 28143 (June 25, 1990) (granting accelerated approval to the MSE's proposal to list CVRs).

[16] 15 U.S.C. 78s(b)(2) (1982).

[Rel. No. 34-28218; File No. SR-NYSE-90-17]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Bid-Ask Differentials and Responsibility of Specialists To Make Ten-Up Markets

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 10, 1990 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[2]

[1] On May 23, and June 27, 1990, the Exchange amended the filing to conform its proposed bid-ask spread differential requirements exactly to those in place at the other options exchanges.

[2] *See* letter from Michael Schwartz, Chairman, Committee on Options Proposals ("C.O.O.P."), to Jonathan G. Katz, Secretary, Commission, dated June 12, 1990. The C.O.O.P. letter expressed support

Continued

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 758 and add Rule 758A as follows (italics indicates material proposed to be added; brackets indicate material proposed to be deleted):

Competitive Options Trader

Rule 758. (a)—No change.

(b)(i) While on the Floor, no Competitive Options Trader shall initiate an Exchange transaction in a kind of option in which he is registered for any account in which he has an interest except in accordance with the following provisions as applied to each kind of option in which he is registered:

(A) through (B)—No change.

(C) A Competitive Options Trader, whenever he enters the trading crowd in other than a floor brokerage capacity or is called upon by a Floor Official or a Floor Broker acting in an agency capacity, shall engage, to a reasonable degree under the circumstances, in dealings for his own account when there exists a lack of price continuity, a temporary disparity between the supply of and demand for option contracts of a particular series or a temporary distortion of the price relationships between option contracts of the same class. Without limiting the generality of the foregoing, a Competitive Options Trader is expected to perform the following activities in the course of contributing to the maintenance of a fair and orderly market:

(1) Bidding and/or offering so as to create differentials of no more than ¼ of $1 between the bid and the offer for each option contract for which the *prevailing bid is* [last preceding transaction price was] less than *$2* [$1], no more than ⅜ of $1 where the *prevailing bid is* [last preceding transaction price was] *$2* [$1] *or more* but *does not exceed* [less than] $5, no more than ½ of $1 where the *prevailing bid is* [last preceding transaction price was $5 or] more *than $5* but *does not exceed* [less than] $10, no more than ¾ of $1 where the *prevailing bid is* [last preceding transaction price was $10 or] more *than $10* but *does not exceed* [less than] $20 and no more than $1 where the *prevailing bid is more than* [last preceding transaction price was] $20 [or more]. *If the bid/ask differential in the security underlying any in-the-money option series is greater than the bid/ask differential specified herein, the permissible differential for such series shall be identical to that in the underlying security market.*

(b)(i)(C)(2) through Supplementary Material .85 — No change.

Specialist Options Transactions

Rule 758A. (a) At all times other than during rotation, a specialist is required to sell (purchase) at least ten contracts at the offer (bid) that is displayed when a purchase (sell) order reaches the trading post where the option class is located for trading. Two Floor Officials may grant exemptions from the rule on a case-by-case basis when exemptions are warranted for, among other things, a change in market conditions or an obvious error in the posting of the display market quote due to reporter error or system malfunction.

(b) Only non-broker dealer customer orders shall be entitled to execution pursuant to the provisions of this rule.

(c) This rule shall apply only to options series that expire during the two nearest term months.

(d) Specialists are not required to display as a market quotation bids or offers of a Competitive Options Trader for less than ten contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NYSE Rule 758(b)(i)(C)(1) currently requires Competitive Options Traders ("COTs") to maintain a specified minimum differential (or spread) between their bids and offers on an option contract.[3] The size of the differential is determined according to the value of the last preceding transaction price for the option contract. The proposed rule change amends the current requirement in three respects to conform the Exchange's requirements with those of the other options exchanges.

First, it sets the applicable differentials according to the prevailing bid in each option contract, rather than according to the last preceding transaction price in the contract. This will better ensure that the differential bears a relationship to the current market conditions for the option contract.

Second, the proposed amendment narrows the differential to ¼ of $1 for option contracts where the prevailing bids are at least $1 but less than $2. Currently, a differential of ⅜ of $1 applies to option contracts where the last transaction price is at least $1 but less than $2. The change to ¼ of $1 should result in improved price continuity and liquidity in lower-priced option contracts. In addition, the proposed rule change conforms the NYSE's bid-ask differential requirements to those of the other options exchanges in those instances where the value of a bid is exactly equal to $5, $10 and $20.

Third, the NYSE proposes to modify the differential applicable to in-the-money option series by providing that, when the quote differential in the market for the underlying security is greater than the applicable differential set forth in Rule 758, the permissible differential shall be identical to that in the market for the underlying security.

Proposed new Rule 758A would impose on NYSE options specialists the same ten-up obligations in place on the other options exchanges. Specifically, the proposed rule will require options specialists to guarantee the execution of each public customer order for option contracts expiring in the two nearest term months, to a minimum depth of ten contracts, at the best bid or offer that is displayed when the order reaches the specialist's post. The requirement will not apply during a rotation. The proposal provides that two Floor Officials may grant an exemption from the requirement on a case-by-case basis when an exemption is warranted. Specialists will not be required to display as the best bid or offer a COT quote for contracts that expire in the two nearest term months if the quote is for less than ten contracts. The Exchange believes that requiring specialists to make ten-up markets for all public orders for contracts that expire in the two nearest term months at the prevailing bid or offer will promote the public interest by enhancing the quality of the Exchange's option market.

for the ten-up market proposal and did not address the proposed modifications to the minimum bid-ask differential requirements.

[3] Rule 750 (e)(i) applies the obligations of COTs to maintain specified bid-ask differentials to options specialists bidding and/or offering for their own accounts.

According to the NYSE, the proposed rule change is consistent with section 6(b)(5) of the Act, which provides in pertinent part that the rules of the Exchange are to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the part of the proposal that amends the minimum bid-ask differential requirements be given accelerated approval. The Exchange requests accelerated approval in order to assure uniformity among the rules of the options exchanges and to remove a competitive disparity among the options exchanges.

The Commission believes that narrowing the maximum allowable bid-ask differential requirement for an options contract bid greater than $1 and less than $2 will result in improved price continuity and tighter, more liquid markets. All orders, including public customer orders, will benefit from the narrower bid-ask differential requirements. In addition, the Commission believes that it is reasonable to permit in-the-money options quotations to reflect the market conditions of the underlying securities, even though such a rule will increase the instances that a narrower bid-ask differential will be bypassed, in light of the narrower bid-ask differentials, the NYSE's proposed ten contract execution guarantee, and the desire to have uniform bid-ask spread requirements among the options exchanges to reduce investor confusion. In this regard, the Commission previously has permitted quotations for in-the-money options to be identical to spreads in the underlying securities markets on the basis of information provided by other options exchanges that indicated that this exemption from the bid-ask differential requirements will occur only in rare circumstances, and, as a result, will have a minimal impact on the market.[4]

Accordingly, the Commission finds that the proposed amendment to the bid-ask differential requirements is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, section 6.[5] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act because it will promote just and equitable principles of trade, protect investors and promote the interest.

The Commission finds good cause of approving the minimum bid-ask differential portion of the proposal prior to the thirtieth day of publication of notice of filing thereof in the **Federal Register** because it will reduce investor confusion by bringing the NYSE's rules into conformity with the bid-ask differential rules of the other options exchanges. In addition, the Commission has previously solicited comment on identical proposals submitted by the other options exchanges and received no response. Moreover, if the Commission is aware of no investor complaints arising out of identical bid-ask spread requirements in place on the other options exchanges.

With respect to the other portion of the proposal, within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (1) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so findings or as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number (SE-NYSE-90-17) and should be submitted by August 14, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the portion of the proposed rule change (SR-NYSE-90-17) relating to bid-ask spread differential requirements be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: July 18, 1990.

Jonathan G. Katz,

Secretary.

[FR 90-17228 Filed 7-23-90; 8:45 am]

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[Rel. No. 34-28215; File No. SR-NYSE-90-24]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Filing and Order Granting Accelerated Temporary Approval to Proposed Rule Change Relating to Amendments to Rule 103A and Extension of Effectiveness of Rule 103A Until May 9, 1991

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2]

[4] *See* Securities Exchange Act Release Nos. 26924 (June 13, 1989), 54 FR 26284 (June 22, 1989) (order approving File No. SR-CBOE-89-4); 27235 (September 19, 1989) 54 FR 38560 (September 19, 1989) (order approving File No. SR-Amex-89-10.)

[5] 15 U.S.C. 78f (1984).

[6] 15 U.S.C. 78s(b)(2) (1984).

[7] 17 CFR 200.30-3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

notice is hereby given that on May 9, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange proposes to amend Rule 103A ("Specialist Stock Reallocation") to enhance the specialist performance criteria relating to administrative responses and to delete certain outdated or otherwise inapplicable performance criteria. The Exchange also proposes to extend the effectiveness of the rule until May 9, 1991. The Exchange has requested accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act [3] to enable the provisions of Rule 103A, which expired on May 9, 1990,[4] to continue on an uninterrupted basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 103A to enhance the specialist performance criteria relating to administrative responses contained in the rule, to delete the rule's performance criteria for the Specialist Performance Evaluation Questionnaire ("SPEQ") and the Opening Automated Report Service ("OARS"), and to delete one of the factors to be considered during the course of an Exchange Performance Improvement Action. The Exchange also proposes to extend the effectiveness of the rule for an additional year until May 9, 1991.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The intent of Rule 103A is to encourage a high level of market quality and performance in Exchange listed securities. Rule 103A grants authority to the Exchange's Market Performance Committee ("MPC") to develop and administer systems and procedures, including the determination of appropriate standards and measurements of performance, designed to measure specialist performance and market quality on a periodic basis to determine whether or not particular specialist units need to take actions to improve their performance. Based on such determinations, the Market Performance Committee is authorized to conduct a formal "Performance Improvement Action" in an appropriate case.

On May 9, 1988, the Commission extended the effectiveness of Rule 103A for two years and approved major revisions to the specialist performance standards and the Performance Improvement Process contained therein.[5] The revised rule defines specific performance measures where below standard performance would trigger a Performance Improvement Action to address cases of substandard specialist performance. The revisions also added structure to the process by which stock reallocations could occur as a result of Rule 103A and provided a means of addressing particularly egregious specialist performance.

The two-year extension period was intended to permit the Exchange to monitor the operation of the revisions under acutal conditions and to make any modifications that it deemed appropriate. At this time, the Exchange proposes to extend the effectiveness of Rule 103A, for an additional year, until May 9, 1991 and proposes to amend four of the standards. These are:

(1) Delete the SPEQ performance criteria specified in Rule 103A.10(A) (i), (ii) and (iii) as these cannot be applied to the new SPEQ. The new SPEQ was approved by the Commission on February 5, 1990,[6] and is currently being administered for the first quarter of 1990. The Exchange expects to submit to the Commission under Rule 19b–4 new criteria for codification in Rule 103A as soon as possible after two quarters of experience with the new SPEQ.

(2) Enhance the performance criteria for administrative messages received through the SuperDOT system by increasing the current requirement in Rule 103A.10(C)(iii) that a specialist respond to 75% of his administrative messages in 30 minutes to 90% of his messages in 10 minutes.

(3) Delete the performance criteria pertaining to OARS specified in Rule 103A.10(C)(i). The rule currently requires that a specialist transmit 90% of his OARS reports within 10 minutes of a stock's opening. This requirement has been rendered obsolete by current technology. The Exchange's electronic display books automatically send the required report upon execution of the initial trade on the Floor.

(4) Delete one of the factors specified in Rule 103A.10(C)(ii) required to be considered by the Market Performance Committee in setting performance improvement goals pertaining to timely turnaround of SuperDOT orders. The factor, whether a specialist unit is equipped with Electronic Display Books, is unnecessary since all specialist units are equipped with Electronic Display Books.

2. Statutory Basis

The Exchange believes the basis under the Act for this proposed rule change is the requirement under section 6(b)(5) [7] that an Exchange have rules designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed amendments to Rule 103A are consistent with these objectives in that they will enable the Exchange to further enhance specialist performance and the Exchange's markets. Further, the Exchange has submitted a report to the Commission detailing its experience under the Rule 103A pilot. The proposed rule change addresses deficiencies noted during the pilot. Finally, the proposed extension of the rule will allow the Exchange to continue to administer Rule 103A on an uninterrupted basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] 15 U.S.C. 78s(b)(2) (1982).

[4] *See* Securities Exchange Act Release No. 25681 (May 9, 1988), 53 FR 17287 (May 16, 1988) (order approving File No. SR–NYSE–87–25).

[5] *See infra*, note 20.

[6] *See*, Securities Exchange Act Release No. 27675 (February 5, 1990), 55 FR 4922, (February 12, 1990) (order approving File No. SR–NYSE–89–32).

[7] 15 U.S.C. 78f(b)(5) (1982).

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 14, 1990.

IV. Discussion and Conclusion

The Commission has reviewed carefully the NYSE's proposed rule change and concludes, for the following reasons, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with section 6(b)(5) of the Act.[8]

The Commission fully supports and encourages the NYSE's continuing efforts to develop meaningful and effective evaluation criteria that encourage improved specialist performance and market quality. The Commission believes it important to market quality that the Exchange have accurate and comprehensive measures of specialist performance in light of changing market structure and the significant role played by the NYSE specialist in providing stability, liquidity and order to exchange markets during both normal and unusual market conditions.

The Exchange has evaluated the Rule 103A pilot and noted several deficiencies, as described below. The proposed amendments are intended to address these deficiencies and strengthen the program. Accordingly, the Commission finds the amendments to be consistent with sections 6(b)(5) and 11(b) of the Act.[9] First, the Exchange's proposed rule change increases the message response rate performance criterion for administrative messages received through the SuperDOT system. The proposal would require a specialist to respond to 90% of his administrative messages in 10 minutes as opposed to 75% of his messages in 30 minutes. The present standard has been too narrow and failed to distinguish poor performers. The increased message response rate criterion should tighten the standard and encourage a more efficient response time to SuperDOT administrative messages.

Second, the Exchange is proposing two technical amendments to its Rule 103A evaluation criteria. Because current technology renders the criteria set forth in Rule 103A.10(C) (i) and (ii) obsolete, it is logical to delete the provisions from the rule.

Third, the Exchange is proposing to delete its Rule 103A.10 SPEQ performance criteria. These criteria are based on the old SPEQ, which used absolute rather than relative scoring standards. The old SPEQ proved increasingly inadequate due to grade inflation (*i.e.*, most units received perfect or near perfect scores). The Commission recently approved amendments to the SPEQ that modify the content of some questions, realign the weighting of the questions, and incorporate a relative scoring methodology.[10] The NYSE intends to incorporate the revised SPEQ into its Rule 103A program soon. The revised SPEQ, with relative performance measures, should ensure that specialists who are regularly among the lowest ranked specialists would be subject to performance reviews regardless of whether their performance met an arbitrarily determined level of unacceptable performance.

Before setting specific criteria under Rule 103A using the revised SPEQ, the NYSE would like to gain some experience with its administration. Thus, the NYSE currently is administering its recently revised SPEQ for the two quarters ending March and June 1990. The Exchange is using this six-month interim period to gain experience with the revised SPEQ scoring methodology in order to determine appropriate minimally acceptable performance standards. After the conclusion of this six-month trial period, the Exchange will set actual relative performance standards for Rule 103A actions based on SPEQ scores received after two quarters of experience with the new questionnaire. Thus, the proposed rule change would delete the old standards contained in Rule 103A.10(A)(i), (ii) and (iii) because these cannot be applied to the new SPEQ.

The Commission recognizes that the NYSE, in administering the SPEQ for two quarters before promulgating standards, is attempting to refine the relative performance methodology.[11] The Commission believes that discontinuing the old SPEQ standards during this period is not inconsistent with the Act for two reasons. First, the new SPEQ will still have some value as a performance improvement measure during this period.[12] Second, the period for limited use of the SPEQ is short, so that the SPEQ will be fully incorporated back into Rule 103A soon. Specifically, prior to the quarter ending September 1990, the Commission expects the Exchange to adopt, and file with the Commission as proposed rule changes, minimum relative performance standards so that specialists who are regularly among the lowest ranked specialists based on SPEQ scores would be subject to performance improvement actions by the MPC under Rule 103A regardless of whether their performance met a predetermined level of unacceptable performance.

Although the Exchange's evaluation criteria under Rule 103A.10 include objective standards that measure specialist performance at the opening (both regular and delayed), systematized order turnaround, and the timeliness of a unit's response to status requests,[13] the Exchange's proposed

[8] 15 U.S.C. 78f(b)(5) (1982).

[9] 15 U.S.C. 78f(b)(5) (1982).

[10] *See* Securities Exchange Act Release No. 27675 (February 5, 1990), 55 FR 4922 (February 12, 1990) (order approving File No. SR-NYSE-89-32).

[11] The Commission does not believe that it is mandatory that a new performance questionnaire be administered for some period before actual use. While it is reasonable for the NYSE to acquire empirical data over a short period of time before promulgating standards, an exchange could implement a questionnaire and then revise it if experience demonstrated the need for revisions.

[12] The Exchange will impose a freeze on the ability of a specialist unit that has been identified as a true bottom performer during this period based on the results of the revised SPEQ to apply for a new stock allocation. The Exchange also has committed during this interim period to identify the worst performing specialist units based on the SPEQ and refer them to the MPC for counseling. Moreover, under Rule 103A, the MPC could determine whether these units, based on other Rule 103A criteria, warranted a performance action.

[13] In addition, although NYSE Rule 103A.10 authorizes the Exchange to establish a "market

Continued

rule change does not incude objective market making measures in the Rule 103A program. The Commission continues to believe that the Exchange should develop objective performance standards that would measure accurately the traditional indicia of specialist performance, namely, market depth, price continuity and dealer participation and stabilization.[14] Similarly, the Commission believes that the mature status of the Intermarket Trading System ("ITS") as a market structure facility warrants the incorporation of ITS turnaround and "trade-through" concerns into the NYSE's Rule 103A performance standards. During the two year Rule 103A pilot, the Exchange has employed the services of an outside expert to study the feasibility of adopting such objective measures of specialist performance. The Exchange has informed the Commission that the consultant is assessing methods to formulate statistical standards to directly measure specialist market making performance, and that the study should be completed during the Fall of 1990.

For the reasons discussed above, the Commission finds that the NYSE's proposal to renew the amended Rule 103A evaluation criteria is consistent with the requirements of section 6 of the Act [15] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[16] in that it is designed to promote just and equitable principles of trade, perfect the mechanisms of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly auction markets on national securities exchanges. Further, the Commission finds that the proposal is consistent with section 11(b) of the Act [17] and Rule 11b-1 thereunder [18] which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and protect the mechanism of a national market system. The revisions to Rule 103A, and the ultimate adoption of relative performance criteria, should enhance the Exchange's ability to evaluate specialist performance, resulting in higher performance levels and market quality.

Moreover, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can continue to administer its revamped Rule 103A evaluation process without delay or interruption. Additionally, the Commission is approving the amended Rule 103A evaluation criteria. During this time, the Commission and the NYSE will be able to examine the efficacy of its amended specialist evaluation procedures,[19] as well as determine whether to extend the pilot for a further period or make Rule 103A's amended evaluation criteria permanent.[20] Finally, a substantial portion of the current rule was noticed for the full statutory period in 1987, and the Commission did not receive any adverse commentary on the revised Rule 103A program.[21] The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.[22]

It is therefore ordered, pursuant to section 19(b)(2) of the Act [23] that the proposed rule change (SR-NYSE-90-24) be, and hereby is, approved for a period ending May 9, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Dated: July 17, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17189 Filed 7-23-90; 8:45 am]

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share" objective measure of specialist performance, the Exchange has not yet implemented this standard. The market share standard is intended to be a competitive measure of specialist performance that authorizes the MPC to initiate a performance improvement action where it finds a specialist unit's overall percentage of the total share volume as reported on the Consolidated Transaction Reporting System in any of its registered securities has declined "significantly" within two consecutive quarters and where the MPC further determines that the reason(s) for the decline can be attributed to "factors within the control of the specialist unit." At this time, the Exchange is attempting to develop meaningful market share standards and procedures for identifying stocks that may be subject to performance review on the basis of a market share criterion.

[14] *See* letter from Richard G. Ketchum, Director, SEC, Division of Market Regulation, to John J. Phelan, Chairman, NYSE, dated May 9, 1988.

[15] 15 U.S.C. 78f (1982).

[16] 15 U.S.C. 78f(b)(5) (1982).

[17] 15 U.S.C. 78k(b) (1982).

[18] 17 CFR 240.11b-1 (1989).

[19] In this connection, the Commission expects the Exchange to submit to the Division of Market Regulation, by February 9, 1991, a report detailing its experience with the implementation of the revised Rule 103A pilot criteria. The report should contain data for each quarter, on (1) The number of specialists that fell below acceptance levels of performance for each category; (2) the number of performance improvement actions commenced; (3) the number of units subjected to informal counseling to improve performance; and (4) a list of stocks reallocated due to substandard performance under the Rule and the particular unit involved.

[20] The Commission expects the Exchange to submit to the Division of Market Regulation prior to the quarter ending March 1992 a proposed rule change under Rule 19b-4 under the Act, 17 CFR 240.19b-4, to extend the Rule 103A pilot or make the rule permanent. This rule change should include objective measures of market making performance that have been developed by the outside experts retained by the Exchange. The Commission also expects the Exchange to submit to the Division of Market Regulation, by September 1, 1990, a separate proposed rule change that would amend Rule 103A.10 to implement relative performance standards for specialist performance evaluations based on SPEQ scores. *See* Securities Exchange Act Release No. 27675 (February 5, 1990), 55 FR 4922 (February 12, 1990) (order approving File No. SR-NYSE-89-32).

[21] *See* Securities Exchange Act Release No. 24919 (September 15, 1987), 52 FR 35821 (September 23, 1987) (notice of filing of File No. SR-NYSE-87-25), and Securities Exchange Act Release No. 25681 (May 9, 1988), 53 FR 17287 (May 16, 1988) (order approving File No. SR-NYSE-87-25).

[22] 15 U.S.C. 78f (1982).

[23] 15 U.S.C. 78s(b)(2) (1982).

[24] See 17 CFR 200.30-3 (1989).

[Release No. 34-28211; File No. SR-PSE-90-25]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to Fees for Alternate Specialist Trades

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 3, 1990, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b-4 of the Act, submitted a proposed rule change to amend its fees for alternate specialist trades. The PSE proposes to reduce the alternate specialist fee from the current $10 per transaction to $5 per transaction for all outgoing Intermarket Trading System ("ITS") and offboard trading.[1]

[1] On June 11, 1990, the PSE submitted to the Commission a proposal to amend the alternate specialist fee based on shares traded. On July 3, 1990, the PSE clarified its proposed rule change to state that the alternate specialist fee will be based on transactions, rather than on shares traded. *See* letter from Rosemary A. MacGuiness, Senior Counsel, PSE, to Diana Luka-Hopson, Division of Market Regulation, Commission, dated July 2, 1990.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to reduce alternate specialist fees in order to better reflect the Exchange's cost of tracking and monitoring alternate specialists' trades.

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members using the facilities of the PSE.

B. Self-Regulatory Organization's Statement of Burden on Competition

The PSE does not believe that the proposed rule change imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received from members or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section (b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-90-25 and should be submitted by August 14, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 17, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17185 Filed 7-23-90; 8:45 am]

BILLING CODE 8010-01-M

Release No. 34-28208; [File No. SR-PTC-90-03]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Participants Trust Company Relating to Permitted Transfers

July 16, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 3, 1990, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change replaces, in its entirety, the text of Article II, Rule 13, section 2 of PTC's rules with proposed new text clarifying the book entry transfers of securities permitted under this rule in support of, and as contemplated by, Article II, Rule 6 and Article III, Rule 2 which, respectively, provide for end-of-day settlement and for the payment of principle and interest advances; and corrects an incorrect cross-reference in the fourth sentence of Article III, Rule 2, section 2(d).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*—(1) The purpose of the proposed rule change to Article II, Rule 13, section 2 is to clarify that the transfer of securities held in the Participants Fund and the transfer of interests in subject principal and interest payments, as contemplated by Article II, Rule 6 and Article III, Rule 2, respectively, are transfers provided for in Article II, Rule 13. The transfers specified in the proposed rule change support and are necessary to the procedures by which PTC (i) funds end-of-day settlement in the event of a Participant default; and (ii) finances principal and interest advances to Participants and Limited Purpose Participants.

PTC's rules require Participants to make certain deposits of securities to the Participant Fund, and PTC may pledge these deposits to its lenders to fund end-of-day settlement in the event of a Participant default. The proposed rule change clarifies that PTC may pledge those securities by a book entry transfer. In addition, the proposed rule change makes explicit that a non-Participant lender may establish an account with PTC, pursuant to an agreement between PTC and the lender, for the purpose of receiving pledged securities in accordance with Article II, Rule 6. The proposed rule change will facilitate the funding of end-of-day settlement by clarifying the procedures to pledge securities to secure a loan for this purpose.

The proposed rule change also clarifies the procedures by which principal and interest advances are,

pursuant to Article III, Rule 2, secured by principal and interest payments which are the subject of such advances ("subject principal and interest payments"). While rights in the subject principal and interest payments are, in all likelihood, general intangibles under the Uniform Commercial Code of New York (the "UCC"), certain lenders to PTC urge the alternative view that these rights may be an interest in securities as defined in section 8-102 of the UCC. The proposed rule change clarifies that PTC may effect book entry transfer or pledge of such interest in securities to lenders. The proposal rule change will thus facilitate the payment of principal and interest advances by PTC.

(2) The purpose of the proposed change to the fourth sentence of Article III, Rule 2, section 2(d) is to correct the incorrect cross-reference to the second preceding sentence.

(b) *Basis*—The basis under the Act for the proposed rule change is the requirement under section 17A(b)(3)(F) that the rules of a clearing agency are to promote the prompt and accurate clearance and settlement of securities transactions. The proposed rule change promotes the prompt and accurate clearance and settlement of transactions in securities deposited with PTC.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not perceive that this proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change has been submitted to certain affected lenders for their review and is the product of discussions with those lenders. PTC has not otherwise solicited, and does not intend to otherwise solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder because the proposed rule change effects a change in an existing service of PTC that (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of PTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of PTC or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to file number SR-PTC-90-03 and should be submitted by August 14, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17183 Filed 7-23-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28212; File No. SR-PHLX-90-15]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Amendments to Its Fee Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 29, 1990, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b-4 of the Act, submitted a proposed rule change to amend the Phlx's Schedule of Fees and Charges as follows:

1. A new policy to pass-through all charges covering third party securities information vendors' equipment and services that are used directly by particular members;
2. A new proprietary stock execution machine equipment charge of $250 per machine per month;
3. A new technology fee chargeable to all members and those foreign currency options participants not also possessing a regular membership payable on a $250 per quarter basis;
4. A change in the charge per direct wire from $40 per quarter to $60 per quarter;
5. A change in the stock execution communication charge from $100 per month to $200 per month;
6. A change in the annual floor trading post licensing fee from $1,250 to $1,500;
7. A change in the annual floor facility fee from $625 to $750;
8. A change in the monthly equity Transaction Fee ("TF") Schedule as follows with a new Schedule of discounts for PACE trades:

Value of trades	Current fee per $1,000	New fee per $1,000
0-10 million	$0.13	.15
10-25 million	.11	.13
25-50 million	.11	.11
50-75 million	.09	.11
75-275 million	.09	.09
275-300 million	.09	.07
300-375 million	.05	.07
375-500 million	.05	.05
Over 500 million	.03	.015

Fees on individual transactions will continue to be capped at 50,000 shares.

NEW PACE TRADE DISCOUNTS

Pace trade size	Current discount off TF	New TF discount (percent)
1-599 shares	0	60
600-1,099 shares	0	40
1,100-2,999 shares	0	25
Over 2,999 shares	0	15

A new $.25 credit per PACE trade to offset TF.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the Phlx Schedule of Fees and Charges. The changes reflected herein represent the first general revisions to that schedule since December 1988.[1] The revisions reflect several key policy determinations of the Board of Governors of the Phlx. First, many of the new fees represent greater reliance upon recovering aggregate operating revenues from fixed-nature fees as opposed to variable sensitive fees. This underscores the fact that the Exchange's expense structure has evolved over time to a greater exposure to fixed expenses, due in part to high fixed and recurrent costs of supporting a sophisticated computer infrastructure and an enhanced regulatory program.

Additionally, the vendor pass-through charges represent a policy to discontinue direct Exchange subsidies in this area. This policy is fair and promotes significant efficiencies as members will receive what they pay for and will now have the pricing discipline to order only equipment and services that are necessary. The Exchange, due to its size and economic bargaining position, will still contract directly with vendors on behalf of the membership so that quantity discounts will remain available to the latter. Finally, individual members will not be required to pay charges associated with the trading crowds' overhead displays nor equipment and services utilized by the Exchange's regulatory and marketing departments.

Third, the new fee schedule incorporates several fee reductions and discounts. In order to enhance the Exchange's equity floor as a highly attractive floor of execution for all of an order delivery firm's business as well as those executing block and other large size orders, the TF for monthly equity value of transactions over $500 million has been reduced from $.03 per $1,000 of value to $.015. Moreover, the Phlx has instituted a schedule of TF discounts of up to 60% for transactions executed through the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE"). A brand new $.25 credit that can be utilized to offset monthly TF has also been instituted for each PACE trade. The fees will be effective as of July 1, 1990.

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statements on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-90-15 and should be submitted by August 14, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 17, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17186 Filed 7-23-90; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Release No. 26468 (January 18, 1989), 54 FR 3713 (January 25, 1989) (File No. SR-Phlx-88-45).

[Rel. No. IC-17591; 811-3884]

Massachusetts Tax-Exempt Money Market Fund; Application for Deregistration

July 16, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Massachusetts Tax-Exempt Money Market Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on July 5, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 13, 1990 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Massachusetts business trust and an open-end non-diversified management investment company registered under the Act. On October 19, 1983, applicant filed a notification of registration on form N-8A pursuant to section 8(a) of the Act. On the same date, applicant filed a registration statement on Form N-1 under the Securities Act of 1933. The registration statement was declared effective on February 23, 1984. Applicant's initial public offering commenced on February 29, 1984.

2. On February 14, 1990, applicant's board of trustees authorized the termination of applicant pursuant to § 9.2(a)(iii) of applicant's declaration of trust. In keeping with the terms of that Section, the chairman of the board of trustees provided written notice of the termination of the shareholders. No shareholder authorization was required or obtained in connection with applicant's liquidation. On May 31, 1990, applicant redeemed all outstanding shares at a net asset value of $1.00 per share.

3. Pursuant to Massachusetts law, applicant filed a notice of termination with the Massachusetts Secretary of State on May 31, 1990.

4. The expenses incurred in connection with the liquidation and dissolution were borne by applicant's investment adviser.

5. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17227 Filed 7-23-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17587; 811-2721]

NEL Tax Exempt Bond Fund, Inc.; Application

July 13, 1990.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: NEL Tax Exempt Bond Fund, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed March 26, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Hearing requests should be received by the SEC by 5:30 p.m. on August 10, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 501 Boylston Street, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, (202) 272-7324, or Stephanie M. Monaco, Branch Chief, (202) 272-3022 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant registered as a diversified, open-end management investment company under the 1940 Act on January 13, 1977.

2. On January 13, 1977, Applicant filed a registration statement under the Securities Act of 1933 to register 2,000,000 shares of common stock, having a maximum aggregate offering price of $20,000,000. Applicant's registration statement became effective on March 16, 1977, and the initial public offering commenced on or about that date.

3. Applicant is a corporation organized and existing under the laws of the Commonwealth of Massachusetts.

4. Applicant sold all of its assets to the New England Tax Exempt Income Fund (the "Fund"), a series of The New England Funds, a Massachusetts business trust (the "Trust"), pursuant to an Agreement and Plan of Reorganization dated January 7, 1987 (the "Plan"). Each share of common stock of the Applicant was converted into one share of the Fund. In total, 15,156,417.636 shares of the Fund having a value of $114,113,829 were issued to the applicant's shareholders pursuant to the Plan previously adopted on December 4, 1986 by the Applicant's shareholders.

5. Immediately preceding the reorganization, the Applicant had 15,156,417.636 shares of common stock outstanding, total net value of $114,113,829 and a per share net asset value of $7.53.

6. Applicant has no outstanding assets except its name and its status as a Massachusetts corporation and a registered investment company. Applicant has no outstanding liabilities.

7. Applicant, to the best of its knowledge, is not a party to any litigation or administrative proceeding.

8. Applicant is not engaged, nor does it propose to engage, in any business activity other than those necessary to wind up its affairs. The Board of Directors of the Applicant will take all action necessary to terminate the Applicant's status as a corporation pursuant to the laws of the Commonwealth of Massachusetts.

9. Applicant has no security holders. There are no former security holders of Applicant to whom disbursements in complete liquidation of their interests in Applicant have not been made.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17191 Filed 7-23-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17593; 811-3083]

Pinnacle Government Fund, Inc.; Application

July 17, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Pinnacle Government Fund, Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on July 11, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 13, 1990, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: SEC: Secretary, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549. Applicant: Pinnacle Government Fund, Inc., 183 East Main Street, Rochester, New York 14604.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504-2284 or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was organized as a corporation under the laws of the State of Florida on July 9, 1980. Applicant has ceased to be a corporation pursuant to the filing of articles of dissolution with the State of Florida on March 14, 1990.

2. Applicant is an open-end, diversified management investment company. Applicant registered under the 1940 Act on July 22, 1980. Applicant filed a registration statement under the Securities Act of 1933, as amended, on July 22, 1980. The registration statement became effective, and the initial public offering of applicant's shares began, on August 20, 1980.

3. On October 16, 1989, applicant's board of directors unanimously approved a plan of reorganization and liquidation (the "Plan"). Applicant's shareholders approved the Plan on January 19, 1990.

4. Pursuant to the Plan, on January 31, 1990, applicant conveyed all of its assets and liabilities to Trinity Liquid Assets Trust (the "Trust"), an open-end, diversified management investment company organized in 1982 as a Massachusetts business trust. In exchange for this conveyance, applicant received units of a new series of the Trust, known as the "Pinnacle Government Fund," equal in number and value to the number and value of shares of the applicant outstanding immediately prior to the reorganization. Applicant thereafter distributed pro rata to its shareholders the units received from the Trust as part of the reorganization. No brokerage commissions were paid in connection with the reorganization.

5. Upon completion of the reorganization, the shareholders of the applicant became shareholders of the Pinnacle Government Fund series of the Trust in a tax-free exchange.

6. The principal purpose of the reorganization was to reduce applicant's operating expenses by reorganizing it as a series of an existing investment company.

7. Expenses relating to the reorganization, in the approximate amount of $14,500, were assumed and paid by the applicant.

8. As of the date of the application, applicant had no assets, liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17228 Filed 7-23-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-25118]

Public Utility Holding Company Filings

July 13, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 6, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70-7544)

Northeast Utilities ("NU"), a registered holding company, Western Massachusetts Electric Company and The Quinnehtuk Company, all located at 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, The Connecticut Light and Power Company, Northeast Utilities Services Company, Northeast Nuclear Energy Company, and The Rocky River Realty Company, all located on Selden Street, Berlin, Connecticut 06037, and Holyoke Water Power Company, Canal Street, Holyoke, Massachusetts 01040, subsidiaries of NU ("Applicants"), have filed a post-effective amendment to their application-declaration filed under

sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 43, 45, and 50(a)(5) thereunder.

By prior Commission order, dated November 18, 1988 (HCAR No. 24750), the Applicants were authorized, through December 31, 1990, to enter into short-term borrowing arrangements in the form of bank notes pursuant to lines of credit and revolving credit agreements and commercial paper, open account advances by NU to its subsidiaries, and the continuation of a system money pool, subject to stated limits on the aggregate amount of such borrowings that each Applicant could undertake. By supplemental order dated February 8, 1990 (HCAR No. 25035), Rocky River was authorized to increase the aggregate amount of its short-term borrowing from $15 million to $20 million.

The Applicants now seek to amend their existing short-term borrowing authority to permit Rocky River to increase the aggregate amount of its short-term borrowings authorized through December 31, 1990, from $20 million to $25 million. The proceeds of the sale of securities will be used for constructions costs for a garage complex located in Berlin, Connecticut.

New England Energy Incorporated, et al. (70-7613)

New England Electric System ("NEES"), a registered holding company, its fuel subsidiary, New England Energy Incorporated ("NEEI") and NEES' generation and transmission subsidiary, New England Power Company ("NEP"), (together, "Applicants"), all located at 25 Research Drive, Westborough, Massachusetts, 01582, have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rule 45 thereunder.

By prior Commission order in this matter (HCAR No. 24847, March 29, 1989), NEEI was authorized to issue short-term notes to refinance its existing short-term bank debt in connection with its oil and gas exploration program, consisting of the Old Program and the New Program (HCAR No. 23658, April 8, 1985), through a financing arrangement with a syndicate of banks led by Citibank, N.A., as Agent ("Credit Agreement"). The Credit Agreement provides for a revolving short-term credit facility of up to $400 million aggregate principal amount outstanding at any one time, which would reduce incrementally to $50 million by December 31, 1997, and terminate on December 31, 1998. NEEI also has the option to further reduce the available facility. In order to secure borrowings under the Credit Agreement, the Applicants were authorized to extend the term of the Fuel Purchase Contract between NEEI and NEP (HCAR No. 23873, October 22, 1985) and the Capital Funds Agreement, the Loan Agreement (both authorized by HCAR No. 23658, April 8, 1985) and the Capital Maintenance Agreement (HCAR No. 23873, October 22, 1985) between NEEI and NEES, so that they would be in effect throughout the term of the Credit Agreement.

NEEI now proposes to amend the Credit Agreement to delete the covenant that NEEI maintain a net worth of not less than $40 million. In connection with this amendment to the Credit Agreement, NEEI and NEES request authority to further amend the Capital Funds Agreement and Loan Agreement to redefine the amount that NEES is committed to invest in NEEI's Old Program.

Under the Capital Funds Agreement and Loan Agreement, NEES is currently authorized to invest up to $45 million in NEEI's Old Program. The proposed amendments to the Capital Funds Agreement and Loan Agreement would redefine the amount that NEES is authorized to invest in NEEI from the current amount of $45 million to an amount of $45 million, plus any after-tax loss attributable to the expensing of interest on additional Old Program borrowings under the Credit Agreement. The total amount of additional Old Program borrowings on which interest may be expensed for purposes herein will not exceed $37,200,000, which equals the amount of NEEI's subordinated notes payable to NEES under the Capital Funds Agreement, as of June 15, 1990.

The proposed amendment to the Credit Agreement will provide NEEI with the flexibility to either maintain or reduce its current net worth. To the extent NEEI elects to reduce its net worth through retirement of Old Program subordinated loans to NEES, NEEI would replace the subordinated loans from NEES with additional Old Program borrowings under the Credit Agreement. The interest costs associated with these additional Old Program borrowings would not be included under NEEI's Fuel Purchase Contract with NEP. Therefore, the interest on these borrowings would be included as a current expense on NEEI's annual income statement.

TECO Energy, Inc. (70-7706)

TECO Energy, Inc. ("TECO Energy"), 702 North Franklin Street, Tampa, Florida 33602, a Florida corporation and public-utility holding company exempt from registration under section 3(a)(1) of the Act pursuant to Rule 2, has filed an application pursuant to sections 9(a)(2) and 10 of the Act.

TECO Energy presently has one wholly owned public-utility subsidiary, Tampa Electric Company ("Tampa Electric"), a Florida corporation engaged in the generation, transmission, distribution, purchase and sale of electricity. Tampa Electric serves over 453,000 retail customers in western central Florida. The application seeks approval for TECO Energy to acquire, directly or indirectly, up to a 100% interest in Hardee Power Partners Limited ("Hardee Power"), a recently-formed Florida limited partnership that is presently wholly owned by two indirect subsidiaries of TECO Energy formed for this purpose. Hardee Power was organized to develop a project ("Project") consisting of the power resources that Hardee Power will use to satisfy its obligations to sell capacity and energy from January 1, 1993 through December 31, 2012 to Tampa Electric and to Seminole Electric Cooperative, Inc. ("Seminole"), an electric generation and transmission cooperative that serves eleven member rural electric cooperatives in Florida. Specifically, the Project will consist of (i) The construction, ownership and operation of a 295 megawatt generation facility (the "Hardee Facility"), (ii) the purchase by Hardee Power for a ten year period beginning with the completion of the Hardee Facility of rights to the output of 145 megawatts of capacity of an existing generating unit of Tampa Electric (the "BB4 Capacity"), and (iii) an expected 145 megawatt upgrade of the Hardee Facility to replace the BB4 Capacity at the end of the ten year period. It is presently anticipated that Seminole and Tampa Electric will purchase electric energy from the planned Hardee Facility capacity addition. The Hardee Facility will be located on a site adjacent to the Tampa Electric service territory and will be directly interconnected with the transmission systems of Tampa Electric system and Seminole. Construction of the Hardee Facility is scheduled to begin in 1990 and commercial operation is scheduled to occur on January 1, 1993.

It is presently anticipated that the Hardee Facility will be financed on a project finance basis, consisting of interim financing by a construction loan and long-term financing following commercial operation. At the time long-term financing occurs, it is anticipated that TECO Energy will make an indirect equity contribution to Hardee Power of approximately 20% of the cost of Hardee Facilities. Such cost is expected to be

approximately $200 million. It is also anticipated that TECO Energy will guarantee repayment of the construction loan but will not guarantee repayment of the long-term financing.

General Public Utilities Corp., et al. (70-7754)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and its wholly owned subsidiary company, GPU Nuclear Corporation ("GPUN"), One Upper Pond Road, Parsippany, New Jersey 07054, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 45, 90 and 91 thereunder.

By order dated September 5, 1980 (HCAR No. 21708), GPU was authorized to organize GPUN as a service company subsidiary responsible for providing safe operation, maintenance, rehabilitation, design, construction, start-up and testing of all nuclear generating facilities owned by GPU system companies, and related research and development.

In response to an invitation issued by Westinghouse Electric Corporation ("Westinghouse"), dated April 12, 1990, GPUN has submitted a proposal to provide radiological decontamination and asbestos removal services ("Contract Services") at the Idaho Falls Naval Reactor Facility ("NRF"), for an initial period of one year with options to renew for three succeeding one year periods, on a cost plus fixed fee basis. The NRF site is operated by Westinghouse for the United States Department of Energy ("DOE").

GPUN has also submitted a proposal to provide Contract Services at the Knolls Atomic Power Laboratory ("KAPL"), in response to an invitation issued May 7, 1990, by the General Electric Company ("GE") which operates KAPL for DOE. This proposal is for services for an initial two year period with an optional two year period, on a cost plus fixed fee basis.

In the event GPUN is selected as the contractor for either or both of the projects, GPUN proposes to form a new subsidiary company ("NewCo") which shall provide the Contract Services. GPUN also proposes to provide certain services, including accounting and other administrative services, to NewCo, at cost.

It is further proposed that, (1) NewCo issue and sell, and GPUN acquire, 100 shares of NewCo common stock, for a total purchase price of $100; and (2) NewCo fund the cost of providing Contract Services by borrowing, from time-to-time, through December 31, 1992, for terms not exceeding 270 days, an amount not to exceed an aggregate of $1 million outstanding at any time either from banks or from GPU, such borrowings to be evidenced by the issuance of notes. The continuing services which GPUN, and its subsidiary companies, will provide to its affiliated companies involving radiological decontamination and asbestos removal services will be at least three times the expected level of services GPUN, and its subsidiary companies, would be providing to Westinghouse, GE, NRF and KAPL.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17190 Filed 7-23-90; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8374]

Issuer Delisting; Application To Withdraw From Listing; Financial News Network, Inc., Common Stock, No Par Value

July 18, 1990.

Financial News Network, (Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the Boston Stock Exchange ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's Common Stock is also listed on the National Association of Securities Dealers Automated Quotation System/National Market System (NASDAQ/NMS). The Company finds it to be unduly burdensome and costly to be listed on both exchanges.

Any interested person may, on or before August 8, 1990, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-17231 Filed 7-23-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0509

SLK Capital Corp.; Surrender of License

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1990)), SLK Capital Corporation, 115 Broadway, New York, New York 10006, incorporated under the laws of the State of New York has surrendered its License No. 02/02-0509 issued by the SBA on January 27, 1988.

SLK Capital Corporation has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of SLK Capital Corporation is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 17, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90-17252 Filed 7-23-90; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting at 8 a.m., on Monday, August 6, 1990, at the Days Inn, 900 East Main Street, Meriden, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Michael P. McHale, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut 06106, phone (203) 240-4670.

Dated: July 19, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-17250 Filed 7-23-90; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 04/04-5254]

FJC Growth Capital Corp.; Notice of Application for License to Operate as a Small Business Investment Company

An application for a license to operate a small business investment company (SBIC) under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*) has been filed by FJC Growth Capital Corp. (Applicant), 6726 Odyssey Drive, Cummings Research Park West, Huntsville, AL 35806, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1989).

The proposed officers, directors, and owner of the Applicant are as follows:

Name and address	Position	Percentage of ownership
William B. Noojin, 1210 Stonehurst, Huntsville, AL 35801.	Manager	0
Francisco J. Collazo, 5709 Criner Road, Huntsville, AL 35802.	President/ Director.	0
Francisco L. Collazo, 10037 Willow Cove Rd., Huntsville, AL 35803.	Vice President.	0
Carmen A. Collazo, 5709 Criner Road, Huntsville, AL 35802.	Secretary/ Treasurer Director.	0
COLSA, Inc., 6726 Odyssey Drive, Huntsville, AL 35806.		100%

The Applicant proposes to begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns.

The Applicant intends to conduct its business primarily in the State of Alabama.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Huntsville, Alabama area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 10, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90-17251 Filed 7-23-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended July 13, 1990

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47044

Date filed: July 9, 1990
Parties: Members of the International Air Transport Association
Subject: TC3 Rates 0072 dated June 18, 1990—Rates Tables
Proposed Effective Date: October 1, 1990

Docket Number: 47045

Date filed: July 9, 1990
Parties: Members of the International Air Transport Association
Subject: TC3 (To/From US Territories) Resolutions R-1 to R-5
Proposed Effective Date: October 1, 1990

Docket Number: 47046

Date filed: July 9, 1990
Parties: Members of the International Air Transport Association
Subject: TC23 (except To/From US Territories) Expedited Resolutions
Proposed Effective Date: August 1, 1990

Docket Number: 47047

Date filed: July 9, 1990
Parties: Members of the International Air Transport Association
Subject: TC1 (USA/US Territories) Resolutions R-1 to R-5
Proposed Effective Date: October 1, 1990

Docket Number: 47048

Date filed: July 9, 1990
Parties: Members of the International Air Transport Association
Subject: TC1 (except USA/US Territories) Resolutions R-1 to R-5
Proposed Effective Date: October 1, 1990

Docket Number: 47055

Date filed: July 9, 1990
Parties: Members of the International Air Transport Association
Subject: TC23 (To/From US Territories) Expedited Resolutions R-1 to R-4
Proposed Effective Date: August 1, 1990

Docket Number: 47056

Date filed: July 9, 1990
Parties: Members of the International Air Transport Association
Subject: TC2 Expedited Resolutions
Proposed Effective Date: August 1, 1990

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 90-17169 Filed 7-23-90; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 13, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47049

Date filed: July 9, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 6, 1990.
Description: Application of Delta Air Lines, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity to permit Delta to provide air

transportation between Atlanta, Georgia and Madrid and Barcelona, Spain.

Docket Number: 47050

Date filed: July 9, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 6, 1990.

Description: Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity to permit Delta to provide air transportation between Orlando, Florida and Mexico City, Mexico.

Docket Number: 47051

Date filed: July 9, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 6, 1990.

Description: Application of Delta Air Lines, Inc., pursuant to sectoin 401 of the Act and subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to permit Delta to provide air transportation between Atlanta, Georgia and Manchester, England.

Docket Number: 47059

Date filed: July 12, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 9, 1990.

Description: Application of Transportes Aereos Bolivianos pursuant to section 402 of the Act and subpart Q of the Regulations, requests renewal of its foreign air carrier permit authorizing non-scheduled cargo service between a point or points in Bolivia; the intermediate points Lima, Peru; Caracas, Venezuela; Panama City, Panama; and the co-terminal points Miami, Florida and Houston, Texas.

Docket Number: 47062

Date filed: July 13, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 10, 1990.

Description: Application of Tower Air, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for an amendment to its certificate of public convenience and necessity for Route 401, authorizing it to engage in scheduled foreign air transportation of passengers, property and mail between New York, New York and Miami, Florida, on the one hand, and Gothenburg, Sweden, on the other hand, and to integrate this service with its other operations on Route 401.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90-17170 Filed 7-23-90; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

On April 11, 1990, Mr. Leonard T. Skreba petitioned the National Highway Traffic Safety Administration (NHTSA) requesting that a Manufacturer's Defect Investigation be conducted of alleged rear window hinge failures and resultant "falling off" of the attached windows form 1988 to 1991 General Motors (GM S-10 Blazers and S-15 Jimmys.

The petitioner alleges that one or both of the hinges that secure the rear liftgate glass to the body can separate during vehicle operation. This is allegedly caused by the hinge-pin working its way out of the hinge and allowing the hinge to come apart. The petitioner further alleges that this allows the glass to fall from the vehicle and into the path of any oncoming traffic causing a safety hazard to these drivers, as well as distracting the driver of the vehicle subject to the failure.

The subject vehicles can be opened in the rear to afford entry into the rear cargo area to carry large items. To accomplish this, the vehicles have tailgates like a pick-up truck that opens downward. This opens the lower half of the rear opening of the enclosed cargo bed. To cover the upper half of this rear opening, the vehicles are equipped with a glass door (liftgate) that is secured by two hinges located along the top edge. This glass liftgate opens upward and two support tubes hold it in this position for loading and unloading.

The only failure report received by NHTSA is the complaint from the petitioner. GM reported three additional owner complaints and two field service reports involving nine additional vehicles for a total of six complaints involving 13 vehicles for a total of six complaints involving 13 vehicles. GM also reports that since this hinge has been used since the subject models were introduced in 1983, they also searched for complaints on these earlier models and no complaints were located.

The GM owner's manual advises the owner not to drive with the rear glass liftgate open. GM points out that even if the liftgate is open it is unlikely to fall off, as the rear liftgate is attached with two hinges, two tube supports, and the latch assembly. There are no reports, including that of the petitioner, where the rear liftgate totally separated from the vehicle. In all reported cases, the window was retained to the vehicle either by the remaining hinge or the tube supports.

Based on the extremely low number of reports and the lack of any reported accidents or injuries, there does not appear to be a reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to the alleged rear liftgate hinge failures would be issued at the conclusion of an investigation. Since no evidence of a safety-related defect trend was discovered, further commitment of resources to determine whether such a trend may exist does not appear to be warranted. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on July 18, 1990.

George L. Reagle,

Associate Administrator for Enforcement.

[FR Doc. 90-17171 Filed 7-23-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 18, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 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 Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0004.

Form Number: SS-8.

Type of Review: Extension.

Title: Determination of Employee Work Status for Purposes of Federal

Employment Taxes and Income Tax Withholding.

Description: This form is used by employers and workers to furnish information to IRS in order to obtain a determination as to whether a worker is an employee for purposes of Federal Employment taxes and income tax withholding. IRS uses the information on Form SS-8 to make the determination.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 8,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping: 34 hours, 41 minutes.

Learning about the law or the form: 6 minutes.

Preparing and sending the form to IRS: 40 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/ Reporting Burden: 283,520 hours.

OMB Number: 1545-0704.

Form Number: 5471, Schedules M, N, and O.

Type of Review: Revision.

Title: Information Return of U.S. Persons With Respect to Certain Foreign Corporations.

Description: Form 5471 and related schedules are used by U.S. persons that have an interest in a foreign corporation. The form is used to report income from the foreign corporation. The form and schedules are used to satisfy the reporting requirements of sections 6035, 6038, and 6046 and the regulations thereunder pertaining to the involvement of U.S. persons with certain foreign corporations.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 88,000.

Estimated Burden Hours Per Response/Recordkeeping:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to IRS
5471	76 hrs., 17 mins	23 hrs., 43 mins	30 hrs., 48 mins.
Sch. M	23 hrs., 55 mins	18 mins	42 mins.
Sch. N	9 hrs., 5 mins	3 hrs., 53 mins	4 hrs., 11 mins.
Sch. O	10 hrs., 31 mins	12 mins	23 mins.

Frequency of Response: Annually.

Estimated Total Recordkeeping/ Reporting Burden: 6,638,695 hours.

Clearance Officer: Garrick Shear (202) 535-4297, 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. 90-17179 Filed 7-23-90; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 18, 1990.

The Department of Treasury has submitted the following public infomration collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 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 Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: New.

Form Number: None.

Type of Review: New Collection.

Title: Registered Banks Survey.

Description: The survey will be used to assist the OCC in evaluating whether changes should be made in the present regualtions and/or the types of changes which may be appropriate.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 60.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: One time only.

Estimated Total Reporting Burden: 60 hours.

Clearance Officer: John Ference (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Louis K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-17180 Filed 7-23-90; 8:45 am]

BILLING CODE 4810-33-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 18, 1990.

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, Public Law 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 Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0139.

Form Number: IRS Form 2106.

Type of Review: Revision.

Title: Employee Business Expenses.

Description: Internal Revenue Code section 62 allows employees to deduct their business expenses to the extent of reimbursement in computing Adjusted Gross Income. Expenses in excess of reimbursements are allowed as an itemized deduction. Unreimbursed meals and entertainment are allowed to the extent of 80% of the expense. Form 2106 is used to figure these expenses.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 5,797,756.

Estimated Burden Hours Per Respondent/Recordkeeping:

Recordkeeping: 1 hour, 38 minutes.

Learning about the law or the form: 18 minutes.

Preparing the form: 1 hour, 14 minutes.

Copying, assembling, and sending the form to IRS: 42 minutes.

Frequency of Response: Annually.

Estminated Total Reporting/ Recordkeeping Burden: 19,801,393 hours.

OMB Number: 1545–0193

Form Number: IRS Form 4972.

Type of Review: Extension.

Title: Tax on Lump-Sum Distributions.

Description: Internal Revenue Code section 402(e) allows taxpayers to compute a separate tax on a lump-sum distribution from a qualified retirement plan. Form 4972 is used to correctly figure that tax. The data is used to verify the correctness of the separate tax. Form 4972 is also used to make the special 20% capital gain election attributable to pre-1974 participation from the lump-sum distribution

Resondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 790,000.

Estimated Burden Hours Per Respondent/Recordkeeping:

Recordkeeping: 33 minutes.

Learning about the law or the form: 25 minutes.

Preparing the form: 1 hour, 44 minutes.

Copying, assembling, and sending the form to IRS: 35 minutes.

Frequency of Response: Quarterly.

Estminated Total Recordingkeeping/ Reporting Burden: 2,591,200 hours.

OMB Number: 1545–0862

Form Number: IRS Form 8257.

Type of Review: Extension.

Title: Documentation of State Data.

Description: Internal Revenue Code section 6103(d) provides for the exchange of Federal/State information for tax administration. The form will provide an effective, efficient and uniform method for the Service to determine what state records are available that may be used by the Service in its compliance programs. Use of the form will also conserve resources and avoid duplication of effort.

Respondents: State or local governments.

Estimated Number of Respondents: 10,000.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 40,000 hours.

Clearance Officer: Garrick Shear (202) 535–4297, 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. 90–17180 Filed 7–23–90; 8:45 am]

BILLING CODE 4830–01–M

Departmental Offices

Privacy Act of 1974; New System of Records

AGENCY: Departmental Offices, Teasury.

ACTION: Notice of Proposed New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a new proposed system of records, the FinCEN Data Base, Treasury/DO .200. The purpose of this system of records is to implement a law enforcement data base containing records with identifying and other relevent information on individuals in subject files and investigative/ intelligence reports used by the Financial Crimes Enforcement Network ("FinCEN").

DATES: Comments must be received no later than August 23, 1990. The proposed system of records will be effective on or before September 24, 1990, unless the Department of the Treasury receives comments on the system of records which would result in a contrary determination.

ADDRESSES: Please submit comments to Department of the Treasury, Office of the Deputy Assistant Secretary (Law Enforcement), Room 4330, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Persons wishing to review the comments should make an appointment with the Office of the Deputy Assistant Secretary (Law Enforcement) at 566–5054.

FOR FURTHER INFORMATION CONTACT: Stephen R. Kroll, Chief Counsel, Financial Crimes Enforcement Network, 3833 North Fairfax Drive, Arlington, VA, 22203, (202) 235–0520.

SUPPLEMENTARY INFORMATION: By Treasury Department Order No. 105–08, issued on April 25, 1990, the Secretary of the Treasury established the Office of the Director, Financial Crimes Enforcement Network ("FinCEN"), in the Office of the Assistant Secretary (Enforcement). FinCEN's mission is to provide a governmentwide, multisource intelligence and analytical network in support of the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes by Federal, State, local, and foreign law enforcement agencies.

Among FinCEN's principal responsibilities are (1) to maintain a governmentwide data access service, with access, in accordance with legal requirements, to (A) information collected by Treasury, including report information filed under the Bank Secrecy Act and section 6050I of the Internal Revenue Code; (B) information regarding national and international currency flows; (C) other records and data maintained by other Federal, State, local and foreign agencies, including financial and other records developed in specific cases; and (D) other privately and publicly available information; and (2) to analyze and disseminate the available data to (A) identify possible criminal targets to appropriate Federal, State, local, and foreign law enforcement agencies; (B) support ongoing criminal financial investigations and prosecutions and related proceedings, including civil and criminal tax forfeiture proceedings; (C) identify possible instances of non-compliance with the Bank Secrecy Act to Federal agencies with delegated responsibility for Bank Secrecy Act compliance; (D) evaluate and recommend possible uses of special currency reporting under 31 U.S.C. 5326; and (E) determine emerging trends and methods in money laundering and other financial crimes.

FinCEN seeks to establish and maintain the proposed new system of records as the sole feasible means to perform these responsibilities. FinCEN will maintain these records to further the Government's investigative, intelligence, interdiction, enforcement, and prosecution efforts through the collation, analysis and dissemination of investigative, intelligence, and enforcement data. Since the system of records will include subject files and investigative/intelligence reports, which will necessarily be retrieved by personal identifier, the Privacy Act of 1974, as amended, 5 U.S.C. 552a, requires the Department of the Treasury to give general notice and seek public comments.

In a separate publication, the Department of the Treasury is also giving public notice of a proposed rule to exempt this system of records from certain provisions of 5 U.S.C. 552a pursuant to subsections (j)(2), (k)(1), and (k)(2) of the same section.

Treasury/DO .200

SYSTEM NAME:

FinCEN Data Base.

SYSTEM LOCATION:

The Financial Crimes Enforcement Network, 3833 North Fairfax Drive, Arlington, Virginia 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Individuals who relate in any manner to official FinCEN efforts in support of the enforcement of the Bank Secrecy Act and money-laundering and other financial crimes. Such individuals may include, but are not limited to, subjects of investigations and prosecutions; suspects in investigations; victims of such crimes; witnesses in such investigations and prosecutions; and close relatives and associates of any of these individuals who may be relevant to an investigation.

2. Current and former FinCEN personnel whom FinCEN considers relevant to an investigation or inquiry.

3. Individuals who are the subject of unsolicited information possibly relevant to violations of law or regulations, who offer unsolicited information relating to such violations, who request assistance from FinCEN, and who make inquiries of FinCEN.

CATEGORIES OF RECORDS IN THE SYSTEM:

Every possible type of information that contributes to effective law enforcement may be maintained in this system of records, including, but not limited to, subject files on individuals, corporations, and other legal entities; information provided pursuant to the Bank Secrecy Act; information gathered pursuant to search warrants; statements of witnesses; information relating to past queries of the FinCEN Data Base; criminal referral information; complaint information; identifying information regarding witnesses, relatives, and associates; investigative reports; and intelligence reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 5311 *et seq.*; 31 CFR part 103; Treasury Department Order No. 105-08 (April 25, 1990).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be used to:

(1) Provide responses to queries from Federal, State, territorial, and local law enforcement and regulatory agencies, both foreign and domestic, regarding Bank Secrecy Act and other financial crime enforcement;

(2) Furnish information to other Federal, State, local, territorial, and foreign law enforcement and regulatory agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where FinCEN becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(3) Furnish information to the Department of Defense, to support its role in the detection and monitoring of aerial and maritime transit of illegal drugs into the United States and any other role in support of law enforcement that the law may mandate;

(4) Respond to queries from INTERPOL in accordance with agreed coordination procedures between FinCEN and INTERPOL;

(5) Furnish information to individuals and organizations, in the course of enforcement efforts, to the extent necessary to elicit information pertinent to financial law enforcement;

(6) Furnish information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations, in response to a subpoena, or in connection with civil or criminal law proceedings;

(7) Furnish information to the news media in accordance with the guidelines contained in 28 CFR 50.2, which relate to civil and criminal proceedings; and

(8) Furnish information to the Department of State and the Intelligence Community to further those agencies' efforts with respect to national security and the foreign aspects of international narcotics trafficking.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media and hard copy.

RETRIEVABILITY:

By name, address, or unique identifying number.

SAFEGUARDS:

All FinCEN personnel accessing the system will have successfully passed a background investigation. FinCEN will furnish information from the system of records to approved personnel only on a "need to know" basis using passwords and access control. Procedural and physical safeguards to be utilized include, the logging of all queries and periodic review of such query logs; compartmentalization of information to restrict access to authorized personnel; physical protection of sensitive hard copy information; encryption of electronic communications; intruder alarms; and 24-hour building guards.

RETENTION AND DISPOSAL:

FinCEN personnel will review records each time a record is retrieved and on a periodic basis to see whether it should be retained or modified. FinCEN will dispose of all records after six years and will never retain any record for more than seven years. Records will be disposed of by erasure of magnetic media and by shredding and/or burning of hard copy documents.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Crimes Enforcement Network, 3833 North Fairfax Drive, Arlington, Virginia 22203.

NOTIFICATION PROCEDURE:

Pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

See "Categories of Individuals Covered by the System" above. The system contains material for which sources need not be reported.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1) and (k)(2).

Dated: July 3, 1990.

Linda M. Combs,

Assistant Secretary of the Treasury (Management).

[FR Doc. 90-17215 Filed 7-23-90; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 19-90]

Treasury Notes, Series F-1997

Washington, July 12, 1990.

The Secretary announced on July 11, 1990, that the interest rate on the notes designated Series F-1997, described in Department Circular—Public Debt Series—No. 19-90 dated July 5, 1990, will be 8½ percent. Interest on the notes will

be payable at the rate of 8½ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 90-17259 Filed 7-23-90; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

[T.D. 90-63]

Revocation of Hermann Runne To Gauge Imported Petroleum and Petroleum Products; Hermann Runne

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

ACTION: Notice of revocation of approval of a commercial gauger.

SUMMARY: Pursuant to § 151.43(b), Customs Regulations (19 CFR 151.43(b)), the approval to gauge imported petroleum and petroleum products granted to Mr. Hermann Runne, now located at 804 Belton Drive, (P.O. Box 50638), Nashville, Tennessee 37205, has been revoked with prejudice for failure to meet bonding requirements and provisions contained in the Commercial Gauger Agreement.

Accordingly, the approval of Hermann Runne to gauge imported petroleum and petroleum products in all Customs districts is revoked.

EFFECTIVE DATE: June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Donald A. Cousins, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-2446).

Dated: July 19, 1990.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 90-17232 Filed 7-23-90; 8:45 am]

BILLING CODE 4820-02-M

Office of Thrift Supervision

[No: 90-1385]

Approval of Application for Unlisted Trading Privileges; Information Collection Request; Midwest Stock Exchange, Inc.

Date: July 12, 1990.

AGENCY: Office of Thrift Supervision, Department of the Treasury.

ACTION: Notice of approval of application.

SUMMARY: The Midwest Stock Exchange, Inc. filed with the Office of Thrift Supervision ("Office") an application ("Application"), pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 (17 CFR 240.12f-1) thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchanges: American Savings Bank, FSB, New York, New York (OTS No. 7776), $1,8125 Cumulative Convertible Exchangeable, Preferred Stock, No Par Value.

Notice of the Application and opportunity for hearing was published in the Federal Register on June 27, 1990 and interested persons were invited to submit written data, views and arguments within 15 days. *See* Office Order No. 90-1160, dated June 15, 1990. 55 FR 26329, June 27, 1990. The Office received no comments with respect to the Application. Notice is hereby given that, pursuant to the authority delegated to the Chief Counsel or his designee, the Application for unlisted trading privileges in these securities was approved, on July 12, 1990.

SUPPLEMENTARY INFORMATION: The Office finds that the approval of the Application for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to section 6 of the Act, the Midwest Stock Exchange, Inc. is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act. 17 CFR 240Aa3-1. The availability of last sale informaiton for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Midwest Stock Exchange, Inc. are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Office received no comments indicating that the granting of the Application would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

Accordingly, pursuant to section 12(f)(1)(B) of the Act and pursuant to the authority delegated to the Chief Counsel of his designee, the Application for unlisted trading privileges in the above named securities was approved, on July 12, 1990.

By the Office of Thrift Supervision.

Debra J. Ahearn,

Program Analyst.

[FR Doc. 90-17172 Filed 7-23-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-42 OTS No. 0767]

Home Federal Savings and Loan Association of Eastern North Carolina Greenville; Final Action; Approval of Conversion Application

Date: July 13, 1990.

Notice is hereby given that on June 29, 1990, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Home Federal Savings and Loan Association of Eastern North Carolina, Greenville, North Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Atlanta District Office, 1475 Peachtree Street NE., Atlanta, Georgia 30348-5217.

By the Office of Thrift Supervision.

Debra J. Ahearn,

Program Analyst.

[FR Doc. 90-17173 Filed 7-23-90; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of formation of working groups to study specific issues related to implementation of the sentencing guidelines. Request for public comment on issues to address in 1991 amendment cycle.

SUMMARY: The Commission is continuing its ongoing study of the implementation of the sentencing guidelines and has formed working groups to study specific issues related to guideline implementation. Comment is requested on these issues. Additionally, in preparation for the 1991 amendment cycle that culminates in the submission

to Congress of proposed guideline amendments no later than May 1, 1991, the Commission solicits comment on: (1) Additional areas of Commission study; (2) specific problems in guideline application; and (3) the adequacy of current training programs and informational materials.

DATES: Public comment for this information-gathering phase of the 1991 amendment cycle should be received by the Commission no later than September 10, 1990, in order for it to be considered by the Commission in setting priorities and allocating staff resources.

ADDRESSES: Comment should be sent to: United States Sentencing Commission, 1331 Pennysylvania Avenue NW, Suite 1400, Washington, DC 20004. Attn: Communications Director.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director, Telephone: (202) 626-8500.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to perodiodically review and revise guidelines promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994(o), (p).

In response to suggestions, the Commission is expanding its amendment process by soliciting formal and informal comment on guideline issues and potential amendments earlier in the amendment cycle. This solicitation is in addition to the traditional formal publication of proposed amendments and amendment issues in the **Federal Register** after January 1st of each year. In addition to this notice, the Commission plans to solicit input on amendment issues from judges, defense attorneys, prosecutors, probation officers, and legal commentators.

To assist in setting priorities and allocating resources, the Commission requests comment on the following matters: (1) Problem areas in guideline application; (2) issues identified by the Commission for staff working groups; (3) additional issues for Commission study; (4) specific suggestions for amendments to the guidelines; and (5) adequacy of current training programs and informational materials.

As in past amendment cycles, the Commission intends to utilize interdisciplinary staff working groups to comprehensively analyze designated priority issues using legal, research, monitoring, and training resources. The working groups will seek to present the Commission with recommendations that may include improved training, amendments, statutory changes, and areas for further research and study. Because of the nature and scope of the issues under review, not every working group is designed to complete its work in time for action during the 1991 amendment cycle.

Currently, the Commission has working groups studying organizational sanctions, penalties review, ASSYST, and revocation of probation and supervised release. All four groups are well along in their assignments. The Commission expects to act on guidelines for sanctioning organizations during the 1991 amendment cycle. The next report of the penalties review project is scheduled for submission to Congress in late fall. The Commission's guideline application computer software program, ASSYST, is in the process of being improved and updated for a fall distribution. And the Commission intends to promulgate policy statements for revocations of probation and supervised release this fall.

The Commission has instructed the Staff Director to organize working group to begin work immediately in the following priority areas: (1) Acceptance of responsibility; (2) bank robbery; (3) criminal history; and (4) departures. Additionally, the Staff Director will organize a second set for working groups designed for more gradual development. This set includes study of drug offenses (especially violent drug offenses), fines, hate crimes, offenses involving firearms and explosives, prison capacity, role in the offense, and aliens.

Finally, the Commission has designated several topics for future working group consideration, including assimilative crimes, computer crime, environmental offenses, juvenile offenses, national security, pornography, obscenity, and sex offenses, regulatory and other infrequently prosecuted offenses, and other violent offenses.

The Commission solicits comment on the priorities chosen as well as the substance of working group projects.

William W. Wilkins, Jr.,

Chairman.

[FR Doc. 90-17199 Filed 7-23-90; 8:45 am]

BILLING CODE 2210-40-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 142
Tuesday, July 24, 1990

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).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, July 25, 1990, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: FY 92 Budget.

The Commission will consider issues related to the CPSC Budget for Fiscal Year 1992.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sadye E. Dunn,

Secretary.

[FR Doc. 90-17388 Filed 7-20-90; 2:10 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, July 26, 1990, See times below.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: _____

MATTERS TO BE CONSIDERED:

10:00 a.m.

Open to the Public

1. *PPPA Protocol Revisions*

The staff will brief the Commission on a draft proposal to amend the current Poison Prevention Packaging Act protocol for testing child-resistant packaging with children and adults.

