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Presidential Documents

Title 3—

The President

Presidential Determination No. 94–46 of September 8, 1994

Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Memorandum for the Secretary of State [and] the Secretary of the Treasury

Under section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note), and a previous determination made by me on September 13, 1993 (58 FR 51209), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to terminate on September 14, 1994.

I hereby determine that the extension for one year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

Therefore, pursuant to the authority vested in me by section 101(b) of Public Law 95–223, I extend for one year, until September 14, 1995, the exercise of those authorities with respect to countries affected by:

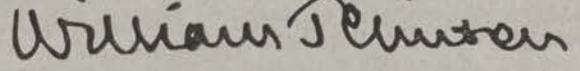
(1) the Foreign Assets Control Regulations, 31 CFR Part 500;

(2) the Transaction Control Regulations, 31 CFR Part 505;

(3) the Cuban Assets Control Regulations, 31 CFR Part 515; and

(4) the Foreign Funds Control Regulations, 31 CFR Part 520.

The Secretary of the Treasury is directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 8, 1994.

[FR Doc. 94–23034
Filed 9–13–94; 3:12 pm]
Billing code 3810–10–M

Rules and Regulations

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

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DEPARTMENT OF JUSTICE

8 CFR Part 3

[AG Order No. 1916–94]

Executive Office for Immigration Review; Board of Immigration Appeals; Expansion of the Board

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule expands the Board of Immigration Appeals to nine permanent members, including eight Board Members and a Chairman. It provides for the designation of three-member panels to adjudicate cases and stay requests. It also provides for a quorum of a majority of the permanent Board for en banc adjudication, and a quorum of a majority of the panel members for panel adjudications. The permanent Board may, by majority vote or at the direction of the Chairman, consider or reconsider en banc any case that was previously decided by a panel. The rule also retains the authority of the Director of the Executive Office for Immigration Review to designate Immigration Judges as temporary additional Board Members.

EFFECTIVE DATE: This final rule is effective September 15, 1994.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone: (703) 305–0470.

SUPPLEMENTARY INFORMATION: The final rule provides for an expansion of the Board of Immigration Appeals to a nine-member permanent Board. This is necessary because of the Board's greatly increased caseload, which has more than quadrupled over the past decade. To maintain an effective, efficient system of appellate adjudication, it has become necessary to increase the number of Board Members. The most efficient utilization of the Board is through increased use of the panel system, which has been in effect since 1988. This will ensure effective, efficient adjudications while providing for en banc review in appropriate cases.

This final rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b). The Attorney General has determined that this rule is not a significant regulatory action under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is not necessary because this rule relates to agency organization and management.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Aliens.

For the reasons set forth in the preamble, 8 CFR part 3 is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Subpart A—Board of Immigration Appeals

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.1, paragraph (a)(1), is revised to read as follows:

§ 3.1 General authorities.

(a)(1) *Organization.* There shall be in the Department of Justice a Board of Immigration Appeals, subject to the general supervision of the Director, Executive Office for Immigration Review. The Board shall consist of a Chairman and eight other members. The Board Members shall exercise their independent judgment and discretion in the cases coming before the Board. A majority of the permanent Board Members shall constitute a quorum of the Board sitting en banc. A vacancy, or the absence or unavailability of a Board Member, shall not impair the right of the remaining members to exercise all the powers of the Board. The Director may in his discretion designate Immigration Judges to act as temporary, additional Board Members for whatever time the Director deems necessary. The Chairman may divide the Board into three-member panels and designate a presiding member of each panel. The Chairman may from time to time make changes in the composition of such panels and of presiding members. Each panel shall be empowered to review cases by majority vote. A majority of the number of Board Members authorized to constitute a panel shall constitute a quorum for such panel. Each panel may exercise the appropriate authority of the Board as set out in part 3 that is necessary for the adjudication of cases before it. The permanent Board may, by majority vote on its own motion or by direction of the Chairman, consider any case en banc or reconsider en banc any case decided by a panel. By majority vote of the permanent Board, decisions of the Board shall be designated to serve as precedents pursuant to paragraph (g) of this section. There shall also be attached to the Board such number of attorneys and other employees as the Deputy Attorney General, upon recommendation of the Director, shall from time to time direct.

* * * * *

Dated: September 6, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–22775 Filed 9–14–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 93–137–3]

Importation of Ratites and Hatching Eggs of Ratites

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with several changes, an interim rule that amended the regulations regarding the importation of ratites and hatching eggs of ratites. In this final rule, we are adding identification and certification requirements to those established by the interim rule. This action is necessary to help ensure that ratites and hatching eggs of ratites that could pose a disease risk to poultry and livestock in the United States are not imported into this country.

EFFECTIVE DATE: October 17, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Hand, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5907.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) regulate the importation of certain animals and birds, including ostriches and other flightless birds known as ratites, and their hatching eggs, to prevent the introduction of communicable diseases of livestock and poultry.

In an interim rule effective and published in the **Federal Register** on March 8, 1994 (59 FR 10729–10734, Docket No. 93–137–1), we amended the regulations by providing that ratites and hatching eggs of ratites may not be imported into the United States unless specified identification and recordkeeping requirements regarding their origin and movement are met in the country of export.

We solicited comments concerning the interim rule for a 60-day comment period ending May 9, 1994. On July 5, 1994, we published in the **Federal Register** a notice (59 FR 34375, Docket No. 93–137–2) reopening and extending the comment period until July 20, 1994. We received a total of 10 comments on or before July 20. The commenters included ratite industry associations, a veterinary association, individual members of the general public, and representatives of foreign governments. Five of the commenters supported the rule as written. The other commenters either opposed the rule or suggested modifications to it. We discuss these comments below.

One commenter objected to the fact that ratites may be imported only from countries in which the national government maintains a registry of premises where ratites or ratite hatching eggs are produced for export to the United States. The commenter stated that prohibiting the importation of ratites and ratite hatching eggs from countries that do not meet this requirement will deny Americans access to imports, and might ultimately lead to those countries' erecting trade barriers with the United States. The commenter suggested that the restrictions on importation should apply only to those countries in which smuggling has been demonstrated to have occurred. We are making no changes based on this comment. International trade in ratites and their hatching eggs often involves transhipping birds and eggs among several countries. Without the identification and recordkeeping requirements established by the interim rule, it is difficult to ensure that ratites and hatching eggs of ratites imported into the United States are from pen-raised flocks.

One commenter stated that the interim rule was not warranted by the incidence of disease found in imported ratites. According to the commenter, since the reinstatement of ratite importation [56 FR 31856–31868, Docket No. 90–147, published in the **Federal Register** July 12, 1991 and made effective August 12, 1991], no ostriches have been refused entry due to illness, two shipments of emus have been denied entry due to the detection of Salmonella, and one shipment of cassowaries and emus was denied entry due to the detection of an H5 strain of avian influenza. We are making no changes based on this comment. As we stated in the background information of our interim rule, we consider the quarantine requirements that were in place prior to the interim rule to be effective in identifying and preventing the entry of ratites with communicable diseases. However, as we also stated in our interim rule, the increased risk presented by smuggled or wild-caught ratites jeopardizes the health of other ratites in quarantine and unnecessarily increases the risk of the entry of a ratite with a communicable disease.

Several commenters objected to the requirement that ratites produced in a flock from which ratites or hatching eggs of ratites are intended for importation into the United States be identified with an identification number by means of a microchip implanted in the pipping muscle at 1-day of age. One commenter stated that, although ostriches at birth have a relatively large neck and a bulbous pipping muscle, emu and rhea chicks have very slender necks with no visible pipping muscle, and are too small at birth to safely undergo implantation of a microchip. We do not agree that a microchip cannot be safely implanted in newly hatched emus and rheas. However, we agree with the commenter that the bulbous pipping muscle of the ostrich is not present in emus and rheas. Therefore, we are amending the regulations at § 92.101(b)(3)(i)(B) to require that a microchip be implanted in the pipping muscle of each ostrich produced in a flock from which ratites or hatching eggs of ratites are intended to be imported into the United States, and that a microchip be implanted in the upper neck of ratites other than ostriches. We consider it necessary to implant the microchip in either the pipping muscle or the upper neck to facilitate reading of the microchip.

Another commenter recommended that if the microchip is not implanted in the pipping muscle, the exact location of the microchip should be indicated on a stock registry, on an export certificate, and on an external form of identification on the ratite. We do not consider such information necessary if the microchip is implanted as discussed in the preceding paragraph.

One commenter also recommended that, for what the commenter termed "practical reasons," microchipping be required not when the chick is 1-day of age, but rather either within 1 day of the chick leaving the hatcher or, in the event of natural breeding and hatching, within 7 days of the chick's hatching. We are making no changes based on this comment. We consider microchipping at the earliest possible date after hatching necessary to enable inspectors to ensure that all ratites in a flock are properly identified and are entered in the flock's register. We are unaware of any reason such microchipping cannot be done when the chicks are 1-day of age.