2. *Crib Toy Petition, HP 89-1*

The staff will brief the Commission on petition HP 89-1 from the Consumer Federation of America and the Attorney General of New York which requests the Commission to issue a rule banning certain crib gyms, crib mobiles, and crib toys.

3. *CP 89-2, Heat Tapes Petition*

The Commission will consider petition CP 89-2 from Christian B. Stegeman and others requesting the Commission to issue a safety standard for electric heat tapes.

2:00 p.m.

Closed to the Public

4. *Compliance Status Report*

The staff will brief the Commission on the status of various compliance matters.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sadye E. Dunn,

Secrtary.

[FR Doc. 90-17389 Filed 7-20-90; 2:10 pm]

BILLING CODE 6355-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, July 30, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERD:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 20, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-17396 Filed 7-24-90; 3:34 pm]

BILLING CODE 6210-01-M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 11:00 a.m., Thursday, July 26, 1990.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC.

STATUS: Open [A portion of the meeting may be closed subject to the recorded vote of a majority of the Board to discuss matters exempt from the provisions of the Government in the Sunshine Act under 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: *McAndrews* v. *Office of Personnel Management,* SE083189C0651; to hear the agency's response to the Board's order dated July 18, 1990, directing certain officials of the agency to "show cause why their salaries should not be withheld in accordance with the authority described at 5 U.S.C. 1204(a) and (e)(2)(A) (West Supp. July 1989) for the period of noncompliance" with the Board's April 23, 1990 decision and subsequent compliance orders.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

Dated: July 20, 1990

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 90-17397 Filed 7-20-90; 3:34 pm]

BILLING CODE 7400-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 23, 30, August 6, and 13, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 23

Thursday, July 26

1:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 30—Tentative

Wednesday, August 1

10:00 a.m.
Briefing on Development of Radiation Protection Standards (Public Meeting)

Thursday, August 2

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 6—Tentative

Friday, August 10

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 13—Tentative

Thursday, August 16

8:30 a.m.
Collegial Discussion of Items of Commissioner Interest (Public Meeting)
10:00 a.m.
Briefing on Continuity of Government Program (Closed—Ex.1)
11:30 a.m.
Affirmation/Discusion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 4–0 on July 18, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required the "Affirmation of Interim Final Rule to Amend 10 CFR Parts 30 and 35" (Public Meeting), scheduled for July 18 be held on less than one week's notice.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 402–1661.

Dated: July 19, 1990.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 90–17395 Filed 7–20–90; 3:34 pm]

BILLING CODE 7590–01–M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: 8:00 a.m., September 24, 1990.

PLACE: Uniformed Services University of the Health Sciences, Room D3–001, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:00 a.m. Meeting—Board of Regents

(1) Approval of Minutes—July 9, 1990; (2) Faculty Matters; (3) Report—Admissions; (4) Report—Associate Dean for Operations; (5) Report—Dean, Military Medicine Education Institute; (6) Report—Nursing School Task Force; (7) Report—President, USUHS; (8) Comments—Members, Board of Regents; (9) Comments—Chairman, Board of Regents
New Business

SCHEDULED MEETINGS: October 29, 1990.

CONTACT PERSON FOR MORE INFORMATION: Charles R. Mannix, Executive Secretary of the Board of Regents, 202/295–3028.

Dated: July 19, 1990.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–17292 Filed 7–19–90; 5:00 am]

BILLING CODE 3810–01–M

federal register

Tuesday
July 24, 1990

Part II

Environmental Protection Agency

40 CFR Parts 122 and 403

General Pretreatment and National Pollutant Discharge Elimination System Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 403

[EN-FRL-3691-7]

RIN 2040-AA99

EPA Administered Permit Programs; the National Pollutant Discharge Elimination System; General Pretreatment Regulations for Existing and New Sources; Regulations To Enhance Control of Toxic Pollutant and Hazardous Waste Discharges to Publicly Owned Treatment Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On November 23, 1988 (53 FR 47632), EPA proposed to revise the General Pretreatment and National Pollutant Discharge Elimination System regulations (40 CFR parts 122 and 403) pursuant to section 3018(b) of the Resource Conservation and Recovery Act (RCRA) and sections 307(b) and 402(b)(8) of the Clean Water Act (CWA). The proposed regulations were developed in accordance with EPA's *Report to Congress on the Discharge of Hazardous Wastes to Publicly Owned Treatment Works* (EPA/530-SW-86-004, hereinafter referred to as "the Domestic Sewage Study" or "the Study"). Today the Agency is promulgating a final rule to implement many of the proposed revisions.

EPA submitted the Study to Congress in response to section 3018(a) of RCRA. This provision directed the Agency to prepare a report for Congress on wastes discharged through sewer systems to publicly owned treatment works (POTWs) that are exempt from regulation under RCRA as a result of the Domestic Sewage Exclusion. The Study examined the nature and sources of hazardous wastes discharged to POTWs, measured the effectiveness of EPA's programs in dealing with such discharges, and identified for Agency consideration a number of possible initiatives that could enhance control of hazardous wastes entering POTWs.

Today's final rule is promulgated pursuant to section 3018(b) of RCRA. This section directs the Administrator to revise existing regulations and promulgate additional regulations as are necessary to assure that hazardous wastes discharged to POTWs are adequately controlled to protect human health and the environment.

DATES: This regulation shall become effective on August 23, 1990. For purposes of judicial review, this regulation is issued at 1 p.m. on August 7, 1990.

ADDRESSES: Questions on today's rule of a technical nature should be addressed to: Marilyn Goode, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The record for this rulemaking, including all public comments received on the proposal, is available for inspection and copying at the EPA Public Information Reference Unit, room 2402, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Marilyn Goode, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 475-9526.

SUPPLEMENTARY INFORMATION:

I. Background

II. Revisions

A. Specific Discharge Prohibitions
1. Ignitability and Explosivity
2. Reactivity and Fume Toxicity
3. RCRA Toxicity
4. Corrosivity
5. Oil and Grease
6. Solvent Wastes

B. Spills and Batch Discharges (slugs)

C. Trucked and Hauled Wastes

D. Notification Requirements

E. Individual Control Mechanisms for Industrial Users

F. Implementing the General Prohibitions Against Pass Through and Interference
1. Toxicity-Based Permit Limits
2. Sludge Control
3. Control of Indirect Dischargers: Commercial Centralized Waste Treaters
4. Categorical Standards for Other Industries

G. Enforcement of Categorical Standards
1. Revisions to Local Limits
2. Inspections and Sampling of Significant Industrial Users by POTWs
3. Definition of Significant Industrial User
4. Enforcement Response Plans for POTWs
5. Definition of Significant Violation
6. Reporting Requirements for Significant Industrial Users

H. Miscellaneous Amendments
1. Local Limits Development and Enforcement
2. EPA and State Enforcement Action
3. National Pretreatment Standards: Categorical Standards
4. POTW Pretreatment Program Requirements: Implementation
5. Development and Submission of NPDES State Pretreatment Programs
6. Administrative Penalties Against Industrial Users
7. Provisions Governing Fraud and False Statements

III. Executive Order 12291

IV. Regulatory Flexibility Analysis

V. Paperwork Reduction Act

I. Background

The regulatory changes promulgated today are intended to improve control of hazardous wastes introduced into POTWs under the Domestic Sewage Exclusion. The exclusion, established by Congress in Section 1004(27) of the Resource Conservation and Recovery Act (RCRA), provides that solid or dissolved material in domestic sewage is not solid waste as defined in RCRA. A corollary is that such material cannot be considered a hazardous waste for purposes of RCRA.

The exclusion applies to domestic sewage as well as mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly-owned treatment works (POTW) for treatment (see 40 CFR 261.4(a)(1)). The exclusion thus covers industrial wastes discharged to POTW sewers containing domestic sewage, even if these wastes would be considered hazardous if disposed of by other means.

One effect of the exclusion is that industrial facilities which generate hazardous wastes and discharge such wastes to sewers containing domestic sewage are not subject to RCRA manifest requirements for the transport of those excluded wastes. However, depending on the circumstances, such industrial users may be required to comply with certain other RCRA requirements that apply to generators of hazardous wastes. Some of these requirements are: (1) Determining whether a waste is hazardous (40 CFR 262.11); (2) obtaining an EPA identification number for hazardous wastes not discharged to the sewer (40 CFR 262.12); (3) accumulation of hazardous wastes (40 CFR 262.34); (4) recordkeeping (40 CFR 262.40 (c) and (d)); and (5) reporting (40 CFR 262.43). Additional requirements will usually apply if the wastes are treated or stored prior to discharge to a POTW (see 40 CFR part 264).

Another effect of the Domestic Sewage Exclusion is that POTWs receiving mixtures of hazardous waste and domestic sewage through the sewer system are not deemed to have received hazardous wastes. Therefore, such POTWs are not required to meet the RCRA requirements of 40 CFR part 264 for treating, storing, and disposing of these wastes. However, hazardous wastes delivered directly to a POTW by truck, rail, or dedicated pipe are not covered by the Domestic Sewage

Exclusion. Industries sending their wastes to POTWs in this manner are not covered by the exclusion, and POTWs receiving these wastes are subject to regulation under the RCRA permit-by-rule (see 40 CFR 270.60(c)).

In 1984, Congress enacted the Hazardous and Solid Waste Amendments to RCRA. Section 246 of the Amendments created a new section 3018(a) of RCRA, requiring EPA to prepare:

> * * * a report to the Congress concerning those substances identified or listed under section 3001 which are not regulated under this subtitle by reason of the exclusion for mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works. Such report shall include the types, size, and number of generators which dispose of substances in this manner, the types and quantities disposed of in this manner, and the identification of significant generators, wastes, and waste constituents not regulated under existing Federal law or regulated in a manner sufficient to protect human health and the environment.

EPA submitted its report (the Study) to Congress on February 7, 1986. In performing the Study, the Agency reviewed information on 160,000 waste dischargers from 47 industrial categories and the residential sector. Because of the nature of the available data sources, the Study provided estimates for the discharge of the specific constituents of hazardous wastes (e.g., benzene, acetone, etc.) rather than estimates for hazardous wastes as they are more generally defined under RCRA (i.e., "characteristic" wastes such as ignitable or reactive wastes, or "listed" wastes such as spent solvents, electroplating baths, etc.). The Study also provided more extensive estimates for those hazardous constituents which are also CWA priority pollutants. The CWA priority pollutant list was originally developed as part of a settlement agreement between the Natural Resources Defense Council (NRDC) and EPA (*NRDC* v. *Train*, Nos. 2153–73, 75–172, 75–1698, 75–1267 (D.D.C. June 8, 1976)). This agreement required the Agency to promulgate technology-based standards for 65 compounds or classes of compounds. Congress then incorporated this list of toxic pollutants as part of the 1977 amendments to the CWA. From the list of compounds or classes of compounds, EPA later developed a list of 126 individual priority pollutants (see Appendix A to 40 CFR part 423).

EPA was able to give estimates in the Study on the types, sources, and quantities of many hazardous constituents discharged to POTWs. The Study provided information on industrial categories ranging from large hazardous waste generators (such as the organic chemicals industry) to the smaller generators (such as laundries and motor vehicle services). The Study also examined the fate of hazardous constituents once they are discharged to POTW collection and treatment systems and discussed the potential for environmental effects resulting from the discharge of these constituents after treatment by POTWs. The Study then discussed the effectiveness of existing government controls in dealing with these discharges, particularly federal and local pretreatment programs and categorical pretreatment standards applicable to industrial users of POTWs.

After considering all the pertinent data, EPA concluded that the Domestic Sewage Exclusion should be retained at the present time. The Study found that CWA authorities are generally the best way to control hazardous waste discharges to POTWs. However, the Study also recommended that these authorities should be employed more broadly and effectively to regulate hazardous waste discharges. The Study identified for Agency consideration a number of possible initiatives with a potential for enhancing CWA controls on hazardous wastes entering POTWs.

The legislative history of section 3018 of RCRA displays Congress' understanding that the appropriateness of the Domestic Sewage Exclusion depends largely on an effective pretreatment program under the CWA. The pretreatment program (mandated by sections 307(b) and 402(b)(8) of the CWA) provides that industrial users must pretreat pollutants discharged to POTWs to prevent the discharge of pollutants that would interfere with or pass through the treatment works, or that would be otherwise incompatible with the POTWs.

As a follow-up to the Domestic Sewage Study, section 3018(b) of RCRA requires the Administrator to revise existing regulations and to promulgate such additional regulations as are necessary to assure that hazardous wastes discharged to POTWs are adequately controlled to protect human health and the environment. These regulations are to be promulgated pursuant to subtitle C of RCRA or any other authority of the Administrator, including section 307 of the CWA.

As a first step toward promulgating the regulations called for by section 3018(b), the Agency published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** on August 22, 1986 (51 FR 30166). In the ANPR, EPA made preliminary suggestions for regulatory changes, which, if promulgated, would improve the control of hazardous wastes discharged to POTWs. The Agency also held three public meetings in Washington, DC, Chicago, and San Francisco to solicit additional comments on the ANPR.

The comments received on the ANPR were summarized and discussed in a **Federal Register** notice published on June 22, 1987 (52 FR 23477). That notice also described many of the activities which EPA is carrying out to address the recommendations of the Study. Most commenters suggested ways to make the pretreatment program more effective in controlling hazardous wastes discharged to municipal wastewater treatment plants. On November 23, 1988 (53 FR 47632), the Agency proposed regulatory changes in response to the recommendations of the Study and the comments received on the ANPR.

EPA believes that today's rule will satisfy the Congressional directive in section 3018(b) of RCRA that EPA revise existing regulations and promulgate such additional regulations "as are necessary to assure that [hazardous wastes] which pass through a sewer system to a publicly owned treatment works are adequately controlled to protect human health and the environment". These rules are designed to assure POTW compliance with water quality standards, including narrative water quality standards preventing the discharge of toxic materials in toxic amounts, and to provide necessary information and regulatory tools to POTWs to address problems that are identified.

States and EPA have invested a great deal of time and resources in developing water quality standards that provide a benchmark for determining whether harmful concentrations of pollutants exist in the nation's waters. Today's rules include important new information collection requirements that will inform POTWs and NPDES permit writers of the likelihood that POTW discharges will violate water quality standards, and also provides new information and regulatory tools with respect to industrial user discharges that may be causing water quality violations through the POTW effluent.

Of particular importance to controlling hazardous waste discharges to POTWs are the following provisions of today's rule. First, under revisions to 40 CFR part 122, POTWs meeting specified criteria will be required to test their effluent for toxicity which may be caused by industrial user discharges of hazardous wastes or other toxic

substances. The results of this testing may indicate that POTWs are violating water quality standards, thereby endangering human health and the environment. Depending on the results of this testing, POTWs may receive new or more stringent permit limits regarding discharges of toxic pollutants. In order to comply with the revised permit limits, POTWs may either alter their operations or impose more stringent local limits on industrial user discharges of hazardous wastes. Imposition of such new or more stringent local limits will be facilitated by another requirement of today's rule: the requirement in 40 CFR 403.12(p) that industrial users notify POTWs, States and EPA of the nature and mass of RCRA hazardous wastes that they introduce into the sewers. In addition, under today's revisions to 40 CFR 122.21(j)(2), POTWs must evaluate in writing, at the same time as they submit the data from toxicity testing to their permit-issuing authority, the need to revise local limits. This new provision will allow the NPDES permit writer to review the POTW's rationale for not imposing more stringent local limits when the results of toxicity testing indicate that such new limits may be necessary to assure attainment of water quality standards. Today's rule also will ban the introduction to POTWs of wastes that exhibit the RCRA characteristic of ignitability. This ban is necessary to prevent explosions in sewer systems that could disrupt POTW operations and lead to releases of hazardous wastes and other toxic or hazardous substances in the sewers. "Midnight dumping" of hazardous wastes to sewers should be substantially curtailed through the ban in 40 CFR 403.5(b)(8) on the introduction of trucked or hauled wastes to POTWs except at discharge points identified for such use by the POTW. Finally, through general improvements in the pretreatment program provided by today's rule, such as industrial user slug control plans, permits for significant industrial users, and POTW enforcement response plans, EPA expects a significant enhancement over the control of hazardous wastes and other toxic and hazardous substances introduced to POTWs. The Agency notes that all pretreatment program changes required by today's rule must be incorporated in POTWs' NPDES permits upon reissuance.

While EPA believes that today's rule satisfies the requirements of section 3018(b), EPA intends to carefully review the effect of today's rule and promulgate in the future any additional regulations that experience reveals are necessary to improve control over hazardous waste and other industrial user discharges to POTWs. In addition, EPA has always recognized that additional categorical pretreatment standards will form an important component of effective controls over pollutants discharged to POTWs. On January 2, 1990, EPA recently issued a plan under section 304(m) of the Clean Water Act under which it will develop regulations for four new technology-based categorical pretreatment standards and will revise three existing standards (55 FR 80). The categories of dischargers selected for the development of new and revised pretreatment standards discharge large amounts of toxic and nonconventional pollutants to POTWs. The Domestic Sewage Study was an important source of data for the section 304(m) plan. While EPA is not obligated to base development of such technology-based categorical standards on findings relating to protection of human health or the environment, EPA believes that pollutant discharge reductions achieved through implementation of new categorical standards will advance the protection of human health and the environment.

It should be noted that today's rule does not directly address potential air emissions from the wastewater collection system or POTWs. EPA's Office of Air and Radiation is evaluating potential air emissions from the collection and treatment of wastewater discharged to POTWs and plans to address these air emissions under the Clean Air Act.

II. Revisions

The Agency received comments in response to its proposal from approximately one hundred and sixty individuals and groups. All significant comments and the Agency's responses to these comments are discussed below. The Agency's responses to minor comments are part of the record to this rulemaking and are available for inspection at the EPA Public Information Reference Unit, Room 2402, 401 M Street SW., Washington, DC 20460.

A. Specific Discharge Prohibitions

1. Ignitability and Explosivity

a. *Proposed change.* The specific prohibitions of the general pretreatment regulations (40 CFR 403.5(b)) forbid the discharge of certain types of materials which may harm POTW systems by creating fire or explosion hazards, causing corrosive structural damage, obstructing flow, or creating heat in a POTW influent which inhibits biological activity. The August 22, 1986 ANPR discussed expanding these prohibitions to forbid the discharge of characteristic wastes under RCRA (i.e., wastes that are defined as hazardous under 40 CFR part 261, subpart C if they possess the characteristics of ignitability, corrosivity, reactivity, or toxicity). This would provide greater specificity to the largely narrative structure of the existing prohibitions in the pretreatment program.

With respect to ignitability, the indirect discharge of ignitable materials has caused many documented cases of explosions and fires in POTW collection systems. These fires and explosions often happen near the point of indirect discharge, when the temperatures (normally above ambient) promote evaporation of ignitable wastes into a relatively fixed volume of air forming vapors which are not dispersed into the atmosphere. These vapors can be ignited by various sources, including electric sparks, frictional heat, hot surfaces such as manhole covers heated by the sun, or chemical heat generated by reactions.

The specific discharge prohibitions (40 CFR 403.5(b)(1)) already prohibit the discharge to sewers of materials creating a fire or explosion hazard. However, this narrative provision lacks specificity. As a result, the prohibition has limited effectiveness as a preventive requirement. The standard is clearly violated if there was an actual fire or explosion in the sewer or if an industrial user violated a local limit designed to implement the prohibition.

To provide for better implementation of these provisions, EPA proposed to revise 40 CFR 403.5(b) to prohibit the introduction into sewer systems of pollutants which create a fire or explosion hazard in the POTW, including but not limited to pollutants with a closed cup flashpoint of less than 140 degrees Fahrenheit (sixty degrees Centigrade), as determined by a Pensky-Martens Closed Cup Tester using the test method specified in ASTM standard D-93-79 or D-93-80, or a Setaflash Closed Cup Tester using the test method specified in ASTM Standard D-3278-78. The Agency also proposed to revise 40 CFR 403.5(b) to prohibit the discharge of pollutants which cause an exceedence of 10% of the lower explosive limit (LEL) at any point within the POTW.

A flashpoint is the minimum temperature at which vapor combustion will spread away from its source of ignition. Below the flashpoint temperature, combustion of the vapor immediately above the liquid will either not occur at all, or will occur only at the point of ignition. A 140 degree Farenheit

flashpoint standard has been used for several years under RCRA to identify liquid wastes that pose a fire hazard. EPA proposed a similar standard for use in a new prohibited discharge standard in the pretreatment program.

The lower explosive limit was proposed to deal with the problems of mixing and dilution in the sewer. The LEL of an organic vapor is the minimum concentration required to form a flammable or explosive vapor to air mixture. The LEL is measured with an explosimeter, an instrument that is commonly used by POTW technicians to protect against combustible vapors in sewers.

In the preamble of the proposed rule, the Agency solicited comments on: (1) Whether or not the flashpoint prohibition would be reasonable, unduly stringent or insufficiently protective of POTWs under worst case conditions and whether it would sufficiently take into account the effects of effluent mixing or dilution in a POTW system; (2) whether another technically feasible and effective alternative exists; (3) whether the regulation should exempt aqueous solutions with less than 24% alcohol by volume from the proposed flashpoint prohibition; (4) whether the LEL prohibition is practical, either alone or in combination with the flashpoint prohibition; (5) whether it is too difficult to link an LEL exceedence to specific discharges; (6) whether vapor phase monitoring (sometimes needed to determine the cause of any exceedence) is too difficult or too expensive; and (7) whether the flashpoint approach or the LEL approach would be sufficient alone to prevent fires and explosions at POTWs.

b. *Response to comments.* Most commenters supported the proposal to adopt limits that would add specificity to the existing narrative prohibition on ignitable and explosive discharges. However, other commenters believed that existing local ordinances and the existing specific prohibition were sufficient and that the proposed regulatory requirements would impose excessive burdens and costs on both municipalities and industrial users.

A majority of the commenters supported the flashpoint prohibition, either alone or in conjunction with the LEL approach. These commenters stated that the flashpoint prohibitions would provide Control Authorities with a quantifiable standard against which to measure compliance. Other commenters believed that because the flashpoint limit is used under RCRA to define which wastes exhibit the characteristic of ignitability, it would have greater credibility and enforceability than other approaches. Many commenters stated that the proposed flashpoint test would be inexpensive and easy to implement.

EPA agrees with those commenters who supported the proposed flashpoint prohibition. The Agency believes that the established flashpoint method is a good measure of fire and explosion hazard and will thus be effective in preventing interference with POTW operations. The flashpoint prohibition will also add specificity to the existing narrative prohibitions, thus facilitating effective prevention and enforcement. The closed cup flashpoint test methods are also relatively simple and inexpensive. For these reasons, EPA is today revising 40 CFR 403.5(b)(1) to prohibit the introduction to POTWs of pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit (sixty degrees Centigrade).

Many commenters pointed out that the language used in the proposed regulation was not consistent with that used in the preamble. The proposed regulation stated that the flashpoint prohibition applies to "pollutants," which could be interpreted to apply both to specific constituents of the waste and to the entire waste mixture generated by indirect discharges. The preamble discussion, however, clearly indicated EPA's intent that the flashpoint prohibition would apply to "wastewater discharge" and not wastewater constituents of the entire discharge or combined wastestream. To clarify the regulatory language, today's final rule has been modified to read,

"* * * Pollutants which create a fire or explosion hazard in the POTW, including but not limited to, *wastestreams* with a closed cup flashpoint of less than 140 degrees Fahrenheit (sixty degrees Centigrade) * * *"

Some commenters expressed confusion as to the exact point where the flashpoint should be measured. The modification made to the final rule (discussed above) resolves any possible ambiguity regarding the location where the flashpoint should be measured. Because the flashpoint prohibition applies to the industrial user's wastestream, the measurement should be taken at the point of indirect discharge.

Although most commenters approved of the flashpoint prohibition, some expressed concerns about its limitations. One commenter stated that a majority of POTWs do not have industrial users that would warrant closed cup testing. Another commenter said that flashpoint was not a good indication of fire and explosion hazard because wastewater should not contain enough hazardous constituents to be flammable. In response, the Agency believes that the flashpoint prohibition is relevant because most POTWs do have at least a few industrial users and even one industrial user may sometimes have the potential to cause fire or explosion hazards in a POTW. Also the Study found that hazardous constituents are found in many different types of wastestreams. EPA believes that the flashpoint is an accurate indicator of fire and explosion hazard caused by the presence of toxic and hazardous pollutants in wastestreams.

Several commenters argued that the discussion on the use of existing literature flashpoint values in the preamble was not applicable to the vast majority of wastes. These literature values are only available for discharges of "pure" substances, which are not common.

The Agency suggested the use of available literature values for those "pure" substances believed present in a wastestream. EPA believes that if the flashpoint of a pure substance, or the flashpoint of each known substance in a mixture, is above 140 degrees F, then the flashpoint of the wastestream containing the substance or substances (normally diluted predominantly with water) would usually also be above the limit. If the industrial user is unsure of this correlation, the flashpoint test should be performed on its wastestream or the industrial user should consult the Control Authority.

Several commenters stated that because industrial wastes are usually variable, testing would ideally have to be continuous. Since there are no continuous monitoring methods available, these commenters feared that the discharger would be faced with retaining the entire discharge until a flashpoint determination could be made. At this point if the waste did not pass the test, it would then have to be disposed of under RCRA, although it could be sufficiently treated through the POTW. A few commenters had concerns about sampling methodologies, and one commenter said that sampling methodologies should be specified in addition to test methods. Another commenter said that the reliability of the closed cup test for wastewater was not good.

EPA does not believe that most wastestreams are sufficiently variable to require continuous monitoring. However, if an industrial user's wastestream is determined to be

extremely variable, the industrial user may wish to conduct frequent monitoring if necessary to avoid violating today's rule. When industrial users are uncertain whether their wastestream can be adequately characterized by intermittent monitoring, they should consult the Control Authority for monitoring instructions. If monitoring indicates periodic violations of the prohibition, industrial users may wish to take appropriate measures to pretreat their wastes so that they could be confident that the discharges would not violate the flashpoint prohibition. This would prevent industrial users from the need to retain their wastes pending flashpoint analysis. With respect to sampling methodologies, grab samples taken at the point prior to discharge are generally the appropriate methodology. However, the number of grab samples which are needed to characterize a wastestream will vary. For most wastestreams, one grab sample may be sufficient. For variable wastestreams, a series of grab samples may be appropriate. In order for a waste to meet today's standard, no single grab sample of the waste may be below the 140 degree flashpoint limit. With respect to reliability of the closed cup method, this method has long been in use under RCRA to measure the ignitability of liquid wastes, with few problems brought to EPA's attention. The Agency sees no reason why the method would not be equally useful on wastestreams discharged to POTWs. In support of this view, many commenters supported the test because of its purported reliability.

Some commenters suggested changing either the flashpoint or LEL limits, and one commenter stated that the flashpoint approach alone could result in unnecessary regulation in circumstances where in-sewer dilution would effectively eliminate any hazardous conditions. One commenter urged that the proposed revision be made less stringent by prohibiting only those discharges with a flashpoint of less than 100 degrees F. This commenter noted that EPA had acknowledged that 140 degrees F is considerably above expected wastewater temperatures. The commenter concluded that prohibiting discharges with a flashpoint near this temperature (140 degrees F) would therefore be overly protective. Another commenter urged EPA to allow case-by-case variances from the prohibition where it can be shown that the waste will be rendered non-ignitable upon mixture in the sewer system, and still another suggested that the Agency consider regional variations in flashpoints which would take into account differing temperatures in different parts of the United States.

The Agency is not convinced that prohibiting discharges with a flashpoint of less than 100 degrees F would be sufficiently protective against fires and explosions. Although the commenter stated that such a flashpoint would better reflect the temperatures encountered in most sewer systems under actual conditions, the commenter provided no data in support of this argument. Although it is true that most wastewater temperatures are below 140 degrees F, many industrial users discharge very hot wastestreams to sewers, with wastewater temperatures ranging from 120 to 212 degrees F (e.g., industrial and commercial laundries, oil refineries, food processors, textile manufacturers, power generating facilities, and any facility discharging boiler blowdown). Temperatures of wastewater in the sewer may therefore reach or exceed 140 degrees F for brief periods of time near the point of a very hot discharge. In addition, some sewer use ordinances prohibit the discharge of wastewater hotter than 150 degrees F, which indicates that wastewaters may reach that temperature. Although such discharges are eventually diluted with cooler water in the sewer, combustion could be sustained near the point of discharge if the sewer wastewater reached or exceeded 140 degrees F, a wastestream with a flashpoint below 140 degrees F were discharged, and a source of ignition (such a friction spark or a lighted cigarette) were present. For this reason, EPA does not agree that in-sewer dilution always eliminates hazardous conditions, or that a flashpoint of 140 degrees F is unnecessarily stringent. With respect to case-by-case variances from the flashpoint prohibition, the Agency believes that the largest determinant of sewer temperature at the point of industrial discharge is the temperature of the industrial wastewaters discharged, rather than the temperatures prevailing outside of the sewer. EPA has decided not to allow case-by-case variances based on ability of the waste to be neutralized after mixture in the sewer because such variances would not protect against explosions that may occur prior to such mixing. POTWs may establish more stringent limits than those promulgated today at their discretion.

With respect to the current exclusion under RCRA (40 CFR 261.21(a)(1)) from the ignitability characteristic for aqueous solutions containing less than 24 percent alcohol by volume, some commenters supported extending the exemption to the proposed flashpoint prohibition, indicating that such solutions are quite soluble, readily diluted, effectively treated by POTWs, and pose little threat to POTWs. One commenter stated that such solutions could flash but would not sustain combustion, but acknowledged that the ability to flash is connected to explosiveness. This commenter believed that deficiencies in operating practices and equipment often accounted for explosions. Other commenters did not support such an exemption. One commenter stated that even though such solutions may not be able to sustain combustion because of their high water content, the more critical issue for substances discharged to sewer lines is the ability of the *vapors* above the aqueous solution to sustain combustion.

After evaluating this issue, EPA has concluded that an exemption from the flashpoint prohibition for aqueous solutions containing less than 24 percent alcohol by volume is not appropriate. POTW collection systems are an ideal environment for generation of flammable/ignitable atmospheres; minimal air interchange within collection systems ensures that ignitable vapors once formed cannot easily be dispersed. Promulgation of the exemption would allow the discharge to POTWs of wastewaters otherwise failing the flashpoint test. For example, a flashpoint of 140 degrees F corresponds to an aqueous solution containing only 6 percent ethyl alcohol by volume; an aqueous solution containing 24 percent ethyl alcohol by volume would have a flashpoint of 90 degrees, well below the flashpoint specified in today's rule. Other allowed discharges would include potentially flammable mixtures containing methyl alcohol and isopropyl alcohol. The Agency believes that allowing an exemption from the flashpoint prohibition for aqueous solutions containing less than 24 percent alcohol by volume would not sufficiently protect POTWs, and is not promulgating such an exemption in today's rule. The Agency agrees that deficiencies in operating practices and equipment may often be responsible for explosions, and encourages industrial users to employ the best methods available to ensure compliance with today's prohibition.

One commenter noted that many POTWs use a closed-cup Tagliabue test to determine flammability, and suggested that EPA should consider adding it to its list of closed cup testers. The Agency agrees and notes that 40 CFR 261.21(a)(1), which specifies test

methods for the liquid ignitability characteristic, allows the use of equivalent test methods if approved by the Administrator under the procedures set forth in 40 CFR 260.20 and 260.21. To enable POTWs to use equivalent test methods according to these procedures, the Agency has modified the proposed prohibition to prohibit the discharge of wastestreams with a closed cup flashpoint of less than 140 degrees F using the test methods specified in 40 CFR 261.21.

Many commenters favored keeping both the flashpoint and LEL prohibitions. These commenters included State and local authorities who said that these limits and methodologies were both reasonable and necessary. Other commenters, however, thought it unnecessary to include both types of prohibitions, and favored retention of the flashpoint limitation or the LEL limitation only. One commenter stated that the difficulty of enforcing the LEL approach in no way diminishes the need for this prohibition, because it is a much more sensitive indicator of fire or explosion hazard. Some of the commenters who supported both prohibitions wanted to have the freedom to choose one or the other or both on a case-by-case basis, and one commenter suggested that the flashpoint and LEL approach are better suited to be placed in guidance documents rather than in a regulation.

Few commenters supported use of the LEL approach alone and many pointed out limitations to the LEL methodology. The most common criticisms were: (1) Calibration of instruments is difficult since wastestreams are a mixture of substances; (2) tracing any sort of exceedance in the collection system would be almost impossible, since the LEL reading cannot distinguish which chemicals are causing the exceedence (although some commenters believed that LEL exceedances could be traced by such means as tracking alarms to certain points in the sewer system; (3) unless continuously monitored, the LEL would be an instantaneous measurement and therefore subject to too much variability to accurately represent industrial users' wastestreams; (4) the LEL of a substance is difficult to measure with portable instruments and depends on many variables that will affect the accuracy of the measurement, such as ambient temperature, VOC, air exchange rate, oxygen concentration, humidity; (5) industrial users would have difficulty ascertaining whether their discharges would cause a violation, due to the uncertainty of conditions that may exist "downstream" in the sewer system from their facilities, and (6) the 10 percent LEL is too stringent, since higher percentages of the LEL are routinely reached. One commenter, however, favored use of the LEL approach, arguing that it was more effective than the flashpoint technique in measuring explosivity of mixtures under actual sewer conditions.

EPA is persuaded by certain of the commenters' arguments against specifying a national prohibition based on the LEL approach. Although the approach has proved very valuable for many POTWs, EPA recognizes that there are certain technical difficulties associated with this approach which make it more suitable for use on a case-by-case basis at the discretion of the particular POTW than as a nationally applicable standard. The principal difficulty is associated with calibration of the instruments. Although one commenter stated that the indicated LEL is accurately represented for the common solvents and does not require knowledge of the substance monitored, other commenters who addressed this issue stated that unless the LEL meter is calibrated using the exact gas that is to be measured, it may not give an accurate reading of the vapors present. As an example, one comenter included a table showing that great variation can occur in LEL readings due to the presence of different chemicals. This would present a problem because the proposed rule would have established an LEL for any point in a POTW's collection system, and the air space in such systems generally contains many different kinds of gases derived from the complex mixtures of substances in the sewerage. EPA has therefore modified proposed 40 CFR 403.5(b)(1) to delete the prohibition on discharges which result in an exceedance of 10 percent of the LEL at any point within the POTW.

In response to the commenters who suggested that EPA allow POTWs to choose either the LEL or the flashpoint approach, the Agency acknowledges that the flashpoint prohibition in today's rule will not necessarily account for the ignitability of mixtures of industrial user discharges when combined in sewers. However, owing to the effect of dilution within the sewer system, the Agency believes that it is generally reasonable to assume that the concentrations of combustible constituents in sewer wastewaters will be well below the concentrations required for ignitability, provided that all industrial users are in compliance with the flashpoint prohibition. Fires and explosions from the discharge of ignitable pollutants often occur in the POTW collection system near the point of discharge, and the temperature in the collection system at that point may be above the ambient temperature, promoting the evaporation of ignitable wastes and the formation of flammable vapor to air mixtures. For these reasons, the Agency believes that today's flashpoint prohibition is necessary to help prevent fires and explosions at sewers, and is not adopting the suggestions that POTWs be allowed to choose between that approach and the LEL or that explosivity problems should be addressed in guidance only.

However, the Agency recognizes that many POTWs have made effective use of the LEL approach in preventing fires and explosions, and encourages POTWs to develop programs which employ this approach, if they deem it appropriate.

Many commenters who addressed vapor phase monitoring used to trace the source of an LEL exceedance stated that such monitoring is too expensive. Some commenters were opposed to a requirement for vapor phase monitoring, stating that most POTWs do not have access to the necessary methodologies, and that POTWs could already track sources without this methodology. One commenter suggested that vapor phase monitoring be done at site-specific points within the POTW. Some commenters argued that the regulation should not require the POTW to identify the compounds responsible for the exceedences, but one commenter stated that the details of a collections system, the location of the LEL exceedence, and the location of the industrial users will make elimination of facilities not causing the problem possible without the specific identification of each industrial user's wastestream.

EPA did not propose, and is not finalizing, requirements that vapor phase monitoring be performed, nor that the identity of the compounds causing the exceedences be revealed through such monitoring. However, many POTWs which adopt the LEL approach may choose to adopt such monitoring on an as-needed basis. In many cases the source of an exceedence can be discovered by other means.

c. *Today's rule.* Today's final rule prohibits the discharge of pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Farenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21.

2. Reactivity and Fume Toxicity

Wastes exhibiting the reactivity characteristic are regulated under RCRA because their extreme instability and tendency to react violently or explode make them a hazard to human health and the environment during waste management. A solid waste exhibits the RCRA characteristic of reactivity if it is normally unstable and readily undergoes violent change without detonating; reacts violently with water; forms potentially explosive mixtures with water; generates potentially harmful quantities of toxic gases, vapors or fumes when mixed with water; is a cyanide or sulfide bearing waste which when exposed to pH conditions between 2 and 12.5 can generate potentially harmful quantities of toxic gases, vapors or fumes; is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement; is capable of detonation or explosive decomposition or reaction at standard temperature and pressure; or is a forbidden, Class A, or Class B explosive pursuant to 49 CFR part 173 (see 40 CFR 261.23(a)).

The health and safety of POTW workers has long been a serious concern of the Agency. There is no question that the generation of toxic gases and vapors can sometimes be dangerous to the health and safety of these workers, thus interfering with operations at the POTW and even endangering human life. In addition, the local general population could also suffer if sufficient quantities of toxic gases and vapors are released from sewer vents or aeration or containment basins. Gases and vapors may be caused by chemical reactions between constituents of the industrial discharge and the receiving sewage, or microbial metabolism. Some toxic gases can be generated as the result of sudden drops in pH. Besides generating toxic gases and vapors when mixed with sewage, industrial discharges may have sufficiently high concentrations of toxic gases and volatile liquids to cause toxic levels of gas or vapor to form above the wastewater even if the discharge is diluted by the sewage. There have been numerous instances of sewer maintenance workers who have been injured or killed from toxic gases formed in sewers. While most accidents have been caused by the formation of hydrogen sulfide gases, more recent incidents have been linked to certain organic pollutants that either volatilized or reacted with hydrogen sulfide within the POTW collection system.

a. *Proposed rule.* The prohibition against the discharge of pollutants which create a fire or explosion hazard, as modified by today's rule to include a prohibition on the discharge of materials with a flashpoint of less than 140 degrees F., will help prevent harm to POTW workers, as will the requirement promulgated today that POTWs evaluate significant industrial users to determine the need for plans to control slug discharges (see part B below). To augment these prohibitions and provide further protection, the Agency proposed on November 23, 1988 to revise 40 CFR 403.5(b) to add a new subsection (6) providing that no discharge to a POTW should result in toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems. EPA also proposed to revise 40 CFR 403.5(c) to require POTWs to implement the proposed narrative prohibition in 40 CFR 403.5(b)(6) by establishing numerical discharge limits or other controls where necessary based on existing human toxicity criteria or other information. Industrial users would then be liable for any violations of these limits or controls.

As possible implementation mechanisms, EPA suggested approaches used by the American Conference of Government Industrial Hygienists (ACGIH) or the Metropolitan Sewer District of Cincinnati. The ACGIH publishes an annual list of threshold limit values (TLVs) for numerous toxic inorganic and organic chemicals. The threshold limit values represent estimated chemical concentrations in air below which harmful health effects in exposed populations are believed to be unlikely to occur. The Metropolitan Sewer District of Cincinnati approach features the use of a vapor headspace gas chromatographic analysis of equilibrated industrial wastewater discharge (one volume of wastewater to one volume of air head space) at room temperature (24 degrees C). The analysis measures the total vapor space organic concentration by calculating the total peak area of the chromatogram expressed as parts per million (ppm) of equivalent hexane.

The Agency solicited comments on the addition of this prohibition to the general pretreatment regulations and on the feasibility of developing local limits from human toxicity criteria or other information such as those discussed above. The Agency requested comments on the practicality of such a prohibition, or alternative regulatory ways to protect worker health and safety, and on whether worker health and safety is adequately protected by the present general and specific discharge prohibitions.

b. *Response to comments.* The Agency received many comments on the proposed rule. Comments were received from States, environmental groups, POTWs and industries. The majority of the commenters supported the narrative prohibition (proposed 40 CFR 403.5(b)(6)) but were against requiring implementation of numerical limits (proposed 40 CFR 403.5(c)). These commenters generally believed that such numerical limits would be too difficult and expensive for POTWs to develop. In general, the commenters believed that the approaches used by ACGIH and the Metropolitan Sewer District of Cincinnati would be useful as guidance or as a screening tool, but that the actual criteria are so imprecise that it would be best not to require POTWs to implement them.

Some commenters pointed out that the Metropolitan Sewer District of Cincinnati approach contained potentially serious flaws in that the 300 ppm equivalent hexane limit might not provide adequate prctection against more toxic compounds. These commenters said that the Cincinnati approach could thus provide workers with a false sense of safety. Other commenters stated that the approach would only be valid if the wastewater in the sewer was at equilibrium with the air above the wastewater and the wastewater acts as an ideal liquid mixture.

Some commenters also expressed concern about the ACGIH list of chemical threshold limit values, stating that the list includes skin and dust hazards as well as vapor hazards. The commenters stated that the list of TLV compounds appears to be very large, but many of the compounds on the list are not applicable to the Agency's purpose. Only 136 compounds on the TLV list are for short term exposure (exposures of less than 8 hours duration within the POTW). The 136 compounds can then be further reduced by the removal of simple asphyxiants (inert gases, vapors and solids (dusts)). Thus, commenters believed that the number of ACGIH listed chemicals that could realistically be limited by POTWs is very small.

These commenters also said that ACGIH specifically disclaims its TLV list for setting environmental standards. ACGIH's basis for this disclaimer is that the averaging process involved in determining the TLVs is inappropriate for establishing such standards.

Some commenters stated that even though EPA has never explicitly required POTWs to develop local limits to prevent pass through or interference due to reactive chemicals and fume

toxicity, almost all POTWs have ordinance prohibitions or local limits to handle common pollutants such as sulfide that have been associated with worker health and safety problems.

After evaluating this issue, the Agency has concluded that the actual methods discussed in the November 23, 1988 proposal (as well as other methods) are not sufficiently precise at the present time to require POTWs to base enforceable local limits upon these methods. None of the approaches currently in use are necessarily suitable for required use at all POTWs, although they may fit the needs of many POTWs after certain modifications. For this reason, EPA is not promulgating a requirement to develop numerical limits to protect worker health and safety based upon specified procedures. The Agency believes that a narrative prohibition coupled with guidance on developing limits would allow POTWs more flexibility to adopt implementation procedures to meet their particular needs while providing adequate protection of worker health and safety. EPA is therefore promulgating the narrative prohibition on reactivity and fume toxicity and plans to issue guidance on developing numerical limits.

One commenter suggested that EPA should require POTWs to use proper confined space entry procedures or to monitor their systems with portable gas chromatographs (GCs) to protect worker health and safety. The commenter also suggested that industrial users causing worker health problems should be required to install activated carbon treatment systems or to perform continuous monitoring using GCs. Another commenter said that POTWs should conduct an extensive investigation of the effects organic compounds have on their system, after which limits could be developed for contributors of organic pollutants. Other commenters suggested requiring POTWs to develop an intensive safety training program for POTW employees, or allowing POTWs to substitute such measures as exposure surveys, engineering controls, or personal safety equipment for numeric limits.

One commenter suggested that EPA should require tests to be used by industrial users to prevent the discharge of wastewaters with high levels of toxic constituents, such as the test used by the Metropolitan Sewer District of Cincinnati. The commenter also suggested forbidding the discharge of any wastewaters containing hazardous constituents at concentrations which could give rise to chronic worker exposures higher than the relevant OSHA Time-Weighted Average Occupational Standard (TWA).

According to the commenter, a simple algorithm could be devised relating TWAs to the concentration of hazardous constituents in the discharge. Industrial users would be prohibited from discharging a wastewater which the algorithm predicted would give rise to vapor concentrations higher than the TWA. As another alternative, the commenter suggested that EPA adopt particular tests for certain types of wastes that can react in low or high pH environments and give off toxic gases. EPA should particularly consider adapting to POTWs the simple scenario it used to quantify the narrative characteristic test used in RCRA for cyanide and sulfide bearing wastes.

EPA encourages POTWs to use any or all of the above approaches (or modifications thereof) which they find necessary to protect worker health and safety at their facilities. However, because the numbers and types of industrial users vary so widely among POTWs, the Agency does not believe that any single test, training program, treatment technology, monitoring approach, or combination thereof is currently suitable for a nationally applicable rule to protect worker health and safety. Today's rule allows POTWs to impose controls on particular industrial users based on numeric limits on specific pollutants *or* through other measures that address their own particular site-specific concerns. Pursuant to 40 CFR 403.5(d), the approach selected by the POTW will be federally enforceable. With respect to the OSHA TWA approach suggested above, the Agency notes that this approach is similar to one suggested by EPA in its *Guidance Manual on the Development and Implementation of Local Discharge Limitations Under the Pretreatment Program.* This approach involves using ACGIH threshold limit value-time weighted averages (TLV-TWAs) which serve as a measure of fume toxicity from which screening levels for all industrial user discharges can be calculated. However, the Agency notes that the TWA levels are the vapor phase concentrations of compounds to which workers may be exposed over long periods of time without adverse effect. In general, POTW workers are not exposed for extended periods of time to sewer atmospheres. The Agency also notes that the algorithm suggested by the commenter did not appear to take into account the effect of possible dilution or mixture with other substances in the sewer. For these reasons, the Agency recommends the use of such approaches as a way to screen industrial users' discharges, but recommends POTW reliance upon site-specific data in developing actual controls for industrial users. In some cases, the use of improved chemical handling or management practices may eliminate any problems. Similarly, regarding the narrative characteristic test under RCRA for cyanide and sulfide bearing wastes, the Agency believes that this test is best adapted by POTWs on a case-by-case basis to address their particular circumstances with respect to acidity or corrosivity which could result in fume toxicity.

One commenter urged that EPA clarify that a specific discharge constituent must itself be a significant source of actual toxic gas, vapor, or fume problems in order to fall within the scope of the prohibition. This commenter said that the proposed regulatory language could prohibit the discharge of biochemical oxygen demand (BOD), which contributes to anaerobic conditions, and otherwise innocuous sulfate (toxic hydrogen sulfide levels can be generated in POTW sewers through the reduction of sulfates by anaerobic bacteria, according to this commenter). Another commenter urged the Agency to limit the applicability of the proposed prohibition to those situations where a POTW interprets the prohibition through adoption of specific numerical discharge limits. In this way, industrial users would not be subject to the prohibition in the absence of numerical limits developed by the POTW. Another suggested that EPA prohibit only those substances discharged in a quantity known to cause worker health and safety problems. This commenter pointed out that the only instance cited in the November 23, 1988 preamble of actual injury to workers involved hydrogen sulfide, and stated that regulation of other substances was unjustified because the existing prohibitions already protect worker health and safety.

In response, the Agency notes that all of the specific discharge prohibitions apply even in the absence of numeric limits developed by the POTW to implement such prohibitions. In addition, EPA does not agree that regulation of other substances besides hydrogen sulfide is unjustified to protect worker health and safety. The Domestic Sewage Study found that adverse health effects on POTW workers have been caused by a variety of pollutants (including toluene, benzene, hexane,

phenol, hexavalent chromium, and chloroform).

However, the Agency agrees that there are certain situations in which industrial users should not be held responsible for a violation of the general pretreatment regulations (including today's prohibition against fume toxicity) because they did not possess the information necessary for them to prevent the causative discharge. To address this concern, EPA is today amending 40 CFR 403.5(a)(2) to provide that an industrial user, in any action brought against it alleging a violation of 40 CFR 403.5(b)(7), shall have an affirmative defense where that user can demonstrate that it did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, caused pass through or interference. Pursuant to 40 CFR 403.5(a)(2), the affirmative defense would also be available if the industrial user were in compliance with local limits developed to prevent pass through and interference, or (where no such limits for the pollutants in question had been developed) if the industrial user's discharge had not changed substantially in nature or constituents from the user's prior discharge activity when the POTW was in compliance with the POTW's NPDES pemit or applicable requirements for sewage sludge use or disposal.

c. *Today's rule.* Today's rule adds a new requirement (40 CFR 403.5(b)(7) that no discharge to the POTW shall result in toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems. Today's rule also amends 40 CFR 403.5(a)(2) to provide that an industrial user shall have an affirmative defense in any action brought against it alleging a violation of 40 CFR 403.5(b)(7), if it can make the appropriate demonstrations pursuant to 40 CFR 403.5(a)(2)(i) and (ii).

3. RCRA Toxicity

The Study discussed the possibility of developing a specific prohibition to forbid the discharge of waste exhibiting the characteristic of toxicity, as measured by the Extraction Procedure (EP) or Toxicity Characteristic Leaching Procedure (TCLP). This prohibition was not proposed in the November 23, 1988 rule, but was discussed in the ANPR published in the Federal Register on August 22, 1986 (51 FR 30166).

The EP toxicity test and the TCLP are designed to simulate the propensity of metals and organic contaminants to leach from a landfilled or land-applied waste into ground water. The EP toxicity test was used under RCRA to determine which wastes are hazardous by virtue of exhibiting the characteristic of toxicity. On March 29, 1990 (55 FR 11798) the Agency published a final rulemaking which, when effective, will replace the EP with the TCLP, which EPA believes provides a better measure of the propensity of pollutants to leach from a land-disposed waste.

EPA solicited comments in the ANPR on whether the EP toxicity test or the TCLP would be appropriate for determining whether particular pollutants are likely to cause pass through and interference. EPA noted that materials may be subsequently diluted when mixed with large amounts of domestic sewage, and that POTWs are capable of removing many such materials even in small amounts.

Comments in response to the ANPR were overwhelmingly opposed to adding specific prohibitions to the pretreatment regulations based on either the EP or the TCLP tests. Commenters generally asserted that since the tests model the tendency for metals and organic constituents to leach from a landfilled or land-applied waste into ground water, the tests were inappropriate for assessing whether an industrial wastewater discharge would cause pass through or interference at a POTW.

The Agency believes that requiring industrial wastestreams discharged to POTWs to pass either of the RCRA toxicity tests may result in both under-regulation and over-regulation of various pollutants with little technical justification, since application of the tests to industrial effluents does not take into account POTW removal efficiencies nor the potential for adverse impact on POTW collection and treatment systems. The Agency believes that current controls on toxic discharges from industrial users (the interference and pass through prohibition, categorical standards, and local limits) and from POTWs (permit limits, including controls on toxicity) are currently the best way to regulate materials that would warrant special consideration under RCRA due to leachability characteristics. For these reasons, EPA did not propose to change the current specific discharge prohibitions to add a prohibition based on any RCRA toxicity characteristic, nor is the Agency finalizing such a prohibition in today's rule.

One commenter on the ANPR, while agreeing that the RCRA toxicity tests were not necessarily suitable for industrial wastewater discharges, suggested that the Agency develop a leaching test applicable to such discharges because of the likelihood that they would leak from sewers and cause contamination of ground water.

EPA believes that such a test would be premature at the present time because of the lack of available information about the extent of ground water contamination caused by leaky sewers. When more data is available, the Agency may consider developing such a test if appropriate.

4. Corrosivity (403.5(b)(2))

Section 403.5(b)(2) of the general pretreatment regulations currently prohibits the discharge of "pollutants which will cause corrosive structural damage to the POTW, (including) discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges." This prohibition provides a numeric limit on the discharge of acidic wastes, but does not contain a corresponding pH limitation for caustic wastes. The Study reviewed local ordinances and found that many provided numeric limits on the discharge of caustic wastes.

The RCRA corrosivity characteristic is designed to address wastes which could endanger human health or the environment due to their ability to destroy human or animal tissue in the event of inadvertent contact; corrode handling, storage, transportation, and management equipment; or mobilize toxic metals in a landfill environment. Under 40 CFR 261.22, an aqueous waste exhibits the hazardous characteristic of corrosivity if its pH is less than or equal to 2 or greater than or equal to 12.5, or if it is liquid and capable of corroding steel at a rate greater than 0.250 inches per year at a test temperature of 130 degrees F. EPA solicited comments in the ANPR (51 FR 30166) on whether the discharge of such wastes to POTWs should be prohibited.

Almost no comments were received on this issue. One commenter believed that the current specific discharge prohibitions were inadequate to control hazardous wastes which exhibit the corrosivity characteristic as defined under RCRA. The commenter suggested that the prohibition be amended to include a maximum pH, because the Study had found that some local ordinances were setting maximum pH limitations in the range of 9.0 to 11.0.

Virtually all of the reported pH related incidents at POTWs involve corrosion caused by the discharge of acidic wastes, which are already prohibited by the current specific discharge prohibitions. The Agency has no evidence that high pH wastes are a problem for most POTW collection systems. For this reason, the Agency is

not amending 40 CFR 403.5(b)(2) to add a prohibition on high pH wastes at the present time. However, EPA encourages POTWs to address any problems with caustic wastes through their local limits.

5. Oil and Grease

a. *Proposed rule.* There are currently no specific nation-wide prohibitions against disposing of oil and grease in sewers, although the existing prohibitions forbid the discharge of pollutants which cause pass through or interference or which obstruct flow at the POTW.

The Agency is concerned about the possibility that the volume of used oil discharged to sewers is increasing to the point of causing interference or pass through. The likely increase in volume of used oil disposed of in this way is due to several factors, among them lower prices for crude oil which make it less profitable to recycle used oil. In addition, the Agency is developing a regulatory program under RCRA to control the management of used oil, including used oil that is recycled. Such regulations could lead to increased discharges of used oil to sewers if there are no controls imposed under the Clean Water Act.

To address these concerns and to strengthen the current prohibitions against pass through and interference, on November 23, 1988 the Agency solicited comment on revising 40 CFR 403.5(b) to add a new provision prohibiting the discharge of used oil to POTWs. "Used oil" was generally described as any oil that has been refined from crude oil, used, and, as a result of such use, contaminated by physical or chemical impurities. The proposal would have covered automotive lubricating oils, transmission and brake fluid, spent industrial oils such as compressor, turbine, and bearing oils, hydraulic oils, metalworking, gear, electrical, and refrigerator oils, railroad drainings, and spent industrial process oils. EPA solicited comment on the possible advantages and disadvantages of such a prohibition, and on which particular kinds of used oil should be covered by the prohibition.

b. *Response to comments.* The majority of commenters who addressed this issue believed that a complete prohibition of the discharge of used oil would not be practical, but many commenters indicated support for a numerical limitation. Most of these commenters suggested that any prohibition should contain a *de minimis* exemption for small quantities of used oil, since discharges from many industrial users contain small amounts of oil from washdown or cleaning waters that may not be completely removed by a grease trap or oil separator. These commenters generally believed that used oil in such small quantities presented little danger of pass through or interference, and that any prohibition should apply only to bulk dumping of large quantities. Three commenters suggested a limitation of 100 milligrams per liter of fats, oils, and grease as being reasonable and consistent with local limits established by many POTWs. Other commenters were opposed to any kind of prohibition, stating that problems with used oil were already adequately addressed by the general and specific prohibitions against pass through and interference and local limits for oil and grease.

Some commenters pointed out that certain used oils (i.e., animal and vegetable oils and certain oils used in machine cutting and metalworking) are highly biodegradable. These commenters stated that biological digestion in the POTW treatment system is the most appropriate treatment for these substances, and that a complete prohibition would lead to other methods of disposal which would ultimately be less protective of the environment. However, some of these commenters acknowledged that such oils could interfere with POTW operations if discharged in very large quantities. One commenter suggested that the proposed prohibition should include restaurant grease because it has been known to cause interference, and is easily rendered.

Several commenters stated that the discharge of used oil to POTWs should not be completely prohibited until sufficient methods were available for other kinds of disposal. Some of these commenters recommended that EPA encourage alternative mechanisms for the safe, legal, and inexpensive recovery of oil and disposal of the residue, along with incentives for collecting and recycling used oil. One commenter suggested a national educational campaign directed towards do-it-yourself oil changers.

Several commenters supported a complete prohibition on the discharge of used oil to sewers. One POTW stated that such a prohibition would ensure that it would not have to make case-by-case determinations on whether requested discharges of used oil would violate its local limits. Another commenter stated that a prohibition should also include restaurant greases because these can interfere with POTW operations and because current test methods do not distinguish between these oils and oils of other origin.

Another commenter who supported a complete prohibition stated that allowing the discharge of used oil would contradict EPA's pollution prevention policy, which seeks to avoid cross-media transfer of pollutants. This commenter stated that a prohibition would provide the incentive for generators to reduce the amount of used oil they generate as well as to recycle what they produce. A prohibition would also stimulate development of a recycling market that would reduce costs and promote the institutionalization of recycling habits and ethics.

EPA agrees with those commenters who said that a complete prohibition on the discharge of oil is unnecessary. Trace amounts of such oil are very difficult to eliminate from the wastewaters of industrial users. Complete elimination could necessitate costly process or treatment changes which would be difficult to justify given the Agency's assessment that the danger of pass through or interference from small amounts of used oils is slight. Although used oil is an energy resource that might be better collected and recycled than discharged to POTWs, today's rule would go some distance towards accomplishing this goal (as well as the aim of pollution prevention), without incurring the disadvantages of a complete prohibition.

EPA agrees with those commenters who stated that oils of animal or vegetable origin (such as restaurant greases) can be more easily accepted by wastewater treatment systems. These oils (as well as certain synthetic oils such as machine cutting or metalworking oils) can be metabolized by microorganisms in secondary waste treatment facilities and are readily reduced in concentration in aerobic and anaerobic biological treatment systems. For this reason, the Agency believes that a prohibition or a national limitation on such oils would not be appropriate.

However, the Agency believes that the discharge to POTWs of oils of petroleum or mineral origin is of potential concern, since these oils are less biodegradable in secondary treatment plants. Release of such oil thus has more potential to interfere with operations at POTWs, particularly in the case of smaller plants. In addition, these oils can contain a variety of toxic or hazardous constituents such as PCBs, benzene, chromium, arsenic, cadmium, and lead. EPA has analyzed the potential for pass through of these pollutants to surface waters and to sludge. Results showed that when large volumes of used oil are discharged,

there is a potential for pass through and violations of water quality criteria. Some of the constituents in contaminated used oil, such as trichloroethane, are very water soluble and thus are characterized by a high mobility potential. Metals such as cadmium, chromium, and lead are very persistent in the environment when released from the POTW in sludge or in wastewater effluent.

For these reasons, the Agency agrees with those commenters who urged limitations on petroleum and mineral-based oil discharged to POTWs. In light of comments received, EPA considered a complete ban on the discharge of such materials, a nation-wide numeric limit, or a new narrative prohibition. As described above, EPA determined that a complete ban was not necessary because small amounts of such oils are not expected to cause pass through or interference. With respect to the option of promulgating a national numeric limitation on the discharge of such oils to POTWs, EPA does not currently have sufficient information upon which to base a limit of general applicability. For this reason, EPA is not promulgating a numeric limit of national applicability.

EPA is therefore revising the specific discharge prohibitions to add a new provision (40 CFR 403.5(b)(6)) to prohibit the discharge of petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through. Under existing 40 CFR 403.5(c)(1) and (2), POTWs with approved pretreatment programs would then be required to implement this prohibition by developing specific limits for such substances, and other POTWs would be required to develop such limits in cases where pass through or interference had occurred and was likely to recur. Today's rule thus provides more specificity than is provided by the existing general prohibitions against pass through and interference by including a specific prohibition addressing petroleum and mineral-based oils and nonbiodegradable cutting oils.

In response to the commenters who stated that the Agency should not prohibit the discharge of used oil until sufficient methods were available for other kinds of disposal, EPA notes that today's rule does not include a complete prohibition on the discharge of any type of oil to POTWs. For this reason, the Agency is not adopting any specific regulatory measures to incorporate these commenters' suggestions at the present time, although the Agency encourages voluntary efforts in this regard.

As preliminary guidance to POTWs in establishing local limits, EPA reiterates that some commenters mentioned 100 milligrams per liter as an oil and grease limit frequently used by POTWs. Some standard manuals of sewer use practice and some studies have recommended limitations of 25 to 75 milligrams per liter of petroleum oils, nonbiodegradable cutting oils, or products of mineral oil origin. One commenter submitted a list of eight municipalities in which the commenter operated. Of the eight, five had limits of 100 milligrams per liter on oil and grease and two had more stringent limits. Only one had limits which were less stringent. POTWs should adopt limits as stringent as necessary to protect against pass through or interference at their particular facilities.

As discussed earlier in today's notice, some commenters on EPA's proposed fume toxicity prohibition expressed concern about possible liability for violation of the prohibition when they did not possess the information necessary for them to prevent the causative discharge. The Agency believes that this is also a valid concern for potential violators of today's prohibition against the discharge of certain types of oil in amounts that cause pass through or interference. To address this concern, the Agency is today amending 40 CFR 403.5(a)(2) to provide that an industrial user, in any action brought against it alleging a violation of 40 CFR 403.5(b)(6), shall have an affirmative defense where that user can demonstrate that it did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, caused pass through or interference. Pursuant to 40 CFR 403.(a)(2), the defense would also be available if the industrial user were in compliance with local limits developed to prevent pass through and interference, or (where no such limits for the pollutants in question had been developed) if the industrial user's discharge had not changed substantially in nature or constituents from the user's prior discharge activity when the POTW was in compliance with the POTW's NPDES permit or applicable requirements for sewage sludge use or disposal.

c. *Today's rule.* Today's rule adds a new requirement (40 CFR 403.5(b)(6)) prohibiting the discharge of petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through. Today's rule also amends 40 CFR 403.5(a)(2) to provide that an industrial user shall have an affirmative defense in any action brought against it alleging a violation of 40 CFR 403.5(b)(6), if it can make the appropriate demonstrations pursuant to 40 CFR 403.5(a)(2) (i) and (ii).

6. Solvent Wastes

a. *Proposed rule.* On November 23, 1988, EPA solicited comment on revising the specific discharge prohibitions to prohibit the discharge of listed solvent hazardous wastes from non-specific sources as defined in 40 CFR 261.31 (EPA Hazardous Wastes Nos. F001, F002, F003, F004, and F005). These solvent listings (about 30 organic compounds) encompass spent solvents, spent solvent mixtures and still bottoms from the recovery of spent solvents and spent solvent mixtures. The compounds were listed on the basis of ignitability and/or toxicity.

Discharges of solvent wastes to POTWs have involved actual fires or explosions, or potential fires which caused evacuation of treatment plant buildings or other measures to protect treatment or collection systems. Incidents have also been documented involving hazards to worker health and safety and inhibition or upset of biological treatment systems. In addition, analysis of pollutant fate within POTW systems has shown that significant quantities of solvents pass through to receiving waters where biological treatment systems are not well acclimated to the pollutant in question. For these reasons, the Agency solicited comment on revising the specific discharge prohibitions to prohibit the discharge of certain solvent wastes listed under 40 CFR 261.31. Specifically, EPA solicited comment on whether existing local limits, the proposed revisions to the specific discharge prohibitions concerning ignitability and fume toxicity, and the proposed solvent management component of industrial user spill and batch control plans would address most of the concerns discussed above, possibly making a ban on solvents redundant. The Agency stated that a possible advantage of these proposed revisions is that they would address the discharge of organic ccmpounds not used as solvents. The Agency solicited comment on whether the possible impacts of solvents on receiving waters would justify prohibiting these wastes from being discharged to POTWs, and whether such a prohibition would be appropriate for those highly water-soluble solvent wastes which are more

appropriately treated by biological degradation processes such as those used at POTWs.

b. *Response to comments.* In general, commenters did not support a ban on the discharge of listed solvents. Many commenters pointed out that a complete ban would not be practical because most industries cannot completely eliminate detectable levels of solvents from their discharges. Solvent recovery systems reduce the total amount of hazardous waste present in a wastestream but there is still a need to dispose of the "F" listed still bottoms. Commenters pointed out that some solvent wastes (e.g., acetone, ethyl acetate, and methanol) can be effectively treated at POTWs using secondary treatment. Some commenters stated that the presence of certain organic solvent wastes can be beneficial to a biological treatment system.

Many commenters believed that existing or proposed regulations concerning ignitability, fume toxicity, solvent management plans, categorical standards and sludge control were sufficient (along with local limits) to prevent the discharge of listed solvent wastes from causing interference or pass through at POTWs. These commenters stated that a proposed ban on the discharge of listed solvent wastes would therefore be redundant.

However, several commenters did support a ban on listed solvents. One commenter urged the Agency to make the prohibition constituent-specific so that constituents of concern from the RCRA "K" and "U" lists could also be included. This commenter also urged the prohibition of alcohol and ketone wastes, stating that these wastes pose significant health problems. Other commenters stated that numerical limits should be established, or that an aggregate limit similar to the Total Toxic Organics standard for the electroplating and metal finishing industries be promulgated. One commenter suggested that each significant industrial user be required to institute a Toxics Organics Management Plan.

After reviewing the comments and evaluating this issue, the Agency has decided not to prohibit the discharge of RCRA listed solvents F001–F005 at this time. EPA believes that such a prohibition would not be justified in light of all the existing controls (including those promulgated today) designed to address the problems caused by solvents. For example, the prohibition on the discharge of wastestreams with a flashpoint below 140 degrees Farenheit (the RCRA standard for ignitable liquid waste) should effectively prevent the discharge of substances (including solvents) that could cause fires at POTWs. Similarly, the prohibition of discharges resulting in toxic gases, vapors, or fumes in a quantity that may cause acute worker health and safety problems should go very far towards eliminating any problems occasioned by the volatilization of solvent discharges in POTW collection and treatment systems. As discussed earlier, EPA is preparing guidance for POTWs on how to implement this prohibition through numeric limits.

Today's final rule also contains a requirement that all POTWs with approved pretreatment programs evaluate their significant industrial users to determine if these users need plans for the control and prevention of slug discharges. Such plans must contain any necessary measures for controlling toxic organics (including solvents). EPA believes that this provision will be an effective vehicle for extending solvent management plans to noncategorical significant industrial users. Many categorical users are already covered by Total Toxic Organic and solvent management plan requirements. In light of these requirements, the Agency does not believe that it is necessary to promulgate a total toxics organic management plan requirement as part of the general pretreatment standards.

With respect to establishing numerical, constituent-specific, or aggregate limits for specific solvents or waste constituents of concern, the Agency believes that such limits would not be appropriate at the national level. Such limits could not, of necessity, address the concerns of particular municipalities with their unique combinations of industrial users and site-specific problems. For this reason, the Agency prefers at this time to leave the development of such limits to POTWs.

c. *Today's Rule.* For the reasons discussed above, today's rule does not contain a prohibition against the discharge of listed solvent hazardous wastes to POTWs.

B. Spills and Batch Discharges (Slugs) (40 CFR 403.8(f)(2)(v))

a. Proposed Change

The principal pretreatment regulation addressed specifically to slugs is the existing requirement in 40 CFR 403.12(f) that all industrial users notify POTWs of discharges that could cause problems at their POTW, including any slug loadings that would violate any of the specific prohibitions of 40 CFR 403.5(b).

Spills and batch discharges present special challenges to POTWs. As documented by data on incidents at POTWs, these discharges can cause many problems at the treatment plant, including worker illness, actual or threatened explosion, biological upset or inhibition, toxic fumes, corrosion, and contamination of sludge and receiving waters. A survey undertaken by the Association of Metropolitan Sewerage Agencies (AMSA) indicated that spills to sewer systems were the most common source of hazardous wastes at the respondents' treatment plants.

The current general pretreatment regulations do not address these problems comprehensively. To address this concern and to strengthen the existing prohibitions against pass through and interference, EPA proposed on November 23, 1988, to revise 40 CFR 403.8(f)(2)(v) to provide that POTWs must evaluate each of their significant industrial users to determine whether such users need a plan to prevent and control slug loadings. This evaluation was proposed to be required at the same time that the POTW conducts inspection or sampling of a significant industrial user. POTWs would use the opportunity of an inspection or sampling to examine the operational practices and physical premises of a significant industrial user to decide whether these warranted the development of a plan to handle and prevent accidental spills or non-routine batch discharges.

The proposal would also have revised 40 CFR 403.8(f)(2)(v) to provide that if the POTW decides that such a plan is warranted for a particular significant industrial user, the plan must contain, at a minimum, the following elements:

(1) Description of discharge practices, including nonroutine batch discharges;

(2) Description of stored chemicals;

(3) Procedures for promptly notifying the POTW of slug discharges as defined under 40 CFR 403.5(b), with procedures for follow-up written notification within five days;

(4) Any necessary procedures to prevent accidental spills, including maintenance of storage areas, handling and transfer of materials, loading and unloading operations, and control of plant site run-off;

(5) Any necessary measures for building any containment structures or equipment;

(6) Any necessary measures for controlling toxic organics (including solvents);

(7) Any necessary procedures and equipment for emergency response; and

(8) Any necessary follow-up practices to limit the damage suffered by the treatment plant or the environment.

EPA solicited comments on all aspects of the proposed revisions. Specifically, the Agency requested comments on the following issues: Whether EPA should impose specific spill or batch control requirements directly on industrial users; whether the control plans proposed to be required should be limited to significant industrial users or expanded to cover all industrial users, or limited to other categories such as industrial users who submit notification of the discharge of hazardous wastes under proposed 49 CFR 403.12(p); whether the requirements of 40 CFR 403.12(f), section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and section 304(b) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) are duplicative and unduly burdensome and if so, on how such duplication could be avoided; whether it would be appropriate to establish certain administrative exemptions from the section 103 CERCLA notification requirements for indirect dischargers; and whether industrial users should be exempted from having to notify the POTW of those slug discharges for which they have submitted CERCLA notification.

b. Response to Comments

The Agency received many comments on this aspect of the proposed rule from POTWs, States, private industry, trade associations and environmental groups. In general, commenters supported the proposal because it would increase control of slugs while still retaining POTW flexibility. These commenters indicated that many POTWs have already successfully reduced slugs using similar control plans. A number of commenters stressed such benefits of slug control plans as facilitation of early response and better control and clean-up of accidental discharges. Some supporters offered suggested clarifications or modifications, as described below.

Only a few commenters opposed the proposed rule. Some commenters believed that some POTWs already have procedures and rules even more restrictive than those proposed by the Agency, and that slugs are already adequately regulated under existing pretreatment, CERCLA, SARA, and RCRA requirements. Because of the many different types of industrial users within the regulated community, some commenters indicated concern that general slug control regulations would either be too general or too specific, and thus would be unworkable for most industrial users. Other commenters also expressed concerns about paperwork burdens, available POTW resources, and the technical ability of POTWs to conduct the initial evaluations and subsequent inspections. One commenter said that some POTW systems are so large that they would not be affected by slug discharges, and suggested that slug plan requirements should be optional.

Because of the importance of slug control and prevention in controlling interference and pass through of toxic and hazardous pollutants, EPA is today requiring POTWs to evaluate significant industrial users to determine the need for such plans. EPA believes that the proposed evaluation and minimum plan requirements will provide significant environmental benefits. The Agency also believes that slug loads have the potential to adversely affect even the largest POTWs. Specific comments, and EPA's responses, are set forth below.

Several commenters expressed confusion regarding the definition of slug loading and submitted suggestions for clarifying the definitions and distinctions between slugs and batches. The primary concern expressed by commenters was that batch discharges are not necessarily harmful, that effluent limitations apply to such discharges, and that batch discharges do not always need to be prevented. To clarify the Agency's intent in specifying the type of discharges which should be covered in slug control plans, EPA is modifying the language of proposed 40 CFR 403.8(f)(2)(v) to provide that, for purposes of that subsection, a slug discharge is a discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge. EPA notes that, when evaluating SIUs to determine whether they need to be subject to slug control plans, POTWs may wish to examine the SIUs' batch discharge practices, because batches are not always subject to effluent limitations: Batches may include discharges from industries not covered by categorical standards or local limits, and certain non-routine batch discharges may cause problems for the POTW.

Most commenters stressed the need to retain complete POTW flexibility in determining which industrial users should have plans, and in approving the adequacy of these plans. A number of commenters supported slug discharge controls only as long as POTWs had the discretion to make the needs assessment and significant industrial user determination, and remain the sole arbiter of what is necessary and adequate. Commenters also generally supported the proposed plan elements. They believed that the elements are comprehensive enough to ensure that all the essentials of slug prevention are covered. However, a few commenters were opposed to the listed plan elements. One commenter said that imposing specific requirements for a control plan would be excessive and should not be necessary. Another commenter said that the detail involved in the list of elements would restrict POTW flexibility in implementing slug controls and would discourage POTWs from identifying appropriate industries.

EPA recognizes the need for POTW flexibility in determining which industrial users need to have plans for the control and prevention of slug discharges, and in determining the appropriate elements of slug control and prevention plans. Today's rule leaves much discretion to the POTW. The areas in which POTWs have considerable discretion include POTW designation and designation of significant industrial users and POTW evaluation of each significant industrial user to determine the need for a slug control plan. However, the Agency does not agree that requiring minimal elements for such plans is unnecessary or undesirable. In particular, the first three elements of the plan (the description of discharge practices, the description of stored chemicals, and notification procedures) are essential for the POTW to be aware of actual or potential slug loads from a particular significant industrial user. The remaining plan elements refer to "necessary" measures, procedures, or practices, thus allowing considerable POTW flexibility in deciding which measures are appropriate for a particular industrial user with respect to prevention, containment, emergency response, and follow-up.

On the other hand, some commenters who supported the proposed rule indicated that it did not go far enough in stating which industrial users should be evaluated, and which criteria should be used in the evaluation. A few commenters objected to the lack of regulatory criteria for determining whether a significant industrial user needs a control plan, one commenter fearing that this lack would increase the potential for arbitrary decisionmaking, another fearing that POTWs would not make determinations that such plans are needed in all appropriate cases. Regulatory criteria suggested by one commenter included certain quantities of stored chemicals, potential for slug loadings, and history of slug discharges. These criteria would increase uniformity and reasonableness of decisionmaking,

according to the commenter. Still another commenter suggested that industrial users with diked storage areas or an absence of floor drains be exempted. One commenter stated that the proposed language would not exempt non-significant industrial users from slug control and prevention requirements. Another commenter expressed concern about industrial users who needed slug control plans because of storage of hazardous chemicals, but who had little industrial discharge to sewers.

EPA's "Guidance Manual for Control of Slug Loadings to POTWs" (September 1988), provides guidance on evaluating industrial users for slug potential, criteria for determining whether an industrial user needs a control plan, and guidance in developing slug control requirements. The manual is divided into three parts: (1) Evaluating the need for a POTW slug control program, (2) developing an industrial user control program, and (3) developing a POTW slug response program. Information is provided on identifying potential industrial user slug sources and their risk categories, evaluating or improving the legal authority to regulate slugs, requiring selected industrial users to develop slug control plans or measures, inspecting and monitoring industrial users, and developing emergency response procedures and resources. EPA believes that this guidance will be useful to POTWs in determining which industrial users need slug control plans, and in developing such plans, thereby reducing the potential for arbitrary decisionmaking. However, EPA does not believe that it should develop rigid criteria in its regulation establishing when slug control plans should be required. POTWs are in the best position to make such determinations and, since such requirements will help ensure continued compliance with its NPDES permit, it is in the interest of the POTW to do so. With respect to exempting certain industrial users from slug control requirements, the Agency notes that today's rule requires that POTWs evaluate significant industrial users to determine whether such users need slug control plans. EPA believes that exemptions are best granted by POTWs during the course of such evaluations to allow them to take into account the particular circumstances present at the significant industrial user's facility. Today's rule does not specifically exempt non-significant industrial users from slug control requirements because POTWs may wish to require such users to develop plans on a case-by-case basis to address the potential for adverse impact caused by slug discharges from those facilities. With respect to facilities with little or no industrial discharge, the Agency notes that non-domestic users which typically introduce only sanitary, as opposed to industrial, waste to POTWs are nevertheless subject to the general pretreatment regulations and may be designated as significant industrial users by POTWs for such reasons as the potential of stored chemicals to enter the sewer in an accident. They may also be required to have slug control plans pursuant to POTWs' local authorities.

One commenter suggested including among the elements a timetable for implementation. Still another said plans should contain language requiring the industrial user to immediately take measures to cease the discharge and remedy the damage. Several wanted to see a requirement for plan certification by professional engineers, and one commenter suggested an equalization system requirement for industrial users with a history of slug discharges. Although these elements may sometimes be needed on an individual basis, EPA does not believe that they are necessary elements for all slug control plans issued to significant industrial users and is therefore not promulgating such requirements as part of today's rule. For example, today's rule already specifies that control plans must contain any follow-up measures necessary to limit the damage suffered by the treatment plan or the environment. POTWs may wish to require many industrial users to immediately take measures to cease the discharge as a follow-up measure, but such a requirement may be superfluous for some industrial users because of the nature of their effluent or their discharge practices. Similarly, although POTWs may wish to require certain facilities to have their plans certified by professional engineers, certification may not be needed for smaller, less complex facilities. With respect to equalization systems for facilities with a history of slug discharges, EPA believes that in many cases other measures may be equally as or more appropriate to address the problem. Concerning timetables for implementation, EPA believes that it is preferable for POTWs to decide on a case-by-case basis whether such a timetable is needed in order to address the potential for adverse impact presented by a particular significant industrial user. Today's rule allows POTWs the flexibility to require such timetables, orders to cease discharge, or engineer plan certification as POTWs deem appropriate or necessary. However, the Agency has modified today's rule slightly from the proposal to require that slug control plans must contain any necessary measures for inspection as well as maintenance of storage areas and for any necessary worker training. Inspection and maintenance of storage areas is essential to see that stored materials are not leaking or improperly placed, and worker training is necessary to instruct employees in the most practicable methods to prevent, detect, and respond to spills at the particular facility.

Another commenter suggested that the rule be modified to require that any significant industrial user which discharges a slug loading should not only notify the POTW but also specifically report (within thirty days) what happened and what action would be taken to minimize the possibility of recurrence. However, EPA believes that the commenter's concern will be adequately addressed by the requirement in today's rule that slug control plans contain procedures for prompt notification to the POTW of slug discharges and follow-up written notification within five days. Today's rule also requires follow-up practices to limit damage to the treatment plant or the environment.

Several commenters asked for clarification on how often the need for slug plans should be evaluated by the POTW; i.e., whether the evaluation of significant industrial users is to be a one-time requirement or whether it must be updated at the time of each sampling or inspection. Also, some commenters stated that POTWs need the flexibility to perform frequent inspections without having to evaluate the need for slug plans every time. Another commenter suggested that POTWs be required to evaluate the need for slug plans only when individual significant industrial user permits are reviewed. One commenter suggested implementation of plans over a three-year period by approved pretreatment POTWs. Another commenter suggested that POTWs should be allowed up to two years to complete all of the initial evaluations, even if sampling or inspection is more often than once every two years. The commenter believed that a two-year interval provides adequate time for the POTW to require, review, and evaluate each slug loading control plan.

EPA believes that evaluation of significant industrial users to determine the need for slug prevention and control plans should be more than a one-time requirement. Today's rule therefore requires POTWs to conduct such

evaluations of significant industrial users for purposes of determining the need for a slug prevention and control plan at least once every two years. However, the Agency notes that at least one commenter apparently misconstrued the language of the proposal to require that POTWs review slug control plans every two years. EPA reiterates that under today's rule, POTWs would evaluate significant industrial users to determine the need for a slug control and prevention plan. Actual evaluations of already submitted plans would take place according to a schedule of POTWs' own choosing.

The November 23, 1988 proposal would have required POTWs to evaluate significant industrial users to determine the need for slug control and prevention plans every two years, and would have also required that the evaluation be conducted at the same time that the POTW conducted inspections and sampling of significant industrial users. Under today's rule, POTWs must inspect and sample significant industrial users at least once a year, instead of once every two years as was proposed on November 23, 1988 (see Part G.2 of today's notice). The Agency believes that determining the need for slug control plans need not take place that often, and therefore is maintaining in the final rule the proposed requirement that POTWs make the determination a minimum of once every two years. Under today's rule, the determination need not necessarily be made at the same time as inspections and sampling of the particular significant industrial user, since EPA believes that POTWs should have the flexibility to conduct this evaluation separately if they deem it appropriate. Nevertheless, EPA believes that inspections and sampling of industrial users will generally provide the POTW with the best opportunity for determination of the necessity for slug prevention and control plans, and encourages POTWs to conduct such evaluations at the same time as inspections and sampling are carried out. Although EPA believes that where slug control plans are developed, compliance with the plans should be made a requirement in the significant industrial users' individual control mechanisms, no schedule for implementation of plans is required in today's rule. This will allow POTWs the flexibility to set priorities with respect to their own significant industrial users.

EPA also solicited comments on whether spill or batch control requirements should be imposed directly on industrial users by EPA. In response, some commenters indicated that it would be appropriate for the industrial users to bear the burden of preventing harm to the POTW and its workers. However, the majority of commenters did not support imposing the slug control requirements directly on all industrial users, on the basis that slug control plans must be specific to each industrial user in order to be effective (although one commenter believed that slug control requirements should be uniform for all industrial users who handle hazardous waste). Commenters generally indicated that due to the facility-specific nature of most control plans, the POTW is in the best position to determine whether a control plan contains appropriate measures. One commenter said that the requirements should be imposed directly on only significant industrial users or those industrial users with slug potential for both hazardous and nonhazardous discharges.

EPA agrees that slug control plans should not be imposed directly by EPA because there are almost no requirements that would be uniformly appropriate for all industrial users or all significant industrial users. POTWs will be in the best position to develop slug prevention and control requirements for industrial users because, by fulfilling inspection and sampling requirements, they will be familiar with the operations of their individual industrial users, and they will also know best what types of discharges must be prevented to avoid causing passthrough and interference. Accordingly, today's rule provides that the POTW will develop individual slug control plan requirements as necessary.

With respect to expanding the evaluation requirement to other categories or all industrial users, commenters generally preferred requiring POTWs to evaluate only significant industrial users as a way to conserve POTW resources, especially since POTWs may classify any user as significant. A number of commenters made their approval of the limitation to significant industrial users contingent upon adoption of an appropriate significant industrial user definition. One commenter stated that if POTWs appropriately designate as significant those facilities that have a "reasonable potential to adversely affect the POTW's operation," the significant industrial user limitation would be appropriate. However, one commenter stated that by implication the proposed rule would make any facility that a POTW believes should have a control plan a significant industrial user, and that this should not necessarily be the case. Other commenters opposed to expanding the requirement beyond significant industrial users generally indicated that evaluating all industrial users for slug control plans could result in development of unnecessary plans. Several commenters expressed concern that EPA had not considered the costs of expanding the proposed rule to include all industrial users, especially small facilities.

However, a number of commenters stated that all industrial users should be evaluated for slug control plans. One commenter stated that all dischargers should be covered by slug control requirements to limit incentives for industries to relocate to areas without an approved pretreatment program. Another commenter suggested that the requirement for slug plan evaluations be expanded to include industrial users who submit notification of the discharge of hazardous wastes (as proposed in 40 CFR 403.12(p)) and any incidental user of the POTW who submits notification of the discharge of hazardous waste pursuant to CERCLA, RCRA or SARA requirements.

Under today's rule, POTWs must, at a minimum, evaluate significant industrial users to determine the need for slug control plans. However, POTWs are free to inspect and require slug control plans of other industrial users. Today's rule affords considerable POTW flexibility in designating significant industrial users, and in selecting other appropriate industrial users for slug plan development. However, today's rule also does not require or imply that every industrial user determined by the POTW to need a slug control plan is a significant industrial user, because such users may not fit the criteria for significance found in the definition of significant industrial user promulgated today (for example, they may have the potential for adversely affecting POTW operations only in the event of a spill, in which case the POTW may not wish to designate them as significant for other purposes). Industries that are not significant industrial users, including some that store or discharge hazardous wastes, may sometimes need a slug control plan, but EPA believes it is preferable for POTWs to ascertain whether this is necessary on a case-by-case basis.

With respect to duplication of CERCLA, SARA and/or RCRA requirements, all commenters expressed an interest in administrative efficiency. A number of commenters asked that the rule recognize the potential existence of industrial user plans already prepared for other permit or regulatory

requirements, and partially exempt such industrial users or incorporate their RCRA or other permit elements by reference. Several commenters asked for clarification about whether an industrial user can submit a copy of a document prepared for another agency or regulation to the POTW in lieu of preparing a separate slug control plan. Several commenters stated that the Spill Prevention Control and Countermeasure (SPCC) Plan requirements should suffice for slug control. One commenter requested clarification about whether a facility would be required to have a RCRA management plan which could serve as a slug control plan if the facility generated a sufficient quantity of waste to be subject to the formal reporting requirements (the Agency assumes that the commenter was referring to today's hazardous waste notification requirements).

EPA recognizes that a number of existing requirements under other statutes and regulations could serve as components of slug control plans. If a significant industrial user is covered by such a plan, the POTW may accept such plans in partial or complete fulfillment of the requirements in today's rule, as long as each element set forth in today's rule is addressed in an acceptable manner in some document or collection of documents. POTWs may also impose more rigorous requirements as circumstances warrant. With respect to today's hazardous waste notification requirements for dischargers of hazardous wastes to POTWs, EPA notes that some, but not all, of such dischargers are also subject to RCRA management requirements because they treat, store, or dispose of hazardous waste pursuant to 4 CFR part 264.

With respect to exemptions from slug notification requirements for industrial users who submit CERCLA and SARA notifications, almost no commenters approved of this proposal. Although SARA and CERCLA have notification requirements that may overlap with slug notification, most commenters believed prompt and direct notification of the POTW by the industrial user was essential. These commenters pointed out that prompt POTW response to slugs would be delayed by a second-hand notification from SARA or CERCLA personnel. Another commenter pointed out that the SARA list of Extremely Hazardous Substances does not address many potential POTW hazards. Gasoline, toluene, and other common flammable and explosive chemicals are not included, while certain unusual chemicals and medicines that may not be of concern to POTWs are on the list. One commenter expressed concern that such an exemption would lead industrial users to believe that spills below a CERCLA reportable quantity (RQ) are of no consequence to the POTW, when this is often not the case.

EPA believes that slug loading notification requirements serve different purposes from SARA/CERCLA requirements and are not duplicative. Direct notification to the POTW affected by the slug is critically important because time is essential in formulating an appropriate response. Similarly, the reportable quantities established under CERCLA are not necessarily related to the potential for pass through or interference at the POTW, nor are the hazardous substances required to be reported under SARA necessarily the substances of most concern to POTWs.

In the proposal, EPA requested comment on whether an administrative exemption from CERCLA section 103(a) notification requirements would be appropriate for releases into sewers which pose little or no hazard to the POTW. The Agency received no data indicating that such an exemption would be appropriate. For this reason, EPA is not addressing the issue of administrative exemptions under CERCLA in today's rulemaking.

c. Today's Rule

Today's rule revises 40 CFR 403.8(f) to provide that POTWs with approved pretreatment programs must evaluate, at least once every two years, whether each significant industrial user needs a plan to control slug discharges as defined under 40 CFR 403.5(b). If the POTW decides that such a plan is needed, the plan shall contain at least the following elements:

- Description of discharge practices, including nonroutine batch discharges;
- Description of stored chemicals;
- Procedures for promptly notifying the POTW of slug discharges, including any discharge that would violate a specific prohibition under 40 CFR 403.5(b), with procedures for follow-up written notification within five days;
- If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response; and
- If necessary, follow-up practices to limit the damage suffered by the treatment plant or the environment.

C. Trucked and Hauled Waste (40 CFR 403.5(b)(8))

a. Proposed Change

Many POTWs have expressed concern about discharges from liquid waste haulers. The Study identified the strengthening of controls on these dischargers as potentially deserving of the Agency's attention. In June 1987 the Agency issued guidance to help POTWs control the discharge of hazardous wastes from liquid waste haulers to their systems (*Guidance Manual for the Identification of Hazardous Wastes Delivered to Publicly Owned Treatment Works by Truck, Rail, or Dedicated Pipe*). As a further response to the Study and to further the prevention of pass through and interference, the Agency proposed on November 23, 1988 to add a provision to 40 CFR 403.5(b) prohibiting the introduction to POTWs of any trucked or hauled pollutants except at discharge points designated by the POTW. The Agency requested comments on the proposal and on the following issues: whether to revise 40 CFR 403.8 to require POTWs to specify particular discharge sites; whether the proposed specific discharge prohibition is too extensive and should be limited to non-septic wastes only; and whether to require POTWs to develop and obtain approval of additional procedures to deal with trucked wastes, such as requiring POTWs to monitor and sample such wastes.

b. Response to Comments

The Agency received many comments on the proposed rule from POTWs, States, private industry, trade associations, and environmental groups. Commenters generally favored the rule although many suggested modifications.

The majority of commenters indicated that specific discharge sites would provide better control of trucked and hauled waste, as well as improved accountability for this type of discharger. Commenters generally indicated that the rule would increase POTWs' control without adding burdensome requirements. Additionally, one commenter indicated that the requirement for designation of discharge points gives notice to all waste haulers that the POTW's control authority is backed by federal controls and guidelines. One commenter stated that as the land disposal of untreated hazardous wastes is increasingly prohibited under RCRA, surreptitious disposal of unwanted hazardous wastes might become more commonplace, and therefore better controls on trucked or hauled discharges will be necessary.

However, some commenters stated that there is no need for additional federal requirements for liquid waste haulers. Some commenters said that current requirements established by POTWs with approved pretreatment programs for sampling, testing, and manifesting are adequate to control the discharge of non-septic trucked wastes. Some commenters opposed to the rule stated that RCRA is the appropriate primary vehicle for control of trucked or hauled hazardous waste in order to avoid confusion, duplicative requirements, and uncertainty. These commenters stated that it would not be productive to require duplicative requirements under the pretreatment program, since liquid waste haulers are not covered by the domestic sewage exclusion and are therefore subject to RCRA transporter requirements.

The Agency does not agree with the assertions that the proposed requirement is redundant with existing RCRA or pretreatment requirements or that trucked or hauled wastes should not be subject to specific regulation. Because hazardous waste haulers must comply with RCRA manifest requirements (including transport of the waste to a designated RCRA facility), the principal new legal effect of today's requirement will be to prohibit the discharge of trucked non-hazardous wastes to POTWs except at designated discharge points. Practically, however, this requirement will give POTWs better control of all wastes entering their systems (including hazardous wastes) by encouraging POTWs to designate certain discharge points that they can monitor to prevent the introduction of undesirable wastes into the sewer system.

EPA believes that designation of discharge points is an essential tool to improve POTW control of trucked or hauled wastes. Therefore, EPA is revising 40 CFR 403.5(b) to add paragraph (8) which prohibits the introduction to POTWs of any trucked or hauled pollutants except at discharge points designated by the POTW. The rule allows POTW flexibility in implementing this prohibition.

Commenters were generally opposed to requiring POTWs to specify particular discharge sites. One commenter noted that only POTWs accepting such waste should designate discharge points. The commenter concluded that requiring POTWs to designate discharge points would cause confusion because many POTWs do not accept hauled waste. EPA agrees that requiring all POTWs to designate discharge points would not be appropriate; not all POTWs are equipped to handle additional loads and/or types of pollutants which may be introduced to their facilities by liquid waste haulers. It is not EPA's intent to require the designation of discharge points by POTWs. Rather, EPA intends that today's rule be interpreted as prohibiting the discharge of hauled waste to a POTW except to the extent that the POTW allows such discharges and they occur at locations designated for such purposes by the POTW.

A number of commenters suggested specific modifications to the rule. One commenter stated that POTWs should have explicit authority to refuse to accept such wastes in order to protect the plant, including a rejection because proper analyses and certification were not met. This commenter indicated that POTWs should also be able to specify location of disposal, time and other conditions deemed necessary, including local limits. The commenter favored adding statements defining conditions POTWs can impose prior to accepting such wastes, including the use of local limits. Two commenters suggested POTW performance standards for establishing discharge points, stating that POTWs with a wide distribution of industrial users should provide multiple locations to minimize transportation expenses and the risks inherent in all transportation for industrial users who haul their wastes to the POTW. One commenter suggested requiring that designated discharge points be supervised by POTW personnel at all times when discharging is permitted.

EPA believes that the conditions and restrictions suggested by these commenters are sometimes necessary on an individual basis, but would necessarily vary according to different POTWs and their circumstances and therefore are not appropriate for inclusion in a uniform national rule. The Agency notes that today's rule provides POTWs with the flexibility to adopt specific conditions or restrictions such as those suggested by the above commenters. For example, POTWs may designate multiple discharge points for non-hazardous waste at any sites they deem appropriate for particular types of industrial users and they may provide supervision at some or all of these sites as appropriate. Similarly, POTWs may refuse to accept any trucked or hauled waste if proper procedures have not been followed, or they may set specific limits for such wastes. EPA's "Guidance Manual for the Identification of Hazardous Wastes Delivered to Publicly Owned Treatment Works by Truck, Rail, or Dedicated Pipe" (Office of Water Enforcement and Permits, June 1987), suggests numerous specific means to ensure that hazardous wastes are not being discharged to POTWs, including permits, waste tracking systems, inspection and sampling analysis, surveillance and investigative techniques, and restricted discharge permits. Because the need for such measures will vary, today's rule leaves it up to the POTW to adopt them when necessary.

A few commenters requested guidance on what specific tests to perform on trucked waste, or suggested the use of simple tests to determine the hazardousness of wastes. EPA's above-cited "Guidance Manual for the Identification of Hazardous Wastes Delivered to Publicly Owned Treatment Works by Truck, Rail, or Dedicated Pipe" contains detailed guidance on such testing, including how to determine if a waste is hazardous and how to establish a waste monitoring program tailored to the POTW's needs.

One commenter suggested that the regulations should prohibit acceptance of trucked or hauled materials which may result in interference or pass through of pollutants. Another commenter stated that categorical limits should not apply to trucked wastes, since this would unduly complicate the process. Still another commenter stated that establishment of dump sites away from the treatment facility could create a control problem for the POTW, and that the most effective control method would allow discharge only at the POTW headworks.

In response, EPA notes that trucked and hauled wastes are already subject to both EPA's general pretreatment regulations (including the general prohibition against pass through and interference) *and* to any categorical pretreatment standards applicable to the wastes. EPA agrees that in many instances the most effective control method may be to allow discharges of trucked or hauled wastes only at POTW headworks, and encourages POTWs to adopt this method if they deem it appropriate. In designating discharge points, and establishing procedures to ensure that wastes introduced to the POTW comply with all applicable federal requirements, EPA suggests that POTWs keep two critical issues in mind. First, facilities generating wastes covered by categorical pretreatment standards may not avoid pretreatment requirements simply by arranging for waste removal by liquid waste haulers. Accordingly, wastes generated by such facilities may not be introduced to a POTW by a liquid waste hauler unless they have been pretreated in accordance

with the categorical pretreatment standard(s) applicable to the waste. Second, POTWs may not designate discharge points outside of the POTW facility boundary for the introduction of hazardous wastes to the sewer system. Under the RCRA regulations, hazardous wastes may only be transported to designated facilities permitted to handle the waste described in the manifest (see 40 CFR 262.20, 263.21). For POTWs operating under a RCRA permit-by-rule, the area outside the POTW property boundary, including most of the sewer collection system, is not part of the permitted facility, so cannot be used as a location for accepting hazardous waste. See EPA's 1987 "Guidance for Implementing RCRA Permit-by-Rule Requirements at POTWs," p. 11. For POTWs operating under or considering applying for a RCRA permit, EPA has stated that "manifested wastes may only be delivered to an approved (hazardous waste management facility), and sewer systems will not be approved for that purpose". 45 FR 33320 (May 19, 1980).

Many commenters supported limiting the prohibited discharge standard to non-septic wastes, stating that designating discharge points for all trucked or hauled wastes could potentially put an undue burden on small POTWs because of supervising discharges at these points, and that limiting the prohibition to non-septic wastes would not prevent a POTW from specifying specific discharge points for septic waste if deemed appropriate by the POTW.

However, other commenters believed that both septic and non-septic wastes should be included in the prohibition. These commenters indicated that the prohibition would be difficult to enforce if septic wastes are excluded, since it is sometimes difficult to ascertain without sampling whether a truck is carrying septic or non-septic wastes.

EPA agrees with those commenters who expressed concerns about the potential presence of toxic and hazardous pollutants from non-domestic sources in septic wastes. For this reason, the Agency is today prohibiting the discharge of all trucked and hauled wastes except at designated discharge points. This will give POTWs better control of all such wastes potentially containing toxic and hazardous pollutants.

One commenter stated that the prohibition does not distinguish between a liquid waste hauler's off-site discharge to a POTW and an on-site discharge from a truck which is used to transport waste from one industrial plant building to another, then rinsed out and the residue discharged to the sewer at the industrial user's site. In response, EPA notes that the intent of today's rule was to regulate the discharge of wastes trucked or hauled off-site to the POTW from an industrial facility. Wastes discharged from a truck to the collection system at an industrial user's facility are not covered by today's prohibition, since such waste would not normally differ from that discharged by the facility during its usual operations. The purpose of today's prohibition, on the other hand, is to give POTWs better control of potentially harmful wastes which may be difficult to identify or which may have no easily ascertainable origin.

Most commenters did not support requiring other procedures for trucked and hauled wastes, although a few commenters recommended requiring additional sampling and monitoring procedures. However, most commenters generally indicated that while monitoring and sampling of truck loads are important, specific procedures should be developed by each POTW on a case-by-case basis to address its own particular situation. A number of POTWs discussed their own procedures for controlling trucked and hauled wastes, such as a certification or manifest requirement to track wastes entering the treatment plant, continuous supervision of designated discharge points, inspection of wastes (visual or through chemical and/or physical analysis) prior to acceptance by the POTW, requiring that trucked wastes be subjected to a minimum annual characterization and compatibility testing, and individual truck load sampling. Commenters believed that the extent of discharge management control exercised by the POTW should be tailored to facility-specific conditions, such as volume of specific material which the treatment process can accommodate over a period of time without loss of treatment effectiveness.

EPA believes that requiring uniform POTW procedures for handling trucked and hauled waste is not appropriate at the present time, since such procedures are very dependent on site-specific situations which POTWs are generally best equipped to address on their own. For this reason, EPA is not requiring POTWs to develop any particular measures to deal with trucked or hauled wastes, other than the prohibition on discharges except at locations designated by the POTW.

c. Today's Rule

Today's rule adds a new provision (40 CFR 403.5(b)(8)) prohibiting the discharge of trucked or hauled pollutants except at discharge points designated by the POTW.

D. Notification Requirements (40 CFR 403.12(p))

a. Proposed Change

Section 3010 of RCRA requires that any person who generates or transports hazardous waste, or who owns or operates a facility for the treatment, storage, or disposal of hazardous waste must file a notification with EPA or with a State with an authorized hazardous waste management program. Pursuant to the Domestic Sewage Exclusion in 40 CFR 261.4(a)(1), any material mixed with domestic sewage that passes through a sewer system to a publicly-owned treatment works for treatment is not a solid waste, and therefore cannot be a hazardous waste. However, section 3018(d) of RCRA (enacted as part of the Hazardous and Solid Waste Amendments in 1984) provides that the notification requirements of RCRA section 3010 "shall apply to solid or dissolved materials in domestic sewage to the same extent and in the same manner as such provisions apply to hazardous waste." There is currently no regulatory requirement that industrial users report the discharge of all hazardous wastes to sewers. The Study therefore identified the implementation of section 3018(d) as a potentially useful component of an improved pretreatment program. The Agency believes that the information provided by such notification is needed for the ultimate development by POTWs of controls to prevent pass through and interference.

On November 23, 1988, EPA proposed to revise 40 CFR 403.12 to add a new paragraph (p) that would require all industrial users to notify EPA Regional Waste Management Division Directors, State Hazardous Waste authorities, and their POTW of any discharge into a POTW of a substance which is a listed or characteristic hazardous waste under section 3001 of RCRA. Such notification would include a description of any such wastes discharged, specifying the volume and concentrations of the wastes, the type of discharge (continuous, batch, or other) and identifying the hazardous constituents contained in the listed wastes. The notification would also include an estimate of the volume of hazardous wastes expected to be discharged during the following twelve months. The notification would take place within six months of the effective date of the final rules.

To further ensure control of hazardous wastes discharged to sewers, the

proposed rule would require all industrial users who submit notification of the discharge of hazardous wastes to certify that they have a program in place to reduce the volume and toxicity of wastes generated to the degree they have determined to be economically practicable, and that they have selected the practicable methods of treatment, storage, and/or disposal currently available to them which minimize the present and future threat to human health and the environment. A similar certification requirement already applies to all generators of hazardous wastes (other than those that discharge their wastes to sewers) under section 3002(b) of RCRA.

In the October 17, 1988 revisions to the general pretreatment regulations (53 FR 40562, 40614) EPA added a requirement at 40 CFR 403.12(j)) that all industrial users promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge. To clarify that 40 CFR 403.12(j) also applies to the discharge of hazardous wastes, the Agency also proposed to require that all industrial users promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including changes in the volume or character of any listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under 40 CFR 403.12(p).

Under proposed 40 CFR 403.12(p) generators would have been exempt from notification requirements during any calendar month in which they generated not more than 100 kilograms of hazardous waste, except for those wastes identified under 40 CFR 261.5 (e), (f), (g) and (j). Generators of more than 100 kilograms of hazardous wastes in any given month would be required to file the one-time notification.

In the proposed rule, the Agency solicited comments on the small quantity generator exemption and on whether any of the existing RCRA forms might be suitable for submission of the proposed notification requirements. EPA also requested comment on whether those industrial users required to submit Form R (a Toxic Release Inventory form required under section 313 of SARA to be submitted annually by industrial users with over ten employees who discharge certain listed toxic chemicals) should send a copy of Form R to the POTW, in lieu of the proposed hazardous waste notification requirements, if the toxic chemicals reported by the industrial user on Form R include those RCRA hazardous wastes for which notification would be required. The Agency also requested comments on whether additional (or more specific) management requirements should be imposed to control wastes for which notification would be submitted under the proposal.

b. Response to Comments

The majority of the commenters expressed strong support for notifying at least the POTW of hazardous waste discharged into its system. Supporting comments were that such notification would augment existing controls on spills and accidental discharges and give the POTW more knowledge of and control over previously unreported discharges.

Other commenters opposed any additional notification requirements, stating they would be duplicative and burdensome for all parties concerned. Several commenters stated that the requirement was not necessary because the discharge of hazardous waste was already prohibited in their sewer ordinances and therefore did not occur unless it was an uncontrolled spill. Still other commenters believed that the information needed by the POTW should be available through the State and Federal RCRA or SARA databases for them to obtain as necessary.

Because the proposal would impose only a one-time notification requirement which can frequently be fulfilled with available information, EPA does not believe it to be burdensome for industrial users. The information will also be useful to POTWs in developing programs to better control the introduction of hazardous wastes into treatment and collection systems. Sewer ordinances do not generally contain a prohibition against the discharge of hazardous waste, and these wastes are frequently present in part because of the Domestic Sewage Exemption provided under RCRA. Although some of the information in the proposed notifications is accessible through State and Federal databases, much of it is not. For example, hazardous substances for which notification is required under SARA are not necessarily the same as the listed and characteristic hazardous wastes for which notification would be provided under today's rule.

Most of the POTWs and States who commented believed that POTWs, State authorities, and EPA should receive the notification. But many commenters (mostly industries) supported notification of the POTW only. They stated that notifying the State hazardous waste management authorities, as well as EPA, would be redundant.

Section 3018(d) of RCRA makes the requirements of section 3010 applicable to solid or dissolved materials in domestic sewage "to the same extent and in the same manner as such provisions apply to hazardous waste." Section 3010(a) states that "any person generating or transporting [hazardous waste] or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the Administrator (or with States having authorized hazardous waste permit programs under section 3006) a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person" (emphasis added). The statute thus mandates that, at the least, State or EPA hazardous waste personnel be notified. However, EPA does not interpret section 3018(d) as limiting the recipients of notification provided for under that section to the recipients specified under 3010(a). EPA's authority to tailor notification requirements to meet the needs of the pretreatment program is based in section 307(b) of the Act, authorizing EPA to promulgate such standards as are necessary to prevent pass through and interference. Also, RCRA section 3018(b) directs EPA to revise existing regulations "to assure that substances identified or listed under (RCRA section 3001) which pass through a sewer system to a publicly owned treatment works are adequately controlled to protect human health and the environment." As described below, EPA believes that proper control of materials identified or listed under RCRA will be facilitated by a requirement that notifications required by today's rule be submitted to POTWs, State authorities and EPA.

EPA agrees with the commenters who support notification of the POTW because it is directly affected by the discharge of such wastes. POTWs need to fully understand the nature of influent wastes to their plants to ensure proper treatment at the plant, establish appropriate local limits, and meet permit requirements. EPA believes that it is important for States to receive the notification so that they may use it in issuing NPDES permits, implementing State pretreatment programs, and protecting public health and welfare. In addition, submission of the notification requirements to EPA may assist the Agency in issuing NPDES permits to POTWs where it is the permitting authority and in establishing pretreatment requirements where it is the Control Authority. Notification of EPA will make possible the

development of a national data base or tracking system that would organize the information into a useful format for all interested parties.

Several commenters suggested that the information received could be summarized by States and EPA and be made available to POTWs. One commenter suggested that only the POTWs be notified and that the State and EPA could get the information from the POTW. However, other commenters suggested that other parties be notified, such as EPA Headquarters, State pretreatment program personnel, State water quality (NPDES) personnel and Regional as well as State Water Division Directors.

Summarization of the information received by the States and EPA and subsequent distribution to the appropriate POTW would, in most cases, be a cumbersome notification method. The Agency believes that the required information should be made available to the POTW as soon as possible. Although the suggestion of notifying EPA Headquarters, pretreatment personnel, water quality personnel and Water Division Directors is reasonable, EPA believes that today's rule, in providing for receipt of the notification by the most important representatives of local, State and Federal governments, will allow other personnel from these respective branches of government to easily obtain copies of the information. As mentioned above, the Agency is considering the development of a data base or tracking system that would organize the information into a useable format.

Several commenters pointed out that much of the required information was already submitted to regulatory agencies in indirect discharger permit applications, notices of process changes, through local ordinances, or is already reported under 40 CFR 403.12 and SARA section 313.

Although some information may be submitted pursuant to these authorities, EPA emphasizes that none of these provisions specifically requires submittal of information to POTWs, States, and EPA about all RCRA hazardous wastes discharged to sewers.

Several commenters, while agreeing with the need for a notification requirement, believed that the POTW should have the flexibility to determine the appropriate reporting. This would eliminate some of the redundancy, since POTWs have different programs and ordinances and could then choose that information which would best suit their needs.

Today's rule requires a minimum amount of information that is to be reported by all industrial users discharging hazardous wastes to sewers, except for dischargers of less than fifteen kilograms per month of non-acute hazardous wastes. EPA believes that these minimum requirements will be very useful to POTWs, States and EPA. POTWs have the flexibility to request additional information to suit the needs of their specific programs.

Several commenters expressed concern about the requirement to estimate the volumes of hazardous waste that would be discharged over a 12 month period. Commenters believed that the estimates would be unreliable and would result in possible liabilities (possibly from failure to report accurately). They questioned how to account for dramatic variation in discharges over the twelve-month estimation period and also questioned the purpose of the requirement. One commenter stated that although this kind of information might be useful, POTWs could not enforce a failure to report accurately. Another commenter suggested that an estimation over 30 days might be more useful.

The Agency believes that the information received through this requirement will be useful for POTW planning purposes. The information requested from industrial users is only an estimate of what they know or have reason to believe will be discharged over the next 12 month period, taking any variability into account. The estimation is not intended to constitute an enforceable limit. Industrial users are reminded that under 40 CFR 403.12(j) of today's rule, POTWs must be notified in advance of any substantial change in the volume or character of pollutants in their discharge. POTWs may choose to develop enforceable local limits based on the information submitted.

One commenter mentioned that the last line of 40 CFR 403.12(p)(1) allows an exemption from the notification requirement for pollutants already listed under the self-monitoring requirements. The commenter stated that self-monitoring information alone would not be sufficient to prevent pass through or interference.

The purpose of this proposed exemption is to avoid duplicative requirements, since in some instances information required under the hazardous waste notification provisions will have already been submitted under 40 CFR 403.12. The Agency notes that neither the self-monitoring requirements nor the hazardous waste notification requirements are intended primarily to prevent immediate pass through or interference. The purpose of the 40 CFR 403.12 requirements is to monitor compliance with categorical standards. The primary purpose of the hazardous waste notification requirements is to gather as much information as is needed to assess the potential effects of hazardous and toxic waste discharged to POTWs. It should be noted that the exemption for pollutants reported under the 40 CFR 403.12 self-monitoring requirements applies even though such reporting may not necessarily include all elements submitted under today's notification requirements, such as an estimate of the wastes expected to be discharged over the next twelve months. Since the 40 CFR 403.12 provisions require the submission of actual sampling results and periodic reporting every six months, the Agency believes that such reports are an adequate substitute for the section 3018(d) requirements. Although self-monitoring reports under 40 CFR 403.12 are submitted only to the Control Authority and not to EPA and the States as are today's section 3018(d) notifications, EPA believes that the existence of an already established, easily accessible data base for 40 CFR 403.12 self-monitoring requirements obviates the need to notify additional parties, as is required for one-time notifications of hazardous waste discharges under section 3018(d).

One commenter stated that notification should extend to all pollutants of concern in addition to hazardous wastes. This commenter supported notification of the discharge of hazardous constituents listed in 40 CFR part 261, appendix VIII. The commenter stated that this would keep the focus of the notification on the chemistry of the discharge rather than the legal status of the wastestream, and would also assure more equitable treatment of different types of dischargers. Some commenters also indicated that the notification requirements should be oriented toward volumes and types of waste based on their chemistry after treatment, rather than using the RCRA codes to describe the waste. The rationale was that the RCRA "derived from" and "mixture" rules fail to provide information about the waste after treatment, other than to define the status of the waste as hazardous up until the point of discharge into a domestic sewage system.

The Agency believes that notification of the discharge of all appendix VIII constituents is not routinely necessary. EPA believes it is preferable for the POTW to require such information on a case-by-case basis when appropriate to protect against potential pass through or

interference. The Agency also notes that today's rule requires the industrial user to report hazardous constituents discharged, if known. If an industrial user is not aware of the hazardous constituents contained in its hazardous waste discharge, EPA believes that POTWs, after receipt of notifications received under today's rule, will be in the best position to institute requirements for follow-up information on an as-needed basis based on the data already acquired about the industrial user's hazardous waste. Such additional information may provide more detail on the chemistry of the discharge, and thus fill in any data gaps that may result from use of RCRA waste codes and RCRA definitional constructs such as the mixture and derived from rules.

Some commenters objected to the requirement that industrial users notify the POTW of "any discharge into the POTW" and questioned whether the presence of a section 3001 RCRA waste in levels below the detection limits would require notification. One commenter opposed requiring that constituents be identified in the notification, stating that it would be burdensome to identify all constituents and calculate their volumes. Another commenter believed that such a requirement would be redundant because the constituents are already reported under section 313 of SARA. Some commenters also stated that the presence of a hazardous waste does not mean that certain constituents are always present, nor does the presence of constituents indicate that a waste is hazardous.

EPA notes that under 40 CFR 261.11, any person generating a solid waste is responsible for determining whether that waste is a listed or characteristic hazardous waste. Thus, industrial users who are generators of hazardous wastes are already required to have knowledge of such wastes. Today's rule requires all parties discharging hazardous wastes to POTWs to file a one-time notification. The notification must include a description of any such wastes discharged. To clarify this requirement and make description easier, today's rule requires that industrial users include the name of the hazardous waste and the EPA hazardous waste number for each hazardous waste discharged (these numbers are found in 40 CFR part 261, subpart D). Today's rule also requires an identification of the constituents discharged, along with their mass and concentration in the wastestream, but only to the extent that these constituents and their mass and concentrations are known and readily available to the user. The Agency is requiring notification of mass rather than volume (as was proposed) because mass is a more useful measure of the quantity of chemicals discharged. Where a discharger has knowledge that such constituents are present in its discharge, the discharger should identify such constituents in its required section 3018(d) notification, notwithstanding inability to detect the exact levels of such constituents in its discharge (e.g., because constituent levels are below analytical detection limits).

In response to concerns expressed by commenters, the Agency has clarified in the language of today's rule that identification of the constituents of hazardous waste and their mass and concentration need only be made if these are known by the industrial user (unlike the notification of the discharge of the hazardous waste and its description by name and EPA hazardous waste number). Monitoring for the presence of these constituents is not specifically required. It is not correct that all of these constituents are reported under SARA section 313, since the list of toxic chemicals required to be reported under that provision does not include all hazardous constituents under RCRA. The Agency believes that many industrial users will already have information about the constituents of their waste and that this information is often useful to POTWs. If the information is not available, the POTW may request additional monitoring on an as-needed basis.

Under the proposed rule, generators would have been exempt from the notification requirements during any calendar month in which they generate no more than 100 kilograms of hazardous wastes, except for certain acute hazardous wastes.

Many commenters supported this exemption. The commenters suggested that by retaining the exclusion, EPA would provide regulatory relief for small industries while not jeopardizing the protection of human health and the environment.

A few commenters who supported the small quantity generator exemption suggested that the exemption be widened to include generators of volumes between 100 to 1000 kilograms per month. These commenters stated that section 3001(d) of RCRA specifically discusses the regulation of these generators, and that during evaluation of an appropriate regulatory scheme for such generators, EPA paid special attention to minimizing paperwork burdens. Commenters stated that by proposing to impose notification requirements on these generators, EPA was ignoring its previous position on minimizing the burdens associated with recordkeeping and reporting.

In response, EPA notes that no POTWs suggested widening the 100 kilogram per month exemption to 1000 kilograms per month. In fact, several POTWs were concerned that the 100 kilogram per month exemption was unjustified and believed that such an exemption could jeopardize human health and the environment, since a discharge of 100 kilograms of certain substances would be very likely to cause pass through or interference.

The majority of the commenters who opposed the small quantity generator exemption were POTWs and State governments. They believed that discharges of less than 100 kilograms per month could at times have a serious impact on collection systems, POTWs and worker health or safety, and that POTWs would be interested in ascertaining all quantities of hazardous wastes discharged to sewers.

Some commenters who opposed the small quantity generator exemption stated that the Agency's proposal to exempt such generators from notification was not supported by the evidence cited in the preamble. These commenters also pointed out that EPA acknowledged that a 100 kilogram discharge of some RCRA hazardous wastes could be problematic for a POTW (particularly small and/or unacclimated ones). Another commenter pointed out that any exemption should be tied to the discharge, rather than the generation, of a hazardous waste.

After evaluation of these comments, EPA believes that a complete exemption from the notification requirements for many dischargers of less than 100 kilograms per month would not be environmentally justified. The Agency also agrees that any exemptions should be tied to the discharge rather than the generation of hazardous wastes, since only wastes actually discharged will usually be of concern to the POTW.

The Agency believes that a discharge of less than 100 kilograms of certain types of hazardous wastes may cause problems for POTWs (particularly small and unacclimated ones) if discharged at once or over a short period of time (e.g., spent electroplating baths, certain spent solvents such as benzene, or discarded unused formulations containing tri-, tetra-, or pentaclorophenol). Although one or two dischargers of approximately one hundred kilograms per month may have little potential for adverse impact on a POTW (depending on the wastes discharged) many POTWs have a

significant number of such generators discharging hazardous waste to the sewer system, which cumulatively pose a potential for causing pass through or interference. EPA believes that some degree of notification from these dischargers is the only way for POTWs to be aware of which hazardous wastes are entering their collection and treatment systems. On the other hand, the Agency believes that most dischargers of considerably smaller amounts of hazardous wastes will not, as a general rule, present the potential for adverse impact at the POTW.

As a general rule, the Agency believes that dischargers of less than fifteen kilograms per month (the equivalent of about one pound per day) of hazardous waste to POTWs present little danger of adverse impact to such POTWs. For this reason, today's rule provides an exemption for such dischargers, unless the hazardous wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Today's rule also provides that all non-exempt dischargers of hazardous wastes must submit the name of the hazardous waste discharged, the EPA hazardous waste number, and the type of discharge (whether batch or continuous). The Agency believes that this is the essential information which is needed to enable POTWs to be aware of which hazardous wastes are entering their systems and to enable them to decide whether to request further data from a particular discharger. Today's rule also requires those industrial users discharging more than 100 kilograms per month of a hazardous waste to a POTW to submit additional information, to the extent such information is known and readily available to the user. The additional information consists of an identification of the hazardous constituents contained in the listed wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that month, and an estimation of the mass of such constituents in the wastestream expected to be discharged during the following twelve months. POTWs may decide to require more detailed information from any discharger on a case-by-case basis in the exercise of authorities granted under local law. POTWs may also decide, in the exercise of local authorities, not to provide any of the above exemptions or reduced reporting requirements if they do not deem them appropriate for their particular systems.

Two commenters stated that because of the application of the "mixture rule" in 40 CFR 261.3(a)(2)(iii), facilities discharging wastewater containing any amount of hazardous waste would be subject to the proposed notification requirements, regardless of the proposed exemption for small quantity generators.

The regulation cited by the commenters provides that waste mixtures that include a hazardous waste that is classified as hazardous solely by virtue of exhibiting a hazardous characteristic identified in 40 CFR 261.20–261.24 are hazardous only if the mixtures themselves exhibit a hazardous characteristic. A companion rule, 40 CFR 261.3(a)(2)(iv), provides that mixtures that include a hazardous waste listed in 40 CFR 261.30–261.33 (other than one which is hazardous solely because it exhibits a characteristic identified in 40 CFR 261.20–261.24) are hazardous unless the resultant mixture is "delisted" pursuant to 40 CFR 260.20, 260.22, or one of the exceptions in 40 CFR 261.3(a)(2)(iv)(A)–(E) applies. The result of these rules is that mixtures of small quantities of certain hazardous wastes with large quantities of process or other solid wastes render the entire mixture a hazardous waste. These rules apply to industrial users covered by today's rule; accordingly, for purposes of ascertaining whether an industrial user discharges between 0 and 15 kilograms per month, 15 to 100 kilograms per month or over 100 kilograms per month of hazardous waste, the industrial user must apply the RCA mixture rules to calculate the volume of hazardous waste being introduced to the sewer.

Two commenters stated that the Agency should limit the notification requirement to significant industrial users as defined in proposed 40 CFR 403.3(u) who have never before notified EPA of their hazardous waste activities. This commenter stated that less than one percent of all hazardous wastes generated is associated with non-significant industrial users.

The Agency believes that limiting the notification requirement to significant industrial users would not be adequate to fulfill the statutory requirement of section 3016(d), since the definition of significant industrial user does not necessarily include the dischargers of hazardous wastes covered under RCRA section 3010. In addition, EPA believes that notification by all hazardous waste dischargers will assist POTWs in ascertaining whether the cumulative effect of many small discharges of hazardous waste may cause pass through or interference. Prior notification to EPA of hazardous waste activities under RCRA does not constitute compliance with today's rule, since the notification would not necessarily include all the items of information specified in this rule.

Some commenters suggested that EPA provide an exemption for the discharges described in 40 CFR 261.3(a)(2)(A)–(E) and an exemption from notification requirements for acute hazardous wastes. They recommended that the exclusion should specify a level for each characteristic waste as well as for total listed wastes.

The Agency notes that 40 CFR 261.3(a)(2)(iv) (A)–(E) describes certain wastes that are not classified as hazardous waste. Discharge of such materials to a POTW would not, therefore, trigger today's notification requirements. In addition, the Agency believes that such discharges present little potential danger of pass-through or interference at POTWs. However, POTWs may require notification of these discharges on a case-by-case basis pursuant to local authorities.

Today's rule does not grant an exemption for acute hazardous wastes. Such wastes have been identified under the RCRA program as meriting controls more stringent than for other types of hazardous waste (e.g., there is a less extensive small quantity generator exemption), and EPA believes that information on the discharge of any quantities of such wastes to a POTW is important for POTW planning to prevent pass through or interference.

Some commenters questioned the requirement that industrial users provide notification to the POTW of any substantial change in the volume or character of hazardous wastes discharged. Notification of substantial changes in pollutants discharged is already required pursuant to 40 CFR 403.12(j), and will be modified by today's rule to specifically provide for notification with regard to substantial changes in hazardous waste discharges. These commenters requested clarification about the definition of "substantial change in the volume or character of pollutants" as well as the means of notification. Another commenter felt that the language should be deleted because it implied continuous monitoring.

The possibility of providing a regulatory definition for "substantial change" in the volume or character of pollutants in an industrial user discharge was specifically addressed in the preamble to the final PIRT rule (53 FR 40562), which was promulgated on October 17, 1988. The preamble discussion of 40 CFR 403.12(j) stated that EPA has determined that a regulatory definition of "substantial change" in the volume or character of

pollutants discharged is inadvisable because what is substantial in a given situation will depend on several variables (53 FR 40599). The Agency stated that substantial change should be determined by the comparable notice requirements for direct dischargers under the NPDES regulations and supplemental, or more stringent, notice requirements adopted by the POTW or required by the permitting authority in the POTW's NPDES permit. With respect to substantial changes in the volume or character of pollutants discharged, the Agency stated that these should include a substantial change in any characteristic of the industrial user's wastewater discharge, including volume, flow, the amount or concentration of pollutants, and the discharge of new pollutants not previously reported to the POTW. Only changes which the industrial user expects to occur on a regular basis over an extended period of time (three months or more) need to be reported. Sporadic or episodic changes in the volume or character of a discharge are not ordinarily covered by the changed discharge notification. However, depending on the circumstances, the industrial user may have to report these discharges in accordance with other pretreatment requirements, e.g., the "slug load" notification requirements (40 CFR 403.12(f)), the upset provision (40 CFR 403.16), or bypass provision (40 CFR 403.17)). In most cases, a substantial change in the volume or character of a user's discharge will result from a deliberate or planned change to the user's facility or operations. "Substantial" should be based on the magnitude of change to the industrial user's existing discharge and not on the anticipated effect of the changed discharge on the POTW. Therefore, a regulation specifying absolute numbers, such as an increase or decrease of X gallons of flow discharged, would not be appropriate. Although the approach taken today may result in notifications about changed discharges which will not have a demonstrable effect on the POTW's influent, effluent or sludge quality, EPA has determined that any incidental "over notification" is justified by the need of the POTW (and NPDES permitting authority) to have information on a timely basis to determine whether, considering other changes to the POTW's system or pollutant control requirements, new limits on pollutant discharges are necessary, or should be further evaluated to prevent pass through or interference (see 53 FR 40600).

One commenter inquired about the mechanism that would be used to ensure that all industrial users were made aware of the one-time notification requirement. Another commenter suggested that the regulations should require POTWs to develop procedures for notification of changes in a user's discharge.

The principal mechanism used to ensure that industrial users are made aware of the notification requirement is through the publication of this notice in the **Federal Register**. In addition, POTWs may wish to send notices to their industrial users on the procedures that they wish them to follow. With respect to requiring POTWs to develop procedures for notification of discharge changes, EPA prefers to leave this question to the discretion of the specific POTW.

Some commenters stated that the certification requirements seemed inappropriate for wastewater effluents. EPA disagrees with these commenters. The Agency believes that a certification requirement is appropriate for industrial users because waste minimization will improve the quality of the effluent which enters the POTW and, eventually, the discharge that enters navigable waters through the POTW. The certification requirement will also further EPA's stated goal of pollution prevention by helping to reduce loadings of hazardous wastes to sewers.

However, the Agency has modified the language of the certification requirement somewhat from the November 23, 1988 proposal in order to make the requirement more appropriate to discharges of hazardous wastes to POTWs. Today's language clarifies that the requirements apply only to hazardous wastes for which notification was submitted under 40 CFR 403.12(p). In addition, the language now requires the industrial user to certify that it has a program in place to reduce the volume and toxicity of wastes generated to the degree it has determined to be economically practical. The Agency has substituted the phrase "economically practical" for "economically practicable" because it believes the former phrase more accurately conveys that generators should choose those means of reducing the volume and toxicity of their wastes that are feasible and cost-effective.

EPA has also deleted the proposed language requiring notifiers to certify that they have selected the treatment, storage, and/or disposal methods currently available to the user which minimize the present and future threat to human health and the environment. By recommending retention of the Domestic Sewage Exclusion, the Agency has made a determination that disposal of hazardous wastes to sewers in compliance with pretreatment requirements is an environmentally acceptable disposal method. In addition, many industrial users discharging hazardous waste to sewers also treat, store, or dispose of hazardous waste by other means and are already subject to the waste minimization certification requirements of 40 CFR 264.73. This deletion will therefore eliminate duplicative paperwork requirements for those facilities while still protecting POTWs and fulfilling Congressional intent to encourage the selection of optimal waste management techniques to reduce or eliminate the generation of hazardous waste.

One commenter suggested that the waste minimization certification requirement should allow POTWs or industries to focus on alternative control mechanisms such as source control and best management practices.

In response, the Agency notes that the requirement that industrial users certify that a program is in place to reduce the volume and toxicity of wastes to the degree that the user has determined to be economically practical allows complete flexibility to the industrial user, including the use of source controls and best management practices to minimize the generation of hazardous wastes.

One commenter suggested that the regulations include a requirement that all industrial users be placed on a 5-year schedule to eliminate hazardous wastes discharged under the Domestic Sewage Exclusion. However, the Study demonstrated that in general, POTWs are capable of accepting a certain amount of hazardous waste without threatening the POTW, human health or the environment. The Agency therefore believes that with proper controls, such as those in today's rule, elimination of all hazardous waste discharges from industrial users is unnecessary at the present time.

With respect to the use of supplemented EPA Form R or RCRA Forms to fulfill the proposed notification requirement, the majority of the commenters who addressed this issue supported the use of such forms. The commenters believed that the use of these forms would lessen duplicative and burdensome paperwork requirements. Other commenters opposed the use of these forms, stating that the use of such forms would lead to extraneous or misleading information that would create an administrative

burden for POTWs. They stated that Form R might simplify the reporting requirement for some industrial users, but would not simplify POTWs' task of evaluating the form and sorting out unnecessary information.

In response to these comments, the Agency is clarifying today that EPA Form R and existing RCRA forms may be used to fulfill the notification requirement as long as the industrial user submits all information required in today's rule. However, POTWs may require industrial users to use other forms if they wish. Industrial users may also submit the required information by other means, such as a letter.

Two commenters stated that the information on Form R would be based on pure estimates on the part of the discharger. In response, EPA points out that today's notification requirement also requires estimates for the mass and concentration of hazardous waste constituents, as well as the mass of constituents discharged over the following twelve months. These estimates should be based on the best available data.

Commenters stated that Form R would not cover a sufficient range of pollutants and that the list of SARA compounds was very different from the list of hazardous wastes under section 3001 of RCRA. In the case of substances which are listed or characteristic wastes under section 3001 of RCRA which do not appear on Form R, the industrial user must submit the required information on those wastes to EPA, the States, and the POTW. In addition, although section 313 of SARA only requires notification for industrial users with more than ten employees, today's rule does not include any exemptions based on the number of employees at the facility.

A commenter suggested that the reporting requirements under 40 CFR 403.12 be used to fulfill the notification requirement. In response, the Agency notes that pollutants reported under 40 CFR 403.12 (b), (d), or (e) need not be reported under today's notification requirement. However, the reporting requirements under the above-mentioned provisions of 40 CFR 403.12 apply to pollutants regulated under applicable categorical pretreatment standards. Thus the reporting requirements under 40 CFR 403.12 may not necessarily address hazardous wastes and would fulfill today's requirements only if such wastes had been reported under 40 CFR 403.12 (b), (d), or (e).

To clarify that today's rule applies to new industrial users or to existing industrial users which will discharge hazardous waste only in the future, EPA has added a provision requiring industrial users who commence discharging after the effective date of today's rule to provide the notification no later than 180 days after the discharge of the hazardous waste.

c. Today's Rule

Today's rule provides that the industrial user shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 40 CFR 403.12(j). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of 40 CFR 403.12 (b), (d), and (e).

Industrial users are exempt from the above requirements during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the industrial user discharges additional quantities of such hazardous waste do not require additional notification.

In the case of new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

In the case of any notification made under today's rule, the industrial user shall certify that it has a program in place to reduce the volume or toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

E. Individual Control Mechanisms for Industrial Users (40 CFR 403.8(f)(1)(iii))

a. Proposed Change

The existing pretreatment regulations require POTWs with approved pretreatment programs to have the legal authority to control, through permit, order, or similar means, the contribution to the POTW by each industrial user to ensure compliance with pretreatment standards and requirements. EPA's experience in developing and overseeing the pretreatment program has led it to believe that individual control mechanisms are the best way to ensure compliance with applicable pretreatment standards and requirements. Such a system gives the industrial user individual notice of all of the pretreatment requirements to which it is subject, thus making it easier for such users to understand their obligations before a violation occurs and ensuring more effective prevention of pass through and interference.

For these reasons, the Agency proposed on November 23, 1988 to revise 40 CFR 403.8(f) to require that POTWs with approved pretreatment programs issue discharge permits or equivalent individual control mechanisms to industrial users identified as significant under proposed 40 CFR 403.3(u). Under the proposal, such control mechanisms would contain, at a minimum, the following elements:

(1) Statement of duration (in no case more than five years);

(2) Statement of non-transferability without prior POTW approval;

(3) Applicable effluent limits based on categorical pretreatment standards and local limits;

(4) Applicable monitoring, sampling, and reporting requirements;

(5) Notification requirements for slug discharges as defined in 40 CFR 403.5(b); and

(6) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements.

The Agency solicited comment on the merits of the proposed revision. Specifically, the Agency requested comment on: (1) The appropriateness of limiting the requirement to industrial users defined as significant under proposed 40 CFR 403.3(u), or the appropriateness of additional or alternative targets, such as categorical users or notifiers of hazardous waste discharges under proposed 40 CFR 403.12(p); (2) whether the requirement should apply only to POTWs with more than a specified number of industrial users (and, if so, what number would be appropriate as a cut-off point); and (3) whether the list of conditions proposed should be reduced, expanded, or modified.

b. Response to Comments

The Agency received many comments on this issue. Commenters included States, POTWs, trade associations, industries and environmental groups. Of these, most supported the proposal in some form and many supported it as proposed.

Several commenters suggested that some instruments other than permits, such as contracts or administrative orders, might serve as equivalent control mechanisms. Most of those opposing the requirement stated that the POTW should have the flexibility to choose whether or not to implement a system of individual control mechanisms. One commenter stated that the requirement was redundant, because every POTW with an approved program is already required to notify users of pretreatment requirements and to have the authority to prohibit harmful pollutants from entering the POTW.

POTWs are required under the existing pretreatment regulations to have and exercise the authority to control through permit, order, or similar means, the contribution of individual industrial users to the POTW (40 CFR 403.8(f)(iii)). It is also true that, under the existing regulations, POTWs are required to notify users of applicable pretreatment standards and requirements and to ensure compliance with such standards and requirements. The Agency does not believe, however, that POTWs have consistently exercised their discretion under the existing regulations to develop adequate industrial user control mechanisms. Audits conducted of local pretreatment programs have led the Agency to conclude that many existing control mechanisms are inadequate to ensure compliance with pretreatment requirements and that industrial users should often be provided with better notice of pretreatment requirements. The Agency continues to believe that individual control mechanisms are the best way to accomplish these objectives. For this reason, EPA proposed to require POTWs to issue permits or other individual control mechanisms to significant industrial users.

Today's rule will provide substantial benefits to the POTW, to the industrial user, and to the pretreatment program as a whole. For instance, a user subject to both categorical standards and local limits would receive individual notice of which limits are applicable (i.e., the most stringent of the two) for each regulated pollutant in its discharge. Similarly, a user with equivalent mass- or concentration-based limits or alternative limits derived by the combined wastestream formula would be informed of such limits in its permit or other individual control mechanism. Users would also be individually notified of sampling and reporting requirements, including any requirements more stringent than the applicable Federal minimum requirements. An individual control mechanism also benefits the user by providing notice of applicable requirements before a violation occurs, rather than afterwards. In addition, individual control mechanisms provide a mechanism for the POTW to impose individualized pretreatment requirements (e.g., for sampling and reporting) on an industrial user. Finally, as some commenters pointed out, this requirement would bring greater consistency to administration and implementation of the national pretreatment program across the country. Some commenters also felt that uniform Federal requirements were necessary to ensure fairness in the administration of the program.

Several commenters stated that mandatory individual control mechanisms would be costly for POTWs. One commenter said that the rule would require POTWs to "scrap" existing and approved pretreatment programs. Some POTWs stated that they were unnecessary because they already had effective ordinances.

Although the Agency is sensitive to concerns regarding costs, EPA notes that many POTWs already issue permits or other individual control mechanisms to some or all of their users and will probably need little or no modification to their existing program to meet these requirements. POTWs which heretofore have relied entirely on ordinances to ensure compliance will require greater modification of their programs to comply with today's rule. However, EPA believes that the long-term benefits of this approach will justify the costs, even for POTWs that now rely on ordinances as their only control mechanism.

POTWs will be able to reduce their costs by utilizing existing data and by incorporating some existing requirements into the new system. Substantive requirements of the POTW's program (such as prohibited discharges, monitoring and reporting requirements, and penalty provisions) should be self-implementing under the POTW's ordinance. Many of these requirements could simply be written into the individual control mechanism, while others could be adjusted with slight modifications to reflect the particular circumstances of the user. Where the POTW already possesses all necessary data from its users to enable it to identify the character and volume of pollutants contributed by each user to the POTW, there would be no need to collect that information again. In support of its view, EPA points out that one POTW commented that it was initially reluctant when required to implement a permit system by its State Approval Authority. However, it found that implementation was fairly simple when standardized forms were developed, and its users preferred to have all of their requirements listed in one document.

One POTW commented that its State law prohibits municipalities with a population of greater than 500,000 from using permits to control individual discharges to the POTW. The commenter did not indicate whether all individual control mechanisms were similarly prohibited. If not, under the rule as promulgated, the commenter may use some other equivalent individual control mechanism. Alternatively, the commenter would have to seek a revision in its State law. In another context, a commenter requested that the Agency clarify the meaning of "equivalent control mechanisms" which could be used in place of permits. Another commenter stated that, if approaches other than permits have been approved and found effective, they should be allowed to continue and that EPA should not limit the definition of individual control mechanisms to permits only.

In this regard, the Agency would like to clarify both what it considers to be an acceptable "permit" under today's rule, and what may constitute "equivalent

control mechanisms". Where possible, analogies or distinctions are drawn between pretreatment permits and NPDES permits because most POTWs are very familiar (as NPDES permittees) with the NPDES program. First, unlike federal requirements applicable to direct dischargers, industrial users are not required under today's rule to obtain a permit prior to discharging to a POTW. (However, POTWs may establish such a requirement pursuant to their own legal authorities). Second, industrial users must comply with all applicable pretreatment requirements under federal law, whether or not they are contained in the permit or equivalent individual control mechanism. As a corollary, compliance by the industrial user with the terms of the permit does not shield it from liability for failure to comply with federal pretreatment requirements not set forth in the permit. However, EPA expects that the POTW will do everything possible to ensure that the limits and other requirements in the permit are as accurate and complete as possible, and will notify the user of any changes in applicable pretreatment requirements which become effective subsequent to the issuance of the permit.

As stated in the preamble to the proposed rule, the Agency will require issuance of "individual discharge permits or equivalent control mechanisms." An adequate equivalent control mechanism is one which ensures the same degree of specificity and control as a permit. To clarify that the conditions of the individual control mechanism must be enforceable against the significant industrial user through the usual remedies for noncompliance (set forth in 40 CFR 403.8(f)(1)(vi)(A)), EPA has amended the language of 40 CFR 403.8(f)(1)(vi)(B) to provide that pretreatment requirements enforced through the remedies of 40 CFR 403.8(f)(1)(vi)(A) shall include the requirements set forth in individual control mechanisms. In addition, the Agency has added to proposed 40 CFR 403.8(f)(1)(iii) a statement that individual control mechanisms must be enforceable.

EPA notes that the most effective control mechanisms should also be "strictly enforceable" under local law. Generally, for an individual control mechanism to be strictly enforceable, the local ordinance must specify that the terms and conditions of the control mechanism can be challenged (administratively and/or in court) only within a very limited time period after the control mechanism becomes effective. If the control mechanism is not challenged within the alloted time period, it cannot later be challenged in an enforcement proceeding (for guidance on this and other issues concerning individual control mechanisms, see EPA's *Industrial User Permitting Guidance Manual,* (September 1989)).

Commenters suggested several alternatives to the use of permits as individual control mechanisms. These included ordinances, administrative orders, and contracts. Although only two commenters discussed the use of an ordinance as a control mechanism, some POTWs rely on ordinances as their principal control mechanism. An ordinance may offer fairness and consistency in its application, but it does not provide specificity and individual notice to significant industrial users. One POTW stated that its ordinance, together with notice by mail to individual users, was sufficient. In response, the Agency emphasizes that, although a letter provides notice to the individual user of applicable limits and other requirements, an ordinance system contains the same limits for all industrial users and does not provide for POTW evaluation of significant industrial users to determine whether individual requirements are necessary for that user. Accordingly, an ordinance will not be considered an equivalent control mechanism under today's rule.

Two commenters discussed the use of administrative orders as an alternative control mechanism. One commenter stated that administrative orders are an effective method of imposing pretreatment and reporting requirements on industrial users and are less paperwork-intensive than permits. One POTW commented that it modified its administrative orders to attempt to comply with EPA's oversight requests, but did not succeed in meeting all requirements. This commenter also stated that it is necessary for the Agency to clearly specify the requirements for individual control mechanisms.

The Agency agrees that detailed administrative orders may be an equivalent individual control mechanism. In order to completely satisfy today's requirement with an administrative order system, the POTW must issue administrative orders to its significant industrial users whether or not they are complying with all applicable pretreatment standards and requirements. In addition, such orders must contain all of the minimum elements of an individual control mechanism specified in today's rule. The use of administrative orders therefore may not be necessarily less paperwork-intensive than other individual control mechanisms. Finally, administrative orders that are typically issued only in the context of an enforcement action may not meet one or more of the criteria for an adequate control mechanism described above and thus would not satisfy today's requirements. POTWs may, of course, use a mix of appropriate administrative orders, permits, and other equivalent individual control mechanisms to satisfy today's rule.

Several commenters mentioned the use of contracts as a control mechanism. One stated that the successful use of contracts precluded the need for permits, and two others equated the use of contracts with the use of permits. Two commenters stated that the permit should be signed by the permittee and "act [as a] legal contract between the POTW and the permittee."

The use of contracts as a control mechanism was addressed in a previous rulemaking (53 FR 40562, October 17, 1988). In that rulemaking, EPA stated that contracts do not provide a POTW with the requisite penalty authority for an approved program and are not an adequate control mechanism for POTWs with an approved pretreatment program. As a result, all references to the use of contracts as a control mechanism were deleted from the general pretreatment regulations (for a discussion of this issue, see the above-mentioned **Federal Register** notice at 53 FR 40574 *et seq.*). A "permit" signed by the permittee (i.e., the industrial user) may be deemed a contract and thus lose its effectiveness as a control mechanism. POTWs that currently use contracts as control mechanisms may incorporate most of the terms of such contracts into their newly issued non-contractual individual control mechanisms if such terms are current, reflect applicable pretreatment standards and requirements, and otherwise meet the requirements of today's rule.

Several commenters appeared to be confused about the meaning of the statement in the preamble to the proposed rulemaking that the Agency was proposing to require POTWs with approved programs to have "the legal authority to issue individual discharge permits or equivalent control mechanisms." Several POTWs commented that they supported the proposal, as some of them already had the authority to issue permits. One State commented that the proposal was not adequate unless the POTW is also required to actually issue the control mechanism. One POTW supported a requirement that POTWs have permit authority, but not a requirement to issue

permits. Finally, one trade association commented that the Agency should remove the word "permits" from the requirement if permit issuance was not intended to be a mandatory requirement.