One commenter suggested that the Animal and Plant Health Inspection Service (APHIS) should specify a location for implantation of microchips on older birds as well as chicks. The commenter stated that if ratites at some time become a source of food, it will be

necessary to locate and remove the microchips, and that a standard location for implantation will facilitate that removal. We are making no changes based on this comment. Our experience enforcing the regulations has shown that relatively few ratites other than hatching eggs and chicks are imported into the United States. Those that are imported cannot at present be used for food, under U.S. Environmental Protection Agency regulations, because they are required by APHIS to be treated with a pesticide. Some of the relatively few older ratites imported into the United States, particularly emus, have already been microchipped by their owners for security purposes. These microchips have often been implanted other than in the neck of the ratites, and we do not believe it is necessary to require that the ratites be microchipped a second time.

One commenter stated that the issue of the potential migration of implanted microchips within ratites should be evaluated. We recognize the possibility of the migration of an implanted microchip within a ratite. At this time, however, we consider microchip implantation to be the most reliable practical means of identifying ratites. Should an implanted microchip migrate from the area of implantation, it can still be located and read, although with greater difficulty than if it had not migrated. We recognize that it is possible that more effective means of identification may be developed in the future, and we will evaluate each method of identification as it is developed and tested.

One commenter stated that, although using microchips for identification of ratites is more effective than banding the ratites, the only sure way of identifying ratites is through "DNA fingerprinting," by having a blood sample analyzed at a laboratory. The commenter stated that microchips can be removed from one bird and placed in another, can migrate in a bird's body, and can become inactivated due to bumping or other harsh action. According to the commenter, DNA fingerprinting could be done as needed, with a certain number of "fingerprints" done randomly to ensure that breeders and importers are "kept honest." We are making no changes based on this comment. Although we agree that "DNA fingerprinting" can be an effective means of identification, it does not offer the necessary speed of identification provided by microchipping.

Our interim rule contained a requirement that each hatching egg produced in a flock from which ratites or hatching eggs of ratites are intended to be imported into the United States be marked in indelible ink with the date of production. One commenter recommended that these hatching eggs also be marked with a code identifying the premises of origin. We agree that such an identifying code would help ensure that hatching eggs have originated in the flock indicated on the export certificate, and we believe it would further aid identification of hatching eggs if each egg is identified as to the country of the flock of origin. Therefore, we are amending § 92.101(b)(3)(i)(C) to require that, on the date it is produced, each hatching egg produced in the flock be marked with indelible ink with the date of production, and also be identified with indelible ink as to the country and the premises of the flock of origin. This identification must be in a form assigned by the national government of the country in which the flock is located.

One commenter recommended that the regulations require that microchip readers provided to APHIS inspectors at the intended port of entry be capable of reading microchips produced by different manufacturers, so that APHIS inspectors would not have to maintain a number of different readers. We are making no changes based on this comment. Although we encourage standardization of microchips and readers, even if such standardization does not occur, it will not be necessary for APHIS inspectors to maintain a number of readers. Under the regulations, each importer of ratites is responsible for providing to APHIS inspectors the reader compatible with the microchips used for identification.

Our interim rule included a requirement that a production ceiling for each premises be set, based on the number of eggs the ratites in a flock could reasonably be expected to produce over a given production season. We defined *production season* as that period of time, usually approximately 9 months each year, from the time ratites in a flock begin laying eggs until the ratites cease laying eggs. We stated in the background information to the interim rule that ratites by nature follow a set cycle for laying eggs, and, for reasons of health and productivity, must be given a period of rest between production seasons. One commenter disagreed with our definition of *production season*, and stated that a compulsory "rest period" is not necessary, because some farmers might deliberately manage their flocks in such a way as to export eggs throughout the entire year. We are making no changes based on this comment. Our definition of *production season* does not require a rest period. It merely describes what is standard practice in the ratite industry. However, it should be noted that § 92.101(b)(3)(i)(H) prohibits the addition of ratites to a flock during a production season. Therefore, a "rest period" is necessary if an owner wishes to add ratites to his or her flock from outside the flock.

Our interim rule included a requirement that the owner or manager of a premises from which ratites or hatching eggs of ratites are intended for importation into the United States maintain on a daily basis a register of the numbers of ratites and hatching eggs in the flock and the identification of the ratites. The interim rule required further that the owner or manager submit these registers to the National Veterinary Service of the country of export on a quarterly basis, and that the national government in turn submit a copy of the registers to the APHIS Administrator on a quarterly basis. One commenter stated that these registers will be of no use to the APHIS Administrator because, under the regulations, ratites from outside a flock may not be added to that flock during a production period. We do not agree that copies of the registers would be of no use to APHIS. A copy of a register would be useful to APHIS in those cases where there is some question as to whether a premises has exceeded its production ceiling. However, we agree it will not be necessary for APHIS to examine copies of registers in all cases. Therefore, in this final rule, we are amending § 92.101(b)(3)(i)(E) to remove the requirement that registers be submitted on a quarterly basis, and to require, instead, that the National Veterinary Service of the country of export make copies of the registers available upon request to the Administrator.

Under § 92.101(b)(3)(i)(J) of the regulations established by the interim rule, when the National Veterinary Service of the country of export submits to APHIS copies of registers on a quarterly basis, it also must indicate whether all ratites and hatching eggs of ratites on a premises are identified as required. Because in this final rule we are removing the requirement that registers be submitted on a quarterly basis, we are also removing the requirement in § 92.101(b)(3)(i)(J) that the country of export indicate on a quarterly basis whether all ratites and hatching eggs of ratites are identified as required. However, as required by the interim rule, some of this information is available to APHIS through other certification. In §§ 92.104(c) and (d), an export certificate must include, among other things, certification that all ratites

in the flock of origin have been identified as required. In this final rule, we are adding to §§ 92.104(c) and (d) the requirement that the export certificate also include certification that all hatching eggs in the flock of origin have been marked as required.

One commenter, a representative of a country from which ratites and hatching eggs of ratites are imported into the United States, stated that it is important to reduce the annual ceiling for a flock if laying ratites are removed from the premises. We agree that, because the production ceiling for a flock is dependent on the number of ratites mature enough to lay eggs, the ceiling should be reduced if laying hens are removed from the flock. We are therefore adding to §§ 92.104(c)(15) and (d)(11) the requirement that the export certificate that accompanies shipments of ratites or hatching eggs of ratites to the United States indicate the number of ratite laying hens in the flock of origin. We are also revising § 92.101(b)(3)(i)(I) to require that the production ceiling be adjusted according to changes in the number of laying hens in the flock.

One commenter stated that the keeping of a control register for identification of ratites should not necessarily be the responsibility of the official veterinary authority of the country of exportation, but should instead be allowed to be the responsibility of a recognized body, as agreed upon by the APHIS Administrator. It is not clear to us what type of "recognized body" the commenter is referring to. We do not consider it appropriate for an entity other than an agency of the national government of the country of export to maintain the required registry. Under the regulation as written, a government agency other than the official veterinary authority is not precluded from maintaining the registry of premises that wish to export ratites or hatching eggs of ratites to the United States. Therefore, we are making no changes based on this comment.

Several commenters addressed issues outside the scope of the interim rule, concerning functions required to be carried out by veterinarians in the country from which the ratites or hatching eggs are to be exported. The functions the commenters addressed were already required under the regulations prior to publication of the interim rule.

Miscellaneous

We are making a wording correction to § 92.104(c)(14). The provisions in § 92.104(c) pertain to ratites other than hatching eggs that are intended for importation into the United States. However, in § 92.104(c)(14) of our interim rule, we made reference to "hatching eggs" when our intent, consistent with the rest of § 92.104(c), was to refer to "ratites." In this final rule, we are correcting this reference.

In this final rule, we are also making several nonsubstantive changes to part 92, to update addresses in footnotes and to correct an incorrect paragraph reference.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of this interim rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

This final rule requires that foreign producers of ratites or ratite hatching eggs intended for importation into the United States identify all ratite eggs in the flock as to premises and country. It also requires that such identification be certified on an export certificate, that the export certificate also indicate the number of ratite laying hens in the flock, and that the production ceiling for a flock be adjusted according to changes in the number of laying hens in the flock.

At present 99 ratite farms in 13 countries are approved to ship ratites or ratite hatching eggs to the United States. The number of approved foreign farms varies each month due to annual recertification requirements.

We anticipate that requiring the identification and certification set forth in this rule will have little or no economic impact. Hatching eggs must already be marked on the premises of origin as to date of production. The additional cost to also identify the hatching eggs as to premises and country is expected to be negligible. Also, the certification required by this rule is in addition to certification already required on an export certificate, and is expected to have little or no economic impact.

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. *et seq.*), the information collection or recordkeeping requirements included in this rule have been submitted for approval to the Office of Management and Budget.

List of Subjects in 9 CFR Part 92

Animal disease, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 9 CFR part 92 that was published at 59 FR 10729–10734 on March 6, 1994, is adopted as a final rule with the following changes:

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

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

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.101, paragraphs (b)(3)(i)(B) and (b)(3)(i)(C), the second sentence of (b)(3)(i)(E), and the second sentence of (b)(3)(i)(I) are revised to read as set forth below; paragraph (b)(3)(i)(J) is amended by removing the reference to "(b)(3)(i)(D) and (b)(3)(i)(E)" and adding "(b)(3)(i)(B) and (b)(3)(i)(C)" in its place; and paragraph (b)(3)(i)(J) is amended by removing the word "quarterly" in the last sentence.

§ 92.101 General prohibitions; exceptions.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(B) Each ratite produced in the flock is identified with an identification number by means of a microchip implanted at 1-day of age in the pipping muscle of ostriches and in the upper neck of other ratites, each ratite added from outside the flock is identified in like manner upon arrival in the flock,

except that the microchip need not be implanted in the pipping muscle or the upper neck, and each ratite already in the flock as of March 8, 1994 is identified in like manner, prior to the next visit to the flock premises by an APHIS representative under § 92.103(a)(2)(iii), except that the microchip need not be implanted in the pipping muscle or the upper neck;

(C) On the date it is produced, each hatching egg produced in the flock is marked in indelible ink with the date of the production, and with identification, assigned by the national government of the country of export, of the premises and country from which the ratites or hatching eggs are intended for exportation;

* * * * *

(E) * * * The country of export in turn submits a copy of the registers to the Administrator upon his or her request;[2]

* * * * *

(I) * * * The ceiling for each premises is calculated jointly by a full-time salaried veterinary officer of the national government of the country of export and the APHIS representative who conducts the site visit required under § 92.103(a)(2)(iii), and is adjusted jointly by an APHIS representative and a full-time salaried veterinary officer of the national government of the country of export according to changes in the number of laying hens in the flock;

* * * * *

§ 92.103 [Amended]

3. In § 92.103, footnote 9 is revised to read "The addresses of USDA quarantine facilities may be found in telephone directories listing the facilities or by contacting the Administrator, c/o Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782."

4. Section 92.104 is amended by redesignating paragraphs (c)(15) and (c)(16) as paragraphs (c)(16) and (c)(17), respectively; by adding new paragraphs (c)(15) and (d)(11); and by revising paragraphs (c)(14) and (d)(10), to read as follows:

§ 92.104 Certificate for pet birds, commercial birds, zoological birds, and research birds.

* * * * *

(c) * * *

(14) That all ratites in the flock from which the ratites come were identified in accordance with § 92.101(b)(3)(i)(B), and that all ratite hatching eggs in the flock were identified in accordance with § 92.101(b)(3)(i)(C);

(15) The number of ratite laying hens in the flock from which the ratites come;

* * * * *

(d) * * *

(10) That all ratites in the flock from which the hatching eggs come were identified in accordance with § 92.101(b)(3)(i)(B), and that all ratite hatching eggs in the flock were identified in accordance with § 92.101(b)(3)(i)(C).

(11) The number of ratite laying hens in the flock from which the hatching eggs come.

§ 92.106 [Amended]

5. Section 92.106 is amended by revising footnote 11 to read "A list of approved vaccines is available from the Administrator, c/o Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782."

Done in Washington, DC, this 9th day of September 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-22849 Filed 9-14-94; 8:45 am]

BILLING CODE 3410-34-P

[2] Copies should be mailed to Administrator, c/o Import/Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

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9 CFR Part 94

[Docket No. 94-083-1]

Change in Disease Status of Portugal Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending our regulations by adding Portugal to the list of countries where bovine spongiform encephalopathy (BSE) exists, because the disease has been detected in native cattle in that country. The effect of this action is to prohibit or restrict the importation of certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants which have been in Portugal. This action is necessary to reduce the risk that BSE could be introduced into the United States.

DATES: Interim rule effective September 9, 1994. Consideration will be given only to comments received on or before November 14, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94-083-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr Kathleen Akin, Senior Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 755, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. (301) 436-7830

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 94 and 95 (referred to below as the regulations) govern the importation of meat, animal products, animal byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

Bovine spongiform encephalopathy is a neurological disease of bovine animals and other ruminants. BSE is not known to exist in the United States.

The major means of spread of BSE appears to be through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants in countries in which BSE exists, are imported into the United States and are fed to ruminants in the United States.

Sections 94.18 and 95.4 of the regulations prohibit and restrict the importation of certain meat, animal products, and animal byproducts from ruminants which have been in countries in which BSE exists. These countries are listed in § 94.18 of the regulations.

In an interim rule effective on December 7, 1993, and published in the **Federal Register** on December 13, 1993 (58 FR 65103-65104, Docket No. 93-149-1), we amended the regulations by adding Portugal to the list of countries where BSE exists after the disease was detected in cattle in Portugal. In a final rule effective on May 27, 1994, and

published in the **Federal Register** on May 12, 1994 (59 FR 24637–24638, Docket No. 93–149–2), we amended the regulations by removing Portugal from the list of countries where BSE exists after epidemiological investigations revealed that the cattle in which the disease was detected had been imported into Portugal from Great Britain, and that all suspect animals were destroyed. Since February 1990, the Portuguese government has prohibited the importation of live cattle and all animal products and animal byproducts from Great Britain, Northern Ireland, and the Republic of Ireland. Additionally, all livestock in Portugal, both domestic and imported, are subject to official supervision and veterinary controls established at the national level.

Recently, Portuguese government veterinarians with the National Veterinary Laboratory in Lisbon reported to the Office of International Epizootics that BSE has been detected in cattle born in Portugal. A limited number of cases of BSE were confirmed by histopathological examination according to standardized procedures for the diagnosis of BSE. Portuguese government veterinarians confirmed the cases of BSE in native cattle born in Portugal. The exposure of these cattle to the BSE agent could only have been while in Portugal. In order to reduce the risk of introducing BSE into the United States, we are, therefore, adding Portugal to the list of countries where BSE is known to exist. Thus, we are prohibiting or restricting the importation of certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants which have been in Portugal.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment.

BSE is a serious animal disease that has caused great loss to the cattle industry of Great Britain, and the introduction of this disease into the United States would cause great harm to the U.S. cattle industry. BSE has been diagnosed in cattle in Portugal. The restrictions contained in this interim rule must be implemented immediately to reduce the risk that BSE could be introduced into the United States through importation of certain meat, animal products, and animal byproducts from ruminants that have been in Portugal.

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

Executive Order 12866 and Regulatory Flexibility Act

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

As an alternative to the provisions of this rule, we considered taking no action. This alternative was rejected because it would allow meat, animal products, and animal byproducts that might spread BSE to be imported into the United States. Placing Portugal on the list of countries in which BSE is known to exist restricts the importation of some animal products and prohibits the importation of others. Currently, natural non-stomach bovine casings are the only commodity imported from Portugal in quantities sufficient to cause any economic impact.

During FY 1992/93, according to the Economic Research Service, U.S. Department of Agriculture, 14,846 metric tons of animal casings were imported by the United States, of which 82 percent came from hogs. Portugal exported 229 metric tons of casings to the United States during this period, or only 1.5 percent of the total imported. In the opinion of the animal casings industry, a very small proportion of the animal casings imported from Portugal are bovine; most come from hogs and sheep. This rule will not affect the importation of hog and sheep casings from Portugal. Therefore, this rule change will not have a significant impact on U.S. entities.

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.18 [Amended]

2. In § 94.18, paragraph (a) is amended by adding "Portugal," immediately after "Oman,".

Done in Washington, DC, this 9th day of September 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–22850 Filed 9–14–94; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Environmental Remediation Services

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is establishing a size standard of 500 employees for Environmental Remediation Services, an activity which involves work identified with a number of different functions associated with restoring a contaminated environment, such as: preliminary assessment, site inspection, testing, remedial investigation, containment, remedial action, the

transportation and disposal of waste materials, and security and site closeouts. The application of this size standard will be for Federal environmental remediation procurements which involve three or more environmentally related activities which in turn can be identified in separate industries under the Standard Industrial Classification (SIC) system. It will also apply in SBA's non-procurement programs where an applicant firm is primarily engaged in environmental remediation services as defined by this final rule.

The adopted size standard of 500 employees is, in practical effect, an increase above the size standard of $18.0 million proposed on October 8, 1993 (58 FR 52452). This higher size standard is supported by more recent data describing the industry structure for this activity, as well as by comments received in response to the proposed rule.

DATES: Effective Date: This rule is effective on October 17, 1994.

Applicability Dates: This rule applies to all Federal procurement solicitations, except noncompetitive Section 8(a) contracts, issued on or after October 17, 1994.

For Section 8(a) noncompetitive contracting actions, the rule is applicable to offers of requirements that are accepted by the Small Business Administration subsequent to October 17, 1994.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Assistant Administrator for Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: On October 8, 1993 the SBA proposed to establish an environmental services size standard of $18.0 million for Federal government procurements meeting the following two criteria: (1) That the overall purpose of the procurement is to restore a contaminated environment, and (2) that the procurement is composed of activities in three or more distinct industries identified with separate Standard Industrial Classification (SIC) four-digit industry codes, none of which constitutes 50 percent or more of the contract's value (58 FR 52452). These criteria were established to distinguish environmental remediation services involving multiple activities from other environmental related procurements involving services primarily associated with one particular industry. For non-procurement applications of this size standard, a firm would have to be primarily engaged in three or more activities related to environmental remediation, none of which accounts for 50 percent or more of the firm's activities. The environmental services activity was designated as a sub-category under SIC code 8744, Facilities Support Management Services, because this SIC code generally requires the performance of a range of different services in support of facilities where no one activity may be considered the primary activity (see Standard Industrial Classification Manual: 1987, Executive Office of the President, Office of Management and Budget).