EPA intended that the proposed rule be interpreted consistently with the Agency's interpretation of other requirements of 40 CFR 403.8(f)(1), i.e., the requirement that the POTW have the authority to undertake various activities means that the POTW must, in fact, engage in those activities. EPA is revising the language of 40 CFR 403.8(f) to clarify that POTW pretreatment programs must be implemented to exercise the authorities in 40 CFR 403.8(f)(1).

In the proposed rulemaking, the Agency also requested comments on (1) the appropriateness of limiting the requirement to industrial users defined as significant under proposed 40 CFR 403.3(u), or the appropriateness of additional or alternative targets, such as categorical users or notifiers of hazardous waste discharges under proposed 40 CFR 403.12(p); (2) whether the requirement should apply only to POTWs with more than a specified number of industrial users (and, if so, what number would be appropriate as a cut-off point); and (3) whether the list of proposed conditions should be contracted, expanded, or modified. The Agency received a number of comments in response to these questions.

Roughly half of the commenters on the proposal responded to the question of which industrial users should be required to have individual control mechanisms. Several commenters stated that the POTW should have the flexibility to decide which users should be covered. However, most commenters who supported the proposal agreed that EPA should specify certain classes of industrial users for which POTWs would be required to issue individual control mechanisms. Most of these supported the proposal to require the use of individual control mechanisms for significant industrial users. With respect to dischargers other than significant users, including dischargers of hazardous wastes, most commenters stated that the use of control mechanisms for such users should be at the discretion of the Control Authority. However, other commenters suggested that the Agency extend the requirement to include dischargers of hazardous wastes or to include all industrial users. Finally, a few commenters wanted the requirement limited to categorical users.

None of these comments provided a compelling reason for the Agency to change the proposed requirement that permits or equivalent individual control mechanisms be issued to all significant industrial users. The Agency agrees with those commenters who supported limiting the requirement to significant users, including categorical users. The Agency also agrees with those commenters who believed that the definition of significant industrial user is sufficiently inclusive and flexible to ensure that the necessary users are regulated by individual control mechanisms. The definition of significant industrial user, as promulgated in today's rulemaking, includes all categorical dischargers and all noncategorical dischargers meeting certain criteria, except to the extent that the Control Authority, with the approval of the Approval Authority, modifies the list of significant industrial users in accordance with criteria specified in 40 CFR 403.3(t)(1)(ii).

EPA believes that issuing individual control mechanisms to non-significant users should be at the discretion of the POTW because this class of users does not typically have sufficient potential to cause pass through or interference to warrant a requirement for individual control mechanisms. For this reason, today's rule does not require that POTWs issue individual control mechanisms to all industrial users. A POTW may, however, require non-significant users to have permits or other individual control mechanisms. One POTW commented that there should be two classes of industrial user permits. In response, EPA points out that POTWs are free to implement this approach if they wish, although the Agency does not believe that a two-class approach would be appropriate for all POTWs in a national rule.

EPA disagrees with those commenters who stated that the requirement for individual control mechanisms should be limited to categorical users. Such a requirement would fail to include many users whose discharges significantly affect POTWs. One commenter stated that the Agency should not require permits for small dischargers, but supported requiring permits for categoricals. However, the Agency believes that even small dischargers should be required to obtain individual control mechanisms if they qualify as significant industrial users because they may have a significant effect on a POTW. On the other hand, if a non-categorical user is not classified as a significant industrial user, it would not be required to obtain an individual control mechanism under today's rule.

A few commenters addressed the question of whether the requirement should apply only to POTWs with more than a specified number of industrial users. Several commenters stated that the requirement should apply to all POTWs with approved programs.

One stated that even a small POTW may need to issue individual control mechanisms to significant dischargers. Another commenter stated that small POTWs (less than 5 million gallons per day) with a small number of significant users (less than ten) should not be required to issue such control mechanisms to their significant users. However, one large POTW commented that this requirement should only apply to smaller POTWs (under 20 mgd).

In response to the commenter who wanted to limit the applicability of the requirement to smaller POTWs, the Agency believes that the larger the POTW (and the greater the number of industrial users), the greater the benefit to be derived from individual control mechanisms. On the other hand, the Agency does not believe that POTWs with a small number of significant users should be categorically exempted from this requirement. Even a small number of significant users may have a substantial impact on a POTW, particularly where their discharges represent a large percentage of the flow. In addition, industrial users will benefit from individualized notification of the limits and monitoring requirements that apply to them, regardless of the size of the POTW.

Several commenters addressed the minimum elements to be included in an individual control mechanism. A POTW opposed to the proposal commented that there should be no minimum elements if permits were to be required because the POTW is in the best position to determine the necessary contents of a permit, and none of the elements would be appropriate under all circumstances. Another commenter recommended that the Agency allow incorporation by reference as an alternative to listing conditions in the permit or alternative individual control mechanism. Most commenters, however, appeared to be satisfied with the list of conditions in the proposal. One POTW commented that the requirements concerning non-transferability, slug load notification, and penalties be dropped from the list, because these are already set forth in its local requirements.

The Agency believes that there should be minimum requirements for individual control mechanisms. Otherwise, the requirement that POTWs issue such mechanisms would be ineffective. The Agency believes that incorporation by reference is generally not appropriate because of the importance of effective

notice to the significant industrial user of all pretreatment requirements contained in the individual control mechanism.

Several commenters stated that the list of minimum requirements for individual control mechanisms should be expanded. Two commenters said that the list should include (any required) compliance schedules. One commenter suggested that the list should include a statement of severability. One POTW described its own additional requirements, which included: A regularly updated spill prevention program; a water and wasteload balance calculation; a wastewater characterization data base; a schematic flow diagram; a building layout diagram, including all drains to the collection system; and a description of the pretreatment systen

The requirements listed in the proposed rule were intended to be minimum requirements. This leaves the POTW much flexibility in adding other elements. Elements such as water and wasteload calculations, flow diagrams, building layouts, etc., are more suitable for inclusion on a case-by-case basis rather than through a national rule. POTWs may also include a statement of severability, but the Agency is not requiring such a statement because even if a control mechanism is found to be invalid under local law because of a single provision, the user is nonetheless required to comply with all applicable pretreatment standards and requirements.

The Agency has issued detailed guidance on the development of industrial user permits (see the EPA *Industrial User Permitting Guidance Manual*, September 1989). The information in this manual should be of use to all POTWs in utilizing individual control mechanisms to implement pretreatment requirements.

The Agency agrees that where a compliance schedule is required it should be included in the individual control mechanism. For this reason, today's rule includes such a requirement. The Agency points out that such compliance schedules cannot relieve an industrial user of its federal obligation to comply with categorical pretreatment standards or any other federal pretreatment requirements in a timely manner, and language to this effect has also been added to today's rule. Compliance schedules placed in individual control mechanisms are those necessary for the attainment of new or revised categorical pretreatment standards or more stringent local limits, rather than those which are the result of enforcement actions against the significant industrial user.

Several commenters opposed the proposal that individual control mechanisms have a duration of no more than five years. One POTW commented that locking a user into a set of standards based on the combined wastestream formula would result in annual changes to the control mechanism as flow conditions change. Two other POTWs commented that a five-year limit would be unduly burdensome for POTWs. One stated that permits should only need to be renewed or amended when there are changes in the quality or quantity of the user's discharge. The other stated that there is no need to modify the user's control mechanism as long as the user is in compliance.

In the first instance, the Agency does not believe that a user is "locked" into a particular set of standards with any individual control mechanism. The municipality may structure its permit program to allow the use of reopener clauses which would allow the individual control mechanisms to be modified if and when the POTW revises its local limits. In addition, where production rates or flow rates are highly variable, effluent limits can be written to reflect such variability. The Agency has provided some guidance on how this may be accomplished (see the above-mentioned *Industrial User Permitting Guidance Manual*). The Agency believes that a five-year maximum period is reasonable, due to the inevitability of changes to the POTW's program and changes in the characteristics of wastewater discharged to the POTW. This is consistent with the requirement promulgated in today's rulemaking that all POTWs must evaluate the need to revise their local limits every five years when they apply for renewal of their NPDES permits. There are many reasons for changing the control mechanism requirements, whether or not the user has changed the quality or quantity of its discharge, and the Agency believes that each control mechanism should be reevaluated at least once every five years to ensure that it is up to date.

The Agency also proposed to require a statement prohibiting transferability to a new owner or operator without prior POTW approval. Only one commenter specifically addressed this issue. This commenter stated that so long as compliance has been maintained under the conditions of a permit, the POTW should have ample authority to enforce the permit, although notification to the new owner or operator would be appropriate. The Agency agrees with this commenter. POTWs may have authority to enforce permits that have been transferred. However, the individual control mechanism is based upon information provided to the POTW by a particular owner or operator. The POTW must, at a minimum, know of the change in ownership or operation to be able to learn of any forthcoming major changes to the industrial user's operations. Similarly, the new owner or operator should have a copy of the existing control mechanism in order to have adequate notice of applicable pretreatment requirements. To ensure that this occurs, the Agency believes that prior notification of the POTW and of the new owner or operator is needed and is therefore promulgating 40 CFR 403.8(f)(1)(iii)(B) to provide that each individual control mechanism must include a statement of nontransferability without, at a minimum, prior notification to the POTW of the change in ownership or operation and without, at a minimum, provision of a copy of the existing individual control mechanism to the new owner or operator. Today's rule does not, however, require prior approval by the POTW. POTWs may decide to require such prior approval in the permits they issue.

The Agency also received several comments on the proposed requirement that individual control mechanisms should include applicable effluent limits based upon categorical standards and local limits. Two POTWs sought to limit this requirement. One of these commenters stated that, due to the inherent variability of certain effluent limits, incorporation of such limits by reference is preferred. The other commented that permit limits should only include end-of-process limits and incorporate by reference local limits and the combined wastestream formula. It is unclear to the Agency why this commenter believed that only end-of-process limits should be included in individual control mechanisms, but the Agency assumes that this commenter was also concerned about variability of certain effluent limits. As discussed above, EPA does not believe that variability of flow and production should prevent the inclusion of appropriate limits in individual control mechanisms. EPA's policy is that POTWs should develop, and place in individual control mechanisms, case-by-case individual end-of-pipe limits for significant industrial users pursuant either to 40 CFR 403.5(c) and/or limits reflecting the application of categorical standards to the permittee's specific operations.

A State suggested that "applicable State standards" be added to the category. The Agency agrees that where these standards apply, they should be included as elements in permits or equivalent control mechanisms. Early calculation of all end-of-pipe limits, including those based on state law, will result in better compliance with applicable standards. Today's rule therefore includes a requirement in 40 CFR 403.8(f)(1)(iii) to include in the individual control mechanism effluent limits based on any applicable State or local law. The Agency has also added a requirement that the individual control mechanism include effluent limits based on applicable pretreatment standards in part 403.

Finally, the Agency received two comments on the requirement that applicable monitoring, sampling, and reporting requirements be included in individual control mechanisms. A State commented that control mechanisms should also include sampling location(s) to ensure that compliance is assessed at the point where the limits are applied. A POTW suggested that the requirement be modified in order to clarify that the requirement refers to self-monitoring instead of the POTW's own compliance monitoring activities.

The Agency agrees with both of these commenters. Sampling requirements should normally specify sampling location(s), and the location(s) should be point(s) at which the limitations set forth in the individual control mechanism apply. Moreover, the Agency intended in the proposal to require that individual control mechanisms contain self-monitoring requirements. The final rule requires that individual control mechanisms specify an identification of the pollutants to be monitored, sampling location and self-monitoring requirements, as well as sampling frequency and sample type. The Agency is also adding a requirement that the control mechanism contain recordkeeping requirements where applicable, since recordkeeping may be very useful in tracking compliance and in otherwise enabling the POTW to obtain needed information about significant industrial users. In addition, EPA has deleted from the proposed rule a separate requirement for notification of slug discharges, since such a requirement might imply that other types of notification should not be included in individual control mechanisms. Instead, the Agency is requiring that such mechanisms contain "applicable" notification requirements, which should include, as well as slug discharges, other notification requirements contained in part 403 such as non-compliance reporting and notification of changed discharge.

c. Today's Rule

Today's rule requires POTWs with approved pretreatment programs to issue permits or equivalent individual control mechanisms to each significant industrial user. The mechanisms shall be enforceable and shall contain, at a minimum, the following elements:

- Statement of duration (in no case more than five years);
- Statement of non-transferability of the individual control mechanism without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;
- Effluent limits based on applicable general pretreatment standards in part 403 of this title, categorical pretreatment standards, local limits, and State and local law;
- Self-monitoring, sampling, reporting, notification, and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on applicable general pretreatment standards in part 403 of this title, categorical pretreatment standards, local limits, and State and local law; and
- Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements and, where required, any applicable compliance schedules. Such schedules may not extend the compliance date beyond applicable federal deadlines.

F. Implementing the General Prohibitions Against Pass Through and Interference

1. Toxicity-Based Permit Limits (40 CFR 122.21(j)(1)(2) and (3))

a. *Proposed rule.* To supplement numerical NPDES permit limits for specific chemicals, EPA has strongly encouraged NPDES permitting authorities to establish toxicity testing requirements in municipal permits and to develop whole effluent toxicity-based permit limitations to control toxicity to aquatic life. Expanded use of toxicity testing and water quality-based permitting for POTWs was also one of the principal recommendations of the Domestic Sewage Study. EPA has encouraged this approach to controlling toxic effluents because it allows POTWs and permit writers to better control pass through by identifying certain toxic effects (such as lethality and effects on growth and reproduction) of a complex mixture with one measurement. Toxicity-based permit limits can also be useful where national categorical pretreatment standards do not adequately address pollutants that cause local toxicity or where there are no current numerical water quality criteria for individual chemicals, as is the case for many toxic and hazardous constituents. In such cases, toxicity-based permit limits provide a numeric measure of the narrative water quality "no toxics in toxic amounts" standard. When such a toxicity-based limit is violated, a toxicity reduction evaluation (TRE) can be used to investigate the causes, sources, and methods to control the toxicity. A TRE is a procedure used to find control methods to reduce or eliminate toxicity. A TRE provides systematic methods for locating sources of POTW whole effluent toxicity and/or assessing the treatability of the toxicity, whether through pretreatment (source control) or through improved treatment at the POTW. A toxicity identification evaluation (TIE) is part of a TRE which uses toxicity tests to characterize, identify, and confirm the specific causative agents of effluent toxicity. EPA recently enacted regulations requiring that whole effluent toxicity limits be placed in NPDES permits in appropriate circumstances. See 40 CFR 122.44(d)).

On November 23, 1988, EPA proposed to revise 40 CFR 122.21(j) to require that all existing POTWs conduct whole effluent toxicity testing and submit the results of such testing in their NPDES permit applications. The information would be used by permit writers to justify permit limitations and toxicity reduction evaluations (TREs) when the testing reveals a potential for violations of water quality standards. The toxicity testing information could also form the basis for monitoring requirements and other permit conditions when needed to ensure ongoing compliance with water quality standards.

In encouraging the use of toxicity testing, EPA has recommended that testing requirements be based on the technical recommendations and principles found in the *Technical Support Document for Water Quality-based Toxics Control* (TSD) (EPA/440/4-85-032, September 1985, revised edition to be published in 1990), and EPA's toxicity testing protocols, or equivalent procedures designated by the Director (i.e., the EPA Regional Administrator or the NPDES permitting authority in a State that is federally approved to administer the NPDES program). The TSD describes the rationale for whole effluent toxicity

controls and the assessment of receiving water effects.

b. *Response to comments.* EPA received approximately 90 comments on the topic of toxicity testing. Most of the comments focused on the need for toxicity testing at all POTWs and the test procedures outlined in the proposal. The majority of the commenters asserted that toxicity testing at all existing POTWs was unnecessary and in some cases redundant. In addition, a majority of commenters objected to the testing procedures and the frequency of testing required on the basis of cost and the possibility that they may conflict with state toxic control strategies already in place. The various comments are discussed in more detail below.

Several commenters stated that EPA or the permitting authority should demonstrate that toxicity is a problem before requiring whole effluent toxicity testing.

Section 101(a) of the Clean Water Act establishes a national policy of restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters. In addition, section 101(a)(3) clearly states the national policy that the discharge of toxic pollutants in toxic amounts is prohibited. Dischargers with NPDES permits must meet all of the technology-based requirements of the CWA as well as any more stringent requirements necessary to achieve water quality standards established under section 303. Section 301(b)(1)(C) and section 402(a)(1) of the CWA require that NPDES permittees achieve the effluent limitations necessary to attain and maintain the numeric and narrative water quality standards set by the states or, in appropriate instances, by EPA. EPA also has authority under sections 308 and 402(a) (1)–(2) to require such monitoring as is necessary to develop effluent limitations consistent with the Act.

Many POTWs have been found to discharge toxic substances in toxic amounts. Effluent toxicity testing allows permitting authorities to assess whether a discharger is complying with state water quality standards and provides a justification for establishment, where necessary, of permit limitations to achieve those standards. EPA's surface water toxics control program uses both chemical and biological methods to assess and protect water quality. Whole effluent toxicity testing is especially appropriate where, as for POTWs, complex chemical interactions may occur and where a chemical specific evaluation alone cannot fully assess the toxic effects of the effluent or attainment or nonattainment of the narrative water quality standard for toxicity.

One commenter stated that these regulations should require that water quality modeling and comprehensive water quality studies be completed before toxicity testing is required.

The toxicity testing required by today's rule is designed to reveal if a POTW is causing or contributing to instream toxicity. Toxicity tests are necessary in assessing the toxicity of an effluent. The results of such tests in conjunction with any applicable water quality modeling information can lead to decisions concerning appropriate water quality-based limits on whole effluent toxicity. However, EPA does not believe that water quality modeling should be a precondition for toxicity testing.

Many commenters stated that it would be more appropriate to use toxicity testing as an optional monitoring tool rather than as the basis for an enforceable limit.

EPA emphasizes that today's rule does not explicitly require the establishment of permit limits based on the results of toxicity tests. Instead, it requires certain POTWs to submit the results of toxicity tests with their permit applications. EPA's regulations at 40 CFR 122.44(d)(1)(iv), however, already require whole effluent toxicity limits where a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a numeric criterion for whole effluent toxicity. A similar requirement exists regarding excursions above narrative criteria, except that limits on whole effluent toxicity may not be necessary if the permitting authority demonstrates that chemical-specific limits for the effluent are sufficient to attain and maintain the applicable state standard. EPA will continue to use the results of effluent toxicity testing and other data to establish permitting priorities, to assess whether a discharger is in compliance with state water quality standards, and to develop permit limitations to achieve those standards.

Several commenters said that toxicity tests cannot distinguish between toxicity caused by "common materials," such as ammonia and chlorine, and toxicity caused by section 307(a) priority pollutants and therefore such tests are of limited use in controlling priority pollutants.

In response, the Agency points out that state narrative standards prohibiting the discharge of toxics in toxic amounts are not limited to section 307(a) priority pollutants. Toxicity tests will account for toxicity caused by any pollutant, whether priority, conventional or nonconventional. Any effluent that causes unacceptable toxicity in the receiving waters would violate general prohibitions on the discharge of toxic pollutants in toxic amounts and controls must be established accordingly.

In addition, a few commenters stated that state disinfection requirements would often cause failure of a toxicity test due to the presence of chlorine, and therefore toxicity testing should be conducted before disinfection.

Residual chlorine and other byproducts of chlorination (i.e. mono- and dichloroamines) can be highly toxic to aquatic life. Therefore, EPA recommends that any use of chlorine for disinfection be carefully evaluated. If unacceptable effluent toxicity is found to be caused by excessive chlorine, either a reduction in the amount of chlorine used for disinfection, dechlorination after disinfection, or use of alternative disinfection technologies may be necessary. Whole effluent toxicity tests are an appropriate means to identify whether excessive toxic chlorine discharges are occurring.

Several commenters suggested the use of only acute tests to verify the need for further testing and toxicity reduction. In response, the Agency notes that today's rule does not specifically require either acute or chronic tests for any particular POTW. However, after reviewing a permit application containing the results of any testing conducted, the Director may choose to require additional testing (acute, chronic, or both) as he deems necessary to assess the toxicity of the discharge pursuant to his authority under sections 402(a) (1)–(2) of the Clean Water Act. The characteristics of instream dilution, effluent variability, and species sensitivity differ from one POTW to the next, as do the types of pollutants discharged. Sometimes chronic tests are more appropriate, sometimes acute tests are sufficient, and at other times a combination of both acute and chronic tests are necessary to accurately assess the toxicity of an effluent to aquatic life.

One commenter stated that the industrial pretreatment program has adequately screened and identified toxicity problems so that in smaller systems (where the pretreatment program does not indicate a potential for toxic discharges) it is unnecessary for POTWs to conduct toxicity testing.

EPA has found that POTWs with pretreatment programs receive the majority of indirect industrial discharges and therefore have a significant potential for effluent toxicity. Even in smaller POTWs with pretreatment

programs, all the toxics in a complex effluent cannot, as a practical matter, be measured or limited singly and, as stated previously, chemical-specific testing methods may not address the interactive effects of the mixture. Toxicity testing provides a way to characterize and ultimately to limit, if necessary, whole effluent toxicity where necessary to meet water quality standards. It may also help identify the presence of particular pollutants of concern so that chemical-specific local limits or other controls can be developed.

One commenter suggested using a priority pollutant scan in lieu of toxicity testing to screen a POTW's influent for the presence of toxic wastes in concentrations which would cause damage to the POTW.

EPA agrees that POTWs should generally test their influent for the presence of individual toxic pollutants. However, a POTW's effluent may be toxic due to non-priority pollutants, complex mixtures of pollutants, or chemicals added or created during the treatment process at the POTW. The revisions to 40 CFR 122.21(j) require POTWs to conduct whole effluent toxicity testing to determine the impact of the effluent on water quality.

Several commenters suggested that toxicity testing should not be required for wastewater discharged to dry creek beds, ephemeral drainages, sloughs, ditches, etc. because these places have no aquatic life to protect and do not affect waterways. One commenter recommended the use of only chemical-specific controls in such circumstances.

In response, EPA notes that narrative water quality criteria apply to all designated uses at all flows unless otherwise specified in state water quality standards. It is EPA's policy that no acutely toxic conditions may exist in any state waters, regardless of designated use. Likewise, criteria for protection against chronic effects must be met at the edge of the mixing zone, where the state water quality standard allows a mixing zone. Dry creek beds, ephemeral drainage areas, intermittent streams, sloughs, or ditches may act as reservoirs for pollutants which can be flushed into larger permanent waters, causing toxic impact.

Many commenters stated that the requirements for toxicity testing in the proposed rule conflict with existing state toxic control strategies. Some commenters wanted EPA to be more specific in setting toxicity testing procedures, while others wanted states to have more flexibility.

EPA intended in the proposed rule to provide flexibility for the states by allowing the use of testing procedures equivalent to EPA's protocols if they are accepted by the Director. This provision was apparently misunderstood by many of the commenters. The proposal, at 50 FR 47653 (proposed 40 CFR 122.21(j)(1)) provided that the Director may require alternative test procedures and may require the submission of definitive testing data generated according to procedures specified by the Director to replace or supplement the test data specified in the proposal. Today's rule also provides much flexibility to the Director in specifying test methods. For example, paragraph 122.21(j)(3) allows the use of EPA's methods or other established protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. To clarify this requirement, the Agency has deleted the provisions in the proposed rule which referred to the use of specific protocols and dilution criteria.

A number of commenters stated that biomonitoring has already been completed or will be completed for their facilities as part of the toxics control programs required under section 304(1) of the CWA. In response, EPA points out that if a POTW has submitted the results of toxicity tests with its permit application to meet water quality-based permitting requirements established by the CWA section 304(1) regulations (40 CFR 122.44(d)), then the POTW has met the toxicity testing requirements in today's rule. Whenever that POTW's permit is up for renewal, the POTW will again be required to submit the results of toxicity tests with its permit application pursuant to today's rule. The tests must be conducted since the last NPDES permit reissuance or permit modification under 40 CFR 122.62(a), whichever occurred latest. For more detail on the relationship between the regulations at 40 CFR 122.44(d)(1)(ii) and the testing required by today's rule, see the discussion on the requirements of 40 CFR 122.44(d) below.

Some commenters suggested that any proposal affecting application requirements for municipalities should be included in the new municipal NPDES application form currently being developed by EPA.

EPA plans to propose new application requirements for POTWs in the near future, along with a form to be used in submitting the application. The final application forms, when promulgated, will reflect the requirements of today's rule.

Two commenters suggested that EPA should formally promulgate whole effluent toxicity testing procedures pursuant to section 304(h) of the CWA.

Although toxicity test procedures have not yet been promulgated under section 304(h) of the CWA, EPA has proposed new biological measurements and test procedures for the analysis of pollutants under section 304(h) (54 FR 50216, December 4, 1989). The proposal would amend 40 CFR part 136 by adding methods to measure the toxicity of pollutants in effluents and receiving waters, by adding methods to measure mutagenicity and to monitor viruses, and by updating citations to microbiological methods. In addition, EPA and States have routinely used certain other test methods. EPA's published guidance documents on acute and chronic toxicity test methods have undergone extensive public comment and peer review prior to their publication, following the standard Office of Research and Development public comment and peer review process. In 1984, the Agency concluded that "* * * toxicity testing is sufficiently refined to be used in setting effluent limitations * * *" (49 FR 38009 (1984)). EPA's studies since 1984 reinforce this conclusion. The absence of promulgated guidelines under section 304(h) does not affect EPA's authority to require toxicity testing, nor does it affect the reliability of the Agency's toxicity testing protocols.

A number of commenters objected to a perceived objective of the proposal to "codify elements of the TSD" because that document is intended only as technical guidance and is currently being revised. These commenters apparently misunderstood EPA's intent. EPA recommends the use of the technical methods and principles presented in the TSD because this document is in wide use and has proven to be a useful tool for conducting toxicity protocols. However, in the proposed and final rules, EPA has provided a considerable degree of flexibility to states desiring to use other testing procedures.

Some commenters stated that toxicity test procedures are still in the developmental stage and are not reliable or precise enough for purposes of enforcement.

EPA studies indicate that toxicity test methods are comparable in accuracy and precision to chemical analytical measurements in common use. The TSD discusses the precision of toxicity test methods and cites various studies that have led EPA to conclude that toxicity test methods, where properly followed, exhibit an acceptable range of variability. EPA recently conducted two interlaboratory studies of chronic toxicity testing using *Ceriodaphnia*.

These studies showed that a high percentage of the 21 participating laboratories met the survival and reproduction criteria for acceptability of test results. Furthermore, EPA has demonstrated a direct correlation between effluent toxicity (where exposure is adequately assessed) and actual instream impact. The Agency began a series of eight studies in 1981 to determine whether effluent toxicity correlates to an impact on receiving waters. At eight water quality impacted sites around the country, EPA conducted extensive biosurveys, calculated actual instream waste concentrations, and compared the results to measured effluent toxicities. Final reports for these studies are presently available from EPA. These reports reveal that if an effluent is found to be toxic at a certain concentration using standard toxicity tests, a toxic effect can be expected in the receiving water if that concentration is met or exceeded instream.

Several commenters stated that POTWs are not equipped to handle certain chemicals that may cause toxicity. One commenter also stated that the proposed rule does not address how to develop local limits for toxics control when specific chemicals cannot be readily identified as the causative toxicants during a TRE. One commenter stated that POTWs would not be able to identify sources of toxicity and would therefore impose arbitrary local limits on industrial users.

EPA recognizes that many POTWs are not designed to treat certain toxics and that therefore these pollutants tend to pass through or interfere with the treatment system at the POTW. The national pretreatment program and today's regulations are intended to identify and control these effects. POTWs with approved local pretreatment programs often require industrial users who are identified as the source of pass through or interference to conduct toxicity monitoring or take other measures to help identify the specific chemicals causing toxicity. Industrial users are often able to easily identify potential toxics used in or created by their processes. The POTW can then derive local limits, if necessary, from those results. The Agency anticipates that in most cases POTWs will be able to determine the source of any toxicity and will be able to develop appropriate local limits if needed to address the problem. EPA has also developed TRE and TIE protocols to help address problematic discharges where causative agents are not readily identified (see, e.g., *Methods for Aquatic Toxicity Identification Evaluations: Phase I Toxicity Characterization Procedures*, U.S. EPA, September 1988, EPA 600/3-88/034; *Methods for Aquatic Toxicity Identification Evaluations: Phase II Toxicity Identification Procedures*, U.S. EPA, February 1989, EPA 600/3-88/035; *Methods for Aquatic Toxicity Identification Evaluations: Phase III Toxicity Confirmation Procedures*, U.S. EPA, February 1989, EPA 600/3-88/036; *Generalized Methodology for Conducting Industrial Toxicity Reduction Evaluations (TREs)*, U.S. EPA, March 1989, EPA 600/2-88/070; and *Toxicity Reduction Evaluation Protocol for Municipal Wastewater Treatment Plants*, U.S. EPA, April 1989, EPA 600/2-88/062).

Several commenters were concerned about the reliability of TREs because they are allegedly in the developmental stage and because TREs do not identify specific causes of toxicity or chemical constituents causing acute or chronic toxicity.

EPA has found the TRE and TIE methods currently available to be useful in helping dischargers to achieve their NPDES permit limits and comply with State water quality standards. TRE's often do identify specific chemical causes of toxicity. EPA will continue to develop and refine TRE methods and provide technical assistance to permittees. EPA anticipates that there may be a few cases where a POTW will be unable to attain or maintain compliance with toxicity-based limits despite implementing an exhaustive TRE, applying appropriate influent and effluent controls, vigorously enforcing existing pretreatment requirements against industrial users, and maintaining continued compliance with all other permit limits and requirements. In such cases, EPA will work with the permittee to resolve the problem and will exercise its enforcement discretion when considering unusual problems faced by certain POTWs in complying with toxicity-based limits.

A majority of the commenters strongly opposed the requirement that all existing POTWs conduct toxicity testing. Most of these wanted to see testing procedures applied on a case-by-case basis, after considering a number of different factors.

EPA was persuaded by these comments to reconsider the requirement that all existing POTWs be required to conduct toxicity testing as part of their NPDES permit applications. The Agency agrees that not all POTWs can be anticipated to exhibit toxicity and that toxicity testing for such POTWs could create an unnecessary burden. However, EPA expects that with few exceptions, all POTWs with design influent flows greater than one million gallons per day and POTWs with pretreatment programs will need to be evaluated to determine whether they have a reasonable potential to cause in-stream excursions that violate a State water quality standard. As stated above, POTWs with pretreatment programs receive the majority of indirect industrial discharges and therefore have a significant potential for effluent toxicity. In addition, one million gallons per day is the point at which the flow of the wastewater usually begins to reach critical instream waste concentrations that are more likely to result in impacts caused by effluent toxicity. The Agency believes that design influent flow is a more appropriate criterion than actual effluent flow because of the possibility that POTWs with a design influent flow of one million gallons per day will reach that capacity during a five-year permit term due to the addition of new industrial users. For these reasons, in lieu of the requirement that all POTWs submit the results of toxicity tests with their permit applications, EPA is today requiring valid toxicity testing results to be submitted as part of the permit application requirements for: (1) Any POTW with a design influent flow exceeding one million gallons per day, or, (2) any POTW with an approved pretreatment program or that is required to develop a pretreatment program. Today's regulations also provide that the Director has the discretion to require additional POTWs to submit the results of toxicity tests with their permit applications based on consideration of one or more of the following factors found at 40 CFR 122.44(j)(2): Existing controls on point and nonpoint source pollution (including total maximum daily load calculations for the waterbody segment and relative contribution of the POTW), the variability of pollutants or pollutant parameters in the effluent (including existing chemical-specific information and type of treatment facility), the dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow), receiving stream characteristics, and other considerations. Any tests submitted under today's rule must have been conducted since the last NPDES permit reissuance or permit modification under § 122.62(a), whichever occurred later.

If toxicity tests follow established protocols and quality assurance requirements are followed, the validity of the test will be assured. An invalid test will not meet the requirements of today's rule. Testing protocols that

adhere to the principles presented in the TSD and EPA's test methods will meet the requirements of today's rule; however, other valid procedures may also be used. While today's rule requires larger POTWs to conduct toxicity testing, it also provides the Director the flexibility to require small POTWs located on small stream segments where available dilution is minimal to conduct toxicity tests, or to require POTWs discharging to near coastal waters to conduct such tests.

In making the determination that the categories of POTWs listed in 40 CFR 122.21(j)(1) shall conduct toxicity tests as part of the permit application process, EPA was influenced by the findings of the Domestic Sewage Study and the conclusion in that Study that EPA should consider expanding the use of biomonitoring techniques and water quality-based permitting to improve controls over hazardous waste discharged to POTWs. To strengthen its water quality-based permitting program, EPA recently revised its permitting regulations at 40 CFR 122.44(d) (54 FR 23868, June 2, 1989). These regulations now require, with limited exceptions, permit limits on whole effluent toxicity where the Director determines, using toxicity testing or other information, that a discharge causes or has the potential to cause excursions above State water quality standards for toxicity. But 40 CFR 122.44(d) does not explicitly require the discharger to generate toxicity testing data, nor does it require dischargers to submit such data with their permit applications. EPA believes that it is necessary to require toxicity testing data from certain POTWs with their permit application so that at the time of application the Director will have sufficient information to determine whether limits on whole effluent toxicity are required in the POTW's permit. EPA recognizes that toxicity testing data will not be necessary for certain categories of POTWs. While EPA maintains the authority to require toxicity testing data from all POTWs, it would not be appropriate to require POTWs that have little or no chance of causing excursions above State water quality standards for toxicity to conduct toxicity tests and submit the results with their permit applications.

Based on the results of the Study, and in conjunction with EPA's ongoing integrated approach to water quality-based toxics control, the Agency has determined that toxicity testing data is necessary and is required to be submitted by POTWs described in 40 CFR 122.21(j)(1) and by POTWs designated by the Director under paragraph (j)(2). Furthermore, under 40 CFR 122.44(d) (iv) and (v), the Director must use this data in determining whether limits on whole effluent toxicity are required in the POTW's permit.

Paragraph (j)(2) provides the Director with the flexibility to require additional POTWs to submit toxicity data with their applications. In exercising this option, the Director is to consider the factors listed in paragraphs (j)(2)(i)–(v). These factors are general principles which EPA has consistently recommended that permitting authorities consider when assessing a discharger's potential to cause or contribute to instream toxicity. These principles are compatible with EPA's "Policy on Development of Water Quality-Based Permit Limitations for Toxic Pollutants" (49 FR 9016, March 1984), *The Technical Support Document for Water Quality-Based Toxics Controls*, and EPA's revisions to 40 CFR 122.44(d) to implement CWA section 304(l).

Once the Director has determined that a POTW meets any of the criteria in paragraph (j)(1) or has designated a POTW under paragraph (j)(2), and that POTW must therefore submit the results of toxicity testing as part of the permit application process, paragraph (j)(3) provides that POTWs shall use a toxicity testing protocol that is scientifically defensible and sufficiently sensitive to detect aquatic toxicity.

Approved State NPDES programs that do not presently allow permitting authorities to require POTWs in the categories described in paragraphs (j)(1) and (2) to submit toxicity test results with their permit applications will need to revise their applicable law to conform to today's requirements. Under 40 CFR 123.62(e), regulatory revisions must occur within one year of the effective date of today's rule, unless statutory changes are necessary, in which case such revisions must take place within two years.

One commenter suggested that the requirement that all POTWs conduct toxicity testing is inequitable when the proposal does not require such testing for private dischargers. As stated above, 40 CFR 122.21(j) no longer requires all POTWs to conduct toxicity testing. Instead, POTWs that meet any of the criteria listed in 40 CFR 122.21(j)(1) or are designated by the Director under paragraph (j)(2) are required to conduct such testing. Moreover, the new amendments to 40 CFR 122.44(d) require the Director to determine whether any discharge causes, has the reasonable potential to cause, or contributes to an excursion above a narrative or numeric criteria within a State water quality standard. Such procedures will include toxicity tests by direct industrial dischargers in many cases.

One commenter stated that toxicity-based limits in NPDES permits are not an effective way of preventing toxicity because nonpoint sources may also be significant contributors to toxicity. EPA reiterates that today's regulations do not explicitly require the establishment of toxicity limits.

However, the Agency disagrees with the argument that POTWs should not monitor or limit toxicity because nonpoint sources may also contribute to such toxicity. If a POTW's effluent is found to cause instream toxicity (after consideration of any applicable mixing zone allowances) then discharge of such effluent is in violation of State water quality standards that prohibit discharges of toxic pollutants in toxic amounts. In such instances, appropriate limits aimed at achieving compliance with State standards must be established.

One commenter stated that permit limits on toxicity should be required in the permit when the results of testing indicate that there is or may be a problem with toxicity in the discharge. As a general rule, EPA agrees with this statement. For further details on appropriate measures to be taken, see EPA's section 304(l) regulations (54 FR 23868, June 2, 1989) at 40 CFR 122.44(d). The regulations at 40 CFR 122.44(d) describe the procedures that permitting authorities must use when determining whether a discharge causes, has the reasonable potential to cause, or contributes to an instream excursion above a narrative or numeric toxicity criterion within a State water quality standard.

Many commenters expressed concern over the cost of toxicity testing and the lack of qualified laboratory facilities available to perform the tests. EPA has found that costs for toxicity testing range from a few hundred dollars for a simple one time screening analysis to one or two thousand dollars per month for a monthly chronic toxicity analysis. Typical monthly or quarterly testing costs are comparable to many other types of chemical monitoring costs.

EPA has also found that there are many competent labs around the country capable of performing these tests. The Agency recently contracted with several labs to perform toxicity tests in support of each EPA Region's toxics control program. It is the responsibility of the permittee to find an appropriate facility and have its samples shipped, if necessary, and

analyzed. EPA's Environmental Monitoring and Support Lab in Cincinnati is currently developing guidance for lab certification which States can use to certify competent labs and to provide permittees with lists of labs capable of conducting toxicity tests.

One commenter stated that the regulations should allow time for the solicitation and subsequent awarding of contracts to conduct toxicity tests and that the proposed deadline for submission of test results would be unreasonably burdensome.

In response, the Agency points out that the regulations do not require POTWs to solicit contracts for the performance of toxicity tests. Since toxicity testing is only required every five years as part of certain POTWs' NPDES permit applications, these POTWs should have ample time to find suitable laboratories.

One commenter noted that the added workload to permitting authorities for reviewing the screening data has not been addressed. EPA has estimated these and other costs associated with implementing the proposed requirements and they are available as part of the public record of this rulemaking. The Agency believes that improved control of toxic and hazardous pollutants occasioned by today's toxicity testing requirements justifies the added workload to permitting authorities.

c. Today's Rule

Today's rule provides that any POTW with a design influent flow equal to or greater than one million gallons per day and any POTW with an approved pretreatment program or which is required to have such a program must provide the results of whole effluent biological toxicity testing to the Director as part of their NPDES permit; applications. Tests submitted under today's rule must have been conducted since the last NPDES permit reissuance or permit modification under § 122.62(a), whichever occurred later. The Director may also require other POTWs to submit the results of toxicity tests with their applications, based on consideration of the variability of pollutants in the effluent, the dilution of the effluent in the receiving water, existing controls on point and nonpoint sources, receiving stream characteristics, and other considerations. In conducting the testing, POTWs must use EPA's methods or other protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity.

2. Sludge Control

The provisions of the amended CWA dealing with the regulation of sewage sludge have far-reaching implications for the pretreatment program. The amendments mandate the promulgation of specific numeric limits for toxic pollutants in sewage sludge and/or the specification of acceptable sludge management practices, and require that these standards be implemented through permits. To carry out these requirements, EPA has proposed technical standards for an initial group of toxic pollutants for the five major sludge use and disposal methods: agricultural and non-agricultural land application, distribution and marketing, incineration, sludge-only landfills, and surface disposal sites. These standards were proposed on February 6, 1989 (54 FR 5746). EPA earlier proposed regulations governing sludge disposal in municipal solid waste landfills (MSWLFs) on August 30, 1988 (53 FR 33314).

In addition to calling for the promulgation of technical criteria for the use and disposal of sewage sludge, the 1987 amendments to section 405 also contain a significant departure from previous statutory provisions regarding implementation. The amendment prohibits the use or disposal of sludge except in compliance with EPA's regulations and requires the implementation of the standards through a permitting system. This means that, for the first time, federal technical standards will be implemented through permits issued to treatment works treating domestic sewage. When the sludge standards are promulgated, NPDES permits issued to POTWs or other treatment works treating domestic sewage must include these requirements unless they are included in another permit under listed federal permit programs or an approved state sludge management program. On May 2, 1989, EPA promulgated final regulations for implementing sludge standards into NPDES permits and for developing approvable State sludge permitting programs.

Section 405(d)(4) as amended also requires that, before promulgation of the criteria, the Administrator shall include sludge conditions in permits issued to POTWs under section 402 or take such other measures as the Administrator deems appropriate to protect public health and the environment from adverse effects which may occur from toxic pollutants in sewage sludge. To incorporate sludge conditions into permits before promulgation of the standards, such conditions will have to be developed on a case-by-case basis. To implement this requirement, the Agency has developed a "Sewage Sludge Interim Permitting Strategy" which explains EPA's strategy in implementing this CWA provision. EPA has also completed guidance (signed in December 1989) which will be distributed in early 1990 to EPA Regions, States, and interested parties. This "Guidance for Writing Case-by-Case Permit Requirements for Municipal Sewage Sludge" is designed to assist permit writers in developing "best professional judgment" permit conditions prior to promulgation of the technical standards. In September 1989, EPA also issued the "POTW Sludge Sampling and Analysis Document" for use in sewage sludge monitoring. In addition, the Agency conducts workshops several times a year on writing sludge permit conditions.

This improved regulation of sewage sludge quality will drive the development of local limits to keep pollutants that could contaminate the sludge and interfere with its proper use and disposal from entering the treatment plant. Thus, this effort will further the development of effective pretreatment programs and will help to identify and control the discharge of hazardous wastes and hazardous constituents to POTWs.

3. Control of Indirect Dischargers: Commercial Centralized Waste Treaters (40 CFR 403.3 (e) and (o), 403.5(c), 403.6(e), 403.8))

a. *Proposed change.* Commercial centralized waste treaters (referred to herein as CWTs) are facilities that treat wastes received from off-site generators of those wastes. The Agency first proposed to specifically address CWTs that discharge to POTWs as part of the proposal, published on June 12, 1986 (51 FR 21456), to implement the recommendations of the Pretreatment Implementation Review Taskforce ("PIRT"). The preamble to that proposal clarified that under the current requirements, categorical pretreatment standards apply to the wastewaters generated by certain industrial processes and discharged to a POTW, regardless of whether they are finally discharged by an industrial generator or some intermediate entity such as a CWT. For those CWTs that mix process categorical wastewater with other wastes prior to pretreatment, the preamble indicated that the combined wastestream formula (CWF) in 40 CFR 403.6(e) should be used to calculate alternate discharge limits. The proposed rule would have codified this

requirement and would have required generators of wastes to supply the information necessary for calculating the limits. Three other alternatives were discussed in the June 12, 1986 proposal: (1) Promulgating national categorical standards for CWTs, (2) relying solely on POTW-developed local limits, and (3) limiting each pollutant discharged from the CWT by applying the most stringent parameter for that pollutant taken from all the categorical standards applicable to the wastes received by the CWT. EPA did not amend its regulations, or current requirements applicable to CWTs, in the final PIRT rule. Instead the issue was deferred and again addressed in the proposal to today's rule (November 23, 1988, 53 FR 47632). That proposal solicited comment on the same alternatives, but proposed an additional one: POTWs would be required to obtain and implement authority to regulate CWTs by developing local limits based on the best available technology economically achievable (BAT), which would be determined by each POTW for its CWTs using best professional judgment (BPJ). If the POTW determined that the combined removal by the CWT and the POTW was less than the removal that would be achieved by BAT, the POTW would set a limit equal to the BAT limits, but adjusted for removal by the POTW.

b. *Response to comments.* The Agency received numerous comments in support of and opposing each alternative and recommending additional alternatives. These comments raised technical, legal and economic concerns. The Agency has decided to collect additional data before deciding whether to finalize any of the alternatives. Data that would assist in the decision include more information on the types, variability, environmental effects, and treatability of wastes received and discharged by CWTs. Such data would also assist the Agency in providing guidance on how to implement its decision. Once the data are obtained, the Agency may determine that it is necessary to consider options not within the current proposals, and to make additional proposals. Otherwise it will base its decision on the proposals currently outstanding and the comments received thereon.

The Agency reiterates its previously stated position (see 51 FR 21456) that any national categorical standard that would apply to a waste if discharged by its generator continues to apply if the waste is shipped off-site to a CWT that is an industrial user of a POTW. Where such wastes are mixed with other process wastestreams prior to discharge, the combined wastestream formula may be used to determine the applicable limit. The Agency recognizes the practical difficulties in applying the CWF faced by CWTs that receive categorical wastes in substantial or highly variable quantities. CWTs experiencing difficulties in applying the CWF may wish to either: (1) Segregate categorical wastes and provide batch treatment to the levels required by applicable categorical standards, or (2) treat a mixture of categorical and other wastes such that each pollutant discharged is in compliance (after correction for dilution flows) with the most stringent numerical limit prescribed for that pollutant in any of the categorical standards applicable to the wastes being treated. EPA believes that either of these options has the potential for substantially reducing the paperwork of CWTs that would otherwise be required to use the CWF, while still assuring treatment of categorical wastes in accordance with categorical standards.

As discussed in section H.1 below, today's rule requires POTWs to determine the necessity of developing local limits to prevent pass through and interference. The Agency encourages POTWs to pay particular attention to the effluent from CWTs in developing those limits.

c. *Today's rule.* The Agency is postponing promulgation of any additional regulations pursuant to the proposals regarding CWTs.

4. Categorical Standards for Other Industries

Section 304(m) of the Clean Water Act, added by the Water Quality Act of 1987, requires the Agency to establish a schedule for the annual review and revision of promulgated effluent guidelines, and to establish a schedule for promulgation of new BAT guidelines and new source performance standards for industries discharging toxic or nonconventional pollutants. On August 25, 1988 (53 FR 32584), the Agency published a notice of its proposed plan to implement section 304(m). That notice contained a discussion of the Agency's proposed decision-making process to set priorities for the development of new or revised effluent guidelines. Although not required by section 304(m), that notice said that EPA would develop categorical pretreatment standards whenever appropriate when developing guidelines for categories of dischargers. Some of the categories which the Agency said it would consider as candidates for new or revised guidelines were identified in the Study as significant contributors of hazardous constituents to POTWs.

One commenter on the November 23, 1988 proposal criticized EPA for not moving swiftly enough to promulgate new or revised categorical pretreatment standards in accordance with the recommendations of the Study and the mandate of section 304(m). This commenter stated that existing categorical standards cover an insufficient number of toxic and hazardous pollutants, and that many industries discharging large amounts of such pollutants are not covered by categorical standards at all.

On January 2, 1990, the Agency published a final notice announcing the Agency's initial plan for reviewing existing guidelines and promulgation of new effluent guidelines to implement section 304(m). This notice established a schedule for reviewing existing regulations and for selecting categories of dischargers of toxic or nonconventional pollutants for which guidelines have not previously been published. Many of the industries for which the Agency has established schedules were recommended by the Study as potential candidates for new or revised categorical pretreatment standards.

G. Enforcement Issues

1. Revision to Local Limits (40 CFR 122.21(j)(2))

a. *Proposed change.* The existing pretreatment regulations provide that the development of local limits (or a demonstration that they are not necessary) is a prerequisite to approval of a POTW pretreatment program and the continuing legal acceptability of an approved program. Although the existing regulatory language does not explicitly require POTWs to update local limits, EPA has previously stated that local limits must be updated as necessary to reflect changing conditions at the POTW (51 FR 21459, June 12, 1986). Because of the importance of up-to-date local limits in controlling pass through and interference from toxic and hazardous pollutants, EPA proposed on November 23, 1988 to revise 40 CFR 122.21(j)(2) to require POTWs to evaluate in writing the need to update their local limits as part of their NPDES permit application (i.e., once every five years at a minimum). If the Director determines that a particular POTW should evaluate the need for revision more often, it may so specify in the NPDES permit or approved pretreatment program (as incorporated by reference in the permit).

This provision would not require POTWs to update their local limits

when such revision is not needed. Instead, EPA is establishing a minimum frequency for formal evaluation of the need for revised limits. Examples of events that might indicate the need for such a revision include changes in the POTW's NPDES permit, changes in sludge disposal standards or POTW sludge disposal methods, modifications to the treatment plant, addition or deletion of significant industrial users, and changes in industrial users' processes or pretreatment operations. These events could all affect the likelihood of interference with POTW operations or possible lack of compliance with the POTW's NPDES permit. The minimum frequency for formal evaluations will give the POTWs more precise notice of their legal responsibilities and should facilitate EPA enforcement actions in some situations where POTWs are not fulfilling their obligations to develop and update local limits. Regular evaluation of the need for revised limits should also lead to more effective limits on the discharge of toxic and hazardous wastes, thereby preventing pass through and interference.

The Agency solicited comments on whether POTWs should be required to conduct the evaluation more often. For example, POTWs might be required to conduct the evaluation whenever multiple instances of pass through or interference had occurred (such as two or more violations in a quarter), in order to determine if existing local limits were adequate to prevent these occurrences. POTWs could also be required to submit such evaluations annually as part of the annual reports required under 40 CFR 403.8(i).

b. *Response to comments.* The Agency received many comments on the proposed rule from States, POTWs, environmental groups, and industry. The vast majority of the commenters favored the rule as proposed. A small minority of commenters expressed concern over the proposed provision.

One area of concern involved the level of POTW discretion in the timing and performance of local limits evaluations. One commenter stated that the frequency for evaluation of local limits should be left entirely to the POTW since the POTW is in the best position to know the nature and effect of the discharges into its system. Another commenter observed that development of local limits should already have taken into account changes in a POTW's system (e.g., projected increase in the number of industrial users, etc.). Therefore, it was believed that the POTW should determine when changes to local limits should be made.

EPA is not persuaded by the argument that no mimimum frequency for evaluating the need for revision is necessary. The Agency believes that the evaluation of local limits at least every five years is necessary to address any changes in the POTW's NPDES permit, any problems in compliance with the permit, changes in sludge disposal methods, or changes to the treatment plant. However, actual changes to local limits would be made only when the evaluation indicates the need for updating the local limit, or when otherwise required by applicable provisions in POTW's approved programs or NPDES permits.

One commenter inquired as to what was meant by a "formal evaluation" of local limits. The Agency intends the formal evaluation to be a written technical evaluation by the Control Authority determining whether or not there is a need to revise the existing local limits at the time of permit application, and the reasons for this determination. To clarify this requirement, today's rule requires a written technical evaluation of the need to revise local limits, rather than a "formal" evaluation.

There was almost universal opposition to the suggestion that local limits should be evaluated annually. The Agency agrees that annual evaluation of local limits is not routinely necessary and therefore is not promulgating that requirement as part of today's final rule.

c. *Today's rule.* Today's rule provides that all POTWs must provide a written technical evaluation of the need to revise local limits as part of their NPDES permit applications.

2. Inspections and Sampling (40 CFR 403.8(f)(2)(v))

a. *Proposed change.* The existing regulations (40 CFR 403.8(f)(2)(v)) require that POTWs with approved pretreatment programs must be able to randomly sample and analyze the effluent from their industrial users and conduct surveillance and inspections to identify noncompliance with pretreatment requirements. However, these regulations do not specify how often such POTWs must perform the sampling analysis and surveillance.

In the 1986 "Pretreatment Compliance Monitoring and Enforcement Guidance," the Agency recommended that POTWs conduct at least one inspection and/or sampling visit annually to all "significant industrial users." EPA emphasized in the Guidance that more frequent monitoring should probably be conducted in certain cases: e.g., where an industrial facility has exhibited a marked inability to achieve and maintain compliance with pretreatment standards.

In order to facilitate implementation of existing requirements by specifying a standard for how often POTWs must inspect and sample the effluent of their significant industrial users, EPA proposed on November 23, 1988 to modify 40 CFR 403.8(f)(2)(v) to require POTWs with approved pretreatment programs to inspect and sample all "significant industrial users" at least once every two years. EPA believes that inspection and sampling of these users at least this often should help POTWs avert pass through and interference by keeping better track of the more significant industrial dischargers into their treatment and collection systems (especially dischargers of toxic and hazardous pollutants). The proposed revisions should also provide a uniform program requirement that EPA can readily enforce if necessary.

The Agency solicited comments on whether the biennial inspections and sampling requirement was sufficient or if annual inspections and sampling should be required. EPA also requested comment on whether the proposed regulation represented a redundant requirement in the face of existing reporting and monitoring requirements and whether to require POTWs to target certain compounds (such as RCRA appendix VIII hazardous constituents) in their sampling of significant industrial user discharges.

b. *Response to comments.* The Agency received many comments on the proposed rule. Comments were submitted by States, POTWs, environmental groups, and private industry. The commenters were evenly split with regard to favoring or opposing the proposed rule. Many commenters stated that the rule should specify annual inspections and sampling while others stated that a minimum of biennial inspections and sampling was adequate. A few of the commenters believed that the frequency of inspections and sampling should be left entirely to the POTW's discretion. Some of the commenters stated that the proposed rule was redundant in light of existing requirements for self-monitoring and reporting by categorical industrial users and proposed requirements for significant non-categorical industrial users.

The Agency does not agree with the assertion that these requirements are redundant. One of the principal purposes and benefits of an annual compliance monitoring program is the

independent verification of the compliance status of the industrial user by the Control Authority. This annual presence provides a means to determine whether the information the POTW receives is adequate in terms of sampling techniques and lab procedures. It also provides a way to evaluate the recordkeeping procedures of the industrial user as well as the operation and maintenance of the pretreatment facility. This annual presence also provides a deterrent value by encouraging the industrial user to maintain appropriate operation and maintenance procedures as well as helping to ensure proper recordkeeping and lab procedures. These benefits are not possible through the review of self-monitoring reports alone. Therefore, the Agency disagrees with the claim that this is a redundant requirement, because the goal of this provision is not simply to receive data but also to provide effective oversight of industrial user operations.

One commenter stated that any specification of inspection and monitoring frequency would limit the ability of the POTW to make rational determinations based on local considerations. It was felt that any more stringent frequency would excessively limit the needed flexibility of the POTW in planning for inspections and sampling of its industrial users. Another commenter was of the opinion that more frequent than biennial inspections and sampling might become so demanding as to prevent a POTW from focusing its attention on actual cases of effluent violations.

However, other commenters did not believe that a minimum frequency of biennial inspections and sampling was sufficient to oversee industrial user compliance. One POTW stated that it supported a minimum frequency, but it believed that it would be difficult to maintain, in the face of competing programs, its current level of two to eight visits per year in the face of regulations which allow for a significantly reduced effort. Many commenters pointed out that the proposed rule was inconsistent with existing EPA guidance regarding inspections and sampling of significant industrial users. These commenters stated that previous instructions from EPA during audits and inspections as well as in workshops directed Control Authorities to establish annual monitoring frequencies for their significant industrial users. Another commenter expressed concern over allowing biennial monitoring and stated its belief that annual oversight provided greater credibility to the reported self-monitoring information. A final commenter said that this proposal ran counter to the recommendations found in the Domestic Sewage Study and that the intent of these recommendations was to provide a stronger effort in pollution control.

EPA is persuaded by these arguments in favor of a requirement for annual inspections and sampling of significant industrial users. The purpose of the rule is to ensure consistent tracking of industrial users with the potential to adversely affect the operation of the treatment works. Requiring annual inspections and sampling will provide for more effective oversight of industrial user compliance, consistent with EPA Guidance. For these reasons, EPA is today requiring that POTWs with approved pretreatment programs sample and inspect all significant industrial users at least once a year.

The Agency does not agree with those commenters who said that specifying a minimum inspections and sampling frequency would excessively limit the POTW in planning for inspections and sampling of industrial users. The Agency, in its 1986 "Pretreatment Compliance Monitoring and Enforcement Guidance" recommended that Control Authorities conduct at least one inspection and/or sampling visit annually for all significant industrial users. This recommendation has also been made during pretreatment inspections and program audits. By specifying a minimum compliance monitoring frequency, the Agency is establishing uniform program requirements to assist in program oversight and which can be readily enforced if necessary. In addition, the Agency points out that this requirement applies only to significant industrial users. EPA has allowed considerable flexibility and discretion for non-significant industrial users with regard to effluent sampling and other regulatory requirements. EPA does not believe that implementation of today's rule will prevent POTWs from dealing with actual cases of effluent violations or from adequately implementing other requirements of their approved programs. Many POTWs are already implementing an inspections and sampling scheme with frequencies far greater than required by today's rule, and there have been no observed difficulties in addressing violations or maintaining compliance with other requirements of approved programs.

Finally, the Agency solicited comments on whether to require that POTWs target certain compounds in their sampling, such as RCRA appendix VIII hazardous constituents. There was universal opposition to this proposal and many commenters indicated that it would be excessively burdensome without producing environmental benefits. Upon evaluation of the comments submitted, EPA has determined that routine monitoring for RCRA appendix VIII hazardous constituents is not nationally necessary for preventing interference or pass through or for preventing sludge contamination. The POTW has the flexibility to require monitoring of these substances if they pose potential problems for the operation of the POTW. The POTW should, however, sample for all regulated pollutants discharged to the treatment works.

c. *Today's rule.* Today's rule requires POTWs with approved pretreatment programs to conduct at least one inspection and sampling visit annually for each significant industrial user.

3. Definition of Significant Industrial User (40 CFR 403.3(t))

a. *Proposed change.* All industrial users which discharge wastes to POTWs are required to comply with the general pretreatment regulations found in 40 CFR part 403. While the general pretreatment regulations include very specific requirements for categorical industries, the regulations are less clear about certain obligations for noncategorical industries. In the 1986 "Pretreatment Compliance Monitoring and Enforcement Guidance", the Agency established a definition for what would constitute a significant industrial user. This definition was in part designed to identify those non-categorical industrial users which are likely to have the most significant impact on the POTW, and for which additional pretreatment requirements might be justified.

In order to provide national consistency in the application of pretreatment requirements and to enhance program enforceability, the Agency proposed on November 23, 1988 to amend 40 CFR 403.3 to add a new definition of "Significant Industrial User" which was generally consistent with the 1986 Guidance. Under the proposal, a "significant industrial user" was defined as: (1) All dischargers subject to categorical pretreatment standards; (2) all noncategorical dischargers that, in the opinion of the Control Authority, have a reasonable potential to adversely affect the POTW's operation; (3) all noncategorical dischargers that contribute a process wastestream which makes up 5 percent or more of the

average dry weather capacity of the POTW treatment plant, or that discharge an average of 25,000 gallons per day or more of process wastewater to the POTW. Under the proposal, the Control Authority need not designate as significant any noncategorical industrial user in category (3) above that, in the opinion of the Control Authority and with the agreement of the Approval Authority, had no potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement. The agreement of the Approval Authority would not be necessary in cases where the noncategorical discharger would have been designated as significant only because of an average discharge of 25,000 gallons per day or more of process wastewater. The proposal also would have allowed any noncategorical industrial user designated as significant to petition the Control Authority to be deleted from the list of significant industrial users on the grounds that it had no potential for adversely affecting the POTW's operation or violating any pretreatment standard or requirement.

The Agency intended to provide with this definition a means for POTWs to set priorities for monitoring and enforcement activities, including self-monitoring by the industrial user. In addition, the definition would provide a basis for establishing reporting requirements for non-categorical industrial users and for Control Authority reporting to the Approval Authority regarding industrial user compliance. The definition would also provide national consistency in the implementation and reporting of pretreatment requirements and would assist Control Authorities in identifying the effective use of permitting, monitoring and enforcement resources. In addition to these benefits, the proposed regulatory definition would provide better notice to POTWs of what constitutes a well-structured pretreatment program. One basic goal was to require that similar industrial facilities be treated consistently with regard to reporting and monitoring requirements.

EPA solicited comments on the Noveber 23, 1988 proposal, and also invited comments and suggestions on the following issues: whether to allow POTWs to delete categorical users from the significant industrial user list; the appropriateness of the 25,000 gallons per day criteria; the role of the Approval Authority in designating significant industrial users; expanding the definition of significant industrial user to include notifiers of hazardous waste dischargers; and requiring POTWs to estimate in annual reports whether the amount of hazardous waste received during the last calendar year has increased significantly and whether any change has affected operations at the POTW.

b. *Response to comments.* The Agency received many comments on the proposed rule which were submitted by States, local POTWs, environmental groups and private industry. The majority of the commenters generally favored the rule, although many suggested modifications. Some commenters were of the opinion that there should not be any regulatory definition for significant industrial user. As explained above and in the preamble to the proposed rule, the purpose behind the proposed definition is to provide national consistency and program enforceability, as well as to provide notice of what constitutes a well-structured pretreatment program and to ensure equity in program implementation. It is EPA's belief that this definition is necessary since several parts of today's rule impose requirements applicable only to significant industrial users.

i. *Role of the approval authority in identifying significant industrial users.* The largest number of comments received on the proposed definition addressed the procedures for listing or delisting industrial users and the role which the Approval Authority would play in this process. All commenters seemed to agree that the POTW should be allowed to add or delete certain industrial users from the significant industrial user list, but there was disagreement on whether and under what circumstances to require the agreement of the Approval Authority in this process. Two comments from POTWs stated that there should not be a requirement to seek prior consent from the Approval Authority to delete or add an industrial user from the list of significant industrial users because the Approval Authority can review these changes in the POTW's annual pretreatment report and during other oversight functions. Another commenter stated that the Approval Authority is not in a position to evaluate a discharger's potential to adversely affect a POTW's operation. It was stated that the Approval Authority must rely on the recommendation and data supplied by the Control Authority in designating significant industrial users and that requiring the agreement of the Approval Authority would create an unnecessary bureaucratic step which would lead to delays. It was recommended that the Control Authority be allowed to simply notify the Approval Authority of its intent not to include, or remove, an industrial user from the list and to have that decision stand unless the Control Authority was in violation of its NPDES permit requirements.

Some of the commenters, on the other hand, favored a strong role for the Approval Authority in designating the universe of significant industrial users. One commenter believed that the political influence often exercised by significant industrial users was sufficient to require a strong oversight presence by the Approval Authority. It was stated that the independent evaluation of the Approval Authority was necessary as an important check on the POTW's exercise of its discretion, especially in cases where there might be pressure exerted by the industry to be removed from the list of significant industrial users (and the subsequent regulatory requirements for such industrial users). In addition, it was stated that if the Control Authority fails to place a significant industrial user on the list, the Approval Authority should have the power to require the listing of that industrial user.

The Agency does not agree that adequate oversight can be achieved through a simple review of the POTW's annual pretreatment report or through other routine compliance monitoring activities on the part of the Approval Authority. The Agency believes that notification should be required to make the Approval Authority aware of any changes to the approved program. Prompt notification is necessary for proper oversight of approved programs and to ensure proper enforcement of program requirements. The Approval Authority has the obligation to evaluate compliance, and therefore needs to be made aware of any changes to the scope of the program as soon as possible, rather than in an annual report. For example, the Approval Authority needs to know if the numbers of industrial users subject to permitting, monitoring, and reporting are undergoing a significant change. If the Approval Authority is not made aware of these changes, tracking program implementation would become extremely difficult. In addition, if the Approval Authority does not have the opportunity to object to unjustified designations or de-designations of significant industrial users, then the Control Authority might be subsequently liable to enforcement action from the Approval Authority.

There was also some stated confusion regarding at what point Approval Authority consent would be necessary, including whether the POTW should use the procedures for non-substantial program modifications promulgated in 40 CFR 403.18(b)(2). One commenter believed that the rule should explicitly state that listing and delisting of SIUs constitutes a minor program modification.

To address these concerns and avoid possible confusion, the Agency has modified the language of the proposal concerning consent of the Approval Authority. Today's rule adds a new provision, 40 CFR 403.8(f)(6), which requires the POTW to prepare a list of its significant industrial users. The list shall identify the criteria for significance applicable to each industrial user. For non-categorical users meeting the criteria for significance, the list shall indicate whether the POTW has made a determination that such industrial user has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement. This list, and any subsequent modifications thereto, shall be submitted to the Approval Authority as a minor program modification pursuant to 40 CFR 403.18(b)(2). EPA believes that this language gives clearer notice to POTWs of their responsibilities and of the role of the Approval Authority in approving significant industrial user lists and subsequent modifications. 40 CFR 403.8(f)(6) replaces the proposed revisions to 40 CFR 403.12(i)(1) that would have required updating lists of significant industrial users in POTW annual reports and an explanation of why certain noncategorical users were not designated as significant. Today's rule requires that any modifications to the list of significant industrial users be submitted to the Approval Authority as a minor program modification. Since modifications to the list will normally take place at a minimum of once a year in most pretreatment cities, the Agency believes that requiring an update of significant industrial users in the annual report is not necessary. EPA notes that 40 CFR 12(i)((4) provides that the annual reports shall contain "any other relevant information requested by the Approval Authority". Approval Authorities may therefore request additional information or more frequent updating of a particular POTW's significant industrial user list if they believe it appropriate.

Today's rule also makes a conforming change to proposed 40 CFR 403.8(f)(2)(iii) to provide that, within 30 days of approval pursuant to 40 CFR 403.8(f)(6) of a list of significant industrial users, the POTW must notify each significant industrial user of its status as such and of all pretreatment requirements applicable to it as a result of such status.

ii. *Use of flow in determining significance.* The use of the 25,000 gallon per day flow criterion received considerable comment from States, POTWs, environmental groups, and private industry. In general, the commenters were of the opinion that the 25,000 gallon per day criterion was either too low or that no flow criterion should be included in the definition at all. One commenter believed that the flow criterion served no purpose because the proposed definition allows the Control Authority to fail to designate or to delete these industrial users without the consent of the Approval Authority. Another commenter stated that relative, not absolute size is important in determining significance and that size is adequately covered in the 5 percent criterion in the existing definition. One POTW suggested that a two-tiered approach be used with POTWs with less than 5 million gallons per day design flow using 25,000 gallons per day and POTWs with a design flow greater than 5 million gallons per day using 50,000 gallons per day.

The major purpose of defining significant industrial user is to provide a means by which EPA can set priorities in its general pretreatment standards and Control Authorities can set priorities for permitting, monitoring and enforcement. The Agency believes that the flow criterion can be used as a screen by the POTW to set priorities for permit applications in their initial evaluation of industrial users, and for updating the significant industrial user list annually. The 25,000 gallon per day measure will provide a general cutoff point for consideration in determining whether a facility should be targeted for compliance monitoring and enforcement activities. Under 40 CFR 403.8(a), the Regional Administrator or Director may, at his discretion, require that a POTW with a design flow of 5 million gallons per day or less develop a pretreatment program in order to prevent pass through or interference. The smallest POTWs generally required by the Regional Administrator or Director to have a pretreatment program under the discretionary authority of 40 CFR 403.8(a) have a design flow of 500,000 gallons per day. EPA chose 25,000 gallons per day as a flow criterion for significant industrial users in part because that figure represents five percent of the flow of the smallest POTWs required to have a pretreatment program. The Agency believes that a 50,000 gallons per day criterion would not capture many non-categorical significant industrial users with a potential to adversely affect smaller POTWs. POTWs may, in their discretion, and subject only to review by the Approval Authority as a minor modification, delete any or all of the facilities which were placed on the significant industrial user list based solely on flow. EPA does not wish to overrule POTWs on a routine basis when it comes to the designation of industrial users as significant. The purpose of the notification requirement is to provide the Approval Authority with information necessary to prevent the deletion of significant industrial users by POTWs without justification. It is EPA's position that this notification is necessary for proper and appropriate oversight of program implementation.

One commenter believed that the new regulatory definition would impose an increased paperwork and administrative burden on the POTW. The proposed definition of significant industrial user is closely related to the recommended definition provided in the 1986 "Pretreatment Compliance Monitoring and Enforcement Guidance," and as such, has been available to POTWs for over three years. Many Control Authorities have already adopted the definition found in the Guidance. EPA believes that most Control Authorities are familiar with the definition and have already incorporated it in their implementation activities.

iii. *Other.* The Agency also solicited comment on whether to allow deletion of categorical users from the list of significant industrial users. A majority of the commenters favored a procedure for deleting categorical industrial users from the lists, but one Approval Authority stated its strong objection to any procedure for deregulating categorical industrial users. There was a suggestion that a de minimis limit of 1000 gallons per day could be used for delisting categorical industrial users from the list of SIUs. Another commenter suggested that only the Approval Authority should be allowed to delete a categorical industrial user from the list of SIUs.

After reviewing these comments, EPA is not persuaded that a POTW should be able to delete categorical industrial users which, in the opinion of the POTW, have no reasonable potential to adversely affect the operation of the POTW. In the development of categorical standards, EPA made a determination that these standards were

necessary in the case of certain industries to prevent pass through and interference. Based on this determination, the Agency promulgated standards which restrict the discharge of pollutants by these industries. It is therefore important that the compliance of these industries with categorical standards be assured. Therefore, today's rule does not allow categorical industrial users to be deleted from the list of significant industrial users.

Some commenters expressed concern over the burden required to prove that an industrial user had "no potential" to adversely affect the operation of the POTW. It was suggested that EPA provide guidance regarding this issue if the current language is maintained in the final rule. In the 1986 "Pretreatment Compliance Monitoring and Enforcement Guidance," the Agency stated that the Control Authority may remove any noncategorical industrial user from the SIU list if it has "no reasonable potential" to violate any pretreatment standards. Under today's rule, the Control Authority may remove an industrial user (subject to the consent of the Approval Authority) based on whether it has a reasonable potential to adversely affect the operation of the POTW or to violate any pretreatment standard or requirement. The determination of reasonable potential should be based on the best professional judgment of the POTW and should take into account the compliance history of the facility, the nature and character of the effluent, and the flow of the facility.