In this final rule, SBA is adopting a size standard of 500 employees (equivalent to approximately $50 million in annual receipts) for environmental remediation services, rather than the $18 million size standard set forth in the October 8, 1993 proposed rule identified above. This increase takes into account comments received on the proposed size standard, an analysis of additional industry data on firms engaged in environmental remediation, and trends in Federal procurement for this type of activity. These factors are discussed in greater detail below.

In addition, SBA has changed the title for this activity from "Environmental Services," the title used in the SBA's proposed rule, to "Environmental Remediation Services." This stems from comments that environmental services as a title is very broad and could result in a misclassification of Federal procurements simply because the title is not sufficiently specific. After reviewing the proposed definition for environmental services, SBA is changing the title to "Environmental Remediation Services," a title believed to better specify the type of services for which the SBA intended to establish a separate, distinct size standard. The proposed rule was directed towards remediation services, and not all other possible services that could be performed in connection with the environment. This definitional modification is for clarification purposes only.

As discussed in the proposed rule, SBA views environmental remediation services as an emerging industry not explicitly defined under the present SIC system. Pursuant to the authority set forth in section 15(a) of the Small Business Act, 15 U.S.C. 644(a), SBA will consider establishing a further segmentation of an industry category defined in the four-digit SIC system to recognize a new industry. In the past, SBA has established other sub-categories within existing four-digit SIC industries (e.g., base maintenance, dredging, pneumatic tires, custom cattle feedlots and food services). In this case, SBA is establishing a separate sub-category under SIC code 8744 because of a need to establish a specific size standard for the emerging multi-discipline activity of environmental remediation services, an area of Federal procurement that has expanded enormously in recent years.

SBA received a total of 69 comments to the proposal to establish an $18 million size standard for environmental remediation services. Twenty-three comments supported SBA's proposed rule in all respects without reservation. Among the 62 comments discussing the $18 million size standard, 21 comments argued for a higher size standard, 10 comments wanted a lower size standard, and 31 comments generally supported the proposed $18 million size standard. Fifteen of the 21 comments supporting a higher size standard also argued for a size standard based on number of employees. Other comments raised alternatives to the proposed size standard, or opposed the establishment of any specific size standard for environmental remediation services. A discussion of these latter comments and SBA's views regarding them will follow a discussion of SBA's basis for establishing a 500 employee size standard for environmental remediation services.

Selection of Size Standard

The SBA has decided to establish a 500 employee size standard for environmental remediation services. SBA now believes the proposed $18 million size standard does not adequately reflect the structure of the environmental remediation services industry as revealed by available data on firms engaged in environmental remediation services. The decision to propose an $18 million size standard was based primarily on the premise that, from limited information available at that time, firms which perform environmental remediation services tend to be larger in size than firms performing non-environmental services in related industries. Accordingly, a size standard which reflected a level similar to the highest size standards then in effect for any of the related construction or services industries was proposed. Since the time of the proposed rule, SBA continued in its efforts to assemble the most recent data available on environmental firms. The assessment of this newly developed data, as well as public comments in response to the proposed size standard, has convinced SBA that a 500 employee size standard would be more suitable for the environmental remediation services industry than an $18 million size

standard. The analysis of the industry data, and the basis for the decision to use number of employees as the measure of size, are each discussed below.

Analysis of Industry Data

In considering the appropriate size standard for an industry, SBA generally evaluates the structural characteristics of an industry by analyzing at least four industry factors. These industry factors include: Average firm size, start-up costs, competition and the distribution of firms by size. In addition, the impact of alternative size standards on SBA's programs is assessed. As a relatively new and developing industry, comprehensive industry data by which to conduct this structural analysis are limited for the environmental remediation services industry. The statistical collection agencies of the Federal government, the primary sources of economic data on industries in the economy, do not publish data on environmental remediation services firms since this activity has not yet been identified as an industry under the SIC system. To overcome this problem, SBA has constructed its own data base of environmental remediation services firms based on data from a non-governmental source. SBA believes this data base is sufficient in coverage to provide an adequate assessment of the relevant structural characteristics of the environmental remediation services industry.

SBA constructed its data base by utilizing data and information published in the 1993 edition of Wards Business Directory. This publication is viewed by the SBA as the best single data base currently available to identify firms engaged in environmental remediation services. This directory lists individual firms by SIC code, provides a description of a firm's activities, and shows the size of a firm by revenues and number of employees. From the description of firm activities, SBA was able to identify firms that perform activities associated with environmental remediation services. Firms in nine industries, considered the primary industries from which firms perform some or all aspects of environmental remediation work, were reviewed to identify environmental remediation services firms. The nine industries reviewed are listed below:

SIC code	Description
1629	Heavy Construction, Not Elsewhere Classified.
1795	Wrecking and Demolition Work.
1799	Special Trade Contractors, Not Elsewhere Classified.
4212	Local Trucking Without Storage.
4953	Refuse Systems.
4959	Sanitary Services, Not Elsewhere Classified.
8711	Engineering Services.
8731	Commercial Physical and Biological Research.
8734	Testing Laboratories.

Data on these firms were then combined to derive information on the structure of the environmental remediation services industry.

Although data obtained from the Wards Business Director provided SBA with useful information on firms performing environmental remediation services, the directory does not include all firms within an industry. Instead, it tends to omit many smaller-sized firms in an industry, thereby creating a bias in the data towards larger-sized firms. In view of this aspect of the data, SBA's analysis of industry characteristics focused on the relative differences between environmental and non-environmental remediation services firms rather than on absolute values calculated from the Wards data. SBA believes that Wards data provide a reasonably accurate picture of the relative difference in average firm size between industries. If the Wards data show that the average firm size of one industry is twice that of another industry, it is likely to be accurate, even if the absolute values listed are not truly representative of each industry as a whole.

In performing the analysis of this size standard, the relative differences of the four industry factors identified above were calculated between the derived environmental remediation services industry and a comparison industry group. The comparison industry group data was also derived from the Wards Business Director and consisted of the firms within the same nine SIC codes listed above which were not shown as engaged in environmental remediation work. From these differences, a range of size standards was indicated based on relationships between relative industry differences and size standards for the non-manufacturing industries. This analytical approach was necessary to accommodate the data limitations discussed earlier. The remainder of this section describes in greater detail the analysis of relative differences performed by SBA in establishing this size standard.

A total of 374 firms within the nine SIC codes identified above were found to be engaged in environmental remediation services. An environmental remediation services industry was constructed by aggregating data on these firms into one industry group. Structural characteristics of this industry then were estimated. Industry values were calculated for each of the four industry factors—average firm size (as measured by average revenues per firm), start-up costs (using average assets per firm to measure capital typically employed by firms in an industry), competition (as measured by percent of total industry revenues attributed to large firms with 1000 or more employees), and the distribution of firms by size (as measured by the market share of total industry revenues obtained by firms with revenues of more than $5 million and more than $18 million). Table 1 below summarizes the industry characteristics of this derived environmental remediation services industry, the industry characteristics of a comparison group (identified as the parent industry group), and the difference between the characteristics of these two groups (as expressed by a ratio).

TABLE 1.—CHARACTERISTICS OF THE ENVIRONMENTAL REMEDIATION SERVICES INDUSTRY AND PARENT INDUSTRY GROUP

	(A) Environmental remediation services	(B) Parent industry group	(C) Difference ratio (A÷B)
Average Revenues Per Firm	$115.4M	$36.4M	3.17
Average Assets Per Firm	$59.5M	$16.8M	3.54
Competition	84.7%	67.1%	1.26
Percent of Revenues by Firm Size Greater Than:			
$5 Million	99.2%	96.2%	1.03
$18 Million	97.1%	74.4%	1.31

TABLE 1.—CHARACTERISTICS OF THE ENVIRONMENTAL REMEDIATION SERVICES INDUSTRY AND PARENT INDUSTRY GROUP—Continued

	(A) Environmental remediation services	(B) Parent industry group	(C) Difference ratio (A+B)
Average	N/A	N/A	1.17

Source: Data derived from 1993 Wards Business Directory. Average assets estimated by SBA based on Wards Directory and Industry Norms and Key Business Ratios, Dun and Bradstreet, 1986.

The relative difference between structural characteristics of the environmental remediation services and the parent industry group can be expressed quantitatively as a "difference ratio," and is shown in table 1 for each industry factor. The difference ratio is simply the value of an industry factor for the environmental remediation services industry divided by the value of the same industry factor for the parent industry group (i.e., the difference ratio for the industry factor of average firm size is: $115.4 million + $36.4 million = 3.17). As can be seen in table 1, the difference ratios range between 1.03 and 3.53.

The relative differences clearly show that the environmental remediation services industry is comprised of larger firms than are present in the parent industry group, and that larger firms capture a greater share of total industry revenues in the environmental remediation services industry than in the parent industry group. The implication of these findings is that the environmental remediation services industry warrants a higher size standard than is generally in effect for the nine parent industries.

The next step in the analysis was to calculate a weighted average size standard for the nine SIC codes making up the parent industry group. The nine parent industries have widely varying size standards, ranging between $2.5 million for engineering services (SIC code 8711) to 500 employees for research and development (SIC code 8731). To create a single size standard for environmental remediation services based on data comparisons with the parent industry group, a single size standard representing the varying size standards of the industries within that group needed to be derived. To obtain such a single size standard, a weighted average of the size standards for the nine parent industries was calculated.