One commenter from a State Approval Authority stated that the proposed definition lacks sufficient objective criteria for determining significance. It was suggested that objective criteria are needed regarding potential impact of an industrial user in terms of the design capacity of the treatment works. In relation to this, another commenter noted that the 1986 Guidance provides that a facility "contribut[ing] a process wastewater which makes up 5 percent or more of the average dry weather hydraulic *or organic* capacity of the treatment plant" would be considered significant. This commenter suggested that the final rule should conform to the Guidance definition. EPA agrees that facilities contributing 5 per cent or more of the average organic capacity of the treatment plant may have significant potential to adversely affect the POTW, since large concentrations of Biochemical Oxygen Demand (BOD) or Total Suspended Solids (TSS) could impair the biological capacity of the plant to treat all incoming wastes. The final rule will therefore incorporate organic capacity as part of the regulatory definition.

One industry commenter objected to the proposed definition of significant industrial user on the grounds that it created additional reporting and monitoring requirements for categorical industrial users. However, today's rule places no additional reporting or monitoring requirements on categorical significant industrial users.

A final issue raised by the proposed rule was whether to expand the definition of significant industrial user to include notifiers of hazardous waste discharges under proposed 40 CFR 403.12(p). There was almost unanimous opposition to this proposal from the commenters. In light of this opposition and upon reviewing this issue, it is EPA's position that notifiers of hazardous waste discharges should not be automatically considered significant industrial users for purposes of pretreatment, since the discharge of small amounts of hazardous waste do not necessarily have the potential to adversely affect the POTW. The POTW, of course, may designate such facilities as significant if a particular facility has the potential to cause interference, pass-through, or sludge contamination at the POTW, or pursuant to state or local law.

c. *Today's rule.* Under today's rule, a significant industrial user is: (1) Any discharger subject to categorical pretreatment standards; (2) any other industrial user that discharges an average of 25,000 gallons per day or more of process wastewater (excluding sanitary, noncontact cooling and boiler blowdown wastewaters) to the POTW or that contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or (3) that is designated as such by the Control Authority on the basis that the industrial user has a reasonable for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement. Upon a finding that a noncategorical user has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority may at any time, upon its own initiative or in response to a petition received from a noncategorical industrial user or POTW and with the consent of the Approval Authority, determine that such industrial user is not a significant industrial user. Today's rule also requires POTWs to prepare a list of their significant industrial users, identify the criteria applicable to such users, and indicate whether the POTW has made a determination that any noncategorical user meeting the criteria in 40 CFR 403.3(t)(1)(ii) should not be a significant industrial user. This list, and any subsequent modifications thereto, shall be submitted to the Approval Authority as a minor program modification pursuant to 40 CFR 403.18(b)(2). Within 30 days of approval of the list, the POTW shall notify each significant industrial user of its status as such and of all pretreatment requirements applicable to it as a result of such status.

4. Enforcement Response Plans for POTWs (40 CFR 403.8(f)(5))

a. *Proposed change.* The existing general pretreatment regulations do not specify detailed enforcement requirements applicable to POTWs with approved pretreatment programs. Specific enforcement sanctions identified in the general pretreatment regulations are the requirement to annually publish the names of significant violators in the largest daily newspaper, and the requirement that POTWs have authority to seek or assess minimum civil or criminal penalties of $1000 per day. The existing regulations require POTW program submissions to identify how the POTW intends to ensure compliance, and also require POTWs to enforce all pretreatment standards and requirements and obtain remedies for noncompliance (40 CFR 403.8(f)(1)). However, POTWs are not further informed what their legal responsibilities are in carrying out enforcement actions.

In the 1986 "Pretreatment Compliance Monitoring and Enforcement Guidance", the Agency encouraged each POTW to develop an Enforcement Response Guide, which is a set of procedures describing how the POTW will investigate industrial user violations and which corrective or enforcement actions the POTW will take to respond to such violations (the Guidance suggested certain procedures). In order to ensure that POTWs develop and implement specific enforcement procedures, EPA proposed on November 23, 1988 to add 40 CFR 403.8(f)(5) to require all POTWs with approved pretreatment programs to develop and implement an enforcement response plan describing how the POTW will investigate and respond to instances of industrial user noncompliance, including time frames within which the responses will take place.

The Agency believes that the process of developing these plans will be very valuable in helping POTWs decide what

resources are needed to enforce their pretreatment standards and how they will actually deal with industrial user violations. Such plans will also make it easier for EPA to determine whether a POTW is complying with its pretreatment implementation requirements for enforcement. The rule will not interfere with the ability of the POTW to carry out their programs in a manner suited to their needs, nor should such a plan be difficult to develop. The POTW should use the 1986 Guidance, EPA's recently issued *Guidance for Developing Control Authority Response Plans* (September 1989) and its own expertise to develop a reasonable plan to address and remedy noncompliance. The Agency solicited comments on whether to include more specific elements in the regulation.

b. *Response to comments.* EPA received many comments on the proposed rule. Comments were submitted by States, POTWs, private industry and environmental groups. The commenters were generally evenly divided with regard to favoring or opposing the proposed rule. Several commenters were of the opinion that there should not be any regulatory requirement to develop enforcement response plans and that any such provision should be developed as guidance only.

EPA believes that enforcement response plans will help POTWs decide what resources are needed to enforce their pretreatment standards and assist in dealing with industrial user violations. In addition, a clearly defined enforcement response plan will provide notice to industrial users of what to expect if they violate any pretreatment requirement. By alerting industrial users to the possible response they may face in the event of noncompliance, the Control Authority will demonstrate that it is serious about its compliance expectations and is ready to respond to violations with firm measures. This heightened awareness by industrial users should improve their compliance status. Therefore, the Agency is of the opinion that it is appropriate to define these enforcement response plans in the regulation. For this reason, the Agency is today requiring all POTWs with pretreatment programs to develop and implement enforcement response plans.

The majority of the comments against the rule claimed that the procedures outlined in the proposed rule would prevent the POTW from exercising its enforcement discretion by locking the POTW into a cookbook approach to addressing violations. One commenter from private industry believed that the rule would force the POTW to address all instances of noncompliance with equal vigor, regardless of the magnitude of the violation. A POTW commented that rigid enforcement response plan requirements could result in less vigorous POTW pretreatment program implementation. Another POTW stated that establishing standardized national elements for the enforcement response plans would remove necessary flexibility in program implementation. A third commenter believed that the current rule would inhibit innovative means of enforcement. In general, these commenters believed that the rule would hinder rather than help the POTW in its efforts to promote industrial user compliance.

An effective enforcement response plan should provide that similar violations will be dealt with in a similar manner, and that more serious violations will be addressed with more stringent enforcement responses. Therefore, it is incorrect to think that the enforcement response plans will address all instances of noncompliance with equal vigor. With regard to the issue of flexibility, the Agency understands that enforcement strategies will be different from jurisdiction to jurisdiction and that the responses selected by each Control Authority will depend on their legal authority and local circumstances. EPA is defining the principles for enforcement in the regulation, but it is up to the local Control Authority to decide how to incorporate these principles into a functional enforcement strategy, taking into account local circumstances. The Agency does not believe that the use of such plans precludes innovative enforcement strategies.

Even those commenters who favored the rule were concerned that EPA provide enough flexibility to the POTW to decide the details of response procedures appropriate for a particular situation. One commenter believed that the rule as written provided enough flexibility to accommodate the differences in the enforcement process for each community. Most commenters, however, felt that requiring the specification of time frames within the rule itself would place an unreasonable restraint on the POTW's enforcement discretion. Another commenter stated that time frames necessarily vary from case to case.

Enforcement is the necessary driving force that makes environmental laws work. One of the foundations of effective enforcement is the timely response upon discovery of a violation. The Agency is not persuaded by the argument that requiring the development of time frames in the regulation will place an unreasonable restraint on the POTW's enforcement discretion. The actual time frames to be incorporated into the enforcement response plan are being left to the discretion of the POTW (with the agreement of the Approval Authority). EPA understands and appreciates the need for local flexibility in determining appropriate responses, but the Agency believes that requiring the establishment of time frames is an appropriate condition for effective enforcement. The Agency emphasizes that both the proposal and today's rule would not require the same time frames for different types of industrial user noncompliance.

Many of the POTWs that commented stated concern that this rule would make them easier targets for EPA enforcement action. One POTW asserted that the rule was an attempt by EPA to fit local programs into the federal mold and to improve EPA's enforcement capabilities against POTWs. It was thought that a more appropriate requirement would be to make these enforcement response plans a permit requirement for POTWs with interference or pass through problems due to inadequate enforcement.

One of the legitimate purposes of this requirement is to provide EPA with a means to evaluate program implementation by the Control Authority. The present general pretreatment regulations already require POTWs to ensure compliance by industrial users with all pretreatment standards and requirements. Today's revision to the regulations serves to make this requirement more explicit. One of the difficulties in implementing and enforcing pretreatment programs for POTWs has stemmed from a lack of clearly defined policies and procedures. The process of developing enforcement response plans will compel the POTW to lay out its enforcement rationale and will therefore serve to minimize or eliminate the uncertainties concerning enforcement. The Agency is requiring that POTWs lay out a clearly defined strategy to be used in addressing violations. One of the benefits of such an approach is that when the Control Authority discovers that its local enforcement authority has been insufficient to return a recalcitrant industrial user to compliance, the Control Authority may wish to report that situation to the Approval Authority as a possible candidate for joint enforcement action. This partnership between the local Control Authority and the Approval Authority is an anticipated

consequence of this requirement. To provide the Approval Authority with knowledge of who is responsible for the various levels of response, the Agency is today adding a new provision (40 CFR 403.8(f)(5)(iii)), requiring the POTW to identify in enforcement response plans the official(s) responsible for implementing each type of enforcement response.

One commenter was uncertain whether the requirement for the development of enforcement response plans would apply to POTWs that already have approved programs. It is the Agency's intent that all Control Authorities, including those with existing approved programs, develop and implement the requirement of this rule. Therefore, all POTWs with approved programs and those POTWs required to develop a program under 40 CFR 403.8(a) will be required to develop an enforcement response plan. This commenter also suggested that a compliance date be established for the development of these plans. Although the Agency does not agree that a uniform compliance date need be specified in the regulation, EPA points out that all enforcement response plans (as well as other program changes required by today's rule) must be included in the POTW's NPDES permit upon reissuance.

c. *Today's rule.* Today's rule provides that POTWs with approved programs must develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance and shall, at a minimum:

(1) Describe how the POTW will investigate instances of noncompliance;

(2) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

(3) Identify by title the official(s) responsible for implementing each type of enforcement response; and

(4) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as provided in 40 CFR 403.8(f) (1) and (2).

5. Definition of Significant Noncompliance (40 CFR 403.8(f)(2)(vii))

a. *Proposed change.* The existing regulations (40 CFR 403.8(f)(2)(vii)) require Control Authorities to publish, in the daily newspaper with the largest circulation in the service community, a list of industrial users which had significant violations of applicable pretreatment standards and requirements during the previous twelve months. This list must be published at least once per year. "Significant violation" is defined as a violation which remains uncorrected 45 days after notification of noncompliance; which is part of a pattern of noncompliance over a twelve month period; which involves a failure to accurately report noncompliance; or which resulted in the POTW exercising its emergency authority under 40 CFR 403.8(f)(1)(vi)(B).

This definition includes criteria similar to those previously used by Quarterly Noncompliance Reports (QNCRs) for direct dischargers. The Agency uses QNCRs to track the progress and measure the effectiveness of NPDES compliance and authorized state enforcement against direct dischargers. However, in 1985 EPA revised the criteria for the types of violations to be reported in QNCRs (see 40 CFR Part 123.45). The revisions established more precise criteria, known as technical review criteria (TRC), to be used for reporting certain permit violations. The TRC are based on the magnitude and/or duration of the violations and provide a means to quantify severity of violations for reporting of direct discharger noncompliance.

In the 1986 *Pretreatment Compliance Monitoring and Enforcement Guidance*, the Agency included a detailed recommended definition of significant noncompliance by industrial users which incorporated the essence of the new criteria used in determining the violations required to be reported in the QNCR. In the Guidance, EPA recommended the national use of this definition to identify the most serious violations by industrial users and to set priorities for enforcement actions.

Experience with the current regulatory definition of significant violation has shown that POTWs vary considerably in their application of this definition when selecting which names of violators to publish in the local newspaper. This is particularly true in deciding what constitutes a "pattern of noncompliance" under 40 CFR 403.8(f)(2)(vii). To eliminate these inconsistencies and to establish more parity in tracking violations committed by direct and indirect dischargers, the Agency proposed on November 23, 1988 to revise 40 CFR 403.8(f)(2)(vii) to replace the definition of significant violation with a new definition which essentially incorporates the criteria used in determining direct discharge violations to be reported on the QNCR. Under the proposal, an industrial user would be in significant violation if its violations met one or more of the following criteria:

- Chronic violations of wastewater discharge limits, defined as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
- Technical review criteria (TRC) violations, defined as those in which thirty-three percent or more of all of the measurements taken during a six-month period equal or exceed the product of the daily average maximum limit or the average limit times the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority believes has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
- Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment and has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;
- Violation, by ninety days or more after the schedule date, of a compliance schedule milestone contained in a local control mechanism or enforcement order, for starting construction, completing construction, or attaining final compliance;
- Failure to provide required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules within thirty days of the due date;
- Failure to accurately report noncompliance; or
- Any other violation or group of violations which the Control Authority considers to be significant.

The Agency believes that this new definition will provide POTWs with more precise instructions regarding which industrial users in violation of pretreatment standards should have their names published in local newspapers.

EPA solicited comments on the appropriateness of the definition criteria, but emphasized that industrial users would continue to be liable for

any violation of applicable pretreatment requirements.

b. *Response to comments.* EPA received many comments on the proposed rule from States, POTWs, environmental groups, and private industry. The commenters were generally evenly divided with regard to favoring or opposing the proposed rule.

By far the greatest number of comments addressed the fact that under the proposed definition of significant violation, an industrial user could be considered a significant violator based on a single sampling event. This means that if the industrial user performs the minimally acceptable level of monitoring (generally twice per year) and detects a violation, then that industrial user, by definition, would be considered a significant violator. There was a recommendation from several commenters to lengthen the evaluation period for the criteria for chronic violations of wastewater discharge limits and technical review criteria violations from six months to twelve months to allow for the accumulation of more data. Alternatively, one commenter suggested that EPA should specify a minimum number of samples for the determination of what is a significant violation.

In response, EPA points out that the general pretreatment regulations specify only the minimum monitoring and reporting requirements for implementing the pretreatment program. Although it is true that an industrial user can be classified as a significant violator based on data from a single sampling event, an industrial user may increase its sampling frequency to lessen the chance that, for chronic or TRC violations, significant noncompliance will be based on only one sampling event. In addition, it should be noted that 40 CFR 403.12(g)(2) provides that if sampling performed by a categorical industrial user indicates a violation, the user shall repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation.

Three commenters were of the opinion that the technical review criteria (TRC) were too low and that a more realistic and appropriate level for the TRC would be 2.0 for conventional pollutants and 1.5 for all other pollutants. One commenter suggested eliminating this component of the definition altogether. Another commenter suggested that the TRC be separately calculated for each pollutant by incorporating the removal efficiencies at the treatment works. A POTW commented that the TRC criteria should have language which specifies that the TRC applies for "each pollutant parameter."

One of the reasons for the development of the significant violator criteria was to promote parity between the tracking of violations for direct and indirect dischargers. 40 CFR 123.45(a)(2) establishes criteria for determining significant violations for direct dischargers. In the 1986 Guidance, the Agency recommended adopting these same criteria for evaluating significant noncompliance for indirect dischargers. The reportability criteria for the Quarterly Noncompliance Report (QNCR) uses TRC values of 1.2 and 1.4. Therefore, EPA proposed to adopt these same criteria in the regulatory definition of significant violation in the pretreatment program. The Agency does not believe that basing TRC values on the removal efficiencies at the POTW is a viable means to define significant violations, since it would involve calculations by each POTW on its removal efficiencies for many pollutants. EPA does agree, however, that the language in the TRC would be clearer if it specified for "each pollutant parameter," and has accordingly included such language in today's final rule.

Three commenters believed that criterion "C" of the proposed definition would promote arbitrary and inconsistent implementation of the definition and should be eliminated. A separate commenter stated that this criterion was inappropriate because the determination of a significant violation should be based on actual fact and not a "belief" that a discharge has caused interference or pass-through. This commenter recommended that we change the wording of this criterion to "has reason to believe." There was a related concern from private industry that the definition, as proposed, would allow for arbitrary or indiscriminate enforcement without providing for adequate or meaningful legal recourse on the part of the industrial user deemed to be in significant violation of pretreatment requirements. It was stated that certain of the criteria were sufficiently vague as to penalize dischargers without adequate warning and without any opportunity for appeal.

EPA recognizes the need to base allegations of violation on information and not on simple belief. Today's final definition therefore incorporates the phrase "which the Control Authority *determines* has caused, alone or in combination with other discharges, interference or pass through * * *" instead of the language in the proposed definition. For the same reason, the Agency has also incorporated the phrase "which the Control Authority *determines will adversely affect the operation or implementation of the local pretreatment program*" in the last criterion for significant violation, instead of "which the Control Authority considers to be significant", as was proposed. The Control Authority's determination may include a technical analysis documenting interference or pass through or other appropriate evidence which it deems sufficient. EPA believes that the above changes decrease the chance of arbitrary judgments by Control Authorities.

One commenter stated that an affirmative defense should be explicitly included in the definition of significant noncompliance. However, EPA does not believe that POTWs should be burdened with ascertaining which industrial users may be eligible for an affirmative defense under 40 CFR 403.5(a)(2) before satisfying the publication requirement in 40 CFR 403.8(f)(2)(vii). Incorporating the commenter's suggestion into the rule could lead to protracted and counterproductive efforts by POTWs if they had to investigate the eligibility of an industrial user for an affirmative defense prior to publication. In addition, where the eligibility for an affirmative defense is unclear, this requirement would leave POTWs uncertain about their obligations under 40 CFR 403.8(f)(2)(vii). Since the listing of an industrial user in the newspaper does not involve an administrative penalty or judicial action, eligibility for an affirmative defense is unaffected by such a listing, and such eligibility will be determined during administrative penalty or judicial enforcement proceedings. Accordingly, today's rule does not provide for the consideration of eligibility for an affirmative defense in determining whether an industrial user is in significant noncompliance.

In response to the comment that the industrial user is not provided with adequate or meaningful legal recourse, EPA believes that Control Authorities will not arbitrarily list industrial users as being in significant violation of pretreatment requirements. The Control Authority is most likely to base this decision on a reasoned professional judgment in cases where there is discretion provided to the POTW.

Three commenters stated that the POTW should develop its own criteria for what is considered significant because it was believed that the POTW is in the best position to determine what violations cause the greatest damage to the treatment works. These commenters suggested that EPA provide support by

maintaining its current criteria in guidance. One commenter was concerned that the Agency be very careful not to foster activities which might inhibit relations between the POTW and its industrial users. If the POTW then fails to follow its criteria, it would be liable to enforce action by the Approval Authority. In response, EPA points out that both the proposal and today's rule allow POTWs discretion to list any violations they consider significant. Today's rule establishes only minimum requirements, and should not affect relations between POTWs and their industrial users.

One commenter requested clarification regarding whether proposed criterion G, "failure to accurately report noncompliance", included only willful failures or any failures to report.

The general pretreatment regulations specify the signatory requirements for reports submitted by industrial users to the Control Authority. This requirement is designed to provide accountability on the part of the industrial user for the contents of any report, including required reports of noncompliance. In signing the report, the person so signing has confirmed that the report is complete and accurate in all respects. Any failure to report accurately is sufficient justification to list the industrial user as a significant violator.

As noted above, the Agency's 1986 guidance on this subject referred to "significant noncompliance" rather than "significant violation" (the term used in the November 23, 1988 proposal). Since that time EPA has directed Control Authorities and Approval Authorities to use the "significant noncompliance" criteria in determining appropriate responses to industrial user pretreatment violations. This term has been employed in EPA workshops and seminars and is also used as a basis for tracking industrial user noncompliance in the Pretreatment Permits Enforcement Tracking Systems (PPETs), a computer system which assists the Agency in overseeing pretreatment program implementation. For the sake of program consistency, today's regulation therefore refers to "significant noncompliance".

c. *Today's rule.* Today's rule provides that an industrial user is in significant noncompliance if its violations meet one or more of the following criteria:

- Chronic violations of wastewater discharge limits, defined as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
- Technical review criteria (TRC) violations, defined as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily average maximum limit or the average limit times the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
- Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;
- Failure to meet, within 90 days after the scheduled date, a compliance schedule milestone contained in a local control mechanism or enforcement order, for starting construction, completing construction, or attaining final compliance;
- Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- Failure to accurately report noncompliance; or
- Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

6. Reporting Requirements for Significant Industrial Users (40 CFR 403.12(h))

a. *Proposed rule.* 40 CFR 403.12 describes the reports that industrial users must submit to their Control Authorities. To demonstrate continued compliance with pretreatment standards, industrial users subject to categorical standards must submit semi-annual reports that include effluent monitoring data taken during the reporting period, as provided in 40 CFR 403.12(e). The existing regulations provide that Control Authorities must require appropriate reporting from those industrial users with discharges not subject to categorical standards. However, the regulations do not specify a minimum frequency for reporting by noncategorical industrial users to the Control Authority regarding their compliance with applicable pretreatment requirements.

To provide for more effective implementation of the existing requirements and to ensure that this reporting is carried out regularly, EPA proposed on November 23, 1988 to revise 40 CFR 403.12(h) to require that all significant industrial users (as defined under proposed 40 CFR 403.3(u)) submit to their Control Authorities, at least twice a year, a description of the nature, concentration, and flow of pollutants selected for such reporting by the Control Authority. In addition, the proposal would require all significant industrial users to base their reports on data obtained through appropriate sampling and analysis performed during the period covered by the report. Control Authorities may require more frequent monitoring as appropriate.

The Agency solicited comments on the proposed twice-yearly reporting frequency, on limiting the reporting requirements to significant industrial users, and on whether to require significant industrial users to sample for certain compounds, such as the RCRA appendix VIII hazardous constituents.

b. *Response to comments.* The Agency received many comments on the proposed rule from States, POTWs, environmental groups, and industry. A majority of the commenters favored the proposal to require significant industrial users to report with the same frequency as categorical industrial users.

A few of the commenters expressed concern that the rule would require duplicative reporting for categorical industrial users. The assumption was that this provision would require categorical industrial users to report more often than is currently required. This was not EPA's intent in the proposal, as indicated by the title of proposed 40 CFR 403.12(h)—"Reporting Requirements for Industrial Users Not Subject to Categorical Standards". Today's rule clarifies this intent by referring in 40 CFR 403.12(h) to "significant noncategorical industrial users."

A few other commenters stated that the current reporting requirements under 40 CFR 403.12(h) were sufficient and allowed for necessary flexibility in establishing reporting requirements for non-categorical industrial users. There was a concern that the current proposal would restrict that flexibility. These commenters believed that the current regulation is more suitable in dealing with the highly variable group of noncategorical discharges.

The Agency believes that the reporting requirements for all significant industrial users, including categorical and non-categorical users, should generally be the same. Since noncategorical significant industrial users are also likely contributors of toxic and hazardous pollutants to POTWs, EPA sees no reason for less frequent reporting for this group of dischargers. With respect to POTW flexibility, the Agency emphasizes that today's rule establishes only what it believes to be the minimum acceptable frequency for sampling and reporting. POTWs are free to require additional sampling and reporting as frequently as is necessary for a particular discharger. EPA believes that these requirements will give POTWs much more accurate knowledge of non-categorical wastes entering their treatment and collection systems. This knowledge is particularly important because many toxic and hazardous pollutants are not covered by categorical standards. EPA also believes that establishing minimum monitoring frequencies is the only way to ensure that the samples submitted to the POTW are representative and up to date. In order to help ensure that sampling is conducted once every six months instead of twice in one month (as the proposed rule would technically have allowed), the Agency is today requiring sampling reports to be submitted "at least once every six months on dates specified by the Control Authority", instead of "at least twice a year" as was proposed.

Two commenters stated a belief that POTW monitoring should be specified as an acceptable alternative in lieu of industrial user monitoring, as is currently stated in 40 CFR 403.12(g). Since the intent of the regulation is to provide parity between categorical and significant non-categorical dischargers, EPA has amended 40 CFR 403.12(h) to specify that POTW monitoring is acceptable in lieu of industrial user self-monitoring.

With respect to requiring significant industrial users to sample for certain compounds or classes of compounds (such as RCRA appendix VIII hazardous constituents), there was almost universal opposition to this suggestion from the commenters. EPA does not believe that monitoring for these constituents is necessary on a routine basis to prevent pass through or interference. POTWs may require an industrial user to monitor for any or all of these constituents if appropriate on an individual basis. Therefore, this requirement is not part of today's rule. However, EPA has added a requirement to 40 CFR 403.8(f)(1)(iii) that any pollutants required to be monitored must be identified in the individual control mechanism issued to the significant industrial user.

c. *Today's rule.* Today's rule requires noncategorical significant industrial users to submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. The reports shall be based on sampling and analysis performed in the period covered by the report, and, where possible, performed in accordance with the techniques described in 40 CFR part 136. The sampling and analysis may be performed by the Control Authority in lieu of the significant noncategorical industrial user.

H. Miscellaneous Amendments

In addition to the substantive regulatory changes proposed on November 23, 1988, EPA also proposed to clarify certain of the general pretreatment regulations. These proposed non-substantive revisions are discussed below.

1. Local Limits Development and Enforcement

a. *Proposed change.* 40 CFR 403.5(c) provides that POTWs "developing" pretreatment programs must develop and enforce specific limits to implement the general and specific discharge prohibitions. In order to clarify that POTWs with already approved pretreatment programs must also develop and enforce local limits, EPA proposed to revise 40 CFR 403.5(c) to provide that POTWs shall continue to develop and enforce appropriate local limits after developing an approved pretreatment program.

b. *Response to comments.* No significant comments were received on this proposed revision.

c. *Today's rule.* Today's rule revises 40 CFR 403.5(c)(1) to provide that POTWs with approved pretreatment programs shall continue after pretreatment program submission and approval to develop local limits as necessary and effectively enforce such limits.

2. EPA Enforcement Action

a. *Proposed change.* 40 CFR 403.5(e) summarizes procedures that EPA follows to bring certain enforcement actions against an industrial user that has caused interference or pass through at a POTW, i.e., give the POTW 30 days notice to initiate its own enforcement action. However, 40 CFR 403.5(e) may be misleading in not stating that this notice requirement only applies to federal enforcement under section 309(f) of the Act and not to State or other federal enforcement actions. In order to avoid misunderstanding, the Agency proposed to revise the title of 40 CFR 403.5(e) to indicate that these notice procedures only apply to actions brought under section 309(f) of the Act.

b. *Response to comments.* No significant comments were received on this proposed revision. EPA notes that in addition to the above-mentioned title, the text of 40 CFR 403.5(e) is also misleading in that it refers to NPDES States in the context of enforcement actions. Since this provision is intended to apply only to actions brought under section 309(f) of the Act, EPA has deleted all references to NPDES States from 40 CFR 403.5(e).

c. *Today's rule.* The title of 40 CFR 403.5(e) has been changed to read "EPA enforcement actions under section 309(f) of the Clean Water Act", and the text of 40 CFR 403.5(e) has been revised to delete all references to NPDES States.

3. National Pretreatment Standards: Categorical Standards

a. *Proposed change.* 40 CFR 403.6 provides that categorical pretreatment standards, unless specifically noted otherwise, shall be in addition to the general prohibitions established in 40 CFR 403.5. There was an unintentional omission from this provision of a reference to the specific discharge prohibitions. In order to rectify this omission, the Agency proposed to revise 40 CFR 403.6 to add that national pretreatment standards, unless specifically noted otherwise, shall be in addition to all prohibitions and limits established under 40 CFR 403.5(c).

b. *Response to comments.* No significant comments were received on this proposed revision. The Agency has noted, however, that the proposed modification could be interpreted as being in conflict with requirements in part 403, other than the general and specific prohibitions, that apply to categorical dischargers. Since this was not the Agency's intent, EPA is today clarifying in 40 CFR 403.6 that categorical industrial users must comply with all applicable pretreatment standards and requirements set forth in part 403, as well as national categorical pretreatment standards.

c. *Today's rule.* Today's rule revises 40 CFR 403.6 to provide that categorical industrial users must comply with all applicable general pretreatment standards and requirements set forth in 40 CFR part 403.

4. POTW Pretreatment Program Requirements: Implementation

a. *Proposed change.* 40 CFR 403.8(f) establishes the requirements that a POTW pretreatment program must satisfy. Section 403.8(f)(1) provides that a POTW must have the legal authority which enables it to deny, condition and control pollutant contributions, require compliance by industrial users, conduct inspections of industrial users, and perform other essential attributes of a pretreatment program. The rule does not specifically state that POTWs must implement these procedures, although this has been EPA's consistent interpretation of the rule. To avoid any possible misunderstanding, the Agency proposed to revise the introductory sentence of 40 CFR 403.8(f) to state that "a POTW Pretreatment Program shall be developed *and implemented* to meet the following requirements". EPA also proposed to amend the title of 40 CFR 403.6 to read "POTW Pretreatment Programs: Development *and Implementation* by POTW" (emphasis added).

b. *Response to comments.* Several commenters specifically endorsed the proposed changes to 40 CFR 403.8(f) regarding implementation of approved pretreatment programs, stating that the proposed language clarified an important requirement. To further clarify this requirement, the introductory language to 40 CFR 403.8(f) has been changed from the proposal to read: "a POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented".

c. *Today's rule.* Today's rule amends the title of 40 CFR 403.8 to read: "POTW Pretreatment Program Requirements: Development and Implementation by POTW". The introductory paragraph to 40 CFR 403.8(f) now provides that POTW pretreatment programs must be based on legal authorities and procedures which shall at all times be fully and effectively exercised and implemented.

5. Development and Submission of NPDES State Pretreatment Programs

a. *Proposed change.* 40 CFR 403.10(c) states that "the EPA shall * * * apply and enforce Pretreatment Standards and Requirements until the necessary implementing action is taken by the State." This sentence might give the wrong impression that the Agency will cease to enforce pretreatment requirements when a State has received program approval. Since this is not the case, EPA proposed to delete this sentence from 40 CFR 403.10.

b. *Response to comments.* No significant comments were received on this proposed revision.

c. *Today's rule.* Today's rule deletes the first sentence of 40 CFR 403.10(c).

6. Administrative Penalties Against Industrial Users

a. *Proposed rule.* The second to last sentence in 40 CFR 403.8(f)(1)(vi)(B) states that "the Approval Authority shall have authority to seek *judicial* relief for noncompliance by Industrial Users when the POTW has acted to seek such relief but has sought a penalty which the Approval Authority finds to be insufficient [emphasis added]". This provision could arguably be read to preclude the Agency from seeking administrative penalties in such instances. In order to clarify that EPA or a State Approval Authority may use any of their enforcement authorities in instances where a POTW has sought relief for industrial user noncompliance that the Approval Authority finds to be insufficient, the Agency proposed to revise 40 CFR 403.8(f)(1)(vi)(B) to provide that the Approval Authority shall have the authority to seek judicial relief and may also seek administrative relief when the POIW has acted to seek such relief but has sought a monetary penalty which the Approval Authority finds to be insufficient.

b. *Response to comments.* Some commenters did not support this proposed revision. These commenters believed that the Control Authority was the only proper entity to establish monetary penalties for discharges under its jurisdiction. One commenter pointed out that state and local ordinances limit most POTWs in the fines that they can levy. This commenter also stated that the proposed change would encourage industrial users to attempt to deal directly with the Approval Authority in cases of violation, bypassing the POTW.

The commenters appear to have been confused about the extent of the Approval Authority's existing authority to levy fines against industrial users when the POTW has sought an insufficient monetary penalty. Under the authority of sections 309(b) and 309(d) of the Clean Water Act, EPA has always been able to seek a judicial penalty against noncomplying industrial users when the POTW has sought an insufficient monetary penalty, including instances where the insufficiency was due to State or local limitations on fines that could be levied. The proposed amendments merely clarified that EPA may now seek administrative penalties as well, under the authority of section 309(g) of the Water Quality Act of 1987. It is clear that Congress intended to give the Administrator the authority to seek judicial or administrative penalties directly against noncomplying industrial users.

c. *Today's rule.* Today's rule revises 40 CFR 403.8(f)(1)(vi)(B) to provide that the Approval Authority shall have the authority to seek judicial relief but also may use administrative penalty authority when the POTW has sought a monetary penalty which the Approval Authority finds to be insufficient.

7. Provisions Governing Fraud and False Statements

a. *Proposed change.* 40 CFR 403.12(n) regarding fraud and false statements incorrectly states that certain reporting requirements are subject to the provisions of section 309(c)(2) of the Clean Water Act. The reference should have been to sections 309(c) (4) and (6) of the Act, as amended. EPA therefore proposed to revise 40 CFR 403.12(n) accordingly.

b. *Response to comments.* No significant comments were received on this proposed revision. To further clarify the existing requirements, the language of 40 CFR 403.12(n) has been changed from the proposal to read:

> * * * the reports and other documents required to be submitted or maintained under this section shall be subject to: 1) the provisions of 18 U.S.C. section 1001 relating to fraud and false statements; 2) the provisions of section 309(c)(4) of the Act, as amended, governing false statements, representation or certification; and 3) the provisions of section 309(c)(6) regarding responsible corporate officers.

c. *Today's rule.* Today's rule revises 40 CFR 403(n) to clarify that reports and other documents submitted under 40 CFR 403.12 are subject to sections 309(c)(4) and 309(c)(6) of the Clean Water Act.

III. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of Regulatory Impact Analysis. Major rules are those which impose a cost on the economy of $100 million or more annually or have certain other economic impacts. The Agency completed a general estimate of the annual costs to industrial users and POTWs of the revisions proposed on November 23, 1988, which is included in the administrative record for this rulemaking, and which showed compliance costs at well below $100 million. Today's rule contains certain changes from the proposal which

increase costs to POTWs and industrial users. For example, the cost for the notification requirements has risen from approximately $250,000 in the proposed rule to approximately $800,000 in the final rule. Similarly, the cost for POTW inspections and sampling of significant industrial users has increased from approximately $1,160,000 in the proposed rule to $10,000,000 in the final rule. However, other changes from the proposal decrease such costs to POTWs and industrial users. For example, the cost of toxicity testing by POTWs has decreased from approximately $7,500,000 in the proposed rule to approximately $1,200,000 in the final rule, and the cost of technology-based limits for CWTs has decreased from approximately $21,000,000 in the proposed rule to no cost in the final rule. These changes are detailed in the Information Collection Request (ICR) for this rule submitted to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act. Since the net effect of these changes does not cause the annual economic impact of today's rule to approach $100 million, this rule does not meet the criteria of a major rule as set forth in section 1(b) of the Executive Order. This regulation has been approved by OMB pursuant to Executive Order 12291.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires EPA and other agencies to prepare an initial regulatory flexibility analysis for all proposed regulations that have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required, however, where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Most of the amendments promulgated today will affect larger POTWs (those with approved pretreatment programs and design influent flow of more than one million gallons per day) and significant industrial users, who are less likely than the average industrial user to be a small business. Those requirements which affect small industrial users do not impose significant costs. I hereby certify, pursuant to 5 U.S.C. 605(b) that this regulation will not have a significant impact on a substantial number of small entities.

V. Paperwork Reduction Act

The information collection requirements contained in this rule were approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Public reporting burden for this collection of information is estimated to average 49 hours per response for POTWs and 6 hours per response for industrial users, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA".

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control, Confidential business information.

40 CFR Part 403

Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution Control.

Dated: July 3, 1990.

William K. Reilly,

Administrator.

40 CFR chapter I is amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.21 is amended by adding paragraphs (j)(1), (j)(2), (j)(3), and (j)(4) to read as follows:

§ 122.21 Application for a permit, (application to State programs, see § 123.25).

* * * * *

(j) * * *

(1) The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the Director:

(i) All POTWs with design influent flows equal to or greater than one million gallons per day;

(ii) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(2) In addition to the POTWs listed in paragraph (j)(1) of this section, the Director may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

(i) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment facility, and types of industrial contributors);

(ii) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);

(iii) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW;

(iv) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, one of the Great Lakes, or a water designated as an outstanding natural resource; or

(v) Other considerations (including but not limited to the history of toxic impact and compliance problems at the POTW), which the Director determines could cause or contribute to adverse water quality impacts.

(3) For POTWs required under paragraph (j)(1) or (j)(2) of this section to conduct toxicity testing, POTWs shall use EPA's methods or other established protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. Such testing must have been conducted since the last NPDES permit reissuance or permit modification under 40 CFR 122.62(a), whichever occurred later.

(4) All POTWs with approved pretreatment programs shall provide the following information to the Director: a written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1).

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES

1. The authority citation for part 403 continues to read as follows:

Authority: Sec. 54(c)(2) of the Clean Water Act of 1977 (Pub. L. 95-217), secs. 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304 (e) and (g), 307, 308, 309, 402(b), 405 and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92-500), as amended by the Clean Water Act of 1977 and the Water

Quality Act of 1987; secs. 2002 and 3018(d) of the Solid Waste Disposal Act as amended.

2. Section 403.3 is amended by redesignating existing paragraph (t) as paragraph (u) and adding new paragraph (t) to read as follows:

§ 403.3 Definitions.

* * * * *

(t) *Significant Industrial User.* (1) Except as provided in paragraph (t)(2) of this section, the term Significant Industrial User means:

(i) All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; and

(ii) Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority as defined in 40 CFR 403.12(a) on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

(2) Upon a finding that an industrial user meeting the criteria in paragraph (t)(1)(ii) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority (as defined in 40 CFR 403.12(a)) may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with 40 CFR 403.8(f)(6), determine that such industrial user is not a significant industrial user.

* * * * *

3. Section 403.5 is amended by revising paragraphs (a)(2) introductory text, (b)(1), and (e), adding text to the end of (c)(1), and adding new paragraphs (b)(6), (b)(7), and (b)(8) to read as follows:

§ 403.5 National Pretreatment Standards: Prohibited Discharges.

(a) * * *

(2) Affirmative Defenses. A User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in paragraph (a)(1) of this section and the specific prohibitions in paragraphs (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) of this section where the User can demonstrate that:

* * * * *

(b) * * *

(1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Farenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21.

* * * * *

(6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

(7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

(8) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

(c) * * *

(1) * * * Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits.

* * * * *

(e) EPA enforcement actions under section 309(f) of the Clean Water Act.

If, within 30 days after notice of an Interference or Pass Through violation has been sent by EPA to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, EPA may take appropriate enforcement action under the authority provided in section 309(f) of the Clean Water Act.

4. Section 403.6 is amended by revising the introductory text to read as follows:

§ 403.6 National Pretreatment Standards: Categorical Standards.

National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by existing or new industrial users in specific industrial subcategories will be established as separate regulations under the appropriate subpart of 40 CFR chapter I, subchapter N. These standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this part.

* * * * *

5. Section 403.8 is amended by revising the section heading, the introductory text to paragraph (f), paragraphs (f)(1)(iii), (f)(1)(vi)(B), (f)(2)(v), and (f)(2)(vii), adding text to the end of (f)(2)(iii), and adding new paragraphs (f)(5) and (f)(6) to read as follows:

§ 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.

* * * * *

(f) *POTW pretreatment requirements.* A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

(1) * * *

(iii) Control through permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under 40 CFR 403.3(t), this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user. Such control mechanisms must be enforceable and contain, at a minimum, the following conditions:

(A) Statement of duration (in no case more than five years);

(B) Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

(C) Effluent limits based on applicable general pretreatment standards in part 403 of this chapter, categorical pretreatment standards, local limits, and State and local law;

(D) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in part 403 of this chapter, categorical pretreatment standards, local limits, and State and local law;

(E) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.

* * * * *

(vi) * * *

(B) Pretreatment requirements which will be enforced through the remedies set forth in paragraph (f)(1)(vi)(A) of this section, will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or

orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or these regulations. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The Approval Authority shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty which the Approval Authority believes to be insufficient.

* * * * *

(2) * * *

(iii) * * * Within 30 days of approval pursuant to 40 CFR 403.8(f)(6), of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.

* * * * *

(v) Randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each Significant Industrial User at least once a year. Evaluate, at least once every two years, whether each such Significant Industrial User needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge. The results of such activities shall be available to the Approval Authority upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

(A) Description of discharge practices, including non-routine batch discharges;

(B) Description of stored chemicals;

(C) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under 40 CFR 403.5(b), with procedures for follow-up written notification within five days;

(D) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response;

* * * * *

(vii) Comply with the public participation requirements of 40 CFR part 25 in the enforcement of national pretreatment standards. These procedures shall include provision for at least annual public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, at any time during the previous twelve months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

(A) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

(B) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH.

(C) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

(D) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;

(E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(F) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(G) Failure to accurately report noncompliance;

(H) Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

* * * * *

(5) The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

(i) Describe how the POTW will investigate instances of noncompliance;

(ii) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

(iii) Identify (by title) the official(s) responsible for each type of response;

(iv) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8 (f)(1) and (f)(2).

(6) The POTW shall prepare a list of its industrial users meeting the criteria in 40 CFR 403.3(t)(1). The list shall identify the criteria in 40 CFR 403.3(t)(1) applicable to each industrial user and, for industrial users meeting the criteria in 40 CFR 403.3(t)(1)(ii), shall also indicate whether the POTW has made a determination pursuant to 40 CFR 403.3(t)(2) that such industrial user should not be considered a significant industrial user. This list, and any subsequent modifications thereto, shall be submitted to the Approval Authority as a nonsubstantial program modification pursuant to 40 CFR 403.18(b)(2). Discretionary designations or de-designations by the Control Authority shall be deemed to be approved by the Approval Authority 90 days after submission of the list or modifications thereto, unless the Approval Authority determines that a modification is in fact a substantial modification.

§ 403.10 [Amended]

6. Section 403.10 is amended by removing the first sentence in paragraph (c).

7. Section 403.12 is amended by adding text to the end of paragraph (h), by revising paragraphs (j) and (n), and adding new paragraph (p) to read as follows:

§ 403.12 Reporting requirements for POTW's and Industrial Users.

* * * * *

(h) * * * Significant Noncategorical Industrial Users shall submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. These reports shall be based on sampling and analysis performed in the period covered by the report, and performed in accordance with the techniques described in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the Administrator. This sampling and analysis may be performed by the Control Authority in lieu of the significant noncategorical industrial user. Where the POTW itself collects all the information required for the report, the noncategorical significant industrial user will not be required to submit the report.

* * * * *

(j) Notification of changed discharge. All Industrial Users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under 40 CFR 403.12(p).

* * * * *

(n) Provisions Governing Fraud and False Statements: The reports and other documents required to be submitted or maintained under this section shall be subject to:

(1) The provisions of 18 U.S.C. section 1001 relating to fraud and false statements;

(2) The provisions of sections 309(c)(4) of the Act, as amended, governing false statements, representation or certification; and

(3) The provisions of section 309(c)(6) regarding responsible corporate officers.

(p)(1) The Industrial User shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the Industrial User discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the Industrial User: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 40 CFR 403.12 (j). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of 40 CFR 403.12 (b), (d), and (e).

(2) Dischargers are exempt from the requirements of paragraph (p)(1) of this section during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification.

Subsequent months during which the Industrial User discharges more than such quantities of any hazardous waste do not require additional notification.

(3) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the POTW, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

(4) In the case of any notification made under paragraph (p) of this section, the Industrial User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

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

Appendix—Hazardous Waste Authorities: Notifications under 40 CFR 403.12(p)

Environmental Protection Agency

Region I

Director, Waste Management Division, Environmental Protection Agency, John F. Kennedy Building, Boston, Massachusetts 02203

Region II

Director, Air & Waste Management Division, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278

Region III

Director, Hazardous Waste Management Division, Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107

Region IV

Director, Waste Management Division, Environmental Protection Agency, 345 Courtland St. N.E., Atlanta, Georgia 30365

Region V

Director, Waste Management Division, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

Region VI

Director, Hazardous Waste Management Division, Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202

Region VII

Director, Waste Management Division, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101

Region VIII

Director, Hazardous Waste Management Division, Environmental Protection Agency, One Denver Place, 999 18th St., Suite 500, Denver, Colorado 80202-2405

Region IX

Director, Hazardous Waste Management Division, Environmental Protection Agency, 1235 Mission Street, San Francisco, California 94103

Region X

Director, Hazardous Waste Division, Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101

States

Alabama

Chief, Land Division, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36130

Alaska

Chief, Solid and Hazardous Waste Management Program, Division of Environmental Quality, Department of Environmental Conservation, 3200 Hospital Drive, P.O. Box O, Juneau, Alaska 99811-1800

Arizona

Assistant Director, Office of Waste and Water Quality Management, Arizona Department of Environmental Quality, 2005 N. Central Avenue, Room 304, Phoenix, Arizona 85004

Arkansas

Chief, Hazardous Waste Division, Arkansas Department of Pollution Control and Technology, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72209

California

Chief, Deputy Executive Officer, California Waste Management Board, 1020 9th Street/Suite 300, Sacramento, California 95814

Colorado

Director, Waste Management Division, Colorado Department of Health, 4210 E. 11th Avenue, Denver, Colorado 80220

Connecticut

Chief, Bureau of Waste Management, Connecticut Department of Environmental Protection, Hazardous Materials Management Unit, 165 Capital Avenue, Hartford, Connecticut 06106

Delaware

Director, Division of Air & Waste Management, Department of Natural Resources and Environmental Control, P.O. Box 1401, 89 King's Highway, Dover, Delaware 19903

District of Columbia

Chief, Pesticides and Hazardous Materials Division/Superfund, Department of Consumer and Regulatory Affairs, 614 H Street NW., Room 505, Washington, DC 20001

Florida

Director, Division of Waste Management, Underground Storage Tanks, Department of Environmental Regulations, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

Georgia

Chief, Land Protection Branch, Industrial and Hazardous Waste Management Program, Floyd Towers East/Room 1154, 205 Butler Street, SE., Atlanta, Georgia 30334

Hawaii

Manager, Solid and Hazardous Waste Branch, Hawaii Department of Health, Hazardous Waste Program, P.O. Box 3378, Honolulu, Hawaii 96801

Idaho, Chief, Hazardous Materials Bureau, Department of Health and Welfare, Idaho State House, 450 W. State Street, Boise, Idaho 83720

Illinois

Manager, Illinois Environmental Protection Agency, 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794-9276

Indiana

Assistant Director, Indiana Department of Environmental Management, 105 S. Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46225

Iowa

Chief, Air Quality and Solid Waste Protection, Department of Water, Air, and Waste Management, 900 East Grand Avenue, Henry A. Wallace Building, Des Moines, Iowa 50319-0034

Kansas

Director, Bureau of Waste Management, Department of Health and Environment, Forbes Field, Building 321, Topeka, Kansas 66620

Kentucky

Director, Division of Waste Management, Department of Environmental Protection, Cabinet for Natural Resources and Environmental Protection, 18 Reilly Road, Frankfort, Kentucky 40601

Louisiana

Assistant Secretary, Hazardous Waste Division, Office of Solid Waste and Hazardous Waste, Louisiana Department of Environmental Quality, P.O. Box 44307, N. Fourth Street, Baton Rouge, Louisiana 70804

Maine

Director, Bureau of Solid Waste Management, Department of Environmental Protection, State House #17, Augusta, Maine 04333

Maryland

Director, Hazardous and Solid Waste Management Administration, Maryland Department of the Environment, 201 W. Preston Street, room 212, Baltimore, Maryland 21201

Massachusetts

Director, Division of Solid and Hazardous Waste, Massachusetts Department of Environmental Quality Engineering, One Winter Street, 5th Floor, Boston, Massachusetts 02108

Michigan

Chief, Technical Services Section, Waste Management Division, Department of Natural Resources, Box 30038, Lansing, Michigan 48909

Minnesota

Director, Solid and Hazardous Waste Division, Minnesota Pollution Control Agency, 520 Lafayette Road, North, St. Paul, Minnesota 55155

Mississippi

Director, Division of Solid Waste Management, Bureau of Pollution Control, Department of Natural Resources, P.O. Box 10385, Jackson, Mississippi 39209

Missouri

Director, Waste Management Program, Department of Natural Resources, Jefferson Building, 205 Jefferson Street (13th-14th floors), P.O. Box 176, Jefferson City, Missouri 65102

Montana

Chief, Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Room B-201, Helena, Montana 59620

Nebraska

Chief, Hazardous Waste Management Section, Department of Environmental Control, State House Station, P.O. Box 98477, Lincoln, Nebraska 63509

Nevada

Director, Waste Management Program, Division of Environmental Protection, Department of Conservation and Natural Resources, Capitol Complex, 201 South Fall Street, Carson City, Nevada 89710

New Hampshire

Chief, Division of Public Health Services, Office of Waste Management, Department of Health and Welfare, Health and Welfare Building, 6 Hazen Drive, Concord, New Hampshire 03301

New Jersey

Assistant Commissioner, Division of HQ Waste Management, Department of Environmental Protection, 401 East State Street, Trenton, New Jersey 08625

New Mexico

Chief, Groundwater and Hazardous Waste Bureau, Environmental Improvement Division, New Mexico Health and Environment Department, P.O. Box 968, Santa Fe, New Mexico 87504-0968

New York

Director, Division of Hazardous Substance Regulation, Department of Environmental Conservation, 50 Wolfe Road, Room 209, Albany, New York 12233

North Carolina

Head, Solid and Hazardous Waste Management Branch, Division of Health Services, Department of Human Resources, P.O. Box 2091, Raleigh, North Carolina 27602

North Dakota

Director, Division of Hazardous Waste Management, Department of Health, 1200

Missouri Avenue, Room 302, Bismarck, North Dakota 58502–5520

Ohio

Chief, Division of Solid and Hazardous Waste Management, Ohio Environmental Protection Agency, 1800 Watermark Drive, P.O. Box 1049, Columbus, Ohio 43266–0149

Oklahoma

Chief, Waste Management Service, Oklahoma State Department of Health, P.O. Box 53551, 1000 Northeast 10th Street, Oklahoma, Oklahoma 73152

Oregon

Director, Hazardous and Solid Waste Division, Department of Environmental Quality, 811 Southwest 6th Avenue, Portland, Oregon 97204

Pennsylvania

Director, Bureau of Waste Management, Pennsylvania Department of Environmental Resources, P.O. Box 2063 / Fulton Building, Harrisburg, Pennsylvania 17120

Rhode Island

Director, Solid Waste Management Program, Department of Environmental Management, 204 Canon Building, 75 Davis Street, Providence, Rhode Island 02908

South Carolina

Chief, Bureau of Solid Waste Management, Hazardous Waste Management, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201

South Dakota

Director, Office of Air Quality and Solid Waste, Department of Water and Natural Resources, 523 E. Capitol, Foss Building, Room 416, Pierre, South Dakota 57501

Tennessee

Director, Division of Solid Waste Management, Tennessee Department of Public Health, 701 Broadway, Customs House, 4th Floor, Nashville, Tennessee

Texas

Director, Hazardous and Solid Waste Division, Texas Water Commission, P.O. Box 13087, Capitol Station, Austin, Texas 78711–3087

Vermont

Chief, Waste Management Division, Agency of Environmental Conservation, 103 South Main Street, Waterbury, Vermont 05676

Virginia

Executive Director, Division of Technical Services, Virginia Department of Waste Management, Monroe Building, 11th Floor, 101 North 14th Street, Richmond, Virginia 23219

Washington

Manager, Solid and Hazardous Waste Management Division Department of Ecology, Mail Stop PV–11 Olympia, Washington 98504

West Virginia

Chief, Waste Management Division, Department of Natural Resources, 1260 Greenbrier Street, Charleston, West Virginia 25311

Wisconsin

Director, Bureau of Solid Waste, Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707

Wyoming

Supervisor, Solid Waste Management Program, Department of Environmental Quality, 122 West 25th Street, Herschler Building, Cheyenne, Wyoming 82002

American Samoa

Director, Solid Waste Division, Environmental Quality Commission, Government of American Samoa, Pago Pago, American Samoa 96799

Guam

Director, Hazardous Waste Management Program, Guam Environmental Protection Agency, P.O. Box 2999, Agana, Guam 96910

Commonwealth of Northern Mariana Islands

Chief, Division of Environmental Quality, Department of Public Health and Environmental Services, Commonwealth of the Northern Mariana Islands, Office of the Governor, Saipan, Mariana Islands 96950

Puerto Rico

President, Environmental Quality Board, Santurce, Puerto Rico 00910–1488

Virgin Islands

Director, Department of Conservation and Cultural Affairs, P.O. Box 4399, Charlotte, St. Thomas, Virgin Islands 00801

[FR Doc. 90–16525 Filed 7–23–90; 8:45 am]

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federal register

Tuesday
July 24, 1990

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary

Operating Assistance Funding Under the Flexible Subsidy Program; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-90-3094; FR-2824-N-01]

Operating Assistance Funding Under the Flexible Subsidy Program

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

ACTION: Notice of funding availability.

SUMMARY: This Notice announces that the Department has approximately $128 milion available in the Flexible Subsidy Fund in this fiscal year and that this amount will be made available for the Operating Assistance component of the program. Processing and monitoring procedures for the Capital Improvement Loan component of the Flexible Subsidy program have not yet been completed in time to implement it during this fiscal year, but the Department expects to be ready to implement it early next year. Consequently, during this fiscal year, funding will not be made available under the Capital Improvement Loan component, and therefore the entire amount in the fund will be used for the Operating Assistance component. Selection of applications for funding will be made in accordance with criteria specified in this Notice and in accordance with governing regulations.

DATES: The deadline date for submission of applications in response to this Notice of Fund Availability is September 7, 1990.

FOR FURTHER INFORMATION CONTACT: Questions concerning this Notice should be directed to the Program Support Branch, Office of Multifamily Housing Management, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-5654 (voice) or (202) 708-3938 (TDD for hearing-impaired). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

A. Statutory Background

Section 201 of the Housing and Community Development Amendments (HCDA) of 1978 created the Flexible Subsidy program to provide operating assistance to section 236, 221(d)(3) below-market interest rate (BMIR), and rent supplement projects experiencing financial difficulty. Operating assistance is provided in the form of a deferred loan and, in conjunction with other resources, is designed to restore or maintain the physical and financial soundness of eligible projects. The 1983 amendments to section 201 of the HCDA expanded the Flexible Subsidy program to include section 8 projects that had been converted from the Rent Supplement or Rental Assistance Payments programs, and clarified that a project need not have an FHA-insured mortgage to be eligible for Flexible Subsidy assistance (e.g., a non-insured section 236 project is eligible).

The 1987 amendments to section 201 of HCDA again expanded the category of eligible projects. Projects assisted under section 23 of the United States Housing Act of 1937 as it existed before January 1, 1975, and projects that received a loan under section 202 of the Housing Act of 1959 more than 15 years before the date of application for assistance, were made eligible for Flexible Subsidy assistance. The principal thrust of the 1987 amendments, however, was to create a new category of assistance to be provided under the Flexible Subsidy program for projects that need capital improvements to achieve physical soundness that cannot be funded from project reserve funds without jeopardizing other major repairs or replacements that are reasonably expected to be required in the near future.

The 1987 amendments to the Flexible Subsidy statute (sections 185 and 186 of the Housing and Community Development Act of 1987) also recognized the need to coordinate assistance under the Flexible Subsidy program with the preservation of low- and moderate-income housing initiative enacted in sections 221 through 235 of that Act. Section 219.330 of the rule governing the Capital Improvement Loan portion of the program contains a set-aside provision to assure maximum support for such preservation activities. This notice assures support by giving top priority for funding of Operating Assistance to projects that are eligible for incentives to extend the low- to moderate-income use of properties under a plan of action approved in accordance with 24 CFR part 248.

In 1988, the Flexible Subsidy statute (section 201(j)(4) of the Housing and Community Development Amendments of 1978) was amended again, to provide that the Capital Improvement Loan portion of the program be funded at a minimum level of $30 million or 40 percent of the amount in the Flexible Subsidy Fund, whichever was less. Any of that amount not used for loans under that program before the last 60 days of a fiscal year shall become available for Operating Assistance loans.

B. Capital Improvement Loans

In March 1989 (54 FR 9713), the Department rewrote and reorganized the Flexible Subsidy regulations at part 219 to separate the requirements that apply generally to the entire Flexible Subsidy program (subpart A); the requirements that apply only to the existing Operating Assistance program (subpart B); and the requirements that apply only to the new Capital Improvement Loan Program (subpart C).

Loans to cover capital improvements have been authorized even under the Operating Assistance portion of the Flexible Subsidy program. However, they differ from loans authorized under the Capital Improvement Loan portion of the program in that they are limited in purpose to projects where the repairs are necessary to meet local building codes or to maintain the project in a decent, safe, and sanitary condition (§ 219.205 of the revised regulations). The loans made under Operating Assistance provisions are also different in that repayment is deferred until occurrence of a triggering event, instead of commencing soon after the loan is made, in accordance with an amortization schedule.

The new program for capital improvement requires a new type of loan document, slightly different processing—including underwriting issues, and a new monitoring mechanism. The Department has been unable to complete implementing steps satisfactory to assure integrity of selection, monitoring and oversight in time to accept applications under the Capital Improvement Loan program this fiscal year. Consequently, this notice pertains only to funding under the Operating Assistance component, and any loans made to cover capital improvements will be made only where the code enforcement or maintenance purpose specified in the regulation apply.

The Department plans to have the Capital Improvement Loan portion of the Flexible Subsidy program ready by February 1991, and will set aside funds for that component in accordance with the statutory formula then.

C. Funding

The Flexible Subsidy Fund is comprised of excess receipts paid to HUD from owners of Section 236 projects, interest earned on investment of the fund, and repayment of operating assistance loans made by the Department in past fiscal years.

Funds are allocated separately for two types of projects: State agency financed

non-insured projects; and all others, including projects with FHA-insured and HUD-held mortgages. Section 219.115 of the HUD regulations requires that the State Agency allocation be based on the number of units in potentially eligible non-insured projects as a percentage of the total number of units in all potentially eligible projects. In accordance with that section, the Department has determined that 9.3 percent of the total available operating assistance funding will be earmarked for eligible State Agency projects.

D. Application Procedure

1. The requirements for the Operating Assistance program are found in subparts A and B of 24 CFR part 219. The owner of any project eligible for Operating Assistance, as described in § 219.105, may apply for assistance by submitting an application as described in § 219.210, to the HUD Field Office that has jurisdiction over the project for which assistance is requested, no later than the deadline date specified in this notice. Applications received after that date will be considered for funding in Fiscal Year 1990 only if the Secretary determines that assistance is needed immediately in response to emergency circumstances and only to the extent that sufficient budget authority is available to satisfy the request for assistance.

2. Each applicant shall comply with the governmentwide rule implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), codified at 49 CFR part 24. That rule supersedes HUD's rule implementing the URA, which was codified at 24 CFR part 42. Under the new rule, all persons displaced on or after April 2, 1989 as a direct result of privately undertaken rehabilitation, demolition or acquisition for a HUD-assisted project are entitled to relocation payments and other assistance under the URA.

3. The project owner shall include in its application the certification and disclosure required by the regulations at 24 CFR part 87 (published on February 26, 1990 at 55 FR 6750), which implement a statutory prohibition against the use of appropriated funds received from the Federal Government for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant or loan. As indicated in this certification and disclosure, the law provides substantial monetary penalties for failure to file the required certification or disclosure.

4. Acceptance of an Operating Assistance application does not in any way constitute a commitment by the Department to award funding in response to the application. Once the Field Office has determined that the application is complete, recommended the project for funding to Headquarters, and notified the owner that the project is under consideration for Operating Assistance, no further information will be disclosed about the application in terms of the selection process unless and until a funds assignment has been issued awarding the assistance to the project.

5. The Office of Management and Budget has approved the continued use of the Operating Assistance forms under OMB control number 2502–0395 through September 30, 1990, subject to the following condition. Owners interested in submitting Operating Assistance applications need only provide summary totals on the Form HUD–9835B (Sources and Uses of Funds) for "Repairs" (at Line A1) and "Operating Deficit" (at Line A3). Consequently, applicants for Operating Assistance need not provide the detailed repair and operating deficit information provided on Lines A1a–d and A3a–e, respectively.

E. Owner Contribution Requirements

Consistent with the requirement stated in § 219.305 for owner contribution in the Capital Improvement Loan component, owners of limited-dividend projects requesting Operating Assistance must contribute at least 25 percent of the total estimated cost of the work needed, as specified in the application's Management Improvement and Operating (MIO) Plan. The 25 percent owner contribution is a minimum requirement for obtaining Operating Assistance funding. This owner contribution may not be taken from project income but may be taken from surplus cash, as defined in the Regulatory Agreement.

Cash that has already been agreed to be contributed as a condition for approval of purchase of the project (TPA) may NOT be considered for this purpose. Cash contributions made by the owner within 24 months before the Operating Assistance application, from sources other than project income, may be considered. Other possible sources for funding MIO Plan action items should be pursued aggressively, including a possible higher contribution percentage and assistance from State or local governments.

F. Selection

Each application for Operating Assistance will be reviewed by the HUD office having jurisdiction over the project in question. Field offices will make recommendations to HUD Headquarters of the applications that should be awarded funding, in accordance with 24 CFR 219.101 through 219.230. As described in § 219.230, funding will be awarded only where the problems addressed in the MIO Plan can be stabilized by the Operating Assistance.

To implement the priorities specified in § 219.230 and to support efforts to preserve housing for low- and moderate-income use, in accordance with section 224 of the Housing and Community Development Act of 1987, within each project type (State Agency financed, non-insured or other), funding will be awarded first to applications in Category 1, and then to applications in Category 2, on a first-come-first-serve basis. After August 15, 1990, HUD Headquarters will determine the amount of remaining funding authority and will fund Category 3 applications with available funds after considering any pending unfunded Category 1 and Category 2 applications.

Category 1

Projects that are eligible for incentives to extend the low- to moderate-income use of properties under a plan of action approved in accordance with 24 CFR part 248.

Category 2

Projects where half or more of the MIO Plan dollar amount is for emergency health and safety problems. This category applies to all projects, including those with insured, non-insured, or HUD-held mortgages, but is limited to those projects with emergency problems that are of such a magnitude that:

(a) They could not be mitigated at a cost that could be in any way absorbed within the project operating budget; or

(b) Their continuance could potentially force tenant displacement.

Accounts payable included in the MIO Plan may be considered "emergency" only to the extent that they directly relate to vital services provided to the project (e.g., utility payables). (*Examples* of emergency health and safety problems involving possible capital improvements that may be included in this category are broken heating systems, leaking gas stoves and falling balconies.)

Category 3

Insured and non-insured projects with serious financial and physical problems whose sponsors do not have the necessary funds available to cure the immediate problems, and whose income stream cannot be sufficiently improved

to meet the project's expenses without first correcting its physical problems. Projects with Secretary-held mortgages are not eligible for funding under Category 3. For projects to meet this category, it must be determined that Flexible Subsidy will prevent the default and assignment of the mortgage to the Secretary (for insured projects), or that serious deterioration of the property exists (for insured and non-insured projects).

G. Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 101(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, 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 this Notice of Funding Availability will not have a significant impact on family formation, maintenance or well-being, and therefore, is not subject to review under the order. The NOFA, insofar as it funds emergency repairs to multifamily housing projects, will assist in preserving decent housing stock for families residing there.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this Notice of Funding Availability will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government.

The Catalog of Federal Domestic Assistance Program number is 14.164.

Authority: Sec. 201, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 18, 1990.

C. Austin Fitts,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-17197 Filed 7-23-90; 8:45 am]

BILLING CODE 4210-27-M

federal register

Tuesday
July 24, 1990

Part IV

Department of Commerce

Technology Administration

15 CFR Part 295

Advanced Technology Program; Implementation and Invitation for Proposals; Final Rule and Notice

DEPARTMENT OF COMMERCE

Technology Administration

15 CFR Part 295

[Docket No. 900130-0152]

RIN 0693-AA83

Advanced Technology Program

AGENCY: Technology Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Under Secretary for Technology of the United States Department of Commerce is today issuing a final rule to implement the Advanced Technology Program. The Advanced Technology Program was authorized by section 5131 of the Omnibus Trade and Competitiveness Act of 1988 (Pub.L. 100-418) codified at 15 U.S.C. 278n. The Advanced Technology Program will assist United States businesses to carry out research and development on precompetitive generic technologies by entering into grants and cooperative agreements with qualified parties pursuant to this rule.

EFFECTIVE DATE: This rule is effective July 24, 1990.

FOR FURTHER INFORMATION CONTACT: George A. Uriano or Brian C. Belanger, Advanced Technology Program, National Institute of Standards and Technology (NIST), telephone number (301) 975-5187.

SUPPLEMENTARY INFORMATION: The Under Secretary for Technology, pursuant to the authority delegated to him by section 2.02 of Department Organization Order 10-17, dated January 6, 1989, is today issuing a final rule to implement the Advanced Technology Program.

The Rationale for the ATP

Both the Congress and the Administration have been concerned that U.S. competitiveness in high-technology fields may be lagging. While the United States is a world leader in basic research, our nation's ability to commercialize new technology quickly and efficiently has increasingly been questioned. Many feel that the Federal Government could and should do more to work with industry to stimulate the commercialization of advanced technology. This Administration believes the Federal Government should avoid "picking winners and losers" but instead should foster an industry-led strategy for competitiveness. The ATP has been designed consistent with these views.

The capability of a nation to capture economic returns from basic scientific and technological innovations is increasingly being recognized as one of the most important determinants of long-term economic growth and international competitiveness. Between basic research and the point in a technology's development when it becomes substantially product-specific, several research stages occur in which the probability of technical success and also the scope and magnitude of potential market applications are highly uncertain. These two factors create substantial risk for individual firms and even collectively for several firms working together.

There are two distinct kinds of risks involved in commercializing products based on new technology—risks associated with technical barriers and commercial or marketplace risks. One example of a technical barrier would be industry's inability to manufacture in a reproducible way some class of advanced materials (*e.g.*, superconductors, ceramics, diamond films, or composites), with sufficiently high performance to make possible new products based on these materials. Commercial or marketplace risks involve questions such as "If we invest in a new factory to build devices exploiting these new materials can we make an acceptable return on investment?" The Advanced Technology Program will not address these marketplace risks which must be left to industry.

But marketplace issues cannot be addressed by industry while technical barriers remain. As long as no one in industry knows how to manufacture type-X materials reproducibly with high performance, decisions on commercialization cannot even be considered. Accordingly, the ATP will focus on technical barriers to commercialization and will terminate Federal funding when those technical hurdles are sufficiently reduced to enable industry to begin to assess commercial risk. In particular, the ATP will seek to focus on technical "choke points," that is, technical barriers that are currently holding up progress in a broad segment of a technical field. ATP-funded proposals will, to the greatest extent possible, be for "generic" technology which fits that description. During the phase of R&D when technical barriers are being overcome, the work can be "precompetitive" because all companies working in the field face the same technical barriers. (The terms "generic" and "precompetitive" are defined and discussed in the next section.) Overcoming these barriers by means of a joint R&D venture would not in any way reduce future competition in products based on the technology.

Under conditions of both high technical and market risk, industry is frequently unable to project sufficiently high risk-adjusted rates of return to stimulate adequate levels of investment. General incentives (such as a tax credit) help increase investment—once the economic potential of specific market applications of the technology becomes clear. However, such general incentives are not effective until technical and market uncertainties are reduced. The ATP will help reduce technical uncertainties.

Program Description

The Advanced Technology Program will assist United States businesses to carry out research and development on pre-competitive generic technologies. The program will focus on improving the competitive position of the United States and its businesses by accelerating the early to mid-stage development of pre-competitive generic technologies that have significant potential to accelerate economic growth and raise productivity. The 1988 Act granted new legislative authority to the Secretary including support for the private sector for the purposes stated above. The authority is to be used to (1) aid United States joint research and development ventures; (2) enter into contracts and cooperative agreements with United States businesses, especially small businesses, and independent research organizations; (3) involve the Federal laboratories in the Program, where appropriate, using among other authorities the cooperative research and development agreements provided for under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980; and (4) carry out, in a manner consistent with the provisions of the law, such other cooperative research activities with joint ventures as may be authorized by law or assigned to the Program by the Secretary.

Such authority permits the Advanced Technology Program to support a broad range of activities including scientific experiments, experimental production and testing of models, prototypes, equipment, materials, and processes. The Advanced Technology Program intends to place a major emphasis on coordinating its program with other technology development programs. Major emphasis will be placed on establishing and maintaining strong program and operational ties to important technology sources (*e.g.* universities and other Federal agencies),

technology users (businesses) and economic development authorities (State and local governments).

The program is authorized to fund either individual firms or joint R&D ventures. The provisions of the rule differ somewhat with respect to types of assistance and limitations on assistance for these two categories of awardees, as noted in Subpart B (Joint Ventures) and Subpart C (Individual Firms).

The Technology Administration intends to focus on supporting private sector development of pre-competitive generic technologies and to participate in a variety of industry initiatives. However, the program will avoid participation in development of specific products and processes by the private sector.

A general definition of the terms "generic technology" and "pre-competitive technology" are embodied in § 295.2 of the rule, as follows:

"Generic technology" means a concept, component, or process, or the further investigation of scientific phenomena, that has the potential to be applied to a broad range of products or processes. Note: A generic technology may require subsequent research and development for commercial application.

"Pre-competitive technology" means research and development activities up to the stage where technical uncertainties are sufficiently reduced to permit preliminary assessment of commercial potential and prior to development of application-specific commercial prototypes. Note: At the stage of pre-competitive research and development, for example, results can be shared within a consortium that can include potential competitors without reducing the incentives for individual firms to develop and market commercial products and processes based upon the results.

The Technology Administration will seek to augment its efforts under ATP by encouraging other Federal agencies and State and local governments to cooperate wherever feasible with ATP funding recipients. However, the ATP will not directly provide funding to any other governmental entity or directly to academic institutions.

Awards will be made from among those proposals scoring highest on the basis of the following selection criteria:

1. Scientific and Technical Merit of the Proposal
2. Potential Broad-Based Benefits of the Proposal
3. Technology Transfer Benefits of the Proposal
4. Experience and Qualifications of the Proposing Organization
5. Proposer's Level of Commitment and Organizational Structure

Detailed descriptions of these five criteria are contained in § 295.3. The Department of Commerce will ensure that awards are made so as to achieve an appropriate long-term balance in the program with respect to areas of technology.

More extensive descriptions of funding available, estimated number of awards, award amount limitations, priorities, and any requirements, will be published separately at the time of solicitation.

Analysis of Comments on the Proposed Advanced Technology Program Rule

On April 4, 1990, the Technology Administration published a notice of proposed rulemaking in the **Federal Register** (55 FR 12504). In response to this notice, 53 letters were received; 29 from businesses, 4 from universities, 4 from Federal agencies, 2 from state agencies, and 14 from other organizations. The 14 responses from "other" organizations included 9 from representatives of public interest groups, 2 from individual citizens, and one each from professional societies, trade associations, and labor unions. Table 1 summarizes the number of comments received on each of the major provisions of the proposed rule (most respondents commented on several different provisions).

TABLE I.—ANALYSIS OF COMMENTS BY MAJOR PROVISIONS IN PROPOSED RULE

Rule section	Title of section	Number of respondents
	Subpart A—General	
295.1	Purpose	18
295.2	Definitions	28
295.3	Criteria for Selection	25
295.4	Notice of Availability of Funds	6
295.5	Intellectual Property Rights; Licensing Fees and Royalty Payments	21
295.6	Protection of Confidential Information	0
295.7	Unspent Balances of Federal Funds	0
295.8	Coordination/Cooperation with Other Federal Agencies	3
295.9	Special Financial Reporting Requirements	3
295.10	NIST Technical Assistance to Recipients of Awards	2
	Subpart B—Assistance to U.S. Joint Research and Development Ventures	
295.20	Types of Assistance Available	6
295.21	Qualification of Applicants	14
295.22	Limitations on Assistance	2
295.23	Dissolution of Joint R&D Ventures	1
295.24	Registration	1

TABLE I.—ANALYSIS OF COMMENTS BY MAJOR PROVISIONS IN PROPOSED RULE—Continued

Rule section	Title of section	Number of respondents
	Subpart C—Assistance to U.S. Businesses	
295.30	Types of Assistance Available	4
295.31	Qualifications of Applicants	13
295.32	Limitations on Assistance	2

Many respondents also submitted general comments on topics not specific to the proposed rule such as other measures that might be taken by the Federal government in enhancing U.S. economic growth and the competitiveness of U.S. industry (*e.g.* reduction in the capital gains tax) and also the importance of a variety of specific technologies to the long-term economic security of the United States. More than 50% of the respondents (28) explicitly indicated general support for the Advanced Technology Program and its objectives.

While many of these general comments were of interest, they were not deemed to be relevant to the issue of whether changes needed to be made in the proposed rule. The remainder of this section deals with those comments that were directly relevant to one or more provisions of the rule and that might be cause for changes or clarifications to the rule. It should also be noted that many of the comments suggested that changes be made to provisions of the rule that were mandated by the ATP legislation or are required by Federal regulations or policies. Proposed changes that fell into those categories could not be made.

Section 295.1 Purpose—Comment Summary (18 Comments)

The eighteen public comments on this section fell into two categories:

1. The limitation on the scope of the program to the support of pre-competitive technology was too restrictive (*e.g.* the program doesn't adequately address the perceived weakness of the U.S. in commercializing technology) and the emphasis on early stage research appeared to contradict the requirements for participants to commit substantial resources. Several of the respondents did indicate support for the rule as currently defined with regard to this point.

2. The requirement that emphasis be placed on technology areas where NIST has expertise was viewed as being unnecessarily limiting.

In response to the first item, the Technology Administration has determined that the scope of the program as defined is sufficiently broad to cover technology development activities through the laboratory prototype stage. Any Federal support beyond the laboratory prototype stage is not appropriate. Minor modifications were made to the definition of pre-competitive in § 295.2 to clarify the intent (see the analysis of the comments on § 295.2).

In response to the second item, the provision that emphasis be placed on technology areas where NIST has expertise has been deleted.

Section 295.2 Definitions—Comment Summary (28 Comments)

Most of the comments centered on the definitions of "generic technology," "pre-competitive technology," and "joint research and development venture."

Concerns were raised by four respondents on the definition of joint research and development ventures. Recommendations for changes to the definition included suggestions such as: (1) Exclude the funding of basic research, establishment and operation of facilities, experimental production of prototypes, and foreign firms; (2) place greater emphasis on manufacturing technologies; and (3) extend to include joint production and marketing. Two members of Congress commented that in their view, it was the intent of Congress to authorize the ATP to assist joint ventures that met the requirements of the National Cooperative Research and Development Act of 1984 (NCRA).

One respondent expressed concern about the restriction on licensing found in section (2)(iii)(A) of the definition of joint research and development venture (§ 295.2(d)). In clarification, this is an antitrust restriction intended to prevent ancillary agreements outside the normal scope of the joint venture.

Since the Program's enabling legislation requires that the definition of a joint research and development venture be the same as that used in the NCRA, the Technology Administration has made no changes to the definition.

Concerns were also expressed about the definitions of "generic technology" (8 comments) and "pre-competitive technology" (9 comments) although several respondents indicated general agreement with the definitions of the terms, and several of the recommendations are contradictory. Some respondents expressed concern that the definition of "pre-competitive technology" is too restrictive. Respondents pointed out that technical uncertainties are *identified* even during early stages of basic research, and the ATP should go beyond basic research. Accordingly, a minor change was made to this definition to respond to this concern. The definition now reads, "* * * up to the stage where technical uncertainties are sufficiently *reduced* [emphasis added] to permit preliminary assessment * * *."

Note that the development of laboratory prototypes, experimental production, testing of models, and development of materials and processes might all be allowed provided the work is generic and pre-competitive in nature.

With regard to the definition of "generic technology," four respondents urged a clarification of the meaning of the phrase "across many industries". This phrase was deemed unnecessary and has been deleted.

Because questions were raised regarding the meaning of the terms "indirect costs" and "matching funds," definitions of these terms have been added to this section.

Section 295.3 Criteria for Selection—Comment Summary (25 Comments)

Generally the respondents did not take issue with the criteria as proposed although a number of suggestions were made for "fine tuning" them. Many of the comments with regard to making the criteria more explicit do not require changes or additions to the criteria. For example, one respondent recommended that the issue of "probability of technical success" be added as a factor under criterion 1. This factor is already covered under technical feasibility. Similarly "potential for advancing the state-of-the-art of the technology" and "potential for enhancing the competitiveness of U.S. industry" were also suggested as additional factors, but are adequately covered by the proposed criteria.

Four respondents commented on the need to achieve a balance between such factors as: Innovations and improvements in current technology vs. radical new technology, distribution of funded proposals across industries and technologies, geographical distribution, and mix of small and large businesses. Because it would be in the best interest of the nation to have a balanced program with respect to technologies over the long term, the final rule makes explicit the Department of Commerce's intention to achieve such a balance.

Based on the arguments of three respondents, the weights of the criteria have been modified slightly. Additional weight (an increase to 20%) was given to criterion 2 (Potential broad-based benefits) and the weight assigned to scientific and technical merit was reduced. (But as noted in § 295.3, only those proposals with very high scores on scientific and technical merit will be rated for the other criteria.) The weighting of the third criterion (technology transfer benefits) was increased to 20%, hence in the final rule all five criteria are weighted equally. Numerical ratings for all criteria will be assigned only to those proposals that make it to the third round of reviews. At that point all proposals still being considered will have been shown to have high scientific and technical merit. At that point, that criterion will be a less important tool for discriminating among the remaining proposals and hence the lower weight was assigned to criterion 1.

The issue of whether the ATP should fund planning grants was raised by several respondents. Some favored such grants, others opposed them. After consideration, the Technology Administration has deleted provision for planning grants. However, it should be noted that technology development proposals can include planning activities as part of the first phase of the technology development program. Also, as noted in § 295.3, under certain circumstances, there is now an option for a grant with full funding contingent on the applicant's successful remedying during a six-month period of organizational deficiencies in an otherwise excellent proposal.

The Technology Administration has made certain other changes to § 295.3, which pertains to the selection process that the Department of Commerce will use in making awards under the Program. These changes are intended to make more explicit the actual process that will be used. They do not represent a substantive change.

Section 295.4 Notice of Availability of Funds—Comment Summary (6 Comments)

The major issue raised by the respondents (especially small businesses) was that the ATP will not fund indirect costs for single business applicants (3 comments). This is a statutory requirement of the ATP enabling legislation, hence the rule must reflect that requirement. The final rule contains a definition of indirect costs.

Because of the confusion concerning the funding of "indirect costs," this section was modified to make explicit that the restriction on funding indirect costs applies only to single firm applicants.

A comment was received regarding the need for other "avenues" to be used to publicize the notice of availability of

funds. A simultaneous announcement of the notice will be made in Commerce Business Daily and direct notification will be made to many hundreds of people who have already indicated an interest in submitting a proposal.

Section 295.5 Intellectual Property Rights; Licensing Fees and Royalty Payments—Comment Summary (21 Comments)

There was substantial confusion and concern expressed by many respondents concerning the intellectual property, licensing, and royalty provisions. An astute comment was made by one respondent who said: "The provisions for intellectual property specified in the Proposed Regulations are governed by Federal law and hence must be taken as givens." Many of the points made by the respondents were thoroughly discussed during the review of the proposed rule. The resulting provisions in § 295.5 are a result of the need to be compatible with existing Federal laws and policies and at the same time to assure that business participants in the program have adequate incentives for commercialization or further research and development.

It was clear from the comments that clarification of the meaning of several of the provisions would be in order. The remaining paragraphs in this section provide such clarification. In addition, editorial changes were made to § 295.5 to clarify the intent and some potentially confusing language was deleted.

Two concerns were expressed about the statement "In general, the Program will encourage the publication of research results by funding recipients in a timely fashion * * *" It appears that this statement was misinterpreted. Decisions on whether to publish or not will be made by the awardees, not by the Technology Administration. Where it is appropriate to publish, such publication should come only after suitable protection for intellectual property has been secured through patents and copyrights. The Technology Administration wants to foster widespread use within the U.S. of new technological approaches developed with ATP funds. "Publication" in this context is not intended to disclose proprietary information, but rather is intended to make other companies aware of the possibilities of the new technology so that they might license it from the developer and incorporate it into the widest possible range of new products. The issue of appropriate publication of research results is clarified in § 295.5(d).

Confusion was also evident about the allocation of ownership rights to inventions made in the course of ATP funded research. In clarification, ATP funding recipients will normally be granted the right to take ownership to these inventions, under the authority of the Bayh-Dole Act and related Presidential policy statements.

Finally, the comments reflected confusion about the collection of royalties by the Government from inventions made in the course of research funded by ATP. To clarify, the Government will be entitled only to a share of royalties earned by the funding recipient as a result of the granting of patent licenses by the funding recipient to third parties. An additional factor was added to criterion 5 to reflect the intent of the Government to recover its share of royalties.

Section 295.6 Confidential Information (No Comments on This Section)

Section 295.7 Unspent Balances of Federal Funds (No Comments on This Section)

Section 295.8 Coordination/Cooperation With Other Federal Agencies—Comment Summary (3 Comments)

The three comments received urged NIST to draw upon the expertise of State and Federal agencies as well as outside organizations where appropriate and urged NIST to take into account expressions of interest on the part of State and Federal agencies.

No changes to this section of the draft rule were required to respond to these comments. Section 295.8 makes it clear that NIST will coordinate with other agencies as appropriate. Expressions of support from State or Federal agencies can be included as appendices to proposals and such expressions of support will be taken into account in scoring proposals to the extent that such expressions of support address the criteria in the rule. NIST intends to use outside reviewers as required and will call upon organizations such as those noted in the comments for assistance if proposals are received for which such organizations have expertise not possessed by NIST that can be utilized in the review process, provided that no conflicts of interest are present and that outside reviewers are willing to adhere to nondisclosure requirements.

Section 295.9 Special Financial Reporting Requirements—Comment Summary (3 Comments)

One respondent expressed concerns about potentially burdensome accounting/audit provisions. Two expressed concerns about the wording of this section with respect to requiring that NIST not fund existing or planned research programs that would not be conducted in the same time period without ATP funds.

The language in this section was taken directly from the ATP legislation, and therefore, it would be inappropriate to make changes from the draft rule. Audits conducted as a result of awards would be no more extensive than normal Federal audits designed to ensure that Federal funds have been spent appropriately. Most companies or joint ventures would not find such audits burdensome. In some cases, audits can be performed by independent certified public accountants. Auditors would focus on simple compliance issues, such as verifying that ATP funds were used for direct costs rather than indirect costs as required by the ATP legislation.

The language of section 9 with respect to not funding R&D that would have been conducted in the same time period without ATP funds is also taken directly from the legislation and thus cannot be changed. The intent of the legislation was to avoid funding projects that would have been completed in the same time period whether or not Federal funds were available. This constraint should not be a deterrent for most potential ATP proposers.

Section 295.10 NIST Technical Assistance to Recipients of Awards—Comment Summary (1 Comment)

One individual's concern over possible constraints on NIST was the only comment on the language of this section. No change in the draft rule was deemed necessary. NIST is not precluded from organizing consortia to support NIST programs so long as such consortia do not request ATP funds to support NIST. Proposals to the ATP for joint ventures that involve collaboration with NIST (but not funding for NIST) are entirely consistent with the intent of the ATP, and in fact, such collaboration is encouraged. To ensure objectivity, NIST will rely primarily on outside reviewers to judge the merit of proposals that involve collaboration with NIST.

Subpart B—Assistance to U.S. Joint Research and Development Ventures

Section 295.20 Types of Assistance Available—Comment Summary (6 Comments)

Concerns were expressed by one large company that the program is inappropriately targeted at small businesses. Concerns were expressed by one small company that the program is not sufficiently targeted at small

businesses. The Technology Administration believes that the balance of the program in this regard is appropriate and that no changes are required.

One respondent commented to the effect that matching funds requirements would be much more difficult to meet for small businesses than for large businesses. The requirement that the ATP provide no more than a minority share to joint ventures is explicit in the legislation and thus cannot be changed. But each member of a joint venture need not provide matching funds in excess of 50% as long as the total matching funds from the venture results in the ATP providing a minority share. Thus, a single small business may not need to provide any matching funds whatsoever if that is agreeable to other members of the consortium. Also, the matching funds requirement does not apply to small (or large) businesses that apply for individual grants or cooperative agreements under subpart C of the rule.

Two respondents commented on the inappropriateness of emphasizing areas where NIST has expertise. This provision of the rule has been deleted.

One respondent urged NIST to target the service sector. Proposals for R&D in service industries will be reviewed using the same criteria as those for other industries. If service industry proposers can show that their proposed work will have a larger impact on U.S. economic growth and productivity than R&D proposed by other industries, their proposals will be funded.

A letter from two members of the Congress suggested that the rule include explicit criteria for the participation of foreign-owned companies, such as the criteria included in legislation now being considered by the Congress. While the Department of Commerce is sensitive to these concerns, after careful consideration of this suggestion the Technology Administration has concluded that it would be inappropriate to write into the rule criteria for foreign participation contained in draft legislation.

The Technology Administration believes it is not necessary to have explicit criteria regarding the participation of foreign owned or controlled firms included in the rule in order to protect U.S. competitiveness, which is the focus of the ATP. The rationale for this assertion is as follows: Companies or joint ventures will not score highly unless they show unambiguously that their proposals will enhance U.S. competitiveness. The burden of proof will be on those submitting proposals which include the participation of foreign owned or controlled firms to convince the reviewers that the proposed work would enhance U.S. competitiveness more than that of other proposals that do not include the participation of foreign owned or controlled firms. The Technology Administration will seek to ensure that the benefits of ATP funded research will flow to the U.S. economy through the judicious use of the authority noted in § 295.5 to withhold from funding recipients ownership of patents resulting from ATP funded research.

Section 295.21 Qualification of Applicants—Comment Summary (14 Comments)

No changes were made to the wording of this section, but the explanatory material which follows sheds additional light on the interpretation of this section and should alleviate some of the concerns.

The respondents who commented on this section generally noted the need to clarify how this section will actually be interpreted by NIST with respect to the definition of and eligibility of "United States joint research and development ventures" and "independent research centers." There are a large number of technology R&D centers, technology transfer centers, and economic development organizations that have been established by universities, by state and local government agencies, by industrial consortia, and by combinations of these. There are considerable variations among them regarding charters, management arrangements, and funding. Questions of eligibility tend to arise for centers that are quasi-government or quasi-university.

While universities cannot be funded directly and cannot apply independently, universities can receive funding as part of a joint venture team. In such cases, the proposal would have to make it clear that the venture was industry-led and not a subterfuge to funnel ATP funds to a university through a cooperating business or businesses.

Research or technology transfer centers established by universities and/or government agencies would be eligible for direct funding as independent research organizations if such centers are genuinely independent of the university or government agency in terms of both financial and management control. For example, a center located on a university campus and utilizing support services from the university would be eligible if, (1) its purpose was research and development oriented towards industrial needs, (2) its management were independent of the normal academic management hierarchy of the university, and (3) the center had a budget of its own such that its funds were not co-mingled with normal university academic funds. In such a center, most of the technical staff would be expected to be engaged full-time in R&D activities rather than in teaching. There will undoubtedly be some institutions that fall into gray areas, and in such cases we suggest that the institution contact NIST to seek a determination of eligibility.

Universities or government agencies can serve as catalysts to organize joint ventures, but the proposal from the joint venture must meet the criteria of the rule.

It should be noted that some respondents endorsed the policy of not providing funding to government agencies or directly to universities.

The issue of the participation of foreign owned or controlled businesses in joint ventures was raised by more than one respondent. (See the comment summary for section 20 for a discussion of this point.)

One respondent urged that the rule include a set-aside for minority-owned businesses. Because the Congress did not authorize via the ATP enabling legislation a set-aside for minority businesses, no set-aside was included in the rule. But minority businesses are strongly encouraged to participate in this program.

Section 295.22 Limitations on Assistance—Comment Summary (2 Comments)

This section stated that no awards are to be made unless Federal aid is needed to form a joint venture quickly. Both of the organizations that commented on this section questioned whether existing consortia are eligible. This section reproduces the actual language of the legislation, accordingly it was not changed. This provision will be interpreted such that existing joint ventures can submit proposals only if the proposed area of work is not one already being pursued by the joint venture. Accordingly, proposers from existing joint ventures must verify in the proposal that the program being proposed strikes out in a new direction and is not merely to increase support for a program already being carried out by the joint venture.

Section 295.23 Dissolution of Joint Ventures—Comment Summary (1 Comment)

The only concern expressed over this section involved the feasibility of the Federal government being entitled to a

share of the residual assets of a dissolved joint venture. This provision is also directly from the legislation, and therefore was not changed. In most cases, successful joint ventures will continue well beyond the period of ATP funding. Since high-tech research equipment tends to become obsolete fairly rapidly, equipment likely to be used in such projects that was purchased with ATP funds will frequently have been depreciated to zero before the joint venture terminates. Another option for those concerned about this provision is for joint venture participants to loan equipment to the joint venture rather than transfer title of the equipment to the joint venture. Where this is done, such equipment would not be an asset of the venture if and when dissolution takes place. Normally one would phase out a joint venture such that on the date of official dissolution, no assets remain to be divided.

Section 295.24 Registration—Comment Summary (1 Comment)

One respondent objected to the requirement that joint ventures must register under the National Cooperative Research Act (NCRA) "prior to award." (This respondent did acknowledge the need to file under the NCRA.) This concern is valid. The phrase "prior to award" was deleted in the final rule. However, NIST will ensure that awardees do file under NCRA in a timely fashion. As redrafted, the rule provides that joint research and development ventures selected for funding must provide notification to the Department of Justice or to the Federal Trade Commission under the NCRA. No funds will released prior to receipt by the Program of copies of such notification.

Subpart C—Assistance to U.S. Businesses

Section 295.30 Types of Assistance Available—Comment Summary (4 Comments)

The comments regarding this section closely parallel those of § 295.20. Respondents were concerned over the language that emphasis will be placed on areas where NIST has expertise. This provision has been deleted. Also, questions were raised regarding the attractiveness of the ATP for small businesses. The discussion and response for § 295.20 apply here as well. Accordingly, no changes to the rule were made in this section.

Section 295.31 Qualifications of Applicants—Comment Summary (13 Comments)

The comments in this section closely parallel those in section 21. The discussion for section 21 applies equally well here and no changes to the draft rule were necessary.

Section 295.32 Limitations on Assistance (2 Comments)

Two respondents questioned the appropriateness of the $2 million restriction on funding to individual firms. The language of the rule cannot be changed lest it be inconsistent with the legislation. The $2 million limitation is required by section 5131 of Public Law 100-418.

Because of the confusion concerning the funding of "indirect costs" cited in the comments on § 295.4, this section was modified to make explicit that the restriction on funding indirect costs applies only to single firm applicants.

Effective Date of the Final Rule

This final rule relating to grants, benefits, and contracts is exempt from the delayed effective date requirement, and accordingly, under section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 553), is therefore being made effective immediately without a 30 day delay in effective date.

Classification

Executive Order 12291

This document is not a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not have an annual impact on the economy of $100 million or more, nor will it result in a major increase in costs or prices for any group, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the time this rule was proposed that, if it were adopted as proposed, it would not have a significant economic effect on a substantial number of small entities requiring a flexibility analysis under the Regulatory Flexibility Act. This is because the program is entirely voluntary for the participants that seek funding.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environment Policy Act.

Paperwork Reduction Act

This rule contains a collection of information requirements subject to the Paperwork Reduction Act which have been approved by the Office of Management and Budget under control number 06930009 for use through August 31, 1991.

Executive Order 12372

The Advanced Technology Program does not involve the mandatory payment of any matching funds from a state or local government, and does not affect directly any state or local government. Accordingly, the Technology Administration has determined that Executive Order 12372 is not applicable to this program.

Executive Order 12612

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

List of Subjects in 15 CFR Part 295

Science and technology, Inventions and patents, Laboratories, Research, Scientists.

Robert M. White,

Under Secretary, Technology Administration.

For reasons set forth in the preamble, 15 CFR chapter II is amended as follows:

CHAPTER II—NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, DEPARTMENT OF COMMERCE

1. By revising the chapter heading to read as set forth above.

2. By adding subchapter K consisting of part 295 to read as follows:

Subchapter K—Advanced Technology Program Procedures

PART 295—ADVANCED TECHNOLOGY PROGRAM

Subpart A—General

Sec.

295.1 Purpose.
295.2 Definitions.
295.3 Criteria for selection.
295.4 Notice of availability of funds.
295.5 Intellectual property rights; licensing fees and royalty payments.
295.6 Protection of confidential information.
295.7 Unspent balances of federal funds.
295.8 Coordination/cooperation with other federal agencies.

Sec.
295.9 Special financial reporting requirements.
295.10 NIST technical assistance to recipients of awards.

Subpart B—Assistance to U.S. Joint Research and Development Ventures

295.20 Types of assistance available.
295.21 Qualification of applicants.
295.22 Limitations on assistance.
295.23 Dissolution of joint research and development ventures.
295.24 Registration.

Subpart C—Assistance to U.S. Business

295.30 Types of assistance available.
295.31 Qualification of applicants.
295.32 Limitations on assistance.

Authority: 15 U.S.C. 271 *et seq.*, and sec. 5131 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, 102 Stat. 1439, 15 U.S.C. 278n.

Subpart A—General

§ 295.1 Purpose.

(a) The purpose of the Advanced Technology Program is to assist United States businesses to carry out research and development on pre-competitive generic technologies. These technologies are:

(1) Enabling, in that they offer wide breadth of potential application and form an important technical basis for future product-specific applications; and

(2) High value, in that when applied, they offer significant benefits to the economy.

(b) In the case of joint research and development ventures involving potential competitors funded under the Program, the willingness of firms to commit significant amounts of corporate funds to the venture will be taken as an indication that the proposed research and development is pre-competitive. For joint ventures that involve firms and their customers or suppliers or for single firms not proposing cooperative research and development, their willingness to adequately address technology transfer requirements to assure prompt and widespread use and protection of results by participants and, as appropriate, other U.S. businesses may characterize their research and development as pre-competitive.

(c) These rules prescribe policies and procedures for the award of grants and cooperative agreements under the Advanced Technology Program, in order to ensure the fair, equitable and uniform treatment of all proposals for assistance under this Program. While the Advanced Technology Program is authorized to enter into contracts to carry out its mission, these rules address only the award of grants and cooperative agreements.

§ 295.2 Definitions.

(a) The term "award" includes grants and cooperative agreements.

(b) The term "generic technology" means a concept, component, or process, or the further investigation of scientific phenomena, that has the potential to be applied to a broad range of products or processes. Note: A generic technology may require subsequent research and development for commercial application.

(c) The term "indirect costs" means those costs that are incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Because of the diverse characteristics and accounting practices of nonprofit and for-profit organizations, it is not possible to specify the types of costs which may be classified as indirect costs in all situations. However, typical examples of indirect costs for many organizations may include depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting. For example, at educational institutions indirect costs might include the following cost categories: Depreciation and use allowances, general administration and general expenses, sponsored projects administration expenses, operation and maintenance expenses, library expenses, departmental administration expenses, and student administration and services.

(d)(1) The term "joint research and development venture" or "joint venture" means any group of activities, including attempting to make, making, or performing a contract, by two or more persons for the purpose of:

(i) Theoretical analysis, experimentation, or systematic study of phenomena or observable facts;

(ii) The development or testing of basic engineering techniques;

(iii) The extension of investigative findings or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes;

(iv) The collection, exchange, and analysis of research information; or

(v) Any combination of the purposes specified in paragraphs (d)(1)(i), (ii), (iii), and (iv) of this section, and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture, but does not include any activity specified in paragraph (d)(2) of this section.

For the purposes of this document, the terms "consortia" and "partnerships" are considered to be joint ventures.

(2) The term "joint research and development venture" excludes the following activities involving two or more persons:

(i) Exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required to conduct the research and development that is the purpose of such venture;

(ii) Entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production or marketing by any person who is a party to such joint venture of any product, process, or service, other than the production or marketing of proprietary information developed through such venture, such as patents and trade secrets; and

(iii) Entering into any agreement or engaging in any other conduct

(A) To restrict or require the sale, licensing, or sharing of inventions or developments not developed through such venture, or

(B) To restrict or require participation by such party in other research and development activities, that is not reasonably required to prevent misappropriation of proprietary information contributed by any person who is a party to such venture or of the results of such venture.

(e) The term "matching funds" includes the following:

(1) Dollar contributions from state, county, city, company, or other sources;

(2) The applicant's share of revenue from licensing and royalties as per § 295.5(c);

(3) Fees for services performed;

(4) In-kind contributions of full-time personnel;

(5) In-kind contributions of a pro-rata share of part-time personnel that the Program deems essential to carrying out the proposed experimental work program and who devote at least 50% of their time to the program; and

(6) In-kind value of equipment that the Program deems essential to carrying out the proposed experimental work program, which may include either the purchase cost of new equipment or the depreciated value of previously purchased equipment.

The depreciation method to be used for the matching fund determination shall be the internal depreciation accounting method used by the applicant for that equipment prior to the award. The value of equipment will be further pro-rated according to the share of total use dedicated to carrying out the proposed ATP work program. The total value of equipment expenditures allowable under the match may be applied in the award year expended or pro-rated over the duration of award years. The total in-kind value of equipment expenditures can not exceed 30% of the applicant's total annual share of matching funds. The total in-kind value of part-time personnel can not exceed 20% of the applicant's total annual share of matching funds.

(f) The term "person" shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(g) The term "pre-competitive technology" means research and development activities up to the stage where technical uncertainties are sufficiently reduced to permit preliminary assessment of commercial potential and prior to development of application-specific commercial prototypes. Note: At the stage of pre-competitive research and development, for example, results can be shared within a consortium that can include potential competitors without reducing the incentives for individual firms to develop and market commercial products and processes based upon the results.

(h) The term "Program" means the Advanced Technology Program.

(i) The term "Secretary" means the Secretary of Commerce or his designee.

§ 295.3 Criteria for selection.

(a) The selection process for awards under the Program will be a four step process based on the criteria listed in paragraph (b) of this section. In the first step, proposals that do not meet the requirements of this rule or the program announcement will be rejected; thus, for example, proposals will be rejected that do not meet requirements set out in the Notice of Availability of Funds issued pursuant to § 295.4, or in the case of joint ventures, proposals that request more than a minority share of funding. The second step will be a review to determine whether proposals have scientific and technical merit (using the criterion in paragraph (b)(1) of this section). Only those proposals which score very high with respect to scientific and technical merit will be further considered. Proposals will be rated as "not recommended" and "recommended." Only those proposals in the "recommended" category will be further considered. In the third step, reviewers with expertise in fields such as business planning, finance, and technology transfer will be used to supplement reviewers familiar with the technology itself, and a total score reflecting all criteria listed in paragraph (b) of this section will be determined for each proposal. The highest ranking proposals will be designated "semifinalists." Semifinalists will be asked to make oral presentations on their proposals, and in cases where special facilities are involved with which the reviewers are not familiar, site visits may be required. Based on the oral proposal presentations and/or site visits, adjustments may be made to the scores and the highest ranking proposals will be designated as finalists. The fourth step will be to select funding recipients from among the finalists, based upon:

(1) Assuring an appropriate distribution of funds among technologies and their applications,

(2) The rank order of the applications on the basis of all selection criteria (§ 295.3(b)); and

(3) The availability of funds.

If a joint venture is ranked as a finalist in step 3, but the Program determines that the proposing organization contains weaknesses in its structure or cohesiveness that may substantially lessen the probability of the proposed program being successfully completed, the Program may inform the applicant of the deficiencies and enter into negotiations with the applicant in an effort to remedy the deficiencies. If appropriate, funding in the lesser amount of 10 percent of the amount originally requested by the applicant or $50,000 may be awarded by the Program to the applicant to assist in overcoming the organizational deficiencies. If the Program determines within six months of this award that the organizational deficiencies have been corrected, the Program may award the remaining funds requested by the applicant to that applicant.

(b) The evaluation criteria to be used in selecting any proposal for funding under this program, and their respective weights, are:

(1) Scientific and Technical Merit of the Proposal (20 percent)

(i) Quality and innovativeness of the proposed technical program (*i.e.* uniqueness with respect to current industry practice).

(ii) Appropriateness of the technical risk and feasibility of the project (*i.e.* is there sufficient knowledge base to justify the level of technical risk involved. Projects should press the state of the art while still demonstrating feasibility).

(iii) Coherency of technical plan and clarity of vision of technical objectives.

(iv) Adequacy of systems-integration and multidisciplinary planning including integration of appropriate downstream or upstream production, manufacturing, quality assurance, and customer service requirements.

(2) Potential Broad-based Benefits of the Proposal (20 percent)

(i) Potential broad impact on U.S. technology and knowledge base.

(ii) Potential to improve U.S. economic growth and the productivity of a broad spectrum of industrial sectors or businesses.

(iii) Timeliness of proposal (i.e. the potential project results will not occur too late to be competitively useful).

(3) Technology Transfer Benefits of the Proposal (20 percent)

(i) Evidence that if the project is successful, the participants will pursue further development of the technology toward commercial application.

(ii) Project plan adequately addresses technology transfer requirements to assure prompt and widespread use and protection of results by participants and, as appropriate, other U.S. businesses.

(4) Experience and Qualifications of the Proposing Organization (20 percent)

(i) Adequacy of proposer's staffing, facilities, equipment, and other resources to accomplish the proposed program objectives.

(ii) Quality and appropriateness of the full-time technical staff to carry out the proposed work program and to identify and overcome technical barriers to meeting project objectives.

(iii) For proposals involving laboratory prototype development, evidence of availability of adequate design and manufacturing tools appropriate to the prototype.

(5) Proposer's Level of Commitment and Organizational Structure (20 percent)

(i) Level of commitment of proposer as demonstrated by contribution of personnel, equipment, facilities, and matching funds.

(ii) For joint ventures, appropriateness of the structure of the proposed venture organization in terms of composition of participants (i.e. vertical and/or horizontal integration).

(iii) For joint ventures, appropriate participation by small businesses.

(iv) Evidence of a strong commitment by proposer to complete and, if appropriate, provide support for

continuation of the program beyond the period of federal funding.

(v) Potential return to the U.S. government as provided for in § 295.5(c).

Each of the subcriteria within a category shall be weighted equally. However, no project will be funded in the absence of a finding of scientific and technical merit by the reviewers.

§ 295.4 Notice of availability of funds.

(a) The Program shall periodically publish a notice in the **Federal Register** inviting interested parties to submit proposals for funding under the Program. Applications will be considered for funding only when submitted in a timely manner in response to a specific notice in the **Federal Register** inviting applications for funding.

(b) All notices published in the **Federal Register** in accord with paragraph (a) of this section shall include basic information about the amount of funds available, the approximate number of awards, types of awards, closing dates, the name, address and telephone number of the contact person, a requirement that proposals be submitted with a Standard Form 424, and any other appropriate guidance.

(c) Notices under paragraph (a) of this section shall also state that awards under the Program shall be subject to all Federal and Departmental regulations, policies and procedures applicable to financial assistance awards, and shall require that funds awarded by the Program under subpart C shall be used only for direct costs and not for indirect costs, profits, or management fees of the funding recipients. Notices shall also include the notification that section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), will be required to be submitted with the application. Also, notices shall inform applicants that they are subject to Government-wide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26, and in accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

§ 295.5 Intellectual property rights; licensing fees and royalty payments.

(a) *Patents.* Awards under the Program will follow the policies and procedures on ownership to inventions made under grants and cooperative agreements that are set out in Public Law 96-517 (35 U.S.C. chapter 18), the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies Dated February 18, 1983, and part 401 of title 37 of the Code of Federal Regulations, as appropriate. These policies and procedures generally require the Government to grant to funding recipients the right to elect to obtain title to any invention made in the course of the conduct of research under an award, subject to the reservation of a Government license, if the purpose of the award is the conduct of experimental, developmental or research work. Exceptions to this rule will only be made

(1) When the funding recipient is not located in the United States or does not have a place of business in the United States or is subject to the control of a foreign government; or

(2) In exceptional circumstances when the Secretary determines that restriction or elimination of the right to obtain title to any subject invention will better promote the commercialization of the invention by United States industry and labor.

(b) *Copyrights.* Except as otherwise specifically provided for in an Award, funding recipients under the Program may establish claim to copyright subsisting in any data first produced in the performance of the award. When claim is made to copyright, the funding recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government, are published, or are deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, distribute copies to potential users in the United States, and perform publicly and display publicly, by or on behalf of the Government.

(c) *Royalty/Licensing Payments.* For technologies resulting from an award under this program, the Federal Government shall obtain a share of the licensing fees and royalty payments made to and retained by a business or joint research and development venture receiving funds under these procedures in an amount proportional to the Federal share of the costs incurred by the business or joint venture as determined by independent audit.

(d) *Publication of Research Results.* Although the program will encourage the timely publication of research results by funding recipients, the decision on whether to publish or not will be made by the funding recipient(s). Unpublished intellectual property owned and developed by any business or joint research and development venture receiving funding or by any member of such a joint venture may not be disclosed by any officer or employee of the Federal Government except in accordance with a written agreement between the owner or developer and the Program. The licenses granted to the Government under § 295.5(b) shall not be considered a waiver of this requirement.

§ 295.6 Protection of confidential information.

As required by section 278n(d)(5) of title 15 of the United States Code, the following information obtained by the Secretary on a confidential basis in connection with the activities of any business or joint research and development venture receiving funding under the program shall be exempt from disclosure under the Freedom of Information Act—

(1) Information on the business operation of any member of the business or joint venture;

(2) Trade secrets possessed by any business or any member of the joint venture.

§ 295.7 Unspent balances of Federal funds.

If a business or joint research and development venture receiving funds under these procedures fails before the completion of the period for which an award has been made, after all allowable costs have been paid and appropriate audits conducted, the unspent balance of the Federal funds

shall be returned by the recipient to the Program.

§ 295.8 Coordination/Cooperation with other Federal agencies.

So as to avoid any unnecessary duplication of effort and to increase the possibilities of joint funding of projects of common interest with other agencies, the Secretary intends to coordinate with other agencies as appropriate, but particularly where the Secretary determines that the subject is of substantial interest to another agency.

§ 295.9 Special financial reporting requirements.

Each award under the Program shall contain procedures regarding financial reporting and auditing to ensure that awards are used for the purposes specified in these procedures, are in accordance with sound accounting practices, and are not funding existing or planned research programs that would be conducted in the same time period in the absence of financial assistance under the program.

§ 295.10 NIST technical assistance to recipients of awards.

(a) Under the Federal Technology Transfer Act of 1986, the National Institute of Standards and Technology of the Technology Administration has the authority to enter into cooperative research and development agreements with non-Federal parties to provide personnel, services, facilities, equipment, or other resources except funds toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory. In turn, the National Institute of Standards and Technology has the authority to accept funds, personnel, services, facilities, equipment and other resources from the non-Federal party or parties for the joint research effort. Cooperative research and development agreements do not include procurement contracts or cooperative agreements as those terms are used in sections 6303, 6304, and 6305 of title 31, United States Code.

(b) In no event will the National Institute of Standards and Technology enter into a cooperative research and development agreement with a recipient of awards under the Program which provides for the payment of Program funds from the award recipient to the National Institute of Standards and Technology.

Subpart B—Assistance to U.S. Joint Research and Development Ventures

§ 295.20 Types of assistance available.

This subpart describes the types of assistance that may be provided under the authority of 15 U.S.C. 278n(b)(1). Such assistance includes but is not limited to:

(a) Partial start-up funding for joint research and development ventures.

(b) A minority share of the cost of joint research and development ventures for up to five years.

(c) Equipment, facilities and personnel for joint research and development ventures.

§ 295.21 Qualification of applicants.

Assistance under this subpart will be available to United States joint research and development ventures, including those which have as members universities, independent research organizations, and governmental entities. However, the Program will not provide funding directly to any governmental entity.

§ 295.22 Limitations on assistance.

No awards are to be made unless, in the judgment of the Secretary, Federal aid is needed if the industry in question is to form a joint venture quickly.

§ 295.23 Dissolution of joint research and development ventures.

Upon dissolution of any joint research and development venture receiving funds under these procedures or at a time otherwise agreed upon, the Federal Government shall be entitled to a share of the residual assets of the joint venture proportional to the Federal share of the costs of the joint venture as determined by independent audit.

§ 295.24 Registration.

Joint research and development ventures selected for funding must provide notification to the Department of Justice or to the Federal Trade Commission under the National Cooperative Research Act of 1984. No funds will be released prior to receipt by the Program of copies of such notification.

Subpart C—Assistance to U.S. Businesses

§ 295.30 Types of assistance available.

This subpart describes the types of assistance that may be provided under the authority of 15 U.S.C. 278n(b)(2). Such assistance includes but is not limited to entering into cooperative agreements with United States businesses, especially small businesses, and with independent research organizations.

§ 295.31 Qualification of applicants.

Awards under this subpart will be available to all United States businesses and independent research organizations. However, the Program will not directly provide funding to any governmental entity or academic institution.

§ 295.32 Limitations on assistance.

Awards under this subpart may not exceed $2,000,000, or be for more than three years, unless the Secretary provides a written explanation to the authorizing committees of both Houses of Congress and then, only after thirty days during which both Houses of Congress are in session. No funding for indirect costs shall be available for awards made under this subpart.

[FR Doc. 90-17117 Filed 7-23-90; 8:45 am]
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DEPARTMENT OF COMMERCE

Technology Administration

[Docket No. 900130-0153]

Invitation for Proposals Under Advanced Technology Program

AGENCY: Technology Administration, Commerce.

ACTION: Notice; invitation for proposals; notice of meeting.

SUMMARY: The Technology Administration invites applications for funding under the Advanced Technology Program (ATP), and announces a public meeting for all parties interested in making such an application. Anyone interested in applying for funding under this Program must contact the Program at the address shown below in order to obtain materials for applications. The Advanced Technology Program is Program Number 11.612 in the Catalog of Federal Domestic Assistance.

CLOSING DATE FOR APPLICATIONS: Proposals must be received no later than 5 p.m. e.d.t. on September 24, 1990.

DATE OF PUBLIC MEETING: The public meeting for parties considering making application for funding under the Advanced Technology Program will be held beginning at 9:30 a.m. on August 22, 1990 in the Red Auditorium, Administration Building, National Institute of Standards and Technology, Quince Orchard and Clopper Roads, Gaithersburg, MD, exit 10 off Interstate 270.

NUMBER OF PROPOSALS: Applicants must submit one signed original plus nine (9) copies of their proposal numbered 1 through 10 along with the Standard Form 424 to The Advanced Technology Program at the address below.

ADDRESSES: Advanced Technology Program, Proposal Solicitation ATP 90-01, room B110, Technology Bldg. (Bldg. 225), National Institute of Standards and Technology, Quince Orchard and Clopper Roads, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: To receive application materials and additional program information, call the Advanced Technology Program Office at (301) 975-5187 or write to the address shown above. The ATP facsimile number is (301) 869-1150.

SUPPLEMENTARY INFORMATION:

Background

The Advanced Technology Program (ATP) is managed by the National Institute of Standards and Technology (NIST), an element of the Technology Administration with the Department of Commerce. ATP was established by section 5131 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, 15 U.S.C. 278n), and is operated under program procedures published at part 295 of title 15 of the Code of Federal Regulations. The ATP, which received its initial appropriation in Fiscal Year 1990, will assist U.S. businesses to improve their competitive position and promote U.S. economic growth by accelerating the development of a variety of pre-competitive generic technologies [1] by means of grants and cooperative agreements. NIST intends to select proposals for funding approximately three months after the closing date for applications.

Research and development activities cover a wide spectrum, from basic research at one extreme to the development of specific new products at the other. The Advanced Technology Program is intended to foster the development of technology that is beyond basic research, but not close to the stage of new product development. Thus the ATP will include the development of laboratory prototypes intended to establish technical feasibility but not prototypes of commercial products. The ATP will not fund projects to demonstrate commercial viability or projects involving market testing of specific products.

The purpose of the ATP as stated in Public Law 100-418 is to assist U.S. companies in creating and applying "generic technology" and research results so as to commercialize new technology more quickly and improve manufacturing processes. While it is hoped and intended that new products will ultimately result from work funded by the ATP, the program will not focus on giving participating companies a competitive advantage for specific new products. Rather, the focus will be on supporting work that has great economic potential with multi-sector benefits. Accordingly, joint ventures are emphasized in the legislation establishing the ATP. This legislation states that the ATP should "avoid providing undue advantage to specific companies."

Invitation for Proposals

The Technology Administration invites applications for funding for two types of proposals: (1) Technology Development Proposals from individual United States businesses or independent research institutes in amounts not to exceed $2 million over three years, and (2) Technology Development Proposals from qualified United States joint research and development ventures where ATP support will serve as a catalyst for the proposed joint venture, and provided however, that the ATP share shall be a minority share of the cost of the venture for up to five years, and subject to the availability of ATP funds. Future or continued funding for multi-year projects will be at the discretion of the Technology Administation and will be contingent on such factors as satisfactory performance and the availability of funds.

Funds Available for Grants and Cooperative Agreements

Approximately $9.1 million will be available for awards in the form of grants and cooperative agreements resulting from this solicitation. The President's FY 1991 budget requests an additional $10 million for the ATP (including funding to administer the program). Depending on the number and quality of proposals received from this solicitation, NIST reserves the right to allocate all or a portion of the funds available in the FY 1991 budget to projects selected through this competition. The actual obligation of FY 1991 funds is contingent on their appropriation. The number of awards will depend on the amount of funding requested by the highest ranked proposals, and is likely to be in the 5-20 range.

Applicant Eligibility

ATP funding is available to United States businesses and certain United States joint research and development ventures. Eligible joint research and development ventures are defined in § 295.2(d) of the ATP Procedures. The information package for applicants contains the ATP Procedures.

ATP funds may not flow directly to universities, Federal laboratories, or state agencies, although universities and federal laboratories may participate as members of an industry-led consortium and universities may receive funding via industry members of the consortium. Nonprofit independent research laboratories may also participate and receive funding either directly or indirectly. The participation of universities and Federal laboratories through cooperative research and development agreements in consortia funded by the ATP is encouraged. As a matter of policy, NIST's intramural programs cannot receive funding from a

[1] The terms "generic technology" and "pre-competitive technology" are defined in the Advanced Technology Program Procedures (15 CFR part 295). A copy of the Procedures is included in the information package that is mailed to potential applicants upon request.

consortium funded by the ATP or its members.

Preparation of Proposals and Reporting Requirements

The ATP application package contains detailed guidelines for the preparation of proposals. Also included is information on reporting requirements.

Award Criteria for Technology Development Proposals

Criteria that will be used to evaluate technology development proposals submitted in response to this notice appear in the ATP Procedures which have been published at § 295.3(b) of title 15 of the Code of Federal Regulations. The information package for applicants contains the ATP Procedures.

The Proposal Review Process

The proposal review process is described in the ATP Procedures at § 295.3(a) of title 15 of the Code of Federal Regulations. The information package for applicants contains the ATP Procedures. The review process is expected to take approximately three months, although the process might take longer if an unusually large number of proposals is received.

Letters of Intent

NIST requests that potential proposers submit a one page letter of intent approximately 4–6 weeks prior to the solicitation deadline. This letter should provide the name, address, and phone number of the principal point of contact for the anticipated proposal and a brief (one paragraph) abstract of the proposal. Technical areas to be covered by the proposed program should be summarized in the abstract.

This letter of intent is optional and failure to submit such a letter will not adversely affect the proposal's rating if and when a proposal is submitted. The purpose of the letter is to aid in determining the technical areas in which proposals are likely to be submitted so that suitable panels of technical reviewers can be arranged in advance of receipt of proposals. By complying with this request, proposers can help expedite the reviews considerably and advance the date of notification to awardees.

Other Requirements, Requests, and Provisions

Applicants who have outstanding accounts receivable with the Federal Government may not be considered for ATP funding until the debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101–121 prohibits recipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, cooperative agreement or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" is required to be submitted with any application for funding under ATP. Applicants for funding under ATP are subject to Government-wide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior conditon" to receiving a grant or cooperative agreement. A false statement on any application for funding under ATP may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment. Awards under ATP shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

Robert M. White,

Under Secretary for Technology.

[FR Doc. 90–17116 Filed 7–23–90; 8:45 am]

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federal register

Tuesday
July 24, 1990

Part V

Department of Defense

48 CFR Part 204 et al

Department of Defense Acquisition Regulations; Miscellaneous Amendments; Interim and Final Rule

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 206, 210, 215, 219, 224, 225, 244, 245, 252, 253, Appendices L and P

[Defense Acquisition Circular (DAC) 88-15]

Department of Defense Acquisition Regulations; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments; and final rules.

SUMMARY: Defense Acquisition Circular (DAC) 88-15 amends the DoD FAR Supplement (DFARS) coverage on the contract data requirements list, ordering data item descriptions, the requirement for competition in awards to colleges and universities, small business subcontracting plans, Freedom of Information and Privacy Act programs, balance of payment program exemptions for ready-mixed asphalt and portland cement concrete, restrictions on acquisitions of valves and machine tools, contractor purchasing system reviews, asset use charges, the DOD contract simplification test, and miscellaneous editorial items.

DATES: *Effective Date:* July 16, 1990 except for Item II, Ordering Data Item Descriptions (210.011 (S-70) and 252.210-7001), which was effective June 18, 1990; Item V, Test Program on Small Business Subcontracting Plans (219.702, 219.708(b) (1) and (2), (c)(1)(S-70) and (c)(3), 252.219-7005, and 252.219-7016), which is effective October 1, 1990; and Item XII, Waiver of Asset Use Charges (245.405(f)), which was effective April 30, 1990.

Comment Date: Comments on the interim rule, Item X, valves and machine tools (225.7000, 225.7001, 225.7008, 225,7012, 225.7012-1, 225.7012-2, 225.7012-3, 225.7012-4, 225.7012-5, and 252.225-7023), should be submitted to the address below by August 23, 1990, to be considered in formulating the final rule. Please cite DAR Case 89-329 in all correspondence concerning this rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Ms. Lucile Hughes, DAR Council, ODASD(P)/DARS, c/o OASD(P&L)(M&RS), Room 3D139, Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Ms. Lucile Hughes, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Determination To Issue Interim Rule

A determination has been made under authority of the Secretary of Defense to issue the regulations in Item X of DAC 88-15 as an interim rule. Compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

B. Background

The DoD FAR Supplement is codified in chapter 1 title 48 of the Code of Federal Regulations.

The October 1, 1989 revision of the CFR is the most recent edition of that title. It includes amendments to the 1988 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 88-1 through 88-12.

DAC 88-15, Item X. DFARS 225.7000 is revised to implement restrictions on the use of appropriated funds by the Department of Defense in purchasing machine tools and powered and non-powered valves. These restrictions are imposed by Public Law 99-591 and subsequent DoD Authorization and Appropriations Acts.

C. Public Comments

DAC 88-15, Item X

This item is published as an Interim rule. Public comment is invited.

DAC 88-15, Item III

This item is for informational purposes and does not contain revisions to the DFARS.

DAC 88-15, Items, I, II, IV, VII, VIII, XI, XII, XIII, and XIV

Public comments were not solicited for these revisions because the revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures.

DAC 88-15, Items V, VI, and IX

These rules were published for public comment. The comments that were received were considered in development of the final rule:

Item V. A proposed rule was published in the Federal Register April 11, 1990 (55 FR 13744).

Item VI. A proposed rule was published in the Federal Register April 25, 1990 (55 FR 17465).

Item IX. A proposed rule was published in the Federal Register March 22, 1990 (55 FR 10637).

D. Regulatory Flexibility Act

DAC 88-15, Items I, II, IV, VII, VIII, XI, XIII, and XIV

The Regulatory Flexibility Act does not apply because these rules are not significant revisions within the meaning of Public Law 98-577. However, comments from small entities concerning the affected DoD FAR Supplement Subparts will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DAR Case 90-610 in correspondence.

DAC 88-15, Item V

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it applies to a very limited number of large contractors. There were no comments received in response to a notice of proposed rule published April 11, 1990 (55 FR 13744) which addressed the Regulatory Flexibility statement.

DAC 88-15, Item VI

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it merely permits large firms to take credit toward their subcontracting goals on work performed on Indian land or in joint venture with Indian organizations. There were no comments received in response to a notice of proposed rule published April 25, 1990 (55 FR 17465) which addressed the Regulatory Flexibility statement.

DAC 88-15, Item IX

This final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it has very limited application. There were no comments received in response to the March 22, 1990 notice (55 FR 10637) which suggested an impact.

DAC 88-15, Item X

This interim rule is not expected to have a significant economic impact upon a substantial number of small entities because it imposes restrictions on the acquisition of foreign products and provides a preference for domestic items. A Regulatory Flexibility analysis has not been prepared. However, comments from small entities will be considered in formulating the final rule.

DAC 88-15, Item XII

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the revision merely extends the current rule.

E. Paperwork Reduction Act

DAC 88-15, Item II, IV, VI, VII, VIII, IX, X, XI, XII, XIII and XIV

The Paperwork Reduction Act does not apply because these rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

DAC 88-15, Item I

The Paperwork Reduction Act applies. This rule is based on the OMB terms of clearance under OMB Control Number 0704-0188.

DAC 88-15, Item V

The information collection requirements in this rule do not require the approval of OMB under 44 U.S.C. 3501 because they are based on a voluntary test program which will affect less than 10 contractors. The test program is based on section 834 of Public Law 101-189. The associated coverage will impact OMB Control Numbers 9000-0006 (SF 294) and 9000-0007 (SF 295). Overall, a decreased burden will result because contractors will no longer be required to submit SF 294s and subcontracting plans on a contract by contract basis. Instead, plans and reporting will be done on a company wide basis. In accordance with section 834 of Public Law 101-189, the results of the test program shall be reported to the Committees on Armed Services and on Small Business of the Senate and the House of Representatives.

List of Subjects in 48 CFR Parts 204, 206, 210, 215, 219, 224, 225, 244, 245, 252, and 253

Government procurement.

Dated: July 16, 1990.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulatory Council.

All DoD FAR Supplement and other directive material contained in this circular is effective July 16, 1990, unless otherwise specified in the Item summary. Material effective July 16, 1990, is to be used upon receipt. Solicitations issued before receipt of the circular do not have to be amended to include the new or revised clauses or forms. See the guidance in DoD FAR Supplement 201.301(S-70)(4).

Defense Acquisition Circular (DAC) 15 amends the Defense Federal Acquisition Regulation Supplement (DFARS) 1988 edition, prescribes procedures to be followed, and provides informational interest items. The following summarizes the amendments, procedures, and information.

Item I—Contract Data Requirements List

DFARS 204.7103-1, 204.7105, 204.7106-2, and 215.871 are revised to clarify the differences between contract exhibits and contract attachments, and specifically to preclude use of the DD Form 1423, Contract Data Requirements List, as an attachment. DFARS 253.3 is revised to include the most current version of the DD Form 1423 and to add two new forms, DD Form 1423-1 and DD Form 1423-2. These forms are to be used when there are only one or two data items.

Item II—Ordering Data Item Descriptions

Instructions to contractors on ordering data item descriptions which are included in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12-L, have been moved from the provision in DFARS 252.210-7001 to the provision in FAR 52.210-2, Availability of Specifications and Standards Listed in the DoD Index of Specifications and Standards (DODISS) and Descriptions Listed in DoD 5010.12-L. Departmental Letter 90-10, dated June 18, 1990, announced revision of the FAR coverage. The provision at DFARS 252.210-7001 and the prescription for its use in 210.011(S-70) are deleted.

Item II—Procurement Integrity

Section 507 of the Ethics Reform Act of 1989 suspended the requirements of section 27 of the Office of Federal Procurement Policy Act on procurement integrity for a one-year period, from December 1, 1989 through November 30, 1990. Instructions and guidance on use and application of the affected FAR clauses were provided in FAC 84-54 and in a January 11, 1990 Deputy Assistant Secretary of Defense (Procurement) memorandum.

The clause in DFARS 252.203-7002 is only partially affected by the suspension. The prohibitions and remedies of 10 U.S.C. 2397 b and c are both covered by this clause, but only b was suspended. The clause must continue to be inserted in solicitations and contracts and shall not be deleted from contracts awarded prior to December 1, 1989. Any contracts awarded after December 1, 1989 that do not contain the clause must be modified to include it. However, the provision of the cluase which prohibits the offering of compensation to a person, if the compensation would violate 10 U.S.C. 2397b, and the remedies for violating this provision, shall not be applied during the suspension period.

Item IV—Requirement for Competition in Awards to Colleges and Universities

DFARS 206.302-3 is deleted and 206.302-5 is added to clarify the statutory requirement for competition in award of research and devlopment or construction contracts to colleges and universities. The exception to full and open competition set forth in FAR 6.302-5 has additional statutory limitations imposed on its use in awards to colleges or universities for research and development or construction. These limitations are described in 206.302-5.

Item V—Test Program on Small Business Subcontracting Plans

Section 834 of Public Law 101-189 requires the DoD to establish a test program to determine whether plant, division, or company-wide small business subcontracting plans rather than individual contracts subcontracting plans will increase the opportunities for small and small disadvantaged business concerns under DoD contracts. The test program will be conducted over a three year period, beginning October 1, 1990, in accordance with a test plan entitled, "Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans."

Under this test, the Military Departments and Defense Agencies will designate contracting activities to select contractors for participation in the program and to negotiate the plant, division, or company-wide comprehensive subcontracting plans. Beginning October 1, 1990, designated contract administration activities will, through comprehensive change orders, substitute the negotiated and approved comprehensive plans for the individual plans in all active DoD contracts with the participating contractors. All DoD contracting activities will include the negotiated and approved comprehensive plans in contracts, which require a plan, awarded participating contractors on or after October 1, 1990.

DFARS subpart 219.7 is revised and two clauses are added in part 252 for use on or after October 1, 1990, in implementation of the test program.

Item VI—Credit for Subcontracting with Indians

DFARS 252.219-7000 is revised as a result of section 832 of Public Law 101-189, to permit work performed on Indian

lands or in joint venture with an Indian tribe or tribally-owned corporation to be credited toward DoD prime contractors' small disadvantaged business subcontracting goals.

Item VII—Deletion of DFARS Appendix L, Freedom of Information Act Program

As a result of the Defense Management Review effort, Appendix L, DoD Freedom of Information Act Program, is deleted. Policies and procedures for conduct of the program are contained in DoD Directive 5400.7, DoD Freedom of Information Act Program, and DoD Regulation 5400.7-R, DoD Freedom of Information Act Program. DFARS subpart 224.2 is revised to reflect deletion of the Appendix.

Item VIII—Deletion of DFARS Appendix P, Department of Defense Privacy Program

As a result of the Defense Management Review effort, Appendix P, Department of Defense Privacy Program, is deleted. Policies and procedures for conduct of the program are contained in DoD Directives 5400.11, Department of Defense Privacy Program. DFARS subpart 224.1 is revised to reflect deletion of the Appendix.

Item IX—Balance of Payments Program—Exemption for Ready-Mixed Asphalt and Portland Cement Concrete

Currently, offers of foreign ready-mixed asphalt and portland cement concrete, when purchased for use outside the United States and when the foreign cost is $10,000 or less, are exempt from the 50% evaluation differential applied under the Balance of Payments Program. DFARS 225.302(S-72)(1)(vii)(J) is revised to increase the $10,000 limit on foreign cost to $100,000.

Item X—Valves and Machine Tools

DFARS 225.70 is revised to consolidate the coverage on restrictions on the purchase of valves and machine tools and to conform the coverage to the most current statutory restrictions. The clauses for valves and machine tools have not been combined (252.225-7023 and 252.225-7024) but the clause at 252.225-7023, Restriction on Acquisition of Foreign Machine Tools, has been revised and an alternate added.

Item XI—Contractor Purchasing System Reviews

DFARS subpart 244.3 is revised to modify surveillance review requirements associated with contractor purchasing system reviews and to remove the detailed requirements for conduct of a surveillance program.

Item XII—Waiver of Asset Use Charges

DFARS 245.405(f) is revised to extend the waiver of rental/asset use charges for use of U.S. production and research property on sales to the Government of Canada from April 30, 1990 through April 30, 1995. Notice of this revision was published in Departmental Letter 90-08, April 30, 1990.

Item XIII—DoD Contract Simplification Test

The DoD Contract Simplification Test has been concluded. The goal of the test was to develop simplified procedures to improve contracting efficiency, expand industry participation in Government acquisitions, and reduce costs. As a result of the valuable experience gained during the test, permanent Federal Acquisition Regulation (FAR) coverage was developed to allow for simplified contract formats on most fixed-price contracts and annual submissions by offerors of representations and certifications. Final FAR coverage was published in Federal Acquisition Circular #84-53, November 28, 1989. The clauses at 252.252-7000 and 252.252-7001 and the provisions at 252.252-7002 and 252.252-7003, which were authorized for use by test sites during the test, are deleted. Test sites should review their local guidance to delete any locally developed clauses or procedures used during the test.

Item XIV—Editorial Revisions

(a) DFARS 204.7004-3(a)(2)(v) is amended to clarify the intent by revising the last sentence to read "In summary, the modifications issued by an activity for a contract shall be numbered in the second through sixth positions as follows:"

(b) DFARS 219.301-70(b)(2) is amended by correcting the words "Subcontinent Asian" to read "Subcontinent Asian Americans".

(c) DFARS 219.501(g)(S-72) was inadvertently omitted in DAC #88-14 and is now reinstated without change in its entirety in DAC #88-15.

(d) DFARS 219.804-4 is amended to correct the subsection cite to read "219.804-4" in lieu of "219.804.4".

(e) Paragraph (b) of the clause at 252.219-7005 is amended by: (1) Correcting the "Subcontinent Asian (Asian Indian)" category to read "Subcontinent Asian (Asian Indian) American (US Citizen with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal)", and (2) Correcting the words "Asian-Pacific Americans" to read "Asian Pacific American".

(f) DFARS 252.223-7005 is amended to revise the clause date to read "(APR 1990)" in lieu of "(JUL 1989)".

(g) Paragraph (a)(xi)(5) of the clause of DFARS 252.225-7006 is amended by removing "TSUS" and inserting "Harmonized Tariff Schedule".

(h) DFARS 252.233-7000 is amended to revise the clause date to read "(APR 1990)" in lieu of "(FEB 1980)".

Adoption of Amendments

Therefore, the DoD FAR Supplement is amended as set forth below.

1. The authority for 48 CFR parts 204, 206, 210, 215, 219, 224, 225, 244, 245, 252, and 253 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and FAR subpart 1.3.

PART 204—ADMINISTRATIVE MATTERS

204.7004-3 [Amended]

2. Section 204.7004-3(a)(2)(v) is amended by revising the last sentence to read: "In summary, the modifications issued by an activity for a contract shall be numbered in the second through sixth positions as follows:"

204.7103-1 [Amended]

3. Section 204.7103-1(b), the last sentence is amended by removing "when used as an exhibit,".

4. Sections 204.7105 through 204.7105-3 are revised to read as follows:

204.7105 Contract exhibits and attachments.

204.7105-1 Definitions.

(a) *Exhibit.* An exhibit is a document, referenced in and appended to a procurement instrument, which establishes a deliverable requirement.

(b) *Attachment.* An attachment is a document, appended to or incorporated by reference in a procurement instrument, which describes, but does not establish, a deliverable requirement.

204.7105-2 Policy.

(a) *Exhibit.* Exhibits may be used as an alternative to setting forth, in the Schedule, a list of line or subline items. The term "exhibit" shall be used only to identify those appendages to the contract that establish a deliverable requirement, such as Contract Data Requirement List, DD Form 1423, or a spare parts list. The DD Form 1423 shall always be an exhibit.

(b) *Attachment.* Attachments do not establish deliverable requirements, but may be used to define or describe contractual requirements. Attachments may include statements of work, DD Form 254, or other documents.

204.7105-3 Procedures.

(a) *Exhibits.* (1) Exhibits are identified by a single or double capital letter. The letters "I" and "O" shall not be used.

(2) Exhibit identifiers need not be assigned consecutively, nor sequentially, but shall not be duplicated in the procurement instrument. They shall appear in the first or first and second positions of all applicable "Exhibit Line Item Numbers" (see 204.7106).

(3) Each page of the exhibit shall cite the procurement instrument identification number and applicable contract line or subline item number.

(4) Each exhibit shall apply to one contract line or subline item only, with the following exceptions: (i) one exhibit may apply to one or more option line item(s) when the data required under the exhibits are identical in all respects other than the period during which the option is to be exercised; and, (ii) an exhibit may apply to more than one contract line if the exhibit is not separately priced and the exhibit deliverable is identical for all applicable contract lines. More than one exhibit may apply to a single contract line item.

(5) When the contract contains a DD Form 1423, the data may be either separately priced or not separately priced (NSP).

(i) For negotiated acquisitions of $100,000 and over, when data are separately priced, the contracting officer shall either insert the negotiated prices in Section B of the contract Schedule, or, adjust the proposed prices on the DD Form 1423. The method used shall be consistent throughout an individual contract. When the prices are put in Section B of the Scheule, blocks 17 and 18 of the DD Form 1423 shall be detached and filed elsewhere in the contract file. However, when prices on the DD Form 1423 are adjusted, blocks 17 and 18 shall not be detached from the form. Also, when prices on the DD Form 1423 are adjusted, the total price of all separately priced deliverable data items attributable to a line item, shall be included parenthetically, below the "Supplies Services" for that line item, in Section B of the Schedule. Except for the requirement to parenthetically enclose data prices, mentioned in the preceding sentence, prices shall only be listed one place in the contract.

(ii) For NSP data, prices are included in priced line or subline items in the contract. Blocks 17 and 18 of the DD Form 1423 shall be detached, and may be retained elsewhere as required.

(b) Attachments shall be identified numerically.

204.7106-2 [Amended]

5. Section 204.7106-2(a), the second sentence is amended to revise the reference "(see 204.7105-3)" to read "(see 204.7105-3(a))".

PART 206—COMPETITION REQUIREMENTS

206.302-3 [Removed]

6. Section 206.302-3 is removed.

7. Section 206.302-5 is added to read as follows:

206.302-5 Authorized of required by statute.

(c) *Limitations.* (1) 10 U.S.C. 2361 precludes use of this exception for awards to colleges or universities for the performance of research and development, or for the construction of any research or other facility, unless—

(i) The statute authorizing or requiring award specifically—

(A) States that the statute modifies or supersedes the provisions of 10 U.S.C. 2361,

(B) Identifies the particular college or university involved, and

(C) States that award is being made in contravention of 10 U.S.C. 2361(a); and

(ii) The Secretary of Defense provides Congress written notice of intent to award. The contract can not be awarded until 180 days have elapsed since the date Congress received the notice of intent to award. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Deputy Assistant Secretary of Defense (Procurement).

(2) Because subsequently enacted statutes may, by their terms, require different results than provided in paragraph (c)(1) of this subsection, contracting officers should consult legal counsel on a case by case basis.

(3) The limitation in paragraph (c)(1) of this subsection applies only if the statute authorizing or requiring award was enacted after September 30, 1989.

PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

210.011 [Amended]

8. Section 210.011(S-70) is removed and marked reserved.

PART 215—CONTRACTING BY NEGOTIATION

215.871 [Amended]

9. Section 215.871 is amended by removing paragraphs (d) and (e).

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.301-70 [Amended]

10. Section 219.301-70(b)(2) is amended by revising the words "Subcontinent Asian" to read "Subcontinent Asian Americans".

11. Section 219.702 is amended by adding paragraph (a) to read as follows:

219.702 Statutory requirements.

(a) Contractors who have been selected for participation in the test program authorized by section 834 of Public Law 101-189 and who have approved comprehensive subcontracting plans are not required to negotiate subcontracting plans on an individual contract basis for Department of Defense contracts. Section 834 authorizes the Department of Defense to establish a test program to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will increase subcontracting opportunities for small business concerns. Under the test program, contractors selected for the test will negotiate comprehensive small business subcontracting plans with a designated DoD contracting activity for use in all DoD contracts that require subcontracting plans. The plans are negotiated on a Government fiscal year basis and are renegotiated annually for the three-year period of the test which begins October 1, 1990. The approved comprehensive subcontracting plans will apply to and shall be included in all DoD contracts with the selected contractor which are active or awarded on or after October 1, 1990, and require subcontracting plans.

8. Section 219.708 is amended by adding paragraphs (b)(1) and (b)(2); by adding in the first sentence of paragraph (c)(1)(S-70) between the reference "(c)(2)" and the words "of this section" the words "and (c)(3)"; and by adding paragraph (c)(3), to read as follows:

219.708 Solicitation provisions and contract clauses.

* * * * *

(b) * * *

(1) DoD contracting activities shall use the clause at 252.219-7015, Small Business and Small Disadvantaged Business Subcontracting Plan (Defense FAR Supplement Deviation), in lieu of the clauses at 252.219-7000, Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts), and FAR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, in

contracts with contractors who have comprehensive subcontracting plans approved under the test program authorized by section 834 of Public Law 101-189. (See 219.702(a).)

(2) DoD contracting activities shall use the clause at 252.219-7016, Liquidated Damages—Small Business Subcontracting Plan (Defense FAR Supplement Deviation), in lieu of the clause at FAR 52.219-16, Liquidated Damages—Small Business Subcontracting Plan, in contracts with contractors who have comprehensive subcontracting plans approved under the test program authorized by section 834 of Public Law 101-189 (See 219.702(a).)

(c) * * *

(3) When the clause at 252.219-7015, Small business and Small Disadvantaged Business Subcontracting Plan (Defense FAR Supplement Deviation), is prescribed, award fee provisions and the clauses at 252.219-7009, Incentive Program for Subcontracting With Small and Small Disadvantaged Business Concerns, Historically Black Colleges and Universities and Minority Institutions, and at FAR 52.219-10, Incentive Subcontracting Program for Small Business and Small Disadvantaged Business Concerns, shall not be used.

PART 224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

12. Section 224.102 is revised to read as follows:

224.102 General.

The Act does not apply to:

(a) Systems of records the contractor maintains on its employees.

(b) The records generated (admission forms, grade reports) by a state or private educational organization under a contract with the Government to provide training, when the records are similar to and commingled with those maintained on other students.

13. Section 224.103 is revised to read as follows:

224.103 Procedures.

(b)(2) DoD rules and regulations are contained in DoD Directive 5400.11, Department of Defense Privacy Program.

14. Section 224.202 is revised to read as follows:

224.202 Policy.

(a) DoD implementation is in DoD Directive 5400.7, DoD Freedom of Information Act Program, and DoD Regulation 5400.7-R, DoD Freedom of Information Act Program.

PART 225—FOREIGN ACQUISITION

225.302 [Amended]

15. Section 225.302(S-72)(1)(vii)(J) is amended by revising the dollar figure "$10,000" to read "$100,000".

16. Section 225.7000 is revised to read as follows:

225.7000 Scope of subpart.

This subpart implements restrictions applicable to the Department of Defense on the availability of appropriated funds for the acquisition of certain commodities. However, reference should be made to the specific Department of Defense Appropriations and Authorization Acts as a check on the current applicability of these restrictions and on the applicability of these restrictions when obligating prior Fiscal Year funds. Nothing in this subpart affects the applicability of the Buy American Act or the Balance of Payments Program.