Based on the current size standards, and weighting each industry by the total number of firms in the industry as reported by the U.S. Bureau of the Census, a weighted average size standard of $12 million was calculated based on annual revenues (the actual calculated figure of $11.95 million was rounded up). Since the size standard for research and development is based on number of employees, it was first converted to a receipts size standard by multiplying the 500 employee size standard by the revenues per employee for that industry.

A weighted average size standard based on number of employees was also calculated to assist in the analysis. To make this calculation, the receipts-based size standards were first converted to number of employees by dividing the receipts size standards by revenues per employee for each industry (for the industries of SIC codes 4953 and 4959, revenues per employee for all private sector industries was used in the absence of current revenue data on these two specific industries). Using employee equivalent size standards for eight of the nine industries, a size standard of 141 employees was calculated (the actual calculated figure of 141.1 employees was rounded down).

These two weighted average size standards became the base size standards ($12 million and 141 employees) by which to estimate how much higher the size standards should be for environmental remediation services than for the parent industry group based upon the relative industry differences shown in Table 1. Table 2 below shows the calculations used in developing the weighted average size standards.

TABLE 2.—WEIGHTED AVERAGE SIZE STANDARDS FOR THE PARENT INDUSTRIES

SIC	Size standard		No. of firms	Percent of total firms	Composite	
	Receipts	Employees [1]			Receipts	Emp.
1629	$17.0M	162	10,088	9.3	$1.57M	15.0
1795	7.0M	92	865	0.8	0.06M	0.7
1799	7.0M	91	23,181	21.3	1.49M	19.4
4212	18.5M	235	37,145	34.1	6.31M	80.2
4953	6.0M	45	2,208	2.0	0.12M	0.9
4959	5.0M	38	852	0.8	0.04M	0.3
8711	2.5M	29	28,494	26.2	0.65M	7.5
8734	5.0M	79	2,844	2.6	0.13M	2.0
8731	[2] 52.7M	500	3,265	3.0	1.58M	15.0
Total	.....	.....	108,942	100.0	11.95M	141.1

Source: U.S. Bureau of the Census, Standard Statistical Establishment List, Special Tabulation, 1990.
[1] Estimated employee size standard based on revenues per employee (except SIC code 8731).
[2] Estimated receipts size standard based on revenues per employee.

The next step in the analysis was to assure that the new size standard would be consistent with all of SBA's size standards as to the way in which those standards in turn relate to industry differences. Failure to take this factor

into account could result in a size standard that would be aberrational in terms of SBA's overall size standards system. This step was an examination of each of the same four industry factors and the existing size standards with respect to two large groups of industries close to either end of the existing size standard spectrum for non-manufacturing industries. To demonstrate this analysis, the paragraph below sets forth the calculations with respect to one of the four industry factors: average firm size. The groups of industries selected for consistency purposes were (1) representative industries covered by a $5 million standard, and (2) representative industries covered by standards of $17 million–$25 million, which have an average of $18.5 million.

This examination revealed that, as to the representative industries covered by the $5 million standard, those industries in the aggregate had an average firm size of $1.15 million, and as to the representative industries covered by standards of $17 million–$25 million, those industries had an average firm size of $3.76 million. In order to identify the relationship between size standards and average firm size in terms of the extent to which differences between average firm size have influenced size standards, SBA used ratios of the size standards between the two groups of industries and the average firm sizes between the two groups. These ratios are expressed as 18.5/5 divided by 3.76/1.15, or 1.13. This number suggests that there is a consistency correlation of 113 percent between average firm size and size standards generally. This means that data which reveals average firm size for a particular industry needs an adjustment by only an added 13 percent before calculating the size standard in order to achieve consistency with the way average firm size relates to size standards as a whole. Table 3 shows the calculations of a "consistency ratio" for average firm size and the other industry factors. The size standards ratio of 3.7 (18.5/5) is a constant in these calculations, and is shown in the description of column (D).

TABLE 3.—CHARACTERISTICS OF SELECTED NON-MANUFACTURING INDUSTRIES

	(A) Industries with $5M standard	(B) Industries with $17M to $25M standard	(C) Difference ratio (B÷A)	(D) Consistency ratio (3.7÷C)
Average Revenues Per Firm	$1.15M	$3.76M	3.27	1.13
Average Assets Per Firm	$0.76M	$2.10M	2.76	1.34
Competition	25.5%	41.1%	1.61	2.30
Percent of Revenues by Firm Size Greater Than:				
$ 5 Million	56.2%	84.8%	1.51	2.45
$18 Million	36.1%	59.5%	1.65	2.24
Average	N/A	N/A	1.58	2.35

Source: U.S. Bureau of the Census, Special Tabulation, Standard Statistical Establishment List, 1990.

Since average firm size "data" in the case of environmental remediation has to be calculated as a differential figure (see Table 1), the consistency ratios were multiplied by the corresponding difference ratios. For example, the average firm size consistency ratio of 1.13 was multiplied by the average firm size difference ratio of 3.17, for a final size factor of 3.58. Looking back to the weighted average size standards established for the parent industry group of either $12 million or 141 employees, average firm size, as one of only four industry factors, would therefore suggest that for the environmental remediation services industry the size standard should be 3.58 times greater than those parent industry group standards, or approximately $45 million or 500 employees. Similar calculations were performed with respect to each of the other three industry factors. The data are shown in Table 4 below.

TABLE 4.—COMPUTATION OF SUGGESTED ENVIRONMENTAL REMEDIATION SERVICES SIZE STANDARDS

	(A) Environmental difference ratio	(B) Consistency ratio	(C) Size factor (A×B)	(D) Suggested receipts standard ($12M×C)	(E) Suggested employee standard (141×C)
Average Revenues Per Firm	3.17	1.13	3.58	$42.9M	505
Average Assets Per Firm	3.54	1.34	4.74	56.9M	668
Competition	1.26	2.30	2.90	34.8M	409
Percent of Revenues by Firm Size Greater Than:					
$5 Million	1.03	2.45	2.53	30.3M	355
$18 Million	1.31	2.24	2.93	35.2M	413
Average	N/A	N/A	N/A	32.7M	385

Preliminary size standards were suggested by the calculations in table 4 of approximately $42 million or 490 employees. These preliminary size standards reflect an average of the suggested size standards indicated by the four industry factors, without giving one factor more weight than another.

The impact of preliminary size standards of these magnitudes on Federal procurements was also assessed before finally adopting a size standard. This assessment also supported a very high size standard. The primary reason for development of this size standard is to standardize the classification of environmental remediation service activities under one industry size standard for procurement purposes. Information available to SBA shows that a number of full-service Federal remediation projects and site restoration projects, usually multi-year projects, have been projected to fall in the $20 to $30 million range, with some contracts exceeding $100 million. In rate cases

such contracts may even exceed $1.0 billion with prime contractors subcontracting much of the work. These are extraordinarily large contracts for Federal procurements that are not contracts for manufactured goods. In addition to the large size of contracts, there is also an extensive level of sophistication required on these contracts given the concern for public health and safety regarding hazardous materials, and the specialized equipment, personnel and work precautions needed by a contractor when handling hazardous materials. Moreover, since the SBA is requiring that contracts which fall in this category be composed of activities in three industries (as explained below), such contracts would naturally tend to be larger contracts. Relatively large companies will necessarily have to be involved on environmental remediation services contracts given the size and sophistication of Federal government remedial efforts. A very high size standard is thus suggested by the nature of the Federal procurement marketplace and the presence of large firms which tend to dominate these Federal procurement activities. The preliminary size standards of $42 million and 490 employees are consistent with this factor.

Based on the industry analysis and a consideration of the available information on Federal procurement, the SBA has decided to establish a 500 employee size standard for environmental remediation services. As the previous industry analysis shows, a 490 employee size standard adequately reflects the structure of the environmental remediation services industry based on available data on firms engaged in these services. For administrative convenience, the 490 employee level is rounded up to 500 employees to be consistent with other SBA employee-based size standards.

The SBA has decided to adopt number of employees as the size standard measure for environmental remediation services rather than a size standard based on annual receipts, as was proposed. As stated in the proposed rule, the SBA generally utilizes a receipts-based size standard for non-manufacturing industries, but it stated it would consider establishing an employee-based size standard for environmental remediation services if information was provided that indicated the use of a receipts-based size standard would be inequitable. SBA specifically solicited comments indicating the need for an employee-based size standard. In response, SBA received 15 comments which advocated adoption of an employeee-based size standard. Only one comment was received which specifically stated that the size standard should be based on receipt and not member of employees. Other comments supported or opposed the $18 million size standard,but did not discuss specifically whether receipts or employees would be a more equitable means of measuring size. SBA also continued its own assessment of whether a receipts-based or an employee-based size standard would be a better measure of size for this new, emerging industry.