225.7001 [Amended]

17. Section 225.7001 is amended by removing the definitions of "Machine Tools" and "Valves".

225.7008 [Removed and Reserved]

18. Section 225.7008 is removed and the section marked "Reserved".

19. Section 225.7012 is revised to read as follows:

225.7012 Restriction on acquisition of machine tools and powered and non-powered valves.

Public Law 99-591 (DoD Appropriations Act for FY 1987) and subsequent statutes have imposed restrictions on the acquisition of certain classes of machine tools, and on powered and non-powered valves used in piping for naval surface ships and submarines. Appropriations Act restrictions apply to acquisitions made obligating certain year funds, while Authorization Act restrictions apply to fund obligations made during certain fiscal years regardless of the year in which the funds were appropriated. When both restrictions apply to an acquisition, the Appropriations Act restrictions take precedence and the procedures of 225.7012-3 apply.

20. Sections 225.7012-1 through 225.7012-5 are added to read as follows:

225.7012-1 Applicability.

(a) "Machine tools" restricted under this section are those tools listed in Federal Supply Classes of metalworking machinery in the following categories

Federal Supply Classification (FSC) and Name

FSC 3405*—Saw and Filing Machines
FSC 3408—Machining Centers and Way Type Machines
FSC 3410—Electrical and Ultrasonic Erosion Machines
FSC 3411—Boring Machines
FSC 3412—Broaching Machines
FSC 3413—Drilling and Tapping Machines
FSC 3414—Gear Cutting and Finishing Machines
FSC 3415—Grinding Machines
FSC 3416—Lathes
FSC 3417—Milling Machines
FSC 3418—Planers and Shapers
FSC 3419—Miscellaneous Machine Tools
FSC 3426—Metal Finishing Equipment
FSC 3433—Gas Welding, Heat Cutting, and Metalizing Equipment
FSC 3438*—Miscellaneous Welding Equipment
FSC 3441—Bending and Forming Machines
FSC 3442—Hydraulic and Pneumatic Presses, power driven
FSC 3443—Mechanical Presses, power driven
FSC 3445*—Punching and Shearing Machines
FSC 3446—Forging Machinery, and Hammers
FSC 3448—Riveting Machines
FSC 3449—Miscellaneous Secondary Metal Forming and Cutting Machines
FSC 3460—Machine and Tool Accessories
FSC 3461—Accessories for Secondary Metalworking Machinery

* Not subject to the restrictions of 225.7012-3 for FY 87 or FY 88 funds.

(b) "Valves" restricted under this section are those powered and non-powered valves listed in Federal Supply Classes 4810 (valves, powered) and 4820 (valves, non-powered) used in piping for naval surface ships and submarines.

225.7012-2 Authorization Act restrictions (FY 1990-1991).

(a) Unless an exception applies under 10 U.S.C. 2507(d), funds appropriated or otherwise made available in DoD may not be used to enter into a contract for the procurement of machine tools or powered and non-powered valves identified in 225.7012-1 unless the tools or valves are of United States or Canadian origin.

(b) Exceptions.

(1) The restriction in paragraph (a) of this subsection is waived for procurements of less than $25,000 when simplified small purchase procedures are used.

(2) The Head of the Agency may waive the restriction in paragraph (a) of this subsection for other procurements on a case-by-case basis if any of the following apply:

(i) The restriction would cause unreasonable costs or delays to be incurred

(ii) United States producers of the item would not be jeopardized by competition from a foreign country and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(iii) Satisfactory quality items manufactured in the United States or Canada are not available.

(iv) The restriction would impede cooperative programs entered into between the Department of Defense and a foreign country and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(v) The restriction would result in the existence of only one United States or Canadian source for the item.

225.7012-3 Appropriations Act restrictions (FY 1987-1989).

(a) Machine tools listed in 225-7012-1, except for those asterisked, purchased directly as an end item or indirectly on behalf of the Government using funds appropriated for FY 1989 must be of United States or Canadian origin. This restriction also applies to purchases made using FY 1987 and 1988 appropriated funds except for those machine tools asterisked in 225.7012-1.

(b) The restrictions under this subsection may be waived only if there is not an adequate supply of these machine tools of United States or Canadian origin to meet DoD requirements on a timely basis. The Head of the Agency may waive the restriction for procurements of $25,000 or more and the Chief of the Contracting Office may waive for procurements less than $25,000.

225.7012-4 United States or Canadian origin.

A valve or machine tool shall be considered to be of United States or Canadian origin if (a) it is manufactured in the United States or Canada and (b) the cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and duty (whether or not a duty-free certificate may be issued).

225.7012-5 Provisions and clauses.

(a) Unless a waiver has been granted, the contracting officer shall insert—

(1) The clause at 252.225-7023, Restriction on Acquisition of Foreign Machine Tools, in all solicitations and contracts for machine tools which are restricted under 225.7012-2 when the contract will be awarded from October 1, 1989 through September 30, 1991.

(2) The clause at 252.225-7023, Restriction on Acquisition of Foreign Machine Tools, with its Alternate I, for machine tools restricted under 225.7012-3.

(3) The clause at 252.225-7023, Restriction on Acquisition of Foreign Machine Tools, with its Alternate I, for acquisitions covered by both 225.7012-2 and 225.7012-3.

(b) Unless a waiver has been granted, the contracting officer shall insert the clause at 252.225-7024, Restriction on Acquisition of Foreign Valves, in all solicitations and contracts for valves when the contract will be awarded from October 1, 1989 through September 30, 1991.

(c) When the acquisition is solely for valves or machine tools, the contracting officer shall not include the clauses at 252.225-7000, 252.225-7001, 252.225-7005, or 252.225-7006.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

244.302 [Amended]

21. Section 244.302 is amended by removing paragraphs (b)(2) (i) and (ii) and by removing in paragraph (b)(3)(i) the words ", or continuing indepth surveillance".

244.304 [Removed]

22. Section 244.304 is removed.

244.307 [Amended]

23. Section 244.307 is amended by removing the third sentence.

PART 245—GOVERNMENT PROPERTY

245.405 [Amended]

24. Section 245.405(f) is amended by revising the date "30 April 1990" to read "April 30, 1995".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.210-7001 [Removed and Reserved]

25. Section 252.210-7001 is removed and marked reserved.

26. Section 252.219-7000 is amended by revising the clause date to read "(JUL 1990)" in lieu of "(JUN 1988)" and by adding paragraphs (c), (c)(1) and (c)(2) to read as follows:

252.219-7000 Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).

* * * * *

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the clause of this contract entitled "Small Business and Small Disadvantaged Business Subcontracting Plan" when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and

(2) It meets the requirements of section 832 of the FY 90 DoD Authorization Act, Pub. L. 101-189.

252.219-7005 [Amended]

27. Section 252.219-7005, paragraph (b) of the clause is amended by adding in the first category, between the words "(Asian-Indian)" and the words "(US Citizen)" the word "American"; and by revising in the second category, the word "Americans" to read "American".

28. Sections 252.219-7015 and 252.219-7016 are added to read as follows:

252.219-7015 Small Business and Small Disadvantaged Business Subcontracting Plan (Defense FAR Supplement Deviation).

As prescribed in 219.708(b)(1), insert the following clause:

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (DEFENSE FAR SUPPLEMENT DEVIATION) (JUL 1990)

(a) Definition. "Subcontract", as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(b) The Offeror's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of section 834 of Pub. L. 101-189, shall be included in and made a part of the resultant contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of section 211 of Pub. L. 95-507.

(c) The Contractor shall submit Standard Form 295, Summary Subcontract Report, in accordance with the instructions on the form, except (1) Items 17 and 18 shall not be completed; (2) Item 16, Remarks, shall be completed to include small business and small disadvantaged business goals, actual accomplishments, and percentages and small business and small disadvantaged business goals, actual accomplishments and percentages for each of the two designated industry categories.

(d) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

252.219-7016 Liquidated Damages—Small Business Subcontracting Plan (Defense FAR Supplement Deviation).

As prescribed in 219.708(b)(2), insert the following clause:

LIQUIDATED DAMAGES—SMALL BUSINESS SUBCONTRACTING PLAN (DEFENSE FAR SUPPLEMENT DEVIATION) (JUL 1990)

(a) "Failure to make a good faith effort to comply with the comprehensive subcontracting plan", as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the comprehensive subcontracting plan approved under the test program authorized by section 834 of Pub. L. 101-189, or willful or intentional action to frustrate the plan.

(b) If, at the close of the fiscal year for which the plan is applicable or at the close of a subsequent fiscal year for which a successor plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its comprehensive subcontracting plan, the Contractor shall pay the Government liquidated damages in an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the comprehensive subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) The Contracting Officer of the agency that originally approved the comprehensive subcontracting plan will exercise the functions of the Contracting Officer under this clause on behalf of all Department of Defense departments and agencies that awarded contracts covered by the Contractor's comprehensive subcontracting plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

252.223-7005 [Amended]

29. Section 252.223-7005 is amended by revising the date of the clause to read "(APR 1990)" in lieu of "(JUL 1989)".

252.225-7006 [Amended]

30. Section 252.225-7006, paragraph (a)(xi)(5) of the clause is amended by removing "TSUS" and inserting "Harmonized Tariff Schedule".

31. Section 252.225-7023 is amended by revising the reference "225.7008(d)" in the introductory sentence to read "225.7012-5(a)(1)"; by revising the date of the clause to read "(JUL 1990)" in lieu of "(JAN 1989)"; by revising paragraph (a); by revising the first sentence of paragraph (b); by revising the reference in the last sentence of paragraph (c) to read "225.7012-3" in lieu of "225.7008"; and by adding at the end of the section an Alternate I, to read as follows:

252.225-7023 Restriction on Acquisition of Foreign Machine Tools.

* * * * *

(a) Machine tools within the Federal Supply Classifications (FSCs) listed in (c) below, delivered as end items, shall be of United States or Canadian origin.

(b) For purposes of this clause, a machine tool shall be considered to be of United States or Canadian origin if (1) it is manufactured in the United States or Canada and (2) the cost of its components manufactured in the United States or Canada exceeds fifty percent (50%) of the cost of all its components. * * *

* * * * *

Alternate I (July 1990)

As prescribed at 225.7012-5(a) (2) and (3), substitute the following paragraph for paragraph (a) of the basic clause:

(a) Machine tools within the Federal Supply Classifications (FSCs) listed in paragraph (c), to be delivered as an end item or acquired by the Contractor on behalf of the Government, and to which title will vest in the Government, shall be of United States or Canadian origin.

252.233-7000 [Amended]

32. Section 252.233-7000 is amended to correct the clause date to read "(APR 1990)" in lieu of "(FEB 1980)".

252.252-7000 through 252.252-7003 [Removed]

33. Sections 252.252-7000 through 252.252-7003 are removed.

PART 253-FORMS

253.204-70 [Amended]

34. The list of forms following section 253.204-70 is amended by adding between the listing "253.303-70-DD-1423: Contract Data Requirements List" and the listing "253.303-70-DD-1425 DD Form 1425: Specifications and Standards Requisition" the listings "253.303-70-DD-1423-1 DD Form 1423-1: Contract Data Requirements List (1 Data Item)" and "253.303-70-DD-1423-2 DD Form 1423-2: Contract Data Requirements List (2 Data Items)".

Appendix L to Chapter 2 [Removed]

35. Appendix L to Chapter 2 is removed.

Appendix P to Chapter 2 [Removed]

36. Appendix P to Chapter 2 is removed.

[FR Doc. 90-16954 Filed 7-23-90; 8:45 am]

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federal register

Tuesday
July 24, 1990

Part VI

Department of Labor

Employment and Training Administration

Proposed Revised Policy on Use of Validity Generalization-General Aptitude Test Battery for Selection and Referral in Employment and Training Programs; Notice and Request for Comments

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Revised Policy on Use of Validity Generalization-General Aptitude Test Battery for Selection and Referral in Employment and Training Programs

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: In the early 1980s, a new experimental process for using the General Aptitude Test Battery (GATB) was introduced. The process is called Validity Generalization (VG) or VG–GATB (generalizing the validity of the GATB across all jobs in the U.S. economy). Concurrently, to reduce adverse impact that testing has on minority jobseekers in being selected for referral to jobs, a score adjustment procedure was also introduced called within-group conversion.

In 1986, the Department of Justice (DOJ) raised questions about within-group scoring but agreed to withhold legal action pending the outcome of a special review of VG–GATB by the National Research Council of the National Academy of Sciences (NAS). Also, organizations representing groups such as veterans and persons with disabilities have expressed concerns regarding the use of tests. The NAS study endorsed the concept of VG and indicated that the GATB compares "quite well" with other tests. However, the NAS recommended that, if the use of VG–GATB would be continued, it should not be the only referral method used. The NAS report provided qualified support for VG–GATB; however, it provided little basis for resolving the legal questions raised by DOJ. The NAS report provided useful operational and technical recommendations in areas such as test validation methods, additional forms of the GATB, "coachability" and time limits, test security, and norms. A number of these areas have implications regarding fairness to groups such as the less well-educated, older workers, and persons with disabilities.

Prudence counsels against further use of GATB and similar tests in screening for referral to employment until an extensive 2-year research project provides assurance that the Department of Labor has the most scientifically valid and reliable assessment instrument possible. The GATB may still be used in vocational counseling where the counselee voluntarily agrees to such use. If the policy is adopted as proposed, there will be a 90-day period for States now using VG–GATB to restructure their operational procedures.

ETA is soliciting comments from the public on its proposed policy directive prior to its actual issuance. The proposed directive is appended to this notice.

DATE: Comments are invited on the proposed revised policy. Comments must be received by August 23, 1990.

ADDRESS: Comments shall be mailed to Roberts T. Jones, Assistant Secretary of Labor, Employment and Training Administration, U.S. Department of Labor, room N–4470, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Director, U.S. Employment Service.

FOR FURTHER INFORMATION CONTACT: Robert A. Schaerfl, Director, U.S. Employment Service, Employment and Training Administration. Telephone: (202) 535–0157 (This is not a toll-free number).

Signed at Washington, DC, this 18th day of July, 1990.

Roberts T. Jones,

Assistant Secretary of Labor.

Proposed Training and Employment Guidance Letter

Subject: Revised Policy on Use of VG–GATB for Selection and Referral in Employment and Training Programs

1. *Purpose.* To inform the employment and training system of a Department of Labor (DOL) policy decision to discontinue the use of the General Aptitude Test Battery (GATB) and all State agency or commercial tests which have adapted the GATB in part or in whole for use in the selection and referral of Employment Service (ES) registrants or Job Training Partnership Act (JTPA) program participants to employer job openings.

2. *References.* None.

3. *Background.* For several decades, the ES used special adaptations of the GATB called Specific Aptitude Test Batteries (SATB's) for selecting applicants for job referral. Developed for some 450 occupations, each SATB consisted of the two to four occupationally relevant aptitudes with separate qualifying scores that were set at a level such that they would disqualify job applicants with ability levels similar to the lower third of job incumbents.

During the early 1980's, the U.S. Employment Service (USES) pilot tested a new use of the GATB for selecting applicants for job referral. Called Validity Generalization (VG), the new procedure used the GATB to assess an applicant's relative potential for occupational success in virtually any of 12,000 jobs described in the "Dictionary of Occupational Titles." Proponents of the new VG research asserted that employment tests were much more generalizable than previously thought, i.e., the same test was valid and could be used for more than one job in more than one location and setting. Most of the previously observed differences in a given test's ability to predict performance from one job setting to another were thought to be merely statistical artifacts caused by small sample sizes.

In 1981, USES began encouraging a few State employment service agencies (SESAs) to pilot the use of the GATB for all job referrals and to rank candidates according to test scores.

To avoid adverse impact when SATB's were used, minority applicants were referred to employers in proportion to their relative numbers or ratio to nonminorities in the local office applicant pool. The same principle was built into the VG selection process through the method of within-group scoring. Within each applicant group (blacks, Hispanics and others), raw job family scores are translated into percentile scores based on that group's score distribution. This results in the same percentage of black and Hispanic applicants receiving the same percentile score as those persons in the "other" category. By combining the percentile scores of individuals in all groups and selecting off the top of the list, applicants are referred in approximate proportion to their relative numbers or ratio within the total applicant pool.

The VG–GATB system caught on fast because of SESA and employer confidence that it provided them with a more productive workforce while at the same time satisfying their desires to comply with Equal Employment Opportunity Commission (EEOC) and Office of Federal Contract Compliance Programs (OFCCP) requirements. The SESA response to the pilot program was positive and the program (still denoted as a "pilot") spread to other States, now numbering approximately 35. In some States it is used in only one office, while in others it is used on a Statewide basis. In no office, however, is it being used as the exclusive basis for all or even most of the referral of workers to employers. In virtually all cases experience and/or education is also taken into account in making referrals.

In 1986, the Department of Justice (DOJ) raised questions about within-group scoring but agreed to withhold

legal action pending the outcome of a special review of VG–GATB by the National Research Council of the National Academy of Sciences (NAS). The NAS provided qualified support for VG–GATB; however, it provided little basis for resolving the questions raised by DOJ. The NAS evaluation provided very useful information on the need for operational and technical improvements in VG–GATB.

Eagerness on the part of local ES offices to serve employers with VG–GATB in some instances led to a lack of individual treatment for some of the ES clients, especially older, low-literate, or minority applicants, or persons with disabilities. As a result of VG–GATB's mass testing requirement, such population groups can develop fear of testing sufficient to cause them to avoid the ES altogether. The NAS reported that in one community, the experiment with VG–GATB was cut short when the applicant population, a largely minority one, simply stopped using the Employment Service. In addition, there are many individuals who possess demonstrated experience and license or other credentials, who the NAS suggests should not be required to take the GATB.

NAS stressed that research was needed to develop more alternate forms of the GATB for retesting purposes and to replace forms that may have been compromised by falling into examinees' hands. Because the NAS also found the GATB tests to be too "speeded" (i.e., its time limits were thought to be too short relative to the length of its tests), more research is needed to determine whether such short time limits are making it difficult for examinees to demonstrate their true potential and whether such short time limits encourage guessing as a strategy to improve one's score.

Policy on Use of VG–GATB

After a length review of the findings of the NAS review, ETA has concluded that the use of VG and the GATB shall be discontinued for employment selection and referral of applicants, even on a voluntary basis (but not for counseling of applicants who voluntarily take the test) while making NAS-recommended corrections to the GATB during a vigorous program of research. Also to be discontinued is the use by ES of other test batteries and assessment packages, both public and private, that are derived from VG–GATB. Such instuments, which depend on the validity of VG–GATB for their legitimacy, are prohibited for use in selection and referral of ES registrants or JTPA program participants to employer job openings until further notice.

At the conclusion of the research program, ETA will again review the VG–GATB program to determine whether there is basis for supporting a revised VG–GATB program. The attached GATB Research Plan provides a description of the research needs which will be addressed.

Although the new policy will not permit the GATB (or VG) to be used for selection/referral, this does not preclude the GATB's continued use as a counseling instrument—under the following conditions:

- Testing will only be done for counseling and assessment.
- Testing will only be done at an individual's request, and individuals will not be required to take tests.
- Testing will not be done at employer's requests.
- Test results will be provided to the individual only, not to employers.
- Test information is only for the individual's confidential use, not employer's use.
- Test information will be provided to the individual in a structured "counseling" session, permitting each individual to make decisions about occupational choice.
- Test results will not be used independently; information about an individual's experience, education, licenses, training, etc., would be used to develop career options with each individual.

The suspension of the use of the GATB for selection and referral does not affect the use of other types of tests commonly used by ES to screen applicants for job referral purposes, including the clerical proficiency tests (typing, shorthand and spelling) which may still be used in the referral process.

4. *Public Release Plan.* The DOL is taking several steps to inform the public of the need and rationale for this policy decision, including meetings with representatives of the Interstate Conference of Employment Security Agencies (ICESA), major affected employers and employer organizations and State agency personnel. Public comments on this draft Training and Employment Guidance Letter are being solicited for a 30-day period from the date of publication in the **Federal Register.**

5. *Action Required.* The effective cut-off date for the use of the GATB for selection and referral purposes is 90 days after the issuance of this directive. This date is designed to afford States sufficient time to restructure local office operations as appropriate and to modify computer programs and procedures to take into account the restrictions on the use of GATB. Prior to the effective date, all SESAs must see to it that affected employers have been informed of the Department's decisions concerning restictions on the use of the GATB for selection and referral purposes as of that date. In addition, each SESA shall, prior to the effective date, inform all organizations or parties possessing State release agreements for the use of the GATB of the new policy restrictions on its use.

6. *Inquiries.* Robert A. Schaerfl, Director, U.S. Employment Service, (202) 535–0157.

Appendix—GATB Research Plan

The following projects are planned to respond to the major issues raised regarding the General Aptitude Test Battery (GATB) in the report by the National Academy of Sciences (NAS), Fairness in Employment Testing: Validity Generalization, Minority Issues, and the General Aptitude Test Battery.

1. *Improve validation methods and accelerate the validation process.* The NAS report noted an unexplained decline in GATB validities in the more recent studies and somewhat lower validities for blacks. It recommended continuing work on measures of job performance, better documentation of recent validity research, and continuing validation research to assure adequate and current occupational coverage, particularly for new and changed occupations. A two year project is proposed to: (1) Provide rigorous, user-friendly documentation of all validation research on the GATB and (2) extend the state-of-the-art in validity research through an exemplary validity study which will address the concerns raised in the NAS report (including concerns regarding persons with disabilities, older workers, illiterate workers, etc.) and develop procedures for future research. In addition, there will be a further examination of optimal methods of clustering jobs and weighting the tests aimed at increasing validity and possibly reducing score differences.

2. *Reduce GATB score differences among racial/ethnic groups.* Modification of the GATB itself does not hold great promise for reducing score differences, although some modifications will be made and results evaluated. (See 3. below) A more promising approach appears to be developing and evaluating additional job-related assessment methods such as biographical information (e.g., the Individual Achievement Record developed by the Office of Personnel

Management), job knowledge assessment instruments, measurements of work values and attitudes. These assessment methods could conceivably have lower levels of group differences and have potential for increasing the validity of the referral process.

3. *Maintain the GATB.*

A. *Develop additional forms of the GATB.* Operational forms of the GATB should be replaced periodically to guard against over-exposure and compromise and to allow for more frequent retesting on a different form of the test. Improvements in the format and appearance of the test booklets and other materials are also needed. Test questions will continue to be screened for fairness to various racial/ethnic, age, and gender groups.

B. *Reduce susceptibility to coaching.* Changed scoring procedures to include a penalty for wrong answers are needed to reduce or eliminate the advantage of guessing or answering at random. Instructions to examinees will also need to be changed. Care must be taken not to change the meaning (validity) of the test.

C. *Reduce speededness of the GATB if possible.* "Speededness" is of concern because of the possibility of achieving a spuriously high score by answering, at random, the items the person is unable to consider in the time allowed. Changed scoring procedures (see B. above), and computerization of the GATB (see 5. below) address this concern. It seems advisable to also investigate the possibility of reducing the number of test questions or extending the time limits. Care must be taken to avoid operational problems or changing the meaning of the test scores.

D. *Develop standards for the physical security of testing material.* Currently there are no instructions to GATB users regarding the confidentiality and security of testing material. Physical security of tests is important because widespread compromise could destroy the value of a very expensive test form.

4. *Develop New Norms.* New norms are needed to: (1) Determine the score levels of different groups; (2) provide information which will allow better estimation of the true validity of the GATB; and (3) provide more accurate information to counselees regarding their standing in relation to other people. To meet these needs, norms on both applicant and employed workers will be required. This will require a considerable amount of new test data.

5. *Computerized GATB.* Although not a specific recommendation of the NAS report, a computerized version of some or all parts of the GATB could address several of the concerns noted in the report and improve operational efficiency. Potentially, a computerized adaptive GATB could (1) reduce testing time, (2) reduce the cost of testing, (3) reduce or eliminate guessing, (4) reduce or eliminate speededness, (5) reduce or eliminate the test security problem, (6) possibly improve testing accuracy, and (7) open the possibility of different test formats including essay and free response.

6. *Provide guidance on proper use of the GATB.* The only current guidance on the proper use of tests is the requirement to conform to applicable regulations such as the *Uniform Guidelines on Employees Selection Procedures.* The NAS report made a number of recommendations regarding test use; other general principles are embodied in professional standards.

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Tuesday
July 24, 1990

Part VII

Environmental Protection Agency

40 CFR Parts 302 and 355

Reporting Continuous Releases of Hazardous Substances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 302 and 355

[FRL 3635-3]

Reporting Continuous Releases of Hazardous Substances

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, requires that the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that is equal to or greater than its reportable quantity (RQ) shall immediately notify the National Response Center (NRC) of the release. Section 102(b) establishes an RQ of one pound for hazardous substances, except those substances for which RQs have been established at other levels pursuant to section 311(b)(4) of the Clean Water Act. Section 102(a) authorizes the U.S. Environmental Protection Agency (EPA) to adjust RQs for hazardous substances and to designate as hazardous substances those substances that, when released into the environment, may present substantial danger to the public health or welfare or the environment. In addition to the reporting requirements under CERCLA, section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA) or Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires that releases of hazardous substances in quantities equal to or greater than their RQs (or one pound if a reporting trigger is not established by regulation) be reported to State and local authorities.

Section 103(f)(2) of CERCLA provides relief from the reporting requirements of section 103(a) for a release of a hazardous substance that is continuous, stable in quantity and rate, and either is a release from a facility for which notification has been given under section 103(c) or is a release for which notification has been given under section 103(a) for a period sufficient to establish the continuity, quantity, and regularity of the release. Section 103(f)(2) provides further that in such cases, notification shall be given annually or at such time as there is any statistically significant increase in the quantity released of any hazardous substance. Relief from reporting under section 103 also applies to notification required under section 304 of SARA Title III. This final rule presents the Agency's interpretation of the section 103(f)(2) reporting requirements.

EFFECTIVE DATE: September 24, 1990.

The information collection requirements contained in 40 CFR 302.8 and 40 CFR 355.40 have been approved by the Office of Management and Budget (OMB) and have been assigned the control numbers 2050-0086 and 2050-0092.

ADDRESSES: The toll-free telephone number of the National Response Center is 800/424-8802; in the Washington, DC metropolitan area, the number is 202/267-2675.

The record supporting this rulemaking is available for public inspection at the U.S. Environmental Protection Agency, Superfund Docket—Room 2427, 401 M Street, SW., (OS-240), Washington, DC 20460 (Docket Number 103(f)CR). The docket may be inspected between 9 a.m. and 4 p.m. Monday through Friday, excluding Federal holidays. To review docket materials, you may make an appointment by calling 202/382-3046. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: Mr. Hubert Watters, Project Officer, Response Standards and Criteria Branch, Emergency Response Division (OS-210), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, 202/382-2463; or the RCRA/Superfund Hotline, 800/424-9346; in Washington, DC, 202/382-3000. The Telecommunications Device for the Deaf (TDD) Hotline numbers are toll-free 800/553-7672 or 202/475-9652 in the Washington, DC metropolitan area.

To request a copy of the information packet available on this regulation, including further explanations of the reporting requirements and an IBM-compatible computer disk that may be used to complete the written reports required under today's final rule, contact the RCRA/Superfund Hotline or the Telecommunications Device for the Deaf (TDD) Hotline at the numbers listed above.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
  A. Statutory Authority
  B. Background of this Rulemaking
  C. Organization of the Final Rule
II. Continuous Release Reporting Requirements
  A. General Requirements Overview
  B. Key Concepts Included in the Final Rule
    1. Continuous Releases
    2. Stable in Quantity and Rate
    3. Reporting Requirements
    4. Statistically Significant Increases
  C. Relationship to Reporting Under SARA Title III
  D. Multiple Concurrent Releases
  E. Administrative Reporting Exemptions
III. Comments on the Federally Permitted Release Rule
IV. Regulatory Costs
V. Summary of Supporting Analyses
  A. Executive Order No. 12291
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act
List of Subjects

I. Introduction

A. Statutory Authority

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96-510), 42 U.S.C. 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499), establishes broad Federal authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. Section 101(14) of CERCLA defines the term "hazardous substance" by reference to other environmental statutes with authority further granted to the Administrator of the U.S. Environmental Protection Agency (EPA) to designate additional hazardous substances under CERCLA section 102(a). The CERCLA list currently contains 724 hazardous substances, plus 1500 radionuclides.

Section 102(b) of CERCLA establishes RQs at one pound for releases of hazardous substances except for those substances for which RQs were established at a different level pursuant to section 311(b)(4) of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes the EPA Administrator to adjust all of these RQs by regulation (See 40 CFR 302.4). Sections 103(a) and (b) of CERCLA require that, as soon as the person in charge of a vessel or facility has knowledge of a release of a hazardous substance from such vessel or facility in a quantity equal to or greater than the RQ for that substance that person shall notify the National Response Center (NRC). This notification informs the government of a release so that government personnel can evaluate the need for a field response and undertake any necessary response action in a timely fashion. Under section 104 of CERCLA, the Federal government may respond whenever there is a release or a substantial threat of a release of a hazardous substance into the environment. Response activities are to be taken, to the greatest extent possible,

in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300), which was developed originally under the CWA and which has been revised to reflect the responsibilities and authority created by CERCLA.

Section 104(e)(2)(B) of CERCLA gives the Agency the authority to require persons who have or may have relevant information to furnish information or documents upon reasonable notice relating to the nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a facility or vessel. If consent is not granted regarding any request for information or documents made under section 104(e)(2)(B), the Agency may issue a compliance order under section 104(e)(5).

Section 103(f)(2) of CERCLA modifies the general notification requirements of section 103(a) for certain releases. Releases may be reported less frequently than otherwise would be required, if they are "continuous" and "stable in quantity and rate," and if notification has been given under section 103(a) "for a period sufficient to establish the continuity, quantity, and regularity" of the release.[1] Section 103(f)(2) pertains only to releases that are continuous and stable in quantity and rate, and requires that reports be made "annually, or at such a time as there is any statistically significant increase" in the quantity of the hazardous substance released above that previously reported or occurring.

In addition to reporting requirements established by CERCLA, section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA) or Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the owner or operator of certain facilities to report releases of extremely hazardous substances (EHSs) and CERCLA hazardous substances to State and local entities. SARA Title III section 304 notification must be given immediately after a release of an RQ or more (one pound or more if a reporting trigger is not established by regulation). The notification is to be given to the community emergency coordinator for each local emergency planning committee (LEPC) for any area likely to be affected by the release, and to the state emergency response commission (SERC) of any State likely to be affected by the release. SARA Title III section 304 notification requirements apply only to releases of EHSs and CERCLA hazardous substances (defined at 40 CFR part 355 Appendices A and B and § 302.4, respectively) that have the potential for off-site exposure.

Section 109 of CERCLA and section 325 of SARA Title III authorize EPA to assess civil penalties for failure to report releases of hazardous substances that equal or exceed their RQs. Section 103(b) of CERCLA, as amended authorizes EPA to seek criminal penalties for failure to report releases of hazardous substances and for submitting false or misleading information in a notification made pursuant to CERCLA section 103, and establishes the maximum penalties and years of imprisonment for violation of the CERCLA section 103 reporting requirements.

B. Background of this Rulemaking

On May 25, 1983, EPA published a Notice of Proposed Rulemaking (NPRM) (48 FR 23552) to clarify procedures for reporting releases and to adjust RQs for 387 CERCLA hazardous substances. In the preamble to the May 25, 1983 NPRM, the Agency discussed the reporting requirements for continuous releases and specifically requested comments on a number of issues, seeking information that would enable EPA to develop a system that imposed a minimal burden on both the regulated community and the government, while achieving the underlying statutory objectives. The reporting requirements for continuous releases were discussed again in the preamble to a final rule adjusting RQs, published on April 4, 1985 (50 FR 13456). EPA noted that due to the complexity of the issues, the Agency would study the continuous release reporting requirements further and would not promulgate, at that time, a regulation related to continuous releases.

On April 19, 1988, EPA published a proposed rule (53 FR 12868) presenting the Agency's interpretation of section 103(f)(2) and responding to comments made in response to the May 25, 1983 NPRM. The official public comment period for the April 19, 1988 proposed rule ended on June 20, 1988. EPA received a total of 29 comment letters, including three letters received after the close of the official comment period. The comments received together with the Agency's responses, are contained in the document, "Responses to Comments on the April 19, 1988 Notice of Proposed Rulemaking on Reporting Continuous Releases of Hazardous Substances" (Responses to Comments), which is available for inspection at the U.S. Environmental Protection Agency, Superfund Docket—Room 2427, 401 M Street, SW., Washington, DC 20460 (Docket Number 103(f)CR).

Today, the Agency is promulgating the final rule on reporting of continuous releases. In preparing this rule, EPA considered all of the public comments submitted on the April 19, 1988 proposed rule. These comments are addressed in sections II–IV of this preamble. Section V provides a summary of the analyses supporting today's rule.

EPA notes that although releases claimed to be continuous may qualify for reduced reporting under section 103(f)(2), such releases are not permitted nor are they necessarily risk-free. (See the Notice of Proposed Rulemaking on Reporting Exemptions for Federally Permitted Releases of Hazardous Substances (53 FR 27268; July 19, 1988)). Also, other provisions of the Act may apply even where CERCLA does not require notification. For example, a party responsible for releasing a CERCLA hazardous substance that is not a federally permitted release is liable for the costs of cleaning up that release and for any natural resource damages, even if the release is not subject to the notification requirements of CERCLA. Similarly, proper reporting of a release in accordance with section 103(a) or section 103(f)(2) does not preclude liability for cleanup costs. The fact that a release of a hazardous substance is reported properly or that it is not subject to the notification requirements of CERCLA will not preclude EPA or other government agencies from seeking reimbursement under section 107 for the cost of cleanup from parties responsible for the release, or from pursuing an enforcement action against those parties pursuant to section 106.

This rulemaking, therefore, should not be interpreted as reflecting Agency policy or the applicable law with respect to other provisions of the Act. Furthermore, all releases of CERCLA hazardous substances, including federally permitted releases, are subject to liability provisions of State statutes, common law, and Federal statutes other than CERCLA.[2]

C. Organization of the Final Rule

Today's final rule amends 40 CFR by adding § 302.8. Section 302.8(a) provides that no notification is required for

[1] Section 103(f)(2) also allows releases to be reported less often if notification has been given under section 103(c), which requires notification to the Federal government of the existence of certain facilities that are or have been used for storage, treatment, or disposal of hazardous substances but do not have Resource Conservation and Recovery Act (RCRA) interim status or a RCRA permit.

[2] CERCLA section 114(a); see Senate Report No. 96–848 (1980), p. 46.

releases that qualify as continuous and that are stable in quantity and rate, except as provided in § 302.8(c). Section 302.8(b) provides definitions of terms relevant to continuous release reporting. Section 302.8(c) lists all of the notification requirements for continuous releases. Section 302.8(d) requires the person in charge of a facility or vessel to establish the continuity and stability of the release and to notify the NRC by telephone to alert government authorities that the release will be reported as a continuous release under CERCLA section 103(f)(2). Section 302.8(e) requires the submission of an initial written notification to the appropriate regional EPA office to report baseline release information. Section 302.8(f) requires that a one-time follow-up report [3] be submitted on the first anniversary of the initial written report. Subsequent reports, under § 302.8(g) and (h) are required only when there is a change in the release, and at such times as there is an increase in the release that is statistically significant as defined in § 302.8(b). Initial written notification and the subsequent one-time follow-up notification are to be made under § 302.8(e) and (f) to the appropriate Regional EPA office for the geographical area where the releasing facility or vessel is located.

Section 302.8(e) and (f) also lists the information that must be submitted in the initial written report and the follow-up report, respectively, for each substance that is claimed to qualify for continuous release reduced reporting. Section 302.8(j) provides that a copy of the SARA Title III section 313 Toxic Release Inventory form may be submitted in lieu of an initial written report or follow-up report and lists the additional information that must be included with the form. Section 302.8(g)(1) explains that if there is any change in the source or composition of a release, the release is considered a "new" release for reporting purposes and requires the submission of initial telephone and written notifications. Section 302.8(g)(2) and (3) describes the notification required if there is a change in any of the other information submitted in the initial written notification and/or follow-up notification, other than a change in source or composition. Section 302.8(h) requires that notice of a statistically significant increase be made to the NRC and the release be identified as a statistically significant increase in a continuous release. Section 302.8(k) explains that the person in charge may rely on engineering estimates, the operating history of the facility or vessel, or any currently available release data to support the notifications required in § 302.8(c), and provides that documentation supporting the continuous release determination and all notifications and evaluations shall be kept on file for one year at the facility or, in the case of a vessel, at an office in the United States in a port of call or place of regular berthing. The documentation must be made available to EPA upon request to enforce the requirements of § 302.8. Section 302.8(l) explains the reporting requirements for multiple concurrent releases under today's rule.

Today's rule also amends 40 CFR part 355 to identify the SERC and LEPC as the recipients of the initial continuous release reports, reports of statistically significant increases, and reports of changes in the source, composition, or normal range of the release, and to indicate that continuous releases are otherwise exempt from SARA Title III section 304 emergency release notification. 40 CFR part 355 also provides references to today's changes to 40 CFR part 302. (For further explanation of the relationship of SARA Title III section 304 notification to CERCLA section 103 reporting, see section II.C of today's preamble.)

II. Continuous Release Reporting Requirements

A. General Requirements Overview

CERCLA notification provisions create a reporting process that informs government officials of releases that require immediate evaluation to determine the need for response action. The RQ reporting triggers are not in themselves assessments of the risk associated with releases of hazardous substances. The actual hazards will vary with the circumstances of the particular release, and many factors other than the size of the release could influence the government's response.

Accordingly, the primary purpose of CERCLA's notification requirements is to alert government officials to releases that may require timely and proper response action in order to prevent or mitigate damage to public health or welfare or the environment. The purpose of section 103(f)(2) is to reduce unnecessary release notifications. Section 103(f)(2) contemplates that, in general, if a release is continuous and stable in quantity and rate, Federal officials should not have to be notified each time the release occurs to decide whether a response is needed. Thus, instead of reporting every release that equals or exceeds the RQ as it occurs, the person in charge of a vessel or facility is allowed to report less often for continuous and stable releases.

Nevertheless, government response authorities will continue to need some notification of hazardous substance releases that equal or exceed their RQs on a continuous basis. Today's rule, therefore, requires four kinds of notification of a continuous release: (1) Initial telephone and written notifications; (2) a written follow-up report to the appropriate EPA Regional Office on the first anniversary of the initial written notification; (3) notification of changes in the source or composition of the release or other submitted information; and (4) immediate reports of any statistically significant increase (SSI) in the release. Under today's rule, an SSI is defined as a release, within a 24-hour period, that exceeds the upper bound of the previously reported normal range of the release. The normal range is defined as the range of releases (in pounds or kilograms) reported or occurring over any 24-hour period under normal operating conditions during the previous year. An SSI in the release must be reported to the NRC, SERC, and LEPC as soon as the person in charge has knowledge that the release has occurred.

An annual evaluation of each hazardous substance release being reported under the provisions of today's final rule must be made within 30 days of the anniversary date of the initial written notification. The annual evaluation must consider and verify the information concerning the release during the period since the submission of the follow-up report or previous annual evaluation. No further reporting is required, however, unless a change has occurred in the composition or source(s) of the release or in other submitted information. The type of notification required when a change in the release occurs varies according to the nature of the change. (Reporting requirements for changed releases under 40 CFR 302.8(h) are described in section II.B.3 of today's preamble.)

Notification must be made by: (1) The owner or operator of a facility for which initial notification of the release has been provided under section 103(c), or (2) the current person in charge of the vessel or facility for which the initial notification was made under section

[3] The one-time follow-up report required under CERCLA section 103(f)(2) for releases claimed to be continuous does not take the place of, and should not be confused with, the written notice that is required under SARA section 304(c) to provide SERCs and LEPCs with additional information on episodic releases reported under SARA section 304(b).

103(a) and for which the initial written report was made establishing the continuity, stability, and regularity of the release. The person in charge of the vessel or facility, of course, always has the option of reporting continuous releases under CERCLA section 103(a) and SARA Title III section 304 as they occur.

Reporting under section 304 of SARA Title III is closely tied to reporting under CERCLA section 103. All releases of CERCLA hazardous substances, including EHSs that are also CERCLA hazardous substances, that must be reported under CERCLA section 103(a) must also be reported to SERCs and LEPCs under the provisions of SARA Title III section 304, if the releases have a potential for off-site exposure. Releases of other EHSs, that are not CERCLA hazardous substances, must be reported to SERCs and LEPCs if they occur in a manner that would require notification under CERCLA section 103(a). Similarly, releases exempt from reporting under CERCLA section 103(a), such as federally permitted releases, or releases subject to reduced reporting requirements under CERCLA section 103(f)(2), are not subject to SARA Title III section 304 reporting.

Owners and operators of facilities subject to the notification requirements of SARA Title III section 304 must qualify releases as continuous and stable under today's definitions by submitting initial telephone and initial written notifications to SERCs and LEPCs. The CERCLA section 103(f)(2) one-time follow-up report does not apply to facilities subject to the provisions of SARA Title III section 304 and, therefore, the owners and operators of such facilities are not required to submit this follow-up report on continuous releases to the SERC or LEPC. EPA, however, will make the information in the continuous release follow-up reports available to the SERCs and LEPCs, should they wish to receive it.

B. Key Concepts Included in the Final Rule

1. Continuous Releases

Under today's final rule, EPA defines "continuous" as a release that occurs without interruption or abatement or that is routine, anticipated, and intermittent during normal operations or treatment processes.

In the April 19, 1988 proposed rule, EPA proposed to define "continuous" as a release that is (1) continuous without interruption or abatement; (2) continuous during operating hours; or (3) continuous during regularly-occurring batch processes. The period over which releases were to be evaluated was 24 hours.

EPA indicated in the April 19, 1988 NPRM, however, that it was aware of situations in which certain routine, anticipated, intermittent releases are predictable and stable with respect to quantity, rate, and time of occurrence. EPA listed as examples releases that are stable in quantity and rate and that result from (1) production of a batch of a substance at the same time every week; (2) startup of a machine every workday morning and its shutdown every workday evening; and (3) use of a hazardous substance at a facility every day or at the same time every week. The Agency stated that it believed that per-occurrence reporting of such releases would not enhance the ability of the Oil and Hazardous Substances Coordinator (on-scene coordinator or OSC) to determine whether a field response is necessary. Consequently, EPA indicated in the April 19, 1988 proposed rule that it would consider allowing these routine, anticipated, intermittent releases to be deemed "continuous" releases and thus subject to the reduced reporting requirements of section 103(f)(2).

The Agency described and solicited comments on two options under which routine, anticipated, intermittent releases that are predictable and stable in quantity, rate, and time of occurrence would qualify for the reduced reporting requirements under section 103(f)(2). Under the first option, the Agency proposed to grant an administrative exemption from section 103(a) reporting for such releases on the basis that response officials would not need information about routine, anticipated, intermittent releases on a per-occurrence basis. Thus, such releases would not be defined as "continuous" releases, but would be subject to analogous requirements pursuant to EPA's general rulemaking authority under CERCLA. Under the second option, EPA proposed to define "continuous" to include these routine releases. The effect of both options would be the same: Routine, anticipated, intermittent releases that are predictable and stable in quantity and rate would be subject to reduced reporting requirements.

EPA received twenty letters containing comments on the proposed definition of "continuous." All of the commenters stated that routine, anticipated, intermittent releases that are incidental to normal plant operations should be considered "continuous" releases. The commenters stated that, based upon the operating history of a plant, a number of routine releases from various kinds of normal plant operations and processes are anticipated in the normal course of operations and are predictable in terms of quantity, quality, nature, and frequency of occurrence. Examples provided by commenters include releases associated with: batch processes; shutdowns for scheduled maintenance; catalyst changeouts; loading and unloading; decompression of pressure vessels; drawing off of liquid at regular intervals during a production process; venting that occurs each time a storage tank is filled; removal of fly ash or dust from pollution control devices; and cyclical operations at production facilities. Most of these commenters urged the Agency to define "continuous" to include such releases rather than creating an administrative exemption.

EPA agrees with the commenters that routine, anticipated, intermittent releases incidental to normal plant operations or treatment processes could have a high degree of regularity and predictability associated with them. Routine, anticipated, intermittent releases that are also stable in quantity and rate do not require per-occurrence reporting to the NRC. Expanding the definition of continuous to include such releases is consistent with the fundamental purpose of CERCLA section 103(a) reporting requirements, which is to alert government response officials to releases that require immediate evaluation to determine whether a field response may be necessary. A release that occurs in the course of normal operations or treatment processes and is predictable and regular in terms of frequency, quantity, and rate does not require immediate evaluation. The initial notifications and the follow-up report, combined with immediate notification of SSIs will provide response authorities sufficient information to evaluate and respond to the release, if necessary. Moreover, EPA interprets the term "continuous" as used in section 103(f)(2) as distinguishing releases that are routine and regular from releases that are episodic and variable. Thus, the term "continuous" encompasses releases that are routine, anticipated, intermittent releases, as well as releases that are uninterrupted. In the final rule, therefore, the Agency has defined "continuous" to include such releases. Also, EPA believes that releases that are continuous during operating hours or regularly-occurring batch processes are routine, anticipated, intermittent releases and, therefore, it is not necessary to list these two types of releases as separate parts of the definition of continuous. Accordingly,

the definition in today's final rule does not include the descriptions of these releases.

Episodic releases, such as those associated with accidents, emergency shutdowns, or pipe ruptures, however, are not routine or regular and do not come within the definition of continuous. Such releases in an RQ or more must be reported to the NRC, SERC, and LEPC as soon as the person in charge is aware that they have occurred.

Many commenters objected to what they perceived as a focus in the proposal on the time of the occurrence of an intermittent release rather than the timing of the release. Commenters noted that certain batch processes occur at the same point in a predictable sequence, but do not occur necessarily at the same time of day or on the same day of the week. One commenter cited the example of pharmaceutical manufacturing processes that may occur once every 32 hours, rather than at an exact time within a 24-hour or week-long period. Other batch operations, according to the commenter, vary in duration, depending on the specific characteristics of the product and the size of the order. Releases from these kinds of processes, the commenters concluded, although predictable in terms of timing rather than time, are the kinds of routine, anticipated releases that should come within the definition of continuous.

EPA agrees with the comment that it is not necessary for a release that otherwise satisfies the definition of continuous to always occur at the same time. Under today's final rule, a release that is predictable with respect to timing is a release that recurs either at a specified time, or at a specific interval, or in association with an anticipated event. In order to qualify a release as "continuous" under today's final rule, therefore, the person in charge must describe in the initial written report and one-time follow-up report the pattern of continuity, including a description of the timing of the release in terms of the frequency of the release and the fraction of the release from each release source and the period during which it occurs. Under today's final rule, for example, a hazardous substance release may be continuous if it occurs during a process that is run infrequently but at anticipated intervals that depend on the market demand for a product. Thus, the final rule is sufficiently flexible to encompass emissions, such as those from batch processes described above, that are predictable in terms of timing, but do not necessarily occur at the same time of week or month.

2. Stable in Quantity and Rate

In order for a release to qualify for reporting under CERCLA section 103(f)(2), the person in charge of a facility or vessel must not only demonstrate that the release comes within the definition of continuous, but also that the release is stable in quantity and rate. In the April 19, 1988 proposed rule, EPA discussed quantitative and qualitative indicators for determining that releases are "stable in quantity and rate." Because of the many different types of releases, and the variation in the types of facilities that may be releasing hazardous substances in a manner that could be defined as continuous, EPA determined that quantitative measures for complying with this statutory requirement, such as a predetermined percentage variation from the mean, would be difficult to establish and insufficiently flexible. Accordingly, in the April 19, 1988 NPRM, the Agency proposed and solicited comments on a qualitative measure under which a qualifying release would have a "predictable quantity and rate during normal operations" and would not be "the result of malfunction or upset conditions." The Agency also solicited comments and supporting data on other qualitative and quantitative measures that might be appropriate. Commenters, on the whole, endorsed EPA's qualitative approach to the "stable in quantity and rate" requirement. EPA has maintained a qualitative approach in today's final rule, and is defining "stable" as "predictable and regular."

Among other things, today's rule allows the person in charge of a facility or vessel to develop the basis for claiming that a release is continuous and stable in quantity and rate. A brief statement of the basis must be provided in the initial written and follow-up reports, and should include such factors as the pattern of the release (e.g., whether the release is uninterrupted or is an intermittent release, and whether the release results from an operating procedure, a batch process, or other operating activity). The statement should also describe the source of the extreme values of the normal range of releases. For example, during the year, the minimum quantity of a release of a hazardous substance may be the result of one batch process, whereas the maximum quantity of a release results from another process.

A commenter supported EPA's proposal to allow the person in charge to develop the basis for asserting continuity and stability, but stated that if EPA determines that the basis is inadequate, the Agency should mitigate penalties for failure to notify under section 103(a) in consideration of the good faith effort on behalf of the person in charge. The Agency acknowledges that the non-quantitative definitions of continuous and stable in quantity and rate rely on the professional judgment of the person in charge of a facility or vessel to make and support the initial determination that a release is continuous and stable in quantity and rate. Nonetheless, information submitted to the NRC, the EPA Region, SERC, and LEPC is subject to review and verification, and the Agency may require modification, clarification, or additions. Penalties for failure to notify, if appropriate, will be imposed taking into account all factors related to the issue. The Agency agrees, however, that if a good faith effort is made by the person in charge to act in accordance with the definitions of continuous and stable in quantity and rate, and if the person in charge has also complied with the other requirements of the continuous release reporting regulation and other pertinent regulations, that these facts may be considered when determining any potential penalties.

Some commenters urged EPA not to equate stability with uniformity, or a constant rate of release. These commenters stated that predictability should be the primary criterion for determining whether a release is stable in quantity and rate. One commenter noted that there are many predictable releases that follow a decreasing rate of release over time. The commenter cited the example of the rate of release from a pressurized batch reactor where the rate is likely to be greatest at the beginning of the process, when the pressure is highest, and then to decline as the pressure decreases, until the system is stabilized. This commenter observed that, although the rate of such fugitive emissions is not strictly uniform, it is predictable in the sense that the rate and amount of release vary in basically the same manner each time the decompression occurs or the process is operated.

Another commenter provided the example of fugitive emissions from valves that occur at different rates over the course of a production cycle as the pressure inside the system changes. These emissions can be calculated on a statistically sound basis, the commenter stated, because the owner or operator knows that historically a given number of valves will release a given amount of a hazardous substance over the course of a year.

The Agency agrees that releases need not be uniform in quantity and rate of emission in order to be considered stable. Predictability and regularity are the criteria set forth in 40 CFR 302.8(b) that define the "stable in quantity and rate" requirement. Thus, emissions such as the releases described by the commenters, if they are predictable and regular, may qualify for reporting under CERCLA section 103(f)(2).

Several commenters stated that releases from malfunctions should qualify for reduced reporting under section 103(f)(2) because malfunctions such as leaking valves are continuous during certain processes and occur with a certain statistical regularity. Other commenters disagreed, stating that malfunctions are abnormal releases that are not routine or anticipated under normal operating conditions. The Agency believes that it is not possible to define releases from malfunctions with sufficient precision to determine, by definition alone, whether they qualify for reporting under section 103(f)(2). Some such releases may qualify, whereas others may indicate a problem at the facility or vessel. The determinative question is whether such releases are both continuous and stable in quantity and rate under the definitions in today's final rule. To ascertain whether the release, including a "malfunction," is "continuous," the person in charge must determine whether, under the regulatory definition, it (1) occurs without interruption or abatement, or (2) is routine, anticipated, intermittent, and incidental to normal plant operations or treatment processes. If the release falls within the regulatory definitions of continuous, the person in charge must make a further determination that the release is stable in quantity and rate, i.e., predictable and regular in amount and rate of emission. For example, fugitive emissions or releases from valves or pump seals may qualify for reporting under section 103(f)(2) if they come within the definitions of continuous, and are regular and predictable in the amount and rate of emissions. Determinations about specific releases must be based on professional judgment and knowledge of the operating history of the facility or vessel.

In the initial written report and the follow-up report, the person in charge must include the frequency of such releases from each release source and the period over which they occur. For example, the reports may include a statement that a release from a valve occurs every 32nd hour, i.e., whenever a certain batch process is run, or that a release occurs four times a year, all during the month of May, or that a release occurs throughout the year on a monthly basis, whenever a certain activity occurs.

Releases that are unanticipated, episodic events, such as spills, pipe ruptures, equipment failures, emergency shutdowns, or accidents would not qualify for the reduced reporting requirements of section 103(f)(2). Although some of these releases may occur with some statistical frequency, episodic events are not incidental to normal operations and, by definition, are not continuous or anticipated, and are not sufficiently predictable or regular to be stable, and therefore do not satisfy the statutory requirements of section 103(f)(2). Such releases, therefore, must be reported on a per-occurrence basis under section 103(a).

One commenter stated that the proposed definition was too narrow and suggested that EPA should define "stable in quantity and rate" solely by reference to the definition of "statistically significant increase." In this commenter's opinion, any release that is not an SSI should be considered "stable in quantity and rate," whether it results from a malfunction or from normal operations.

The Agency does not agree. A release must be established as "continuous" and "stable in quantity and rate" before it may be reported under section 103(f)(2). To qualify a hazardous substance release for reduced reporting under today's final rule, the person in charge must establish the continuity and stability of the release and must submit initial telephone and written notifications to the NRC, the EPA Region, the SERC, and the LEPC. After initial notifications have been made, the person in charge of the facility or vessel can limit reporting to the follow-up report and reports of SSIs.

In addition, although some malfunctions incidental to normal operations may qualify as continuous and stable in quantity and rate under the definitions in today's final rule, others are unanticipated, episodic releases, such as pipe ruptures or emergency shutdowns. Although the amount of the hazardous substance released may be less than the upper bound of the reported normal range, these releases are outside the scope of the continuous release reporting regulation and must be reported on a per-occurrence basis under CERCLA section 103(a) and SARA Title III section 304. For these reasons, EPA does not agree that a release that is "stable in quantity and rate" can be defined as any release that is not an SSI.

3. Reporting Requirements

Congress intended, in CERCLA section 103(f)(2), to reduce otherwise applicable reporting requirements for continuous releases, but did not intend to eliminate them entirely. Accordingly, today's final rule requires an initial telephone and written notification, a one-time follow-up report on the first anniversary of the submission of the initial written notification, and reports of SSIs in continuous releases. Also, changes in information submitted in the initial notifications or the follow-up report may require notification to the appropriate authorities.

Initial telephone notification under the authority of CERCLA section 103(f)(2) and SARA Title III section 304(b) notifies government authorities of the intent of the person in charge of the facility or vessel to establish the release as continuous and stable in quantity and rate under the definitions in today's final rule. The initial telephone notification consists of (1) a minimum of one telephone report to the NRC, the SERC of any State likely to be affected by the release, and the LEPC for any local area likely to be affected by the release; and (2) within 30 days of the initial telephone notification, submission of an initial written notification to the appropriate EPA Regional Office for the geographical region in which the facility or vessel is located, and the appropriate SERC and LEPC.

Within 30 days of the first anniversary date of the initial written notification, the person in charge must evaluate the reported releases and submit a one-time written follow-up report to the appropriate EPA Regional Office. (No follow-up report need be submitted to the SERC or LEPC). The follow-up report must contain information concerning the release during the period since the submission of the initial written report. Following the submission of the follow-up report, the person in charge must evaluate each hazardous substance release annually and must document each annual evaluation. The annual evaluation must take into account all information concerning each release during the period since the submission of the follow-up report or prior annual evaluation. EPA need not be notified of the annual evaluation, however, unless there is a change in the information submitted previously.

An SSI in a release must be reported to the NRC, SERC, and LEPC whenever the person in charge knows that a release has exceeded the upper bound

of the previously reported normal range of the release within a 24-hour period. Under today's final rule, the normal range is defined to include all releases (in pounds or kilograms) of a hazardous substance reported or occurring during any 24-hour period under normal operating conditions during the preceding year.

If there is no change in a release after initial or follow-up notifications have been made, no additional reports are required. The notification that must be made when a change in a release occurs varies with the nature of the change.

If there is any change in the composition or source(s) of a release, the release is considered a new release. The new release must be reported to the NRC on a per-occurrence basis until there is a sufficient basis to establish its continuity and stability under the definitions in today's rule. When the basis is established, the person in charge must notify government authorities of the intent to report under section 103(f)(2) by making an initial telephone call to the NRC, SERC, and LEPC and, within 30 days, submitting initial written reports to the appropriate EPA Region, SERC, and LEPC.

If a change in a release results in an increase in quantity of a release above the normal range, the release must be reported to the NRC, SERC, and LEPC as an SSI as soon as the person in charge knows that the release exceeded the upper bound of the reported normal range. If a change results (or will result) in a number of releases that exceed the reported normal range, the person in charge may continue to report the releases as SSIs, or modify the normal range to reflect the change. To modify the normal range, the person in charge must report at least one release as an SSI by telephone, but may at the same time inform the NRC, SERC, and LEPC that the normal range of the release has changed. Within 30 days from the telephone notification, the person in charge of the facility or vessel must submit a letter to the appropriate EPA Region describing the new normal range, the reason for the change, and the basis for asserting that the release is continuous and stable at the increased quantity. For all other changes in the information submitted in the initial written or follow-up notification, the person in charge must notify the appropriate EPA Region by letter within 30 days of determining that the information submitted previously is no longer valid.

Information used to develop and support the initial written notification and follow-up report, and to document annual evaluations, as well as information relevant to SSIs, establishment of the normal range, and the continuity and stability of continuous releases should not be sent to EPA. This information should be sufficient to substantiate the normal range of releases over the year and to support the other information included in the initial written report, the follow-up report, or the most recent annual evaluation. Supporting information should be kept on file at the facility, or in the case of a vessel, at an office within the United States, in either a port of call, a place of regular berthing, or at the headquarters of the business that operates the vessel. EPA may request that the person in charge of a facility or vessel submit such information as is necessary to enforce the reporting requirements under section 103(f)(2).

In summary, the reporting requirements for continuous releases have four basic components: Initial telephone and written notifications, a one-time written follow-up report on the first anniversary of the initial written notification, notification of changes, and immediate reporting of SSIs.

Written initial notification reports, follow-up reports, and notification of changes in a release should be submitted to the appropriate EPA Regional Office in the geographic area where the facility or vessel is located. Written initial notifications to SERCs and LEPCs should be submitted with the SARA Title III section 304(c) follow-up notice in the manner required by SARA Title III section 304. Addresses of the appropriate EPA Regional Offices are:

EPA, Region I, Oil and Hazardous Materials Section, 60 Westview Street, New England Regional Laboratory, Lexington, MA 02173

EPA, Region III (3-HW-20), Emergency Response Section, 841 Chestnut Street, Philadelphia, PA 19107

EPA, Region V, Emergency & Remedial Response Section, 230 South Dearborn Street, Chicago, IL 60604

EPA, Region VII, Emergency Response and Spill Branch, 25 Funston Road, Kansas City, KS 66115

EPA, Region IX (T-4-9), Emergency Response Section, 215 Fremont Street, San Francisco, CA 94105

EPA, Region II—Building 209, Emergency Response Branch, Woodbridge Avenue, Edison, NJ 08837

EPA, Region IV, Emergency & Remedial Response Section, 345 Courtland Street NE, Atlanta, GA 30365

EPA, Region VI, Emergency Response Branch, 1445 Ross Avenue, 9th Floor, Dallas, TX 75202

EPA, Region VIII, Emergency Response Branch, One Denver Place, 999 18th Street (8HWN-ER), Denver, CO 80202-2413

EPA, Region X, Superfund Response and Investigation Section, 1200 6th Avenue, Seattle, WA 98101

a. Initial Notification (Establishing the Release Baseline). In addition to requiring that a release be established as continuous and stable in quantity and rate, CERCLA section 103(f)(2) requires that notification of the release be made under CERCLA section 103(a) for a period sufficient to establish the continuity, quantity, and regularity of the release. In the April 19, 1988 NPRM, EPA proposed a flexible approach, allowing the person in charge to determine the period sufficient to establish the continuity, quantity, and regularity of a specific release in order to qualify for reporting under CERCLA section 103(f)(2).

One commenter was concerned that if a number of reports were submitted to the NRC under CERCLA section 103(a) to establish that a release is continuous and stable in quantity and rate, the repeated reports would trigger EPA's Accidental Release Information Program (ARIP)[4] questionnaires. The Agency agrees that notification to qualify for continuous release reporting should not automatically require completion of an ARIP questionnaire. So long as the person in charge has a sufficient basis for establishing the continuity and stability of a release, multiple reports over a period of time are not necessary. The person in charge may rely on release data, engineering estimates, knowledge of the plant's operations and release history, and professional judgment to establish the basis for reporting under section 103(f)(2). Today's final rule, therefore, requires a minimum of one telephone call to the NRC under CERCLA section 103(a), and to the SERC and LEPC under SARA Title III section 304, and, within 30 days of the telephone notification, an initial written notification to the EPA Region, SERC, and LEPC. The initial telephone notification will alert appropriate authorities to the intent of the person in charge to report the release as a continuous release, will enable the EPA Regional Office to establish a record and file of the release report, and will partially satisfy the statutory requirement that the person in charge report the release under section 103(a) for a period sufficient to establish the continuity and stability of the release[5];

[4] Reports to the NRC of certain releases, such as repeated releases and releases that cause injury or death, trigger an ARIP questionnaire that requests information pursuant to CERCLA section 104, RCRA section 3007, section 114 of the Clean Air Act, and section 308 of the Clean Water Act.

[5] The Agency has determined that one call to the NRC, SERC, and LEPC, in combination with the initial written notification, will satisfy the statutory

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the initial written notification will provide information on the profile of the release during the previous year. During the initial telephone notification to the NRC, SERC, and LEPC, the person in charge of the facility must identify the release as "continuous" and must inform the government of the intention to report the release under section 103(f)(2). The continuous release reports will be so marked and will be given a case number. This initial notification, therefore, will not automatically trigger an ARIP questionnaire. The Agency may send an ARIP questionnaire to the person in charge of a facility, however, if it deems it appropriate based on the information in the initial notifications and follow-up report.

If the person in charge of the facility or vessel does not have a sufficient basis for establishing a release as continuous and stable, as defined by today's rule, and the release equals or exceeds the RQ and is not otherwise exempt from CERCLA notification provisions, the release must be reported on a per-occurrence basis to the NRC, SERC, and LEPC under the provisions of CERCLA section 103(a) and SARA Title III section 304.[6] Until such time as the person in charge develops a sufficient basis for establishing the continuity and stability of the release, these release reports may trigger an ARIP questionnaire.

Initial Telephone Notification. To satisfy initial telephone notification requirements, the person in charge must identify the release in the telephone call to the NRC, SERC, and LEPC as a report under section 103(f)(2) of a continuous release above the RQ, and must provide the following information for each release:

(1) The name and location of the facility or vessel; and

(2) The name(s) and identity(ies) of the hazardous substance(s) being released.

Initial Written Report. Initial written notification of a continuous release must be made to the appropriate EPA Regional Office, SERC, and LEPC within 30 days of the initial telephone call to the NRC, SERC, and LEPC, notifying the government of the intention of the person in charge of the facility or vessel to report under the requirements of section 103(f)(2). Under today's rule, the initial written report must include the following information:

(1) The name of the facility or vessel; the location, including the longitude and latitude; the case number assigned by the NRC or EPA; the Dun and Bradstreet number of a facility, if available; the port of registration of the vessel; the name and telephone number of the person in charge of the facility or vessel.

(2) The population density within a one-mile radius of the facility or vessel, described in terms of the following ranges: 0–50 persons, 51–100 persons, 101–500 persons, 501–1,000 persons, more than 1,000 persons.

(3) The identity and location of sensitive populations and ecosystems within a one-mile radius of the facility or vessel (e.g., elementary schools, hospitals, retirement communities, or wetlands).

In addition to the preceding general information, the following substance-specific information must be supplied for each hazardous substance release claimed to qualify for reporting under section 103(f)(2):

(4) The name/identity of the hazardous substance; the Chemical Abstracts Service Registry Number for the substance (if available). If the release is a mixture, the components of the mixture and their approximate concentrations and quantities, by weight.

(5) The upper and lower bounds of the normal range of the release (in pounds or kilograms) over the previous year.

(6) The source(s) of the release (e.g., valves, pump seals, storage tank vents, stacks). If the source is a stack, the stack height (in feet or meters) must be provided. (If the release is attributable to a malfunction, the source must be identified as such.)

(7) The frequency of the release and the fraction of the release from each release source and the specific period over which it occurs.

(8) A brief statement describing the basis for stating that the release is continuous and stable in quantity and rate.

(9) An estimate of the total annual amount of the hazardous substance released in the previous year (in pounds or kilograms).

(10) The environmental medium(a) affected by the release:

If surface water, the name of the surface water body;

If a stream, the stream order or average flowrate (in cubic feet/second) and designated use;

If a lake, the surface area (in acres) and average depth (in feet or meters);

If on or under ground, the location of public water supply wells within two miles.

(11) A signed statement that the hazardous substance release(s) described is continuous and stable in quantity and rate under the definitions in 40 CFR 302.8(b) and that all reported information is accurate and current to the best knowledge of the person in charge.

In today's final rule, EPA requires, under the authority of section 104(e), that specific information about the source(s) of the release, the medium(a) affected, and certain ecological and population-density information be included in the initial written notification and follow-up reports. If the substance released is a mixture, the person in charge is required to identify and estimate the components of the mixture and their approximate concentrations and quantities. The Agency believes that this information is necessary to determine the need for a government response action.

To ensure that persons in charge can supply the information required in the initial written report and follow-up report without monitoring or measuring releases, the Agency has deleted the proposed provisions requiring information about the dates and numbers of times the release exceeded the RQ in a 24-hour period, the amount of the mean release, and the largest single release. Under today's rule, persons in charge may estimate the normal range and frequency of the release and the total annual amount released; these estimates, however, must have a sound technical basis. Various factors can be used to arrive at the estimates, including the operating history of the facility or vessel, knowledge of the operating processes any currently available data, and the professional judgment of the person in charge.

A brief statement describing the basis for stating that the release is continuous and stable in quantity and rate must be included as part of the initial written notification to the EPA Region, SERC, and LEPC; however, the substantiating information should not be submitted with the report. The substantiating information must be kept on file at the facility or, in the case of a vessel, at an office within the United States in either

requirement of CERCLA section 103(f)(2)(B) that a release be reported for a period sufficient to establish its continuity and stability. If the person in charge does not have a basis supported by existing data, engineering estimates, operating history and experience, or professional judgment sufficient to qualify for reporting under section 103(f)(2), the release must be reported under section 103(a) for the length of time necessary to establish it as continuous and stable under the definitions in today's rule.

[6] In general, EPA does not expect that multiple reports will be necessary to establish the continuity and stability of a release. The Agency believes that most facilities already have a sufficient basis to qualify a release for reporting under section 103(f)(2) and, therefore, only one telephone call to the NRC, SERC, and LEPC would be necessary.

a port of call, a place of regular berthing, or at the headquarters of the business that operates the vessel, EPA, the SERC, or LEPC may request and/or inspect this information, as necessary, to ensure compliance with the requirements of today's rule.

EPA's receipt of the initial written report without comment should not be interpreted to indicate approval of the report or the information it contains. There is no requirement for review of the reports submitted under sections 103(a) and 103(f)(2) of CERCLA, or section 304 of SARA Title III within a time limit. EPA, the SERC, or LEPC may re-evaluate the information submitted in the initial written report upon receipt of the follow-up report from the facility or vessel, receipt of information about an SSI, receipt of notification of changes in the release, or at any other time, and may contact the person in charge of the facility or vessel to review the basis for reporting under section 103(f)(2). EPA may also take other enforcement action, as appropriate.

One commenter asked EPA to allow a 60- to 90-day delay between the date of promulgation and the effective date of today's rule so that facilities could implement activities to establish releases as continuous and stable in quantity and rate. EPA agrees. The effective date of today's final rule is delayed 60 days to better enable persons in charge of facilities and vessels to comply effectively with the continuous release reporting requirements. In particular, the delay in the effective date will allow facilities sufficient time to call the RCRA/Superfund Hotline to request the guidance material that will fully explain today's requirements and to obtain a copy of the computer disk that will facilitate completion and evaluation of the written reports required under today's rule.

Several commenters requested a clarification about whether EPA expects a facility to perform monitoring beyond that which is currently performed to determine the continuity and quantity of releases. One commenter stated that if extensive additional monitoring is required, facilities may be unwilling or unable to expend the resources to demonstrate their qualification for reduced reporting. The commenter concluded that only available data should be required to establish the continuity and stability of releases.

EPA agrees that, to comply with the requirements of today's rule, persons in charge may use readily available information. EPA does not expect a facility or vessel to perform additional monitoring in order to comply with today's rule. Neither the identification of SSIs nor the other reporting requirements in today's final rule necessitates monitoring or measuring of releases to acquire empirical data. EPA has limited the information required in the initial and follow-up reports to data that can be calculated or estimated. For example, the Agency has eliminated the proposed requirements that the person in charge report the number of times the amount of the release during any 24-hour period exceeded the RQ, the mean release, and the single largest release.

Although no monitoring or measuring of releases is required, estimates provided in the reports, such as the total annual amount of the release and the normal range, must have a sound technical basis. This basis can be provided by engineering estimates, mass balance analysis, or other estimating techniques used by the person in charge of the facility or vessel, as well as by any data available from monitoring that is being performed currently. For example, in the case of a facility with a coal-fired boiler, the person in charge can estimate the hazardous substance releases from the boiler by considering such factors as the hazardous constituents in the particular type(s) of coal used, the volume of coal used, the efficiency of the boiler, and the amount of energy produced.