The comments which explained their preference for an employee size standard pointed out that environmental remediation contracts using this size standard would be obtained by contractors who would subcontract out a relatively high proportion of work, and that revenues passed-through to subcontractors should not be attributed to the prime contractor. SBA agrees that there likely will be a very high percentage of subcontracting; this consideration, in combination with the fact that the contracts involved will be extremely large contacts, and the fact that environmental remediation is an emerging industry, suggests that a receipts-based size standard would be less equitable than an employee standard. If a $42 million size standard were established instead of one at 500 employees, a firm which is already generating significant revenues could receive a single environmental remediation contract in an amount close to the size standard and effectively become large for purposes of future contracts, even though one-third or more of the revenues of the contract might be attributed to another firm. This result would hinder the ability of small businesses in this emerging industry to grow and continue to participate in the Federal market. SBA believes it would be inconsistent with the purposes of the small business and minority small business set-aside programs to establish a size standard which would effectively be useful to firms on only one or two contracts before disqualifying them from further benefits from the program. This principle is particularly important for new industries where the small business segment is generally less able to compete effectively due to uncertainties as to market and fast-moving technologies. Moreover, since firms from nine or more industries have the capability to perform some or all of the environmental remediation requirements, the type and amount of activity to be subcontracted will vary considerably by contract and by the capabilities of the prime contractor. Accordingly, SBA doubts that it can establish a receipts-based size standard which reflects a "typical" subcontracting pattern for environmental remediation services.

SBA recognizes that, in other contexts, pass-through revenue by itself has not warranted establishment of an employee-based size standard. Here, the additional factors of the extremely large size of the expected contracts, and the status of environmental remediation services as an emerging industry with its special needs for growth opportunities for small business, have persuaded SBA that an employee-based size standard is appropriate.

Comments to Proposed Rule

In response to its proposed rule, the SBA received comments from 69 interested parties. Sixty-two of those comments discussed the proposed size standard. All comments dealing with the appropriate level or type of size standard were carefully considered by SBA, and the discussion above has explained in detail how SBA has selected the size standard of 500 employees. None of the comments presented SBA with credible data which would conflict with SBA's analysis in any significant way, and most comments discussed the proposed size standard in only general terms. Some comments did raise other issues related to the proposal which warrant discussion. Those issues are discussed below:

Environmental Remediation and the Brooks Act

A few comments questioned whether SBA's designation of Environmental Remediation Services as a new sub-category under SIC code 8744, Facilities Support Management Services, complied with the Federal Government's selection criteria for awarding architecture and engineering services contracts under the Brooks Act. These comments primarily came from engineering firms and associations. Under the Brooks Act procedures (see Subpart 36.6 of the Federal Acquisition Regulation (FAR), Title 48 of the Code of Federal Regulations), contracts for architecture and engineering services are competed based on the qualifications of architectural and engineering firms. This differs from many of the procedures for most other services where the primary criterion is usually price competition.

Because application of the Brooks Act procedures does not depend on the SIC code assigned to a particular requirement, it is SBA's view that the

establishment of a new sub-category within SIC code 8744 for Environmental Remediation Services will not disturb the Brooks Act determination process. It is a requirement's statement of work and how the requirement is to be performed, and not the SIC code assigned to it, that determines whether Brooks Act procedures should be used. The Brooks Act and Subpart 36.6 of the FAR do not require contracts to be awarded through Brooks Act procedures merely because architects or engineers might do part of the contract work. In this regard, the Brooks Act procedures apply to requirements that include both architect-engineer services and other services "if the statement of work, substantially or to a dominant extent, specifies performance or approval by a registered or licensed architect or engineer," FAR, § 36.601–3(b). As such, architect and engineering services may account for an identifiable portion of a particular requirement without the Brooks Act applying where these services are not substantial or dominant. The SIC code assigned to a requirement will not preclude Brooks Act procedures where the statement of work itself specifies a substantial or dominant amount of work by a registered or licensed architect or engineer. It is the extent of the architect and engineering services to be required by the statement of work that drives that determination. Case law and the Brooks Act's legislative history make clear that contracting officers have a great deal of discretion in determining whether the Brooks Act procedures apply to a particular procurement. See, *e.g.*, H.R. Rep. No. 1070, 100th Cong., 2d Sess. 89, 90, reprinted in 1988 U.S. Code Cong. & Ad. News 5523; *Association of Soil and Foundation Engineers*, B–209547, 83–1 CPD ¶ 551 (May 23, 1983); and *Department of Energy Request for Decision*, B–207849, 82–2 CPD ¶ 63 (July 20, 1982).

It is not uncommon for a single procurement to require more than one product or service. These products or services are often individually associated with different industries and size standards. Where this occurs in connection with an environmental remediation services procurement, this final rule provides explicit guidance as to the classification of the procurement by SIC code based on the principal purpose of the procurement and the relative value and importance of each of the components in the procurement. This guidance, however, refers only to the classification of the procurement for SIC code designation and size standard purposes It leaves undisturbed the possible application of the Brooks Act or the award procedures to be used for the procurement.

Impact on Small Business Competitiveness Demonstration Program

A few comments also questioned whether the establishment of the environmental remediation service size standard circumvents the Small Business Competitiveness Demonstration Program (Demonstration Program) by shifting procurements that might otherwise be designated as engineering, construction or refuse systems procurements into the environmental remediation services industry.

The Demonstration Program was established by Title VII of the Business Opportunity Development Reform Act of 1988, Public Law 100–656, 102 Stat. 3853, 3889, to test, over a four-year period, "whether the expanded use of full and open competition will adversely affect small business participation in designated industry categories." It was statutorily extended through September 30, 1996. Four designated industry groups have been identified for inclusion in the program consisting of (1) all construction industries except for dredging; (2) the refuse systems and related services industries within SIC codes 4212 and 4953, but generally not including contracts for dealing with hazardous materials; (3) the architectural and engineering services industries within SIC codes 7389, 8711, 8712, and 8713, but generally not including contracts for military and aerospace equipment, military weapons, marine engineering and naval architecture; and, (4) non-nuclear ship repair.

In general, the Demonstration Program was implemented to remedy the problem of too many set asides in industries where small businesses dominated because agencies overused set asides in those industries. The Demonstration Program targeted the specific industry categories listed above because they were overwhelmingly dominated by small business set asides, suspended the set asides in these specific industry categories, and barred SBA from changing the size standards for these industries.

Pursuant to the Small Business Act, SBA generally has the authority to establish size standards on an industry by industry basis, and particularly for emerging industries. See, 15 U.S.C. sections 632(a) and 644(a). Although the Agency is constrained from changing the size standards for the industries within the Demonstration Program, it is SBA's view that the statutory restriction imposed by the Demonstration Program would not apply to the establishment of a sub-category within SIC code 8744, which is not one of the SIC codes statutorily identified for inclusion in the Program.

Under this rule, a contracting officer may use the newly established Environmental Remediation Services sub-category and accompanying size standard only where (1) a procurement' general purpose is to restore a contaminated environmental area, (2) three or more distinct types of services are required by the procurement, and (3) no single industry accounts for at least 50 percent of the value of the entire procurement. It is our view that where these conditions are met, the requirement loses its identity as one for "construction," "refuse systems," or "architectural or engineering services." Thus, the restriction imposed by the Demonstration Program on changing the size standards for those industries is inapplicable. If a procurement is primarily (i.e., at least 50 percent) engineering, or construction, or refuse cleanup and disposal, it still would be assigned a SIC code in one of those industries and not in the environmental remediation services industry. Such a procurement could be subject to the Demonstration Program. Because of the rule's definition of environmental remediation services, only procurements which have multiple industry activities and which are also designed to restore the environment would be classified properly under the environmental remediation services size standard, and procurements properly classified in industries covered by the Demonstration Program would not be affected by this rule.

Prior to this rule, solicitations requiring environmental remedial services type work have been classified inconsistently and sometimes incorrectly within the Demonstration Program. Some requirements have been classified under one of the SIC codes within the Demonstration Program, even though the requirement actually was for a multi-disciplinary approach to environmental cleanup with most of the work not related to the assigned SIC code.

This rule will have the effect of clarifying that any environmental remediation services requirement for which one component accounts for at least 50 percent of the value of the requirement should be designated under the SIC code for that component. Thus, if that one component is an item covered by the Demonstration Program, the procurement should be assigned a

Demonstration Program SIC code, and the contracting officer should not avoid the Demonstration Program by assigning a different SIC code to match another type of service contained within the requirement. As a consequence of this rule, fewer solicitations will be misclassified because there will be a more accurate classification system for the environmental remediation services requirements.

The Three Industry Criteria

Some comments raised concerns regarding the definitional requirement that for a procurement to be designated under the environmental remediation services category and given the applicable size standard, it would have to contain at least three different industry components. Several of the comments argued that the three industry requirement would limit the use of the size standard of environmental remediation services procurements. Several other comments alleged either that the present SIC codes are adequate to classify environmental remediation services procurements or that a three industry criteria would be confusing and result in errors in which procurements would be misclassified by SIC code and size standard. Several comments mentioned that a firm would have to be performing in three or more industries before it could qualify as a small business for environmental remediation services procurements.

For a number of reasons, SBA believes it is appropriate to establish a separate description of environmental remediation services with the requirement that there be three or more activities associated with distinct four-digit SIC codes. First, the available information and data reveal an emerging industry which is characterized by firms that already have multi-disciplinary capabilities related to different aspects of environmental cleanup. Second, environmental remediation procurements frequently include requirements for many different services that need to be interrelated by a single prime contractor. As indicated above, such procurements have been vulnerable to widely divergent approaches by contracting offices as to the proper SIC code classification. Third, the three industry requirement, when combined with the requirement that a single component not exceed 50 percent, ensures that procurements which primarily consist of an activity within the Competitiveness Demonstration Program are so classified rather than as an environmental remediation services requirement

SBA believes that limiting the use of the environmental remediation services size standard to contracts where less than 50 percent of a procurement consists of a particular activity is appropriate. As indicated above, many of the SIC codes which sometimes entail environmental remediation activity are also included within the Competitiveness Demonstration Program. In its desire to accommodate an emerging industry, SBA does not wish to create a size standard which would permit the avoidance of that Program where the majority of the work required would fall under one of the SIC codes covered by the Program. Since an emerging industry exists, which is not adequately defined by an existing SIC code other than SIC code 8744, a further segmentation of that SIC code is required for size standard purposes.

SBA also believes that the three industry criteria will not be confusing to any great extent. The same general criteria apply to the selection process of the size standard for Base Maintenance, a category which the SBA has maintained as a separate component of Facilities Support Management Services for many years without significant confusion.

Comments received on this issue suggest a need to clarify the application of the three industry requirement. The description of environmental remediation services regarding Federal procurements is designed to inform contracting officers as to which procurements should be assigned the size standard. Section 121.902 of SBA's regulations describes the criteria for making SIC designations. A firm qualifying as an eligible small business on an environmental remediation services procurement is only required to meet the size standard for that procurement. It is the contracting officer's responsibility to determine if the eligible small business is capable of performing the various requirements of the procurement, and whether that firm intends to perform all of the activities associated with the procurement or to subcontract one or more activities to another firm.

For other SBA programs, such as the "7(a) General Business Loan Program," the size standard would be based on a firm's primary industry activity. A firm citing environmental remediation services as its primary industry would have to demonstrate that it currently operates in three or more industries and that no one industry accounts for 50 percent or more of its total business activity.

Multiple Size Standards

A few comments recommended a two-tier standard for environmental remediation services in which "technical or professional" environmental remediation services would have a different size standard from "non-professional and non-technical remediation" services. These comments generally recommended a size standard of $18 million to $25 million for non-professional remediation services, but disagreed on the size standard for professional environmental services. Some believed a size standard lower than $18 million would be appropriate to assist small businesses, while others recommended $25 million or 750 employees to increase procurement opportunities for small businesses. Other comments recommended establishing a separate size standard within many industries which sometimes perform activities related to environmental services, rather than a single environmental remediation size standard under SIC code 8744. SBA believes that either the establishment of two separate environmental remediation services size standards, or the establishment of a separate environmental size standard within a number of related industries, would be unwarranted and would add needless complexity and confusion to SBA's size standards.

The SBA generally establishes size standards by four-digit SIC code, unless a segment of an industry possesses unique characteristics which make the size composition of firms within that industry segment substantially different from other firms in the industry. The SBA believes this to be the case for environmental remediation services. To go further and create yet another segmentation within environmental remediation services would be unprecedented and unnecessary. The SBA lacks any significant data suggesting that a further differentiation within this industry is needed to reflect different characteristics divided along professional versus non-professional lines.

To create a new segmentation of each of the nine SIC codes primarily associated with environmental remediation would be impractical, would add substantial and needless complexity to the size standard system, and would undercut SBA's ongoing efforts to simplify and consolidate size standards, where appropriate. As indicated above, the purpose of this size standard is to establish a definition of small business for an emerging industry where very large firms dominate the

industry, and where Federal procurements tend to be large scale, multi-activity contracts. While other types of environmentally related procurements usually will have a scope of work confined to one industry activity and be smaller procurements. This generally is not the case for environmental remediation services.

SIC Code Selection

Several comments expressed concern that a misclassification of procurements by SIC code (and, therefore the size standard associated with the SIC code) by a contracting agency would occur if the nature of a procurement had to be determined before the actual scope of work for each activity would be known. For example, a contracting officer reasonably could believe that at least three distinct SIC codes were involved, or that no SIC code would comprise more than 50 percent of contract activities before contract award, but actual contract performance would reveal a different pattern of work. These comments warned that a dichotomy between pre-contract expectations and actual contract performance experiences would result in an increased level of protests.

The SBA recognizes that the actual distribution of work on a multiple-activity procurement may differ from the anticipated distribution. Nonetheless, contracting officers presently must use their best judgment in designating a SIC code for a procurement based on their knowledge of the work statement associated with the procurement, and the situation for application of this SIC code is no different. Moreover, SBA's experience with the base maintenance size standard, where a similar assessment of work to be performed must be made, has shown the approach to be workable.

Size Standards on Subcontracts

Several comments expressed concern as to the proper size standard for a subcontract for environmental remediation services let by a contractor which had been awarded a federal prime contract under a different SIC code. For subcontracts of more than $10,000, current SBA regulations provide that the same procedures for designating the proper SIC code for a Federal prime contract also apply on subcontracts. Thus, if a subcontract is primarily for environmental remediation activities and can be identified with at least three separate SIC industries, none accounting for 50 percent or more of the work, the environmental remediation services size standard of 500 employees would apply. On the other hand, if the subcontract does not have three or more separate industries or one of its industries exceeds 50 percent of the value of the contract, the appropriate size standard would be that of the primary industry and not the environmental remediation industry's size standard. For subcontracts of $10,000 or less, a size standard of 500 employees should be applied regardless of the nature of the work. SBA's size regulations at 13 C.F.R. 121.910–911 discuss the designation of SIC codes and size standards for subcontracting.

Compliance With Regulatory Flexibility Act, Executive Orders 11612, 12788, and 12866 and the Paperwork Reduction Act

General

This rule has been reviewed under Executive Order 12866.

Based on all available information, the SBA believes that this final rule will 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.* Immediately below the SBA has set forth a regulatory impact analysis.

(1) Description of Entities to Which This Rule Applies

Based on SBA's knowledge of the relative importance of environmental remediation activities among the nine industries surveyed in this rule, the SBA estimates that over 1,100 firms would immediately gain eligibility to bid on procurements for this activity competed under various small business and small disadvantaged business procurement preference programs, or would be able to seek assistance under the SBA's financial assistance programs. Of these 1,100 firms, 200 would fall in the $18.0 million to 500 employee (equivalent to approximately $50.0 million) range and be included by SBA's decision to adopt a size standard of 500 employees for this activity rather than the proposed $18.0 million. SBA believes these 1,100 firms are active in environmental remediation, but exceed the size standard of the various environmentally related industries (construction, engineering, refuse collection, etc.) in which procurements have been classified in the absence of an environmental remediation services size standard. Since the size standards for all but one of these industries are less than 500 employees, a number of firms exceeding these industries' size standards would gain eligibility. From a longer term perspective, however, many more firms than the estimated 1,100 firms will eventually be impacted by this rule, as firms expand or shift their capabilities in response to the anticipated growth of federal contracting for environmental remediation efforts.

(2) Description of Potential Benefits of This Rule

The establishment of a size standard of 500 employees would expand procurement opportunities to hundreds of firms previously not considered small and permit Federal agencies to better utilize procurement preference programs for small business and small disadvantaged businesses (SDB) and the SBA's 8(a) Program. The amount of Federal contracting in this area is projected to fall in the billions of dollars on a yearly basis. It is possible that over a ten year period, Federal contracting will exceed $50 billion for this activity. At present, many Federal procurements are not set aside for small firms or reserved for SDB or 8(a) firms because the alternative size standards for environmental work are considered too low, thus restricting small business eligibility to firms without the resources to adequately perform the work. The result is that the preference programs for small businesses are not fully utilized and many contracts which could be set-aside or reserved for small disadvantaged businesses are competed on an unrestricted basis.

In the SBA's Business Loan Program, it is estimated that twelve additional loans amounting to $6 million will be made to firms newly eligible to participate in the program under the 500 employee size standard established by this rule. This fairly small impact occurs because only a small percentage of eligible firms seek financial assistance in this program in any one year, especially firms within the size ranges affected by this rule.

(3) Description of the Potential Costs of This Rule

The potential costs of the establishment of this size standard are expected to be minimal. With respect to the General Business Loan Program, no additional costs to the government should result since all of the SBA's lending authority is established by appropriations which the Agency does not have the authority to exceed.

The costs to the Federal government through the procurement process are also thought to be minimal for two reasons: First, competition between two or more small firms must be present before a contract can be set aside for small business. Second, set-asides are expected to be awarded at reasonable

prices. If competition and reasonable pricing do not exist on a proposed set-aside, the procuring agency is expected to issue an unrestricted procurement. This process suggests that losses in the form of increased costs to the government, if at all, are unlikely to be significant.

In addition, this new size standard is not expected to have significant adverse effect on competition, employment, investment, prices, productivity, innovation or the ability of U.S. based businesses to compete with foreign-based businesses in domestic or export markets. The competitive effects of size standard changes differ from those normally associated with most regulations affecting factors such as prices of goods and services, costs of labor, profits, growth, innovations, mergers and access to foreign trade because no firm is required to respond to a size standard revision.

(4) Description of the Potential Net Benefits of the Rule

From the above discussion, the SBA believes that because the potential costs of this rule are minimal, the potential net benefits (potential benefits minus potential costs) would approximately equal the potential benefits. The impact of the size standard would be concentrated in Federal Procurement.

(5) Legal Basis for This Rule

The legal basis for this rule is sections 3(a), 5(b) and 15(a) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6) and 644(a).