One commenter suggested that industry and Federal resources would be used effectively if the baseline determination was documented solely in the annual report rather than established by a series of reports during an initial reporting period. EPA disagrees. The Agency believes a minimum of one telephone call is necessary to alert government authorities to the intent of the person in charge of a facility or vessel to report a release as a continuous release. Accordingly, if there is a sufficient basis to establish the continuity and stability of the release under the definitions in today's rule, the person in charge need only make an initial one-time telephone notification to the NRC, SERC, and LEPC and, within 30 days, submit an initial written report to the EPA Region, SERC, and LEPC to establish the baseline information for a release. The initial written report must cover a period of time sufficient to satisfy the requirement of section 103(f)(2)(B) that notification establish the continuity, quantity, and regularity of the release. If, however, the person in charge of a facility or vessel does not have a basis for qualifying a release for reporting under section 103(f)(2), the release must be reported on a per-occurrence basis for a period sufficient to establish its continuity and stability. When the basis is established, the person in charge can begin reporting under section 103(f)(2) by notifying the NRC, SERC, and LEPC and then, within 30 days, submitting the initial written notification. The initial written notification to the EPA Region, SERC, and LEPC will allow response officials to assess potential threats to public health and welfare and the environment from the release in question.

b. Follow-up Report. The April 19, 1988 NPRM required the submission of annual reports on continuous releases. Under section 103(f)(2)(B) that authorizes annual reports of continuous releases, the final rule requires that, within 30 days of the first anniversary date of the initial written notification, the person in charge must evaluate the reported releases and submit a one-time follow-up report to the EPA Region for the geographical area where the releasing facility or vessel is located. The purpose of the one-time follow-up report is to verify or update the information submitted in the initial written report. Although follow-up reports need not be submitted to SERCs or LEPCs, EPA will make the submitted information available to them.

After the submission of the follow-up report, the person in charge must annually reevaluate each reported hazardous substance release within 30 days of the anniversary date of the initial written notification to determine whether there have been changes in the release that require modification of the information previously submitted. Each annual evaluation must be documented, but no annual report or notification of the annual evaluation is required. Notification subsequent to the follow-up report must be made only if there is a change in any of the information submitted previously. Nevertheless, if EPA determines that annual evaluation is not occurring or submitted information is not being properly updated, the Agency may reconsider requiring more frequent reporting. In addition, under the authority of CERCLA section 104(e)(4), the Agency intends to make periodic inspections and targeted audits of facilities reporting under section 103(f)(2) to ensure that the hazardous substances released do not pose a hazard to public health or welfare or the environment and that proper reporting and recordkeeping has occurred.

One commenter stated that although the requirement to submit annual reports to the EPA Region seemed practical, it contradicted the language of the statute which, in section 103(f)(2)(B),

requires that "* * * notification [shall be given] in accordance with subsections (a) and (b) of this paragraph * * *" The commenter stated that notification "in accordance with section 103(a)" means notification to the NRC and not to the EPA Region.

EPA believes that it is more appropriate to require that the follow-up report and subsequent notifications of changes in previously submitted information be directed to the EPA Region rather than to the NRC. The NRC is set up to receive immediate telephone notifications of hazardous substance releases for which a response may be necessary. The required initial written notification and follow-up report are not immediate release reports and are unlikely to trigger immediate field responses. EPA Regions are better equipped than the NRC to review such reports. Releases that are SSIs, however, must be reported to the NRC as they occur.[7]

Several commenters stated that the statutory language gives EPA the authority to require annual reporting *or* SSI reporting, but not both. These commenters also stated that the person in charge should be allowed to choose which report to submit. Although EPA believes that the statute does not preclude requiring both annual reporting and SSI reporting, EPA has decided not to require annual reports, but instead to require an initial written notification, a one-time follow-up report, and reports of changes in previously submitted information, in addition to reports of SSIs.

As noted by the Agency in the April 19, 1988 NPRM, the primary function of CERCLA's notification requirements is to alert government officials to the existence of a situation that may require a government response to protect public health or welfare or the environment. Section 103(f)(2) reduces the notification requirements for releases that are continuous and stable in quantity and rate, but does not eliminate them. Notification of such releases, therefore, must be sufficient to enable officials to determine if a field response is necessary.

SSI reports and initial written notification and follow-up reports are complementary reports that serve different purposes but are equally important. SSIs must be reported immediately to the NRC, SERC, and LEPC because such releases are episodic releases that must be reported under CERCLA section 103(a) and SARA Title III section 304(b). Under today's rule, SSIs are defined as releases that exceed the upper bound of the reported normal range, where the normal range is defined to include all releases (in pounds or kilograms) of a hazardous substance reported or occurring over any 24-hour period under normal operating conditions during the previous year. The initial written report and follow-up reports are the vehicles for establishing and confirming the normal range of a release and will provide the baseline against which to evaluate SSI reports.

As noted above, SSIs are episodic releases that must be reported under CERCLA section 103(a) and SARA Title III section 304(b). Other episodic releases are one-time releases at or above the RQ resulting from occurrences such as emergency shutdowns or pipe ruptures. Such occurrences are not part of the continuous release reporting regime. They must be reported if released in an RQ or more as soon as the person in charge knows they have occurred, whether or not they exceed the upper bound of the reported normal range of releases. Because, by definition, an SSI is a release above the reported normal range, it has not been previously reported or evaluated and may pose a substantial threat to human health or the environment. Such releases should be evaluated on the basis of reasonably current and accurate information. The Agency has concluded, therefore, that requiring SSI reports, initial written and follow-up reports, and reports of changes in previously submitted information best fulfills the intent of the statute and its underlying purpose.

The requirements for the information that must be submitted in the follow-up report are the same as those for the initial written report. If the information submitted in the initial or follow-up reports raises concern about the potential threat posed by the release, EPA has broad authority under CERCLA section 104(e) to procure additional information and under section 104(a) to take any action necessary to prevent or mitigate damage to public health or welfare or the environment. For example, if EPA determines that the upper bound of the reported normal range for a given release is high enough to raise concern about the potential threat posed by the release, the Agency may require the person in charge of the facility or vessel to report all releases at or above some specified level within the reported normal range. (See section II.B.4., below, for a complete discussion of the normal range approach.)

If EPA determines that the reported basis is inadequate for establishing that the release is continuous and stable in quantity and rate, or other information is insufficient or unclear, the Agency may request additional information, clarification, or modifications. EPA may also ask to review the materials on file at the facility or vessel that support information submitted in the report.

Upon review, if EPA determines that the documentation does not adequately support the information in the initial written or follow-up report, the Agency may require that the person in charge amend the report to reflect supporting information. If EPA determines that the release does not qualify for reporting under section 103(f)(2), the person in charge must resume reporting the release under section 103(a) until a sufficient basis for reporting under section 103(f)(2) is developed and reported.

Several commenters requested that State-permitted emissions reports be accepted as substitutes for annual reports under CERCLA section 103(f)(2). Since the proposal, EPA has determined that it will require a one-time follow-up report rather than annual reports. Nonetheless, the Agency does not believe that a State report can be used in lieu of the follow-up report. Reports submitted under State programs vary widely in format and information and might not include the information required in the follow-up report. Also, under today's rule follow-up reports need be submitted only once, unless there is a change in previously submitted information. Therefore, follow-up reports should not be unduly burdensome to persons in charge of facilities or vessels that also must submit reports under State programs.

c. Reports of Changes in Previously Submitted Information. After initial notification reports have been submitted for a release and reporting under section 103(f)(2) has commenced, a change in the composition or source of the release may make it necsssary for the person in charge to requalify the changed or "new" release under section 103(f)(2). In the April 19, 1988 NPRM, EPA proposed that the person in charge requalify such a release under section 103(f)(2) when there is a "substantial" change in the composition or character of the release. The Agency is today defining a substantial change to be *any* change in the composition or source(s) of the release. A change in the composition or source(s) of a release may be caused by factors such as equipment modifications

[7] The Federal government has exercised its discretion in previous rulemakings to allow, in certain limited circumstances, immediate notification to the EPA or Coast Guard OSC, rather than to the NRC. (See 40 CFR 300.63(b) and 33 CFR 153.203.)

or process changes. The changed or "new" release may pose a hazard warranting notification and evaluation and must be qualified anew for reporting under section 103(f)(2). To qualify the new release for reporting under section 103(f)(2), the person in charge must establish the new release as continuous and stable in quantity and rate by reporting to the NRC, SERC, and LEPC on a per-occurrence basis. When the basis has been established, the person in charge must submit initial telephone notifications to the NRC, SERC, and LEPC and initial written reports to the appropriate EPA Region, SERC, and LEPC[8] within 30 days of the initial telephone notification.

If a change at a facility or vessel results in an increase in the quantity of a release above the reported normal range although other reported characteristics of the release remain unchanged, the release must be reported immediately to the NRC, SERC, and LEPC as an SSI as soon as the person in charge knows that the release has exceeded the upper bound of the reported normal range. If a change results (or will result) in a number of releases that exceed the normal range and the person in charge wishes to modify the normal range to reflect the change, the person in charge must report at least one release as an SSI, but may at the same time inform the NRC, SERC, and LEPC that the normal range of the release is being modified. Within 30 days from the telephone notification, the person in charge of the facility or vessel must submit a letter to the EPA Region describing the new normal range, the reason for the change, and the basis for stating that the release is continuous and stable at the increased quantity. Persons in charge of facilities or vessels that must report releases of CERCLA hazardous substances and EHSs under SARA Title III section 304(b) must include this information with the written notice that is required under SARA Title III section 304(c).

For all other changes in the information submitted in the initial or follow-up notification, the person in charge must notify the EPA Region in writing within 30 days of determining that the information submitted previously is no longer valid. (Such notification to SERCs and LEPCs is not required.) For example, if there is a change in the person in charge of a facility or vessel, the new person in charge must notify the EPA Region of the change. Notifications of changes in a release or in other submitted information must include the NRC/EPA-assigned case number and a signed certification statement that the release is continuous and stable in quantity and rate and that all the reported information is accurate and correct to the best knowledge of the person in charge.

One commenter stated that, rather than requiring a new justification for reporting under section 103(f)(2), EPA should allow persons in charge to report changes in the frequency of a release by amending the annual report. As an example, the commenter cited more frequent startups and shutdowns of units under normal conditions and argued that, although there would be an increase in the annual total amount released, the change in frequency would not result in any greater impact on public health and the environment or in any greater need for repetitive immediate reports than do startups and shutdowns of batch operations.

The Agency agrees that for changes in frequency it is not necessary to submit a completely new written report under section 103(f)(2). A change in the frequency of a release under normal conditions may not result in any greater impact on public health or the environment; however, that may not be the case in all situations. Under today's final rule, therefore, a change in the frequency is among the changes that the person in charge must report to the EPA Region in writing within 30 days. An explanation for the change in the release frequency must be included in the letter to the EPA Region. A new initial written report is not required.

d. Statistically Significant Increase Reports. Reports of SSIs must be made by notifying the NRC by telephone as is required in 40 CFR 302.6 for notifications of episodic releases of hazardous substances that equal or exceed an RQ (50 FR 13456; April 4, 1985), and to the SERC and LEPC in the manner set forth in 40 CFR 355.40(b). Callers should identify the releases as SSIs and include the case number assigned by the NRC or EPA when initial telephone notification of the release was made, to ensure that the information is recorded correctly. EPA will immediately evaluate such releases to determine the need for a response action. In determining whether an SSI has occurred and must be reported, the person in charge of the facility or vessel should use a 24-hour period for measuring the quantity released.

One commenter suggested that reports of SSIs should be made in amendments to the annual report as soon as practicable rather than by notifying the NRC by telephone. The Agency does not agree that an SSI in a release should be reported by inclusion in or amendment to a written report. EPA interprets the provisions of section 103(f)(2) to require an SSI, like any other episodic release, to be reported to the NRC under section 103(a) as soon as the person in charge is aware of its occurrence. Notification to the NRC is appropriate because an SSI is an episodic release; it is a release above the RQ that has not been reviewed or evaluated previously. Thus, like episodic releases of hazardous substances, an SSI must be evaluated promptly to determine whether a government response is necessary. It would not be sufficient to report SSIs to the EPA Region when the person in charge decides to amend the previously submitted written report. Today's final rule, therefore, requires that notification be given when an increase in the quantity of the hazardous substance being released during any 24-hour period exceeds the upper bound of the reported normal range of the release (40 CFR 302.8(c)(5), 40 CFR 355.40(a)(2)(iii)(B)).

One commenter stated that "the 24-hour time period over which releases must be aggregated" seemed excessive and urged that it be shortened considerably, perhaps to one hour. EPA does not agree that the time period for determining an SSI in a release should be shortened. The Agency believes that 24 hours is an appropriate length of time in which to determine whether SSIs have occurred because it is the length of time used to determine whether other types of episodic releases equal or exceed the RQ and must be reported under section 103(a) (50 FR 13456; April 4, 1985). The regulated community is also familiar with the 24-hour period as it was established under regulations implementing section 311 of the Clean Water Act, the predecessor of CERCLA. In addition, the Agency is concerned that releases that may pose threats to public health or welfare or the environment may not be brought to the attention of government authorities if the 24-hour period is shortened. For example, if the period were shortened to one hour from the onset of the release as the commenter suggests, a release that continues for more than one hour may not reach the full rate of emission within the shortened time period. As a result, the threat posed by the release would be inaccurately evaluated. Within 24 hours, however, most releases should have

[8] In all communications with the NRC, EPA Region, SERC, and LEPC, the person in charge of the facility or vessel should include the NRC/EPA-assigned case number to properly identify the release in question.

reached their full emission rate. In addition, the Agency believes 24 hours is an appropriate length of time for releases that occur during batch processes or certain other operating procedures.

One commenter suggested that EPA allow the person in charge to use any routine 24-hour reporting period employed, such as a period from 7 a.m. of one day to 7 a.m. of the next day, rather than a calendar day. EPA agrees with this suggestion. The Agency does not intend that the person in charge be required to use a calendar day as the 24-hour period for measuring releases. If a release is continuous without interruption or abatement, the 24-hour period for determining whether an SSI in the release has occurred can be any routine, continuous 24-hour operating period that reasonably reflects the quantity typically released over that length of time. If the release is continuous during operating hours, or during regularly-occurring batch processes, or follows some other pattern, but is a routine, anticipated, intermittent release, the 24-hour period for determining the total amount of the release should begin at the onset of the release.

Several commenters stated that the released quantity of a hazardous substance frequently cannot be determined accurately on a 24-hour or daily basis. One commenter stated that in large, continuous processes with many pieces of equipment and storage tanks, any estimate of releases is subject to inventory errors so large that only annual data give a good measure of average loss per day. The commenter cited the example of losses from tank openings, pump seals, and other connections as not being generally known or measured.

EPA realizes that for some facilities or vessels, the persons in charge may not be able to quantify releases on a daily or a 24-hour basis. In such instances, persons in charge can use their knowledge of the processes, equipment, and operating history of the facility or vessel and the approximate amount of annual total releases to estimate or calculate the normal range of such releases. The same knowledge and judgment can also be employed to estimate the amount released within a 24-hour period and to determine whether it exceeds the upper bound of the reported normal range and must be reported to the NRC.

If a release is continuous without interruption or abatement, the person in charge can estimate the amount released over a 24-hour period by dividing the estimate of the total amount released by the number of 24-hour periods over which the release extends. If the release is continuous during operating hours, or during regularly-occurring batch processes, or follows some other pattern, but is a routine, anticipated, intermittent release, the period for determining an SSI begins at the onset of the release and continues for 24 hours. Releases of the same hazardous substance from the same facility must be aggregated for the 24-hour period to determine if an SSI has occurred. This does not mean that the person in charge should postpone notifying the NRC, SERC, and LEPC until the 24-period has ended. The NRC, SERC, and LEPC must be notified as soon as the person in charge knows that the quantity of a release within the 24-hour period exceeds the upper bound of the reported normal range.

4. Statistically Significant Increases

In today's final rule, the Agency defines an SSI as any release of a hazardous substance that exceeds the upper bound of the reported normal range. The normal range is defined to include all the releases (in pounds or kilograms) of a hazardous substance reported or occurring over any 24-hour period under normal operating conditions (i e., normal conditions that prevail during the period establishing the continuity, quantity, and regularity of the release) during the preceding year. The definition reflects comments received on the NPRM definition of an SSI and is based upon the language of CERCLA section 103(f)(2)(B) that requires that notification shall be given "* * * at such time as there is any statistically significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring." The definition of SSI, therefore, does not include releases within the reported normal range of the release. The Agency considers any release that exceeds the reported normal range to be statistically significant because the normal range is established based on a set of historical data representing all releases reported or occurring during normal operations over the previous year.

In the proposed rule, EPA had selected as the definition of SSI the five percent significance level for the Type I error rate, but solicited suggestions from interested parties with data supporting a Type I error rate other than five percent (Type I error is the probability of falsely assuming a difference) Several commenters objected to EPA's choice of the five percent significance level as being too stringent. One commenter stated that the Agency might be overburdened with reports to such an extent that releases requiring responses could be obscured. Another commenter suggested that EPA change the confidence level from 95 to 99 percent to reduce the frequency of unnecessary reporting and reduce the burden on the facilities and vessels, the NRC, SERCs, and LEPCs.

The Agency agrees with the commenters that the five percent significance level might burden facilities and vessels, and the NRC, SERCs, and LEPCs with a large number of SSI reports without providing a commensurate benefit in protection of human health and welfare and the environment. At a five percent, significance level, the NRC would receive approximately 18 reports per year for each hazardous substance released in a manner that is continuous without interruption or abatement (i.e., 5 percent of 365 days). Given the number of facilities and vessels that could qualify for reporting under section 103(f)(2), the NRC could be overburdened by reports at the five percent significance level. Also, if a continuous release is sufficiently stable to qualify for reduced reporting, the Agency believes that the number of reports required at the five percent significance level is unnecessary to protect public health and welfare and the environment, and might result in the government's inability to evaluate or respond to the most hazardous releases.

In the April 19, 1988 NPRM, the Agency proposed to allow the person in charge of a facility or vessel to select the appropriate statistical test for identifying SSIs at the five percent significance level. EPA included a nonparametric test and two parametric statistical tests: A control chart test and the Student-test. The Agency also proposed to allow the person in charge of a facility to use other statistical tests, provided that a demonstration is made to show that the test used is appropriate given the underlying release distribution. A number of commenters stated that quantification of releases to provide data for statistical tests is not possible for certain facilities. Some commenters objected to the use of the statistical tests because of the expense and burden of collecting the necessary data. Other commenters stated that releases from many facilities are "calculated" or "estimated" and, therefore, use of the statistical tests "does not make sense" for such facilities. Several commenters stated that CERCLA does not require monitoring for purposes of reporting under CERCLA section 103(a) and,

therefore, many facilities would not have the data necessary to use the tests. These commenters suggested that rather than using a statistical test to identify SSIs, persons in charge of facilities could establish a normal range for releases from those facilities and SSIs would be defined as those releases outside the normal range.

One commenter noted that the language of section 103(f)(2) requires reporting of "any statistically significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring." Notification at the five percent significance level, the commenter stated, would not only require reporting of releases above the range of releases previously reported or occurring, but also would require reports of the largest five percent of releases within that range. Such reporting would be redundant and contrary to the intent of the statute.

The Agency agrees that the use of statistical tests may require empirical release data that are unavailable for some facilities or vessels whose releases could otherwise qualify for reporting under section 103(f)(2), and that the establishment of a normal range of releases provides an acceptable approach to identifying SSIs. The Agency also agrees that, in order to be consistent with the language of section 103(f)(2), the normal range, properly identified, will include all releases under normal operating conditions reported or occurring over the previous year. Thus, the definition of statistically significant will not include releases within that reported range. An SSI in an otherwise continuous and stable release is defined as any release greater than the upper bound of the reported normal range of the release.

Specification of the normal range must be made in the initial written notification report to the EPA Region, SERC, and LEPC. Identification of the normal range of a release should be based on professional judgment, the operating history of the facility or vessel, experience with the operating equipment and processes, and any existing data. Releases included in the normal range are to be evaluated over a 24-hour period. The Agency believes that persons in charge, in most cases, would have adequate information available to provide reasonable estimates or approximations of the normal range of a release, without measuring or monitoring. To establish a normal range, for example, historical data or engineering estimates of releases and operations under varying conditions could provide a reasonable indication of the nature, frequency, and source(s) of a normal range of releases that are predictable in quantity and rate of emission.

Justification of the normal range must be kept on file at the facility, or in the case of a vessel, at an office within the United States in either a port of call, place of regular berthing, or at the headquarters of the business that operates the vessel. Only those releases that are both continuous and stable in quantity and rate may be included in the normal range. Any release outside the upper limit of the reported normal range would be an SSI that would require an immediate report to the NRC, the SERC, and the LEPC. In allowing persons in charge to use this normal range approach, the Agency is not suggesting that releases within the normal range are federally permitted or risk-free. Generally, the Agency believes that the normal range approach promulgated today will result in reports of releases that may pose a hazard to human health, welfare, or the environment, without overburdening the resources of facilities or vessels, or the government. For some releases, however, reporting only those releases above the reported normal range as SSIs may not be sufficiently protective of human health, welfare, and the environment. EPA, therefore, may review initial written notification reports and follow-up reports to determine if the release poses a potential hazard, taking into consideration the characteristics of the substance being released, the quantity and frequency of the release, the sensitivity of the location of the release, and any other relevant factors. If EPA determines, based on such factors, that the release poses a threat or potential threat to human health or welfare or the environment, EPA may take any authorized action necessary to prevent or mitigate the danger, including requiring the person in charge to report releases at or above some specified level below the upper bound of the reported normal range on a per-occurrence basis. Receipt of an initial or follow-up report without comment should not be interpreted as an indication of EPA approval of the normal range or of the other information the report contains.

One commenter suggested that an SSI should be defined with reference to some significant change in plant operations, such as an increase in capacity, a major equipment modification, or some unusual release that occurs as a result of a malfunction or upset condition. EPA does not agree with this comment. An SSI may or may not be the result of a malfunction or unusual occurrence. Some releases that result from malfunctions are episodic releases that are not continuous and stable in quantity and rate and, therefore, do not qualify for reduced reporting under section 103(f)(2). Such releases from malfunctions, although they may not exceed the upper bound of the reported normal range of the continuous release, must be reported on a per-occurrence basis under section 103(a). Also, changes in plant operations may not result in an SSI, but in a change in the source or composition of the release. Any change in source or composition is considered a "new" release for purposes of reporting under section 103(f)(2). Such changes must be re-evaluated in a timely manner, based on the full scope of information required in the initial written report, which must include a statement that the release is continuous and stable in quantity and rate under the changed conditions. EPA, therefore, does not agree that SSIs in releases can be defined as the commenter suggests.

Another commenter stated that actual daily release quantities are known for only a few sources of a few substances and that release quantities are often determined by using engineering calculations, emission factors, and operating experience. The commenter suggested that release estimates, because they are not actual daily release figures, should be rounded to two significant digits of accuracy and an SSI should be defined as a release that, when the increased release is rounded to two significant digits, results in an increase of at least one in the less significant digit.

EPA does not agree that an SSI should be defined as a numeric increase in estimated release figures because, given the variety of release sources, any such figure would be arbitrary and potentially inappropriate for some releases. The Agency believes, therefore, that for releases that only can be estimated by calculations, operating experience, and professional judgment, it is more appropriate that persons in charge estimate the normal range of the release to include the releases previously reported or occurring under normal operating conditions, and to report, as SSIs, those releases that exceed the upper bound of the reported normal range. The normal range approach can much more readily be adapted to the many different sources of releases.

Several commenters questioned whether monitoring is required to obtain

data for reporting SSIs. One commenter stated that because no monitoring is required for purposes of reporting under section 103(a), many facility owners and operators may decide that section 103(a) reporting is less difficult and expensive than qualifying for reduced reporting under section 103(f)(2). If owners or operators opted to report continuous releases under section 103(a), the commenter believed the NRC could be overwhelmed by unnecessary reports.

As has been noted at section II.B.3 of this preamble, the Agency does not intend that monitoring systems be installed in facilities or vessels in order to collect empirical data to qualify releases for reduced reporting. The Agency believes the normal range method for identifying SSIs in releases established in today's rule is sufficiently flexible to permit persons in charge of facilities or vessels to qualify releases for reduced reporting under section 103(f)(2) without installing monitoring devices or incurring other excessive regulatory burden or expense. By using engineering estimates, knowledge of the operating history of the facility or vessel, experience with operating processes, and professional judgment, the person in charge can establish a normal range of releases on a sound technical basis. SSIs above this normal range can be estimated in the same fashion without monitoring or measuring.

C. Relationship to Reporting Under SARA Title III

SARA Title III (sections 301–329) addresses emergency planning and community right-to-know and requires, among other things, emergency and annual notification to State and local governments in addition to the notification requirements of section 103 of CERCLA.

Section 304 Reporting

To clarify the types of releases exempt from section 304 notification, the April 19, 1988 NPRM proposed revising the applicability section of the regulations implementing section 304 to add definitions of "continuous" and "statistically significant increase." Several commenters misinterpreted the proposed rule language as incorporating CERCLA section 103(f)(2) continuous release annual report requirements under section 304.

Section 304 of SARA Title III provides release reporting requirements that parallel the requirements of section 103(a) of CERCLA, but are intended to make release information available immediately to the SERC of any State likely to be affected by the release and emergency response coordinator for the LEPC for any area likely to be affected by the release. In general, a release of an EHS or a CERCLA hazardous substance must be reported immediately to a SERC and LEPC if it (1) is in an amount equal to or in excess of the RQ (or one pound if an alternative quantity has not been established by regulation), and (2) occurs from a facility at which a hazardous chemical is produced, used, or stored and in a manner that would require notice under CERCLA section 103(a).[9] The addition of the definitions in today's final rule clarify the meaning of the statutory phrase, "occurs in a manner which would require notice under CERCLA section 103(a)."

To the extent that releases are continuous and stable in quantity and rate as defined by CERCLA section 103(f)(2) and today's final rule, they do not occur in a manner that requires notification under CERCLA section 103(a). Accordingly, when persons in charge of facilities or vessels releasing EHSs or CERCLA hazardous substances submit the initial notification reports (including the initial written reports, which should be submitted with the follow-up report required by SARA Title III section 304(c)) to the appropriate SERC and LEPC, identifying releases of EHSs and CERCLA hazardous substances as continuous and stable in quantity and rate under the definitions in today's final rule, they need not report again to the SERC and LEPC, except for reports of SSIs. No CERCLA section 103(f)(2) follow-up reports are required under SARA Title III section 304.

If there is a change in the composition or source(s) of a release, however, the release is considered a new release and must be qualified for reporting as a continuous release. Accordingly, the new release must be reported to the NRC, SERC, and LEPC on a per-occurrence basis for a period sufficient to establish its continuity and stability. When the basis is established, the owner or operator must make an initial telephone report to notify the NRC, SERC, and LEPC of the intent to report the release as a continuous release and, within 30 days, submit initial written notifications to the EPA Region, SERC, and LEPC. No other changes in releases must be reported to the SERC or LEPC, unless there is an increase in the quantity of the release, and the owner or operator wants to modify the reported normal range of the release to redefine SSIs. To modify the reported normal range, the owner or operator must submit at least one SSI report to the NRC, SERC, and LEPC and, within 30 days, submit a letter to the EPA Region describing the new normal range, the reason for the change, and the basis for stating that the release in the increased amount is continuous and stable in quantity and rate under definitions in today's rule. Information on the change in the normal range should also be submitted to the SERC and LEPC, along with the SARA Title III section 304(c) follow-up report, in order to redefine SSIs under section 304.

EPA intends to maintain the information submitted on continuous releases in its computerized Emergency Response Notification System data base. The Agency will make this information available to EPA program offices, and, upon request, will share with SERCs and LEPCs information not submitted directly to them. Continuous release information, together with the information collected under other sections of SARA Title III, will provide the SERCs and LEPCs with a comprehensive picture of chemical hazards in a particular community. EPA believes this information can be used by facilities, as well as by other government authorities, to further pollution and accident prevention goals and objectives.

Initial telephone notification to the SERC and LEPC required under today's rule must include the same information as is contained in the initial telephone notification to the NRC under 40 CFR 302.8(d)(3). To satisfy the requirements under today's rule and the requirements for a follow-up notice under SARA Title III section 304(c), the initial written notification to the SERC and LEPC must identify the facility or vessel, the person in charge, the hazardous substance being released (and whether it is an extremely hazardous substance under 40 CFR part 355, appendix A), the source(s) of the release and the medium(a) it may affect, its frequency, the basis for stating that the release continuous and stable in quantity and rate, the normal range of the release, an estimate of the total annual amount released, the population density within a one-mile radius of the facility, the identity and location of sensitive populations and ecosystems within that area, if any, and any known or anticipated acute or chronic health risks associated with the release, and proper precautions, including medical attention that should be taken as a result of the release. Information from

[9] Section 304 of Title III excludes releases that result in exposure only to persons within the facility boundaries, releases that are federally permitted, releases of pesticide products exempt from CERCLA section 103(a) reporting under CERCLA section 103(e), and releases that do not come within the definition of release in CERCLA section 101(22).

initial reports will establish the release as continuous, assist State and local officials in emergency planning, and provide a basis for the SERC or LEPC to evaluate reports of SSIs.

Commenters on section 304 requirements should note that the Agency has proposed to designate 232 EHSs as CERCLA hazardous substances (54 FR 3388; January 23, 1989). When that proposed rule becomes final and effective, continuous releases of EHSs that are newly designated as CERCLA hazardous substances will be subject to all the requirements applicable to releases of CERCLA hazardous substances, including submission of follow-up reports to the appropriate EPA Regional office under CERCLA section 103(f)(2).

Section 313 Reporting

A number of commenters urged EPA to allow substitution of the Toxic Release Inventory (TRI) report required under SARA Title III section 313 for the annual reports required under the April 19, 1988 NPRM. In today's final rule the Agency is not requiring annual reports but only an initial written notification and a one-time follow-up report. Nevertheless, to provide flexibility, the Agency is allowing persons in charge to submit a copy of the TRI report in lieu of the CERCLA section 103(f)(2) initial written and follow-up reports, provided that certain supplemental continuous release information is submitted with the TRI report.

Under SARA Title III section 313, covered facilities must submit, on or before July 1 of each year, a TRI form to the EPA Administrator and to the State official or officials designated by the Governor of the State in which the facility is located. Annual notification requirements under section 313, however, are different in scope and purpose from CERCLA section 103 reporting requirements. SARA Title III section 313 requirements apply only to facilities in the Standard Industrial Classification (SIC) Major Groups 20 through 39 (unless the Administrator exercises the discretion granted in sections 313(b)(1) or 313(b)(2) to add or delete SIC groups or individual facilities) that have inventories of listed chemicals greater than specified threshold amounts. There are no such restrictions on the applicability of CERCLA notification requirements. Also, the universe of substances covered by CERCLA section 103 is not the same as the universe covered by SARA Title III section 313 requirements; some substances subject to CERCLA notification requirements are not subject to section 313, and other substances not subject to CERCLA notification requirements are subject to section 313 notification requirements.

The purpose of the reporting requirements differs as well. The purpose of the SARA Title III section 313 reporting requirements is to provide the public with information concerning the release of toxic chemicals into the environment, whereas the purpose of CERCLA notification requirements is to alert response officials to releases that may require a government response to protect public health and welfare and the environment.

In accordance with its statement in the preamble to the April 19, 1988 proposed rule to resolve, if possible, the concern about duplicate reporting, the Agency initiated discussions with EPA Regional personnel to determine whether the data submitted under section 313 would be adequate for their needs. On the basis of these discussions, EPA determined that the use of the SARA Title III section 313 report to satisfy the initial written and follow-up reporting requirements of CERCLA section 103(f)(2) is feasible so long as certain additional continuous release information is included with the section 313 report. The additions will provide EPA Regions with information that is not requested for purposes of the SARA Title III section 313 report, but is required in the continuous release initial written notification or follow-up report.

If the TRI report[10] is submitted in lieu of the initial written or follow-up report, the following continuous release information must be submitted with a copy of the TRI report:

(1) The population density within a one-mile radius of the facility or vessel, described in terms of the following ranges: 0–50 persons, 51–100 persons, 101–500 persons, 501–1000 persons, more than 1,000 persons.

(2) The identity and location of any sensitive populations or ecosystems within a one-mile radius of the facility or vessel (e.g., elementary schools, hospitals, retirement communities, or wetlands). In addition, the following information must be supplied for each hazardous substance release claimed to qualify for reporting under section 103(f)(2).

(3) The upper and lower bounds of the normal range of the release (in pounds or kilograms) over the previous year.

(4) The frequency of the release and the fraction of the release from each release source and the specific period over which it occurs.

(5) A brief statement describing the basis for stating that the release is continuous and stable in quantity and rate.

Also, the person in charge must include in the report the case number assigned by the NRC or EPA and a signed statement that the hazardous substance release(s) described in the notification is continuous and stable in quantity and rate under the definitions in 40 CFR 302.8, and that all the reported information is accurate and current to the best of his or her knowledge.

This additional information must be submitted to the appropriate EPA Regional Office, along with a copy of the most recent SARA Title III section 313 annual report, within 30 days of the initial telephone notification to the NRC. A subsequent TRI report plus addendum must also be submitted within 30 days of the first anniversary date of the initial written submission. The additional information required for purposes of satisfying the requirements of today's rule should not, however, be submitted by an owner or operator when submitting the Form R report under SARA Title III section 313 to the Toxic Release Inventory data base. Rather, a copy of Form R should be submitted with the additional information to the EPA Region. (The addresses of appropriate EPA Regional Offices are listed in section II.B.3 of this preamble.) Owners and operators that do not choose to substitute the section 313 report must submit the CERCLA section 103(f)(2) initial written report within 30 days of the initial telephone notification and a follow-up report on or before the anniversary date of the initial written report.

RQ Adjustments

One commenter stated that although the proposed rule does not address modification of RQs, it highlights the need for EPA to modify the RQs for non-CERCLA EHSs. The commenter noted, for example, that the RQ for sulfur dioxide was set by SARA Title III section 304 at one pound, but that emission levels far above 200 pounds per day are permitted for power plants burning fossil fuels.

EPA has proposed a rule to designate 232 EHSs as CERCLA hazardous substances (54 FR 3388; January 23, 1989). On August 30, 1989, the Agency

[10] EPA acknowledges that the information required in the CERCLA section 103(f)(2) initial written report and follow-up report under today's final rule is not identical to the information required in the SARA section 313 report, plus the addendum. The Agency, however, believes that the requirements are comparable and, regardless of the reporting option exercised, it will be able to derive the information necessary to evaluate the release.

proposed adjustments to the RQs for these and other EHSs (54 FR 35988). When the Agency promulgates the final rule, it will simultaneously adjust the RQs for these substances. Also, the commenter should note that releases in compliance with permits under other Federal programs may be exempt from CERCLA notification requirements under the federally permitted release exemption. (See CERCLA section 101(10), CERCLA section 103(a), and SARA Title III section 304(a)).

D. Multiple Concurrent Releases

In § 302.8(e) of the April 19, 1988 proposed rule (53 FR 12868 at 12869), EPA stated that multiple concurrent releases of the same substance occurring at various locations from contiguous plants or installations on contiguous property that are under common ownership or control shall be added together to determine whether such releases constitute a continuous release or an SSI. Several commenters found the multiple concurrent release section of the proposed rule confusing and inconsistent with the CERCLA definition of facility. These commenters inferred that the proposed rule adopted the SARA Title III definition of "facility" for purposes of the continuous release rule. The commenters stated that the aggregation of release data from different facilities on contiguous grounds under common ownership would be inconsistent with the definition of "facility" under CERCLA, and would be difficult because there are often different persons in charge of the various facilities.

The Agency did not intend to adopt the SARA Title III definition of facility for the purposes of the continuous release rule. In today's final rule, therefore, § 302.8(l) allows the person in charge to aggregate release data from separate, contiguous, adjacent facilities or to consider each facility separately. Persons in charge, however, must aggregate multiple concurrent releases of the same substance from a particular facility, to determine if an RQ has been equaled or exceeded (See 50 FR 13456 at 13459; April 4, 1985 and CERCLA section 101(9)). For the purpose of determining whether a release is continuous and stable in quantity and rate, and for the purpose of identifying SSIs, however, the aggregation of release data from separate facilities is optional. The person in charge may either consider the releases separately or in the aggregate, provided that whichever approach is elected is used for both purposes. This option should eliminate any difficulty or confusion that persons in charge of different facilities at one plant or company might otherwise have experienced.

E. Administrative Reporting Exemptions

One commenter on the April 19, 1988 proposed rule maintained that emissions that are considered *de minimis*, or that are exempt from regulation under other Federal or State statutes or regulations because their impact is insignificant, do not warrant reporting to the NRC. The commenter cited the example of emissions from small internal combustion engines used in the field. According to the commenter, releases from these engines easily could equal or exceed the 10-pound RQ for oxides of nitrogen, yet could be significantly below the annual emission level that would trigger a permitting requirement. Other examples the commenter mentioned were emissions from flares at tank batteries and gas processing plants, venting of small amounts of sour gas (gas containing hydrogen sulfide), and fugitive emissions. The commenter stated that these emissions have been identified to other authorities and are clearly normal, routine emissions that should be exempt from CERCLA section 103(a) reporting requirements.

The EPA would consider granting an administrative reporting exemption if EPA or another appropriate Federal agency determines that certain releases pose a hazard only rarely and that the government would rarely, if ever, respond to such releases, or if the Agency concludes that it is technically or administratively infeasible or inappropriate to respond to such releases. The commenter has not provided sufficient data or analysis for the Agency to determine whether the releases mentioned are actually *de minimis* and thus would rarely pose a hazard or that government authorities would rarely, if ever, want to respond to reports of such releases. The Agency, therefore, is not granting any administrative exemptions from section 103(a) or section 103(f)(2) notification requirements in today's final rule. Under the definitions of continuous and stable in quantity and rate promulgated in today's rule, however, releases such as the ones cited by the commenter may qualify for reporting under section 103(f)(2).

Another commenter proposed that EPA exempt from all continuous release notification requirements, air releases from electric utility fossil fuel-fired steam/electric generating units because some emissions from such facilities cannot be measured to any reasonable degree of accuracy, and because reporting the facility emissions that are measurable or monitorable would duplicate reporting associated with other Federal and State regulatory and permit requirements.

The Agency is aware that some releases are not measured or monitored and that persons in charge of facilities or vessels emitting such releases will not be able to provide empirical data about such releases. Consequently, for this type of release, the Agency is allowing persons in charge to make reasonable estimates or calculations of the information necessary to comply with section 103(f)(2) requirements on the basis of experience with operating processes and equipment, professional judgment, and any available data.

Also, certain releases are considered federally permitted releases under CERCLA section 101(10) and are exempt from CERCLA and SARA Title III notification and liability provisions. Congress was explicit in listing the types of releases that are exempt from notification and liability provisions. Releases that do not come within the provisions of section 101(10), however, are subject to CERCLA notification and liability provisions, regardless of any permits or licenses that may control these releases. (For further clarification, see the proposed rule on federally permitted releases (53 FR 27268; July 19, 1988)).

III. Comments on the Federally Permitted Release Rule

A number of commenters stated that it would not be possible to assess the full impact of the continuous release rule until the federally permitted release rule was proposed. One commenter suggested that the two rules be combined for final promulgation.

The Agency understands that the provisions of today's rule and the federally permitted release rule have a related effect on CERCLA notification requirements for many facilities and vessels. Some releases that do not qualify as federally permitted releases under one of the Federal acts enumerated in CERCLA section 101(10) may nevertheless qualify for reduced reporting as continuous releases under CERCLA section 103(f)(2). Accordingly, the Agency has examined all comments received on the federally permitted release proposal that address reporting requirements for continuous releases. Those comments raised no significant issues regarding continuous releases that had not already been raised in the comments on the continuous release proposal.

Moreover, the Agency believes that persons in charge of facilities and vessels have had ample opportunity to

assess the impact of the rules on the basis of the proposals published in the **Federal Register.** The federally permitted release rule was proposed on July 19, 1988 (53 FR 27268) and the comment period was extended to October 19, 1988 to accommodate comments. The federally permitted release rule is a complex rulemaking involving the provisions of a number of statutes in addition to CERCLA section 101(10). The Agency believes it would be inappropriate to delay promulgation of today's final rule until the promulgation of the federally permitted release rule, which is not expected until the Spring of 1991. By promulgating the continuous release rule today, the Agency will enable industry to begin reporting immediately under its provisions.

IV. Regulatory Costs

In the economic analysis supporting the April 19, 1988 NPRM, EPA assumed as a baseline the costs that the regulated community incurs when fully complying with section 103(a) reporting requirements. One commenter suggested that in so doing EPA assumed an extremely costly base situation that did not reflect reality, resulting in very large and unrealistic cost savings attributable to the continuous release reporting rule. The commenter also stated that continuous releases are not currently being reported because the Agency had stated, in a 1981 draft document, entitled "Interim Implementation Policy" that it did not wish to receive notification of routine, continuous, or anticipated intermittent releases.

The draft Interim Implementation Policy document did not suggest that facilities or vessels were permanently exempt from reporting continuous releases, but rather that, at that time, EPA did not intend to enforce strictly the notification requirements for continuous releases. In its first final rule on notification requirements and reportable quantity adjustments for hazardous substances, the Agency made it quite clear that, although it was not promulgating a continuous release rule at that time, "[n]otification of releases must be given 'annually, or at such time as there is any statistically significant increase' in the quantity of the hazardous substance being released" (50 FR 13458; April 4, 1985).

EPA does not agree with the comment that the baseline used in the economic analysis supporting the proposed rule was inappropriate. The purpose of an economic baseline is to provide a measure of the estimated costs that the affected community, government agencies, and other parties, such as the general public, would incur if a regulation were not promulgated. Estimates of the post-regulation costs can be determined once the baseline is established. The difference between the post-regulation costs and the baseline costs is the incremental cost (or cost savings) attributable to the final regulation.

Today's continuous release reporting regulation clarifies the reduced reporting requirements for facilities that release CERCLA hazardous substances at levels that equal or exceed an RQ on a continuous basis. As such, it is deregulatory in nature and results in cost savings to affected facilities and vessels relative to the costs that would be incurred were they to report on a per-occurrence basis under CERCLA section 103(a). The economic analysis supporting the NPRM used as its baseline the reporting requirements that would prevail without section 103(f)(2). That is, the economic baseline assumed that all facilities and vessels would report releases under CERCLA section 103(a). EPA believes that this is an appropriate approach, but acknowledges that many facilities and vessels with continuous releases of hazardous substances are not reporting under section 103(a) and have interpreted the statutory provisions of section 103(f)(2) as not requiring any reports of releases that are continuous and stable in quantity and rate.

Under the final rule, the person in charge of any facility or vessel that releases a CERCLA hazardous substance in a quantity equal to or exceeding the RQ in a manner that is continuous and stable in quantity and rate may submit initial and follow-up notifications, reports of SSIs in the release, and reports of changes in previously submitted information, instead of reporting such releases on a per-occurrence basis. Because of the numerous facilities that have interpreted the provisions of section 103(f)(2) not to require any reports, and have, to date, submitted no reports to the Agency, in the economic analysis supporting today's final rule, the baseline assumptions have been modified to represent the situation in which no reporting has occurred. As a result, the $5.9 million cost estimate for the final rule represents annual costs assuming that the facilities and vessels that release hazardous substances in a continuous manner are not currently complying with section 103(a) or section 103(f)(2) notification requirements. That is, it represents costs incurred to submit initial and follow-up notifications. SSI reports, and reports of changes in previously submitted information, as required by the continuous release reduced reporting regulation, without taking credit for the cost savings associated with daily notifications that are no longer required. The burden is expressed as a cost rather than a cost savings in order to reflect more accurately the reality of the reporting situation for these facilities. Therefore, the Agency believes it has responded fully to the commenter's concerns by estimating the potential costs of the final regulation assuming no prior compliance with CERCLA reporting requirements. The economic impact analysis (EIA) clearly shows that today's final rule is nonmajor, generating costs well below $100 million.

The same commenter stated that EPA failed to comply with the Paperwork Reduction Act requirement to ensure that it has taken every reasonable step to ensure that the collection of information is the least burdensome alternative necessary for the proper performance of the Agency's functions and to comply with legal and program objectives. The Agency does not agree that it failed to comply with requirements of the Paperwork Reduction Act in the publication of the proposed rule.

The Agency considered several alternative definitions of "continuous," "stable in quantity and rate," and "statistically significant increase." In the NPRM, as well as in today's final rule, EPA selected definitions that provide the person in charge of a facility or vessel the greatest flexibility in evaluating individual release situations. In particular, "continuous" was defined in the NPRM as "continuous without interruption or abatement, or continuous during operating hours, or continuous during regularly-occurring batch processes." The Agency stated, however, that it acknowledged that certain routine, anticipated, intermittent releases should also be reportable under section 103(f)(2). The Agency also proposed to allow persons in charge to determine whether a release is stable in quantity and rate. Similarly, the NPRM provided that the person in charge could use any appropriate statistical test to identify SSIs. Today's final rule provides even greater flexibility. By allowing the person in charge to determine the normal range of the release and to thereby identify SSIs, the Agency has selected the least burdensome and least expensive option that conforms with legal and program objectives.

The economic analysis supporting today's final rule considers three options: (1) Use of a broad definition of continuous to include routine,

anticipated, and intermittent releases, a definition of SSIs as releases above the normal range, and a definition of the normal range to include all releases under normal operating conditions reported or occurring during the preceding year; (2) use of the more restrictive NPRM definition of "continuous" as without interruption or abatement, and a definition of SSI as any release in the top 5 percent of all releases occurring under normal operating conditions; and (3) per-occurrence reporting. Annualized total costs to industry and government of these three options are: $5.9 million under Option 1; $48.7 million under Option 2; and $873.9 million under Option 3, per-occurrence reporting under section 103(a).

The following table summarizes the estimated costs of the analyzed options:

ESTIMATED COSTS OF CONTINUOUS RELEASE REPORTING OPTIONS

	Estimated number of facilities	Estimated number of SSIs annually	First year total costs (88 dollars) (million)	Annualized total costs (88 dollars) (million)	Annualized cost per facility
Option 1	10,200	1,510	$11.0	$5.9	$510
Option 2	10,200	143,200	53.3	48.7	3,490
Option 3	10,200	2,864,200	874.1	873.9	62,190

Costs to industry and government are incurred in preparing and processing notifications of hazardous substance releases, recordkeeping, and responding to releases. The substantial difference in estimated total annualized costs among the three options results largely from differences in the number of releases that must be reported as SSIs. Under Option 1, about 1,500 SSIs are expected to be reported, whereas the estimated number of SSIs, under Option 2, is about 143,200. Under Option 3, all 2,864,000 releases of hazardous substances estimated to occur each year in a continuous and stable manner must be reported to government authorities. The estimated cost to industry of reporting SSIs is approximately $215 per release for releases of CERCLA hazardous substances, and $205 per release for releases of non-CERCLA EHSs.[11] The corresponding government costs for processing and evaluating an SSI report is estimated at about $85 per report for CERCLA hazardous substances and $55 per report for non-CERCLA EHSs.

The average cost per facility to comply with the reporting requirements under each option, based on an estimated universe of 10,200 affected facilities, is approximately $510 annually under Option 1, $3,490 annually under Option 2, and $62,190 annually for per-occurrence reporting under section 103(a). The cost savings of reporting under the final rule are considerable, therefore, as compared with costs that persons in charge of facilities or vessels would incur if they reported on a per-occurrence basis. In selecting the first option in the final rule, EPA believes it has provided persons in charge of facilities and vessels with the least burdensome, most flexible approach to reporting under section 103(f)(2) and has fully complied with the requirements of the Paperwork Reduction Act.

One commenter suggested that EPA should use the actual number of emergency release reports to the NRC as the basis for estimating the number of facilities that will report under section 103(f)(2) and actual estimates for time spent by industry in the past to prepare annual reports. The Agency does not agree. The number of episodic releases reported annually to the NRC is not representative of the number of facilities or vessels that are likely to report under CERCLA section 103(f)(2). Based on information in the Toxic Release Inventory data base, the New Jersey Community Right-to-Know data base, and the Philadelphia Air Management Services data base, the Agency estimates that approximately 10,200 facilities are likely to release hazardous substances in a continuous and stable manner at reportable levels. This estimate exceeds the 4,900 reports of hazardous substance releases reported to the NRC in 1988.

The Agency believes that persons in charge of many facilities and vessels have interpreted the provisions of section 103(f)(2) not to require any reports, and currently are not reporting continuous releases to the NRC. The Agency believes, therefore, that the number of episodic release reports to the NRC cannot be used as a basis for estimating the number of facilities and vessels potentially affected by today's final rule.

Similarly, the Agency does not believe that annual reports submitted by industry to date can be used to estimate costs of compliance with today's rule. Annual reports submitted to date do not include the information required in the initial written notification or the follow-up report promulgated in today's rule. In fact, many of the annual reports submitted to date tend simply to identify the facility and the release, and to provide little additional information. Cost estimates based on such reports could underestimate reporting costs.

Several commenters stated that EPA substantially understated the cost of implementing the proposed rule by not including the costs of installing and operating special systems to monitor releases of hazardous substances. EPA does not agree that monitoring costs should be included in the cost estimates attributable to the continuous release reporting rule. Neither the identification of SSIs nor compliance with the reporting requirements in today's final rule requires monitoring or measuring of releases to acquire empirical data. Use of the normal range to identify SSIs, rather than the use of statistical tests, has eliminated any need for monitoring equipment. The normal range approach requires only that estimates be made of the quantity of each release relative to the reported normal range. This estimation can be based on professional judgment; a precise determination of the quantity of the release is not necessary. Also, EPA has limited the information required in the initial and follow-up reports to data that do not require monitoring. Therefore, because the provisions of today's final rule do not require or necessitate additional monitoring, EPA does not believe it is appropriate to include monitoring costs in the calculations of the estimated total costs of today's regulation.

One commenter stated that the Agency had underestimated costs by inappropriately assuming that a facility or vessel would release only one hazardous substance subject to the

[11] The cost difference between reporting a release of a CERCLA hazardous substance and reporting a release of a non-CERCLA EHS reflects the fact that releases of non-CERCLA EHSs need not be reported to the NRC.

continuous release reporting requirements and, consequently, underestimated the costs to facilities or vessels reporting more than one hazardous substance release. The commenter suggested use of the Philadelphia Air Management Services data to derive an estimate of the number of facilities or vessels releasing multiple hazardous substances at levels that equal or exceed the RQ. The Agency performed the analysis suggested by the commenter, as well as analyzing data submitted under SARA Title III section 313. On the basis of these analyses, the Agency determined that, on average during a given year, facilities tend to manufacture, use, or store approximately five CERCLA hazardous substances and EHSs, and release approximately four substances. This estimate, of course, varies considerably by industry category.

Not all of the hazardous substance releases equal or exceed the RQ. Based on the Philadelphia data, less than 6 percent (approximately one in 18 releases) of releases equaled or exceeded the RQ and would be reportable under CERCLA. Thus, on average, across all facilities, it is assumed that approximately one of 18 releases will occur at a reportable level. If releases are not independent, then it may be more likely that a facility will have multiple releases at reportable levels. It is not clear, however, whether these multiple releases would occur simultaneously from the same source (i.e., in a mixture) or whether they would occur as independent releases from different sources. Mixtures are reportable as one release and thus costs would not increase proportionately with the number of multiple, simultaneous releases. Releases of different hazardous substances from different sources, in contrast, must be reported separately.

The economic analysis supporting today's final rule, therefore, assumes that affected facilities releasing CERCLA hazardous substances release at most two hazardous substances in a continuous and stable manner at levels that equal or exceed an RQ, and that facilities that release non-CERCLA EHSs release one EHS at a reportable level. The analysis, however, also includes a sensitivity analysis showing that, if a facility or vessel has multiple continuous releases of hazardous substances occurring in an unrelated manner at levels that equal or exceed the RQ, regulatory costs for that particular facility or vessel could increase roughly in proportion to the number of hazardous substances released at or above the RQ.

One commenter stated that EPA should revise its estimates of the number of facilities affected by the regulations to account for the possibility that some facilities that release federally permitted air emissions also may be releasing hazardous substances that are not federally permitted as defined in CERCLA section 101(10) and the proposed regulation clarifying the federally permitted release exemption. EPA agrees that some of these facilities that have Federal permits also may be releasing substances that are not considered federally permitted under CERCLA section 101(10). The Agency, therefore, has modified its estimates of the universe of facilities potentially affected by today's final rule to include some facilities that have Federal permits but may not be entirely exempted under section 101(10) from CERCLA reporting. The Agency estimates that approximately 10,200 facilities release CERCLA hazardous substances and non-CERCLA EHSs in a manner that is continuous and stable in quantity and rate, and at levels that equal or exceed the RQ. This estimate includes facilities that have Federal permits, but also release other hazardous substances not covered by permit limitations.

The information used for the cost estimates supporting the April 19, 1988 NPRM was based upon the data available at that time. In support of the final rule, however, the Agency used more recent and accurate data on facilities that release hazardous substances. The Agency used two new data bases generated as a result of SARA Title III requirements to estimate the number of facilities potentially affected by the reporting requirements under CERCLA section 103(f)(2). The New Jersey Right-to-Know data base is used to estimate the total number of facilities that manufacture, process, or use CERCLA hazardous substances and non-CERCLA EHSs in the State of New Jersey and the nation as a whole; the SARA Title III section 313 Toxic Release Inventory data base is used to estimate the relationship between the number of facilities that release CERCLA hazardous substances and non-CERCLA EHSs and the number of facilities that manufacture, process, or use the substances. The Agency believes that these data bases provide the best currently available data for estimating the number of facilities that will be affected by the CERCLA section 103(f)(2) requirements. (See Economic Impact Analysis Supporting the Final Continuous Release Reporting Regulation under section 103(f)(2) of CERCLA, available in the Superfund Docket, for details on these data bases and the methodology used to estimate the costs attributable to today's final rule.)

The 10,200 facilities estimated to be eligible to report releases under section 103(f)(2) are estimated to release approximately 13,660 CERCLA hazardous substances and 1,475 non-CERCLA EHSs in a continuous and stable manner. Under Options 1 and 2, facilities are assumed to provide initial notification for these hazardous substance releases in the first year of implementation at a unit cost of $360 for CERCLA hazardous substances and $350 for non-CERCLA EHSs. In addition to the costs of providing initial notification, persons in charge will incur costs for providing information or clarification at the request of government authorities, for providing notification of changes in submitted information, for recordkeeping, and for reporting SSIs. Option 3, reporting under section 103(a), does not have any initial or annual reporting requirements; rather, facilities must report releases immediately as they occur.

One commenter stated that EPA should include, in the estimate of the overall cost of the regulation, the cost of reporting to State and local authorities under SARA Title III section 304. EPA agrees with the commenter and has provided an estimate of these costs in the economic analysis supporting the final rule. Of the total annual cost estimate of $5.9 million for reporting and processing reports under the continuous release reporting regulation, the annualized cost of all reporting under SARA Title III 304, including SSI reports, is estimated at $0.8 million.

One commenter argued that the continuous release reporting rule is a major rule because it will impose costs on society of over $100 million annually, and that even if it is not, it is likely to cause a major increase in costs or prices. The Agency does not agree that the continuous release rule is a major rule. Even assuming a baseline of no reporting under section 103(a), the annual cost to facilities and vessels of complying with CERCLA section 103(f)(2) requirements is estimated to be $5.18 million; the cost to the government of processing reports is estimated to be $0.76 million. This is well below the $100 million cost of a major rule and the rule does not meet the other criteria for a major rule. (Criteria for a major rule are listed in the summary of supporting analyses in section V, below.)

V. Summary of Supporting Analyses

A. Executive Order No. 12291

Executive Order (E.O.) No. 12291 requires that regulations be classified as major or nonmajor for purposes of review by the Office of Management and Budget (OMB). Under E.O. No. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) 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.

As demonstrated by an economic analysis (Economic Impact Analysis Supporting the Final Rule on Continuous Release Reporting under Section 103(f)(2) of CERCLA) performed by the Agency, available for inspection in the Superfund Docket Room 2427, U.S. EPA, 401 M Street SW., Washington, DC 20460, this final rule is nonmajor, because the rule will result in estimated annualized costs of $5.9 million, with $5.18 million incurred by facilities and vessels, and an estimated annualized cost of $0.76 million incurred by the government. Moreover, the rule will not cause a major increase in costs or prices mentioned in (2) above or cause any of the significant adverse effects mentioned in (3) above.

OMB completed its review, as required by E.O. No. 12291, on March 9, 1990 without comment.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." EPA certifies that this final regulation will not have a significant impact on a substantial number of small entities and that a Regulatory Flexibility Analysis is not required. See Chapter Five of the Economic Analysis supporting today's final rule, available in the Superfund Docket

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control numbers 2050-0086 and 2050-0092.

Public reporting burden for this collection of information is estimated at 9 hours per response for the initial written report, at 5 hours per response for the follow-up report, and at 2.2 hours per change notification letter, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

40 CFR Part 355

Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Extremely hazardous substances, Hazardous substances, Reportable quantity, Reporting and recordkeeping requirements, Threshold planning quantity.

Dated: June 21, 1990.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 is revised to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

2. Part 302 is amended by adding § 302.8 to read as follows:

§ 302.8 Continuous releases.

(a) Except as provided in paragraph (c) of this section, no notification is required for any release of a hazardous substance that is, pursuant to the definitions in paragraph (b) of this section, continuous and stable in quantity and rate.

(b) *Definitions.* The following definitions apply to notification of continuous releases:

Continuous. A continuous release is a release that occurs without interruption or abatement or that is routine, anticipated, and intermittent and incidental to normal operations or treatment processes.

Normal range. The normal range of a release is all releases (in pounds or kilograms) of a hazardous substance reported or occurring over any 24-hour period under normal operating conditions during the preceding year. Only releases that are both continuous and stable in quantity and rate may be included in the normal range.

Routine. A routine release is a release that occurs during normal operating procedures or processes.

Stable in quantity and rate. A release that is stable in quantity and rate is a release that is predictable and regular in amount and rate of emission.

Statistically significant increase. A statistically significant increase in a release is an increase in the quantity of the hazardous substance released above the upper bound of the reported normal range of the release.

(c) *Notification.* The following notifications shall be given for any release qualifying for reduced reporting under this section:

(1) Initial telephone notification;

(2) Initial written notification within 30 days of the initial telephone notification;

(3) Follow-up notification within 30 days of the first anniversary date of the initial written notification;

(4) Notification of a change in the composition or source(s) of the release or in the other information submitted in the initial written notification of the release under paragraph (c)(2) of this section or the follow-up notification under paragraph (c)(3) of this section; and

(5) Notification at such times as an increase in the quantity of the hazardous substance being released during any 24-hour period represents a statistically significant increase as defined in paragraph (b) of this section.

(d) *Initial telephone notification.* Prior to making an initial telephone notification of a continuous release, the person in charge of a facility or vessel

must establish a sound basis for qualifying the release for reporting under CERCLA section 103(f)(2) by:

(1) Using release data, engineering estimates, knowledge of operating procedures, or best professional judgment to establish the continuity and stability of the release; or

(2) Reporting the release to the National Response Center for a period sufficient to establish the continuity and stability of the release.

(3) When a person in charge of the facility or vessel believes that a basis has been established to qualify the release for reduced reporting under this section, initial notification to the National Response Center shall be made by telephone. The person in charge must identify the notification as an initial continuous release notification report and provide the following information:

(i) The name and location of the facility or vessel; and

(ii) The name(s) and identity(ies) of the hazardous substance(s) being released.

(e) *Initial written notification.* Initial written notification of a continuous release shall be made to the appropriate EPA Regional Office for the geographical area where the releasing facility or vessel is located. (Note: In addition to the requirements of this part, releases of CERCLA hazardous substances are also subject to the provisions of SARA Title III section 304, and EPA's implementing regulations codified at 40 CFR part 355, which require initial telephone and written notifications of continuous releases to be submitted to the appropriate State emergency response commission and local emergency planning committee.)

(1) Initial written notification to the appropriate EPA Regional Office shall occur within 30 days of the initial telephone notification to the National Response Center, and shall include, for each release for which reduced reporting as a continuous release is claimed, the following information:

(i) The name of the facility or vessel; the location, including the latitude and longitude; the case number assigned by the National Response Center or the Environmental Protection Agency; the Dun and Bradstreet number of the facility, if available; the port of registration of the vessel; the name and telephone number of the person in charge of the facility or vessel.

(ii) The population density within a one-mile radius of the facility or vessel, described in terms of the following ranges: 0–50 persons, 51–100 persons, 101–500 persons, 501–1,000 persons, more than 1,000 persons.

(iii) The identity and location of sensitive populations and ecosystems within a one-mile radius of the facility or vessel (e.g., elementary schools, hospitals, retirement communities, or wetlands).

(iv) For each hazardous substance release claimed to qualify for reporting under CERCLA section 103(f)(2), the following information must be supplied:

(A) The name/identity of the hazardous substance; the Chemical Abstracts Service Registry Number for the substance (if available); and if the substance being released is a mixture, the components of the mixture and their approximate concentrations and quantities, by weight.

(B) The upper and lower bounds of the normal range of the release (in pounds or kilograms) over the previous year.

(C) The source(s) of the release (e.g., valves, pump seals, storage tank vents, stacks). If the release is from a stack, the stack height (in feet or meters).

(D) The frequency of the release and the fraction of the release from each release source and the specific period over which it occurs.

(E) A brief statement describing the basis for stating that the release is continuous and stable in quantity and rate.

(F) An estimate of the total annual amount that was released in the previous year (in pounds or kilograms).

(G) The environmental medium(a) affected by the release:

(*1*) If surface water, the name of the surface water body;

(*2*) If a stream, the stream order or average flowrate (in cubic feet/second) and designated use;

(*3*) If a lake, the surface area (in acres) and average depth (in feet or meters);

(*4*) If on or under ground, the location of public water supply wells within two miles.

(H) A signed statement that the hazardous substance release(s) described is(are) continuous and stable in quantity and rate under the definitions in paragraph (a) of this section and that all reported information is accurate and current to the best knowledge of the person in charge.

(f) *Follow-up notification.* Within 30 days of the first anniversary date of the initial written notification, the person in charge of the facility or vessel shall evaluate each hazardous substance release reported to verify and update the information submitted in the initial written notification. The follow-up notification shall include the following information:

(1) The name of the facility or vessel; the location, including the latitude and longitude; the case number assigned by the National Response Center or the Environmental Protection Agency; the Dun and Bradstreet number of the facility, if available; the port of registration of the vessel; the name and telephone number of the person in charge of the facility or vessel.

(2) The population density within a one-mile radius of the facility or vessel, described in terms of the following ranges: 0–50 persons, 51–100 persons, 101–500 persons, 501–1,000 persons, more than 1,000 persons.

(3) The identity and location of sensitive populations and ecosystems within a one-mile radius of the facility or vessel (e.g., elementary schools, hospitals, retirement communities, or wetlands).

(4) For each hazardous substance release claimed to qualify for reporting under CERCLA section 103(f)(2), the following information shall be supplied:

(i) The name/identity of the hazardous substance; the Chemical Abstracts Service Registry Number for the substance (if available); and if the substance being released is a mixture, the components of the mixture and their approximate concentrations and quantities, by weight.

(ii) The upper and lower bounds of the normal range of the release (in pounds or kilograms) over the previous year.

(iii) The source(s) of the release (e.g., valves, pump seals, storage tank vents, stacks). If the release is from a stack, the stack height (in feet or meters).

(iv) The frequency of the release and the fraction of the release from each release source and the specific period over which it occurs.

(v) A brief statement describing the basis for stating that the release is continuous and stable in quantity and rate.

(vi) An estimate of the total annual amount that was released in the previous year (in pounds or kilograms).

(vii) The environmental medium(a) affected by the release:

(A) If surface water, the name of the surface water body;

(B) If a stream, the stream order or average flowrate (in cubic feet/second) and designated use;

(C) If a lake, the surface area (in acres) and average depth (in feet or meters);

(D) If on or under ground, the location of public water supply wells within two miles.

(viii) A signed statement that the hazardous substance release(s) is(are) continuous and stable in quantity and rate under the definitions in paragraph (a) of this section and that all reported information is accurate and current to

the best knowledge of the person in charge.

(g) *Notification of changes in the release.* If there is a change in the release, notification of the change, not otherwise reported, shall be provided in the following manner:

(1) *Change in source or composition.* If there is any change in the composition or source(s) of the release, the release is a new release and must be qualified for reporting under this section by the submission of initial telephone notification and initial written notification in accordance with paragraphs (c)(1) and (2) of this section as soon as there is a sufficient basis for asserting that the release is continuous and stable in quantity and rate;

(2) *Change in the normal range.* If there is a change in the release such that the quantity of the release exceeds the upper bound of the reported normal range, the release must be reported as a statistically significant increase in the release. If a change will result in a number of releases that exceed the upper bound of the normal range, the person in charge of a facility or vessel may modify the normal range by:

(i) Reporting at least one statistically significant increase report as required under paragraph (c)(7) of this section and, at the same time, informing the National Response Center of the change in the normal range; and

(ii) Submitting, within 30 days of the telephone notification, written notification to the appropriate EPA Regional Office describing the new normal range, the reason for the change, and the basis for stating that the release in the increased amount is continuous and stable in quantity and rate under the definitions in paragraph (b) of this section.

(3) *Changes in other reported information.* If there is a change in any information submitted in the initial written notification or the follow-up notification other than a change in the source, composition, or quantity of the release, the person in charge of the facility or vessel shall provide written notification of the change to the EPA Region for the geographical area where the facility or vessel is located, within 30 days of determining that the information submitted previously is no longer valid. Notification shall include the reason for the change, and the basis for stating that the release is continuous and stable under the changed conditions.

(4) Notification of changes shall include the case number assigned by the National Response Center or the Environmental Protection Agency and also the signed certification statement required at (c)(2)(xi) of this section.

(h) *Notification of a statistically significant increase in a release.* Notification of a statistically significant increase in a release shall be made to the National Response Center as soon as the person in charge of the facility or vessel has knowledge of the increase. The release must be identified as a statistically significant increase in a continuous release. A determination of whether an increase is a "statistically significant increase" shall be made based upon calculations or estimation procedures that will identify releases that exceed the upper bound of the reported normal range.

(i) *Annual evaluation of releases.* Each hazardous substance release shall be evaluated annually to determine if changes have occurred in the information submitted in the initial written notification, the follow-up notification, and/or in a previous change notification.

(j) *Use of the SARA Title III section 313 form.* In lieu of an initial written report or a follow-up report, owners or operators of facilities subject to the requirements of SARA Title III section 313 may submit to the appropriate EPA Regional Office for the geographical area where the facility is located, a copy of the Toxic Release Inventory form submitted under SARA Title III section 313 the previous July 1, provided that the following information is added:

(1) The population density within a one-mile radius of the facility or vessel, described in terms of the following ranges: 0–50 persons, 51–100 persons, 101–500 persons, 501–1,000 persons, more than 1,000 persons.

(2) The identity and location of sensitive populations and ecosystems within a one-mile radius of the facility or vessel (e.g., elementary schools, hospitals, retirement communities, or wetlands).

(3) For each hazardous substance release claimed to qualify for reporting under CERCLA section 103(f)(2), the following information must be supplied:

(i) The upper and lower bounds of the normal range of the release (in pounds or kilograms) over the previous year.

(ii) The frequency of the release and the fraction of the release from each release source and the specific period over which it occurs.

(iii) A brief statement describing the basis for stating that the release is continuous and stable in quantity and rate.

(iv) A signed statement that the hazardous substance release(s) is(are) continuous and stable in quantity and rate under the definitions in paragraph (b) of this section and that all reported information is accurate and current to the best knowledge of the person in charge.

(k) *Documentation supporting notification.* Where necessary to satisfy the requirements of this section, the person in charge may rely on recent release data, engineering estimates, the operating history of the facility or vessel, or other relevant information to support notification. All supporting documents, materials, and other information shall be kept on file at the facility, or in the case of a vessel, at an office within the United States in either a port of call, a place of regular berthing, or the headquarters of the business operating the vessel. Supporting materials shall be kept on file for a period of one year and shall substantiate the reported normal range of releases, the basis for stating that the release is continuous and stable in quantity and rate, and the other information in the initial written report, the follow-up report, and the annual evaluations required under paragraphs (e), (f), and (i), respectively. Such information shall be made available to EPA upon request as necessary to enforce the requirements of this section.

(l) *Multiple concurrent releases.* Multiple concurrent releases of the same substance occurring at various locations with respect to contiguous plants or installations upon contiguous grounds that are under common ownership or control may be considsred separately or added together in determining whether such releases constitute a continuous release or a statistically significant increase under the definitions in paragraph (b) of this section; whichever approach is elected for purposes of determining whether a release is continuous also must be used to determine a statistically significant increase in the release.

(m) *Penalties for failure to comply.* The reduced reporting requirements provided for under this section shall apply only so long as the person in charge complies fully with all requirements of paragraph (c) of this section. Failure to comply with respect to any release from the facility or vessel shall subject the person in charge to all of the reporting requirements of § 302.6 for each such release, to the penalties under § 302.7, and to any other applicable penalties provided for by law.

(Approved by the Office of Management and Budget under the control number 2050–0086).

PART 355—EMERGENCY PLANNING AND NOTIFICATION

3. The authority citation for part 355 is revised to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

4. Section 355.40 is amended by revising paragraph (a)(2)(iii) to read as follows:

§ 355.40 Emergency release notification.

(a) * * *

(2) * * *

(iii) Any release that is continuous and stable in quantity and rate under the definitions in 40 CFR 302.8(b). Exemption from notification under this subsection does not include exemption from:

(A) Initial notifications as defined in 40 CFR 302.8(d) and (e);

(B) Notification of a "statistically significant increase," defined in 40 CFR 302.8(b) as any increase above the upper bound of the reported normal range, which is to be submitted to the community emergency coordinator for the local emergency planning committee for any area likely to be affected by the release and to the State emergency response commission of any State likely to be affected by the release;

(C) Notification of a "new release" as defined in 40 CFR 302.8(g)(1); or

(D) Notification of a change in the normal range of the release as required under 40 CFR 302.8(g)(2).

(Approved by the Office of Management and Budget under the control number 2050-0092)

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[FR Doc. 90-15260 Filed 7-23-90; 8:45 am]

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[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1989. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1989 to Mar. 30, 1990. The CFR volume issued April 1, 1989, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.