(6) Federal Rules

There are no Federal rules which duplicate, overlap or conflict with this final rule. The SBA has statutorily been given exclusive jurisdiction in establishing size standards.

(7) Significant Alternatives to This Rule

In compliance with the Regulatory Flexibility Act, the SBA has examined alternatives to the 500 employee size standard established in this final rule. Other alternatives have been considered and rejected as discussed in the supplementary information above.

The SBA certifies that this rule will not impose any requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

The SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. For purposes of Executive Order 12778, the SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs-business, Loan programs-business. Small business.

Accordingly, part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

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

Authority: 15 U.S.C. 632(a), and 632(b)(6) 637(a), 644(a) and 644(c).

§ 121.601 [Amended]

2. Section 121.601, Major Group 87 is amended by revising SIC code 8744 within Major Group 87 to read as follows:

§ 121.601 Standard Industrial Classification codes and size standards.

* * * * *

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = note elsewhere classified)	Size standards in number of employees or millions of dollars
Major Group 87—Engineering, Accounting, Research, Management, and Related Services:		
* * * * * * *		
8744*	Facilities Support Management Services [19]	$5.0
	Base Maintenance [20]	$20.0
	Environmental Remediation [23]	500
* * * * * * *		

[19] Facilities Management, a component of SIC code 8744, has the following definition: Establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which any include, but are not limited to, secretarial services, typists, telephone answering, reproduction or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, use of information systems (not programming), etc.

[20] SIC code 8744: If one of the activities of *base maintenance* as defined below, can be identified with a separate industry, and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard shall be that for the particular industry, and not the base maintenance size standard.

"Base Maintenance" constitutes three or more separate activities. The activities may be either service or special trade construction related activities. As services, these activities must each be in a separate industry. These activities may include, but are not limited to, such separate maintenance activities as Janitorial and Custodial Service, Protective Guard Service, Commissary Service, Fire Prevention Service, Safety Engineering Service, Messenger Service, and Grounds Maintenance and Landscaping Service. If the contract involves the use of special trade contractors (plumbing, painting, plastering, carpentering, etc.), all such specialized special trade construction activities will be considered a single activity, which is Base Housing Maintenance. This is only one activity of base maintenance and two additional activities must be present for the contract to be considered base maintenance. The size standard for Base Housing Maintenance is $7 million, the same size standard as for Special Trade Contractors.

* * * * *

[23] SIC code 8744: For SBA program assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement under SIC code 8744, the following requirements must be met: Such a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition. Such services include, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry shall be that of the particular industry and not the Environmental Remediation Services Industry.

For purposes of classifying a Government procurement as Environmental Remediation Services under SIC code 8744, the following is required: (1) That the general purpose of the procurement is to restore a contaminated environment; and (2) that the procurement is composed of activities in three or more separate industries identified with separate Standard Industrial Classification four-digit industry codes or, in some instances (e.g., engineering), smaller sub-components of four-digit industry codes with separate, distinct size standards. These activities may include, but are limited to, separate activities in industries such as: Heavy Construction; Special Trade Construction; Engineering Services; Architectural Services; Management Services; Refuse Systems; Sanitary Services, Not Elsewhere Classified; Local Trucking Without Storage; Testing Laboratories; and Commercial, Physical and Biological Research. If any activity in the procurement can be identified with a separate four-digit industry code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard shall be the one for that particular industry, and not the Environmental Remediation Service size standard.

* * * * *

Dated: September 8, 1994.

Cassandra M. Pulley,

Deputy Administrator.

[FR Doc. 94–22677 Filed 9–14–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AEA–08]

Modification of Class D Airspace and Establishment of Class E Airspace; Various Locations, State of New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace areas at Elmira, NY, Poughkeepsie, NY, and Utica, NY, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also establishes Class E airspace at these areas when the associated control tower is closed. Additionally, this action establishes Class E airspace areas at Ithaca, NY, Niagara Falls, NY, and White Plains, NY. Presently, these areas are designated as Class D airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control towers located at these locations are closed. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approaches when these control towers are closed.

EFFECTIVE DATE: 0901 U.T.C. December 8, 1994.

COMMENT DATE: Comments must be received on or before October 15, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, AEA–500, Airspace Docket Number 94–AEA–08, F.A.A. Eastern Region, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430. The official and the informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Jordan, Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "DATES" section. However, after the review of any comments, and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to amend the regulation or to extend the effective date of the rule.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule that might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace areas at Elmira, NY, Poughkeepsie, NY, and Utica, NY, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also establishes Class E airspace at these areas when the associated control tower is closed. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at these airports. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ's were continuous, while the former ATA's were contingent upon the operation of the associated air traffic control tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. This action also establishes Class E airspace during the hours the control tower is closed. Additionally, this action establishes Class E airspace areas at Ithaca, NY, Niagara Falls, NY, and White Plains, NY. Currently, this airspace is designated as Class D when the associated control tower is in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at Ithaca, NY, Niagara Falls, NY, and White Plains, NY, when the control towers are closed. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when these control towers are closed. As noted in the Airspace Reclassification Final Rule, published in the **Federal Register** on December 17, 1991, airspace at an airport with a part-time control tower should be designated as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is closed (56 FR 65645).

The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace designations are published in Paragraphs 5000, 6002, and 6004, respectively, of FAA Order 7400.9B

dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify these Class D and establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; Executive Order 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000—General

* * * * *

AEA NY D Elmira, NY [Revised]

Elmira/Corning Regional Airport, Elmira, NY
(Lat. 42°09'34" N., long. 76°53'30" W.)

That airspace extending upward from the surface to and including 3,500 MSL within a 4.2-mile radius of the Elmira/Corning Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA NY D Poughkeepsie, NY [Revised]

Dutchess County Airport, Poughkeepsie, NY
(Lat. 41°37'36" N., long. 73°53'01" W.)
Kingston VORTAC
(Lat. 41°39'55" N., long. 73°49'20" W.)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4-mile radius of the Dutchess County Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA NY D Utica, NY [Revised]

Oneida County Airport, Utica, NY
(Lat. 43°08'42" N., long. 75°23'02" W.)
Clay NDB
(Lat. 43°03'10" N., long. 75°15'52" W.)
Utica VORTAC
(Lat. 43°01'35" N., long. 75°09'52" W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.2-mile radius of the Oneida County Airport, excluding the portion within the Rome, NY, Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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Paragraph 6002—Class E airspace areas designated as a surface area for an airport

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AEA NY E2 Elmira, NY [New]

Elmira/Corning Regional Airport, Elmira, NY
(Lat. 42°09'34" N., long. 76°53'30" W.)

Within a 4.2-mile radius of the Elmira/Corning Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA NY E2 Ithaca, NY [New]

Tompkins County Airport, Ithaca, NY
(Lat. 42°29'25" N., long. 76°27'27" W.)
Ithaca VOR/DME
(Lat. 42°29'42" N., long. 76°27'35" W.)

Within a 4-mile radius of the Tompkins County Airport and that airspace extending upward from the surface from the 4-mile radius of the Tompkins County Airport to the 5.7-mile radius of the Tompkins County Airport clockwise from the 329° bearing to the 081° bearing from the airport, that airspace from the 4-mile radius of Tompkins County Airport to the 8.7-mile radius of the Tompkins County Airport extending clockwise from the 081° bearing to the 137° from the airport, that airspace from the 4-mile radius of Tompkins County to the 6.6-mile radius of the Tompkins County Airport extending clockwise from the 137° bearing to the 170° bearing from the airport, that airspace from the 4-mile radius to the 5.7-mile radius of the Tompkins County Airport extending clockwise from the 170° bearing to the 196° bearing from the airport and that airspace within 2.7 miles each side of the Ithaca VOR/DME 305° radial extending from the 4-mile radius of Tompkins County Airport to 7.4 miles northwest of the Ithaca VOR/DME. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published continuously in the Airport/Facility Directory.

* * * * *

AEA NY E2 Niagara Falls, NY [New]

Niagara Falls International Airport, NY
(Lat. 43°06'26" N., long. 78°56'44" W.)
KATHI LOM
(Lat. 43°06'33" N., long. 78°50'18" W.)

Within a 4.5-mile radius of Niagara Falls International Airport and within 1.8 miles each side of Niagara Falls ILS east localizer course extending from the 4.5-mile radius to the KATHI LOM, excluding the portion outside the United States and that airspace which coincides with the Buffalo, NY, Class C airspace area. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published continuously in the Airport/Facility Directory.

* * * * *

AEA NY E2 Poughkeepsie, NY [New]

Dutchess County Airport, Poughkeepsie, NY
(Lat. 41°37'36" N., long. 73°53'01" W.)
Kingston VORTAC
(Lat. 41°39'55" N., long. 73°49'20" W.)

Within a 4-mile radius of the Dutchess County Airport; and that airspace extending upward from the surface within 3.1 miles each side of the Kingston VORTAC 025° radial extending from the VORTAC to 8.3 miles northeast of the VORTAC and within 1.8 miles each side of the Kingston VORTAC 231° radial extending from the 4-mile radius to 9.2 miles southwest of the VORTAC and within 3.1 miles each side of the Kingston VORTAC 050° radial extending from the VORTAC to 9.2 miles northeast of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA NY E2 Utica, NY [New]

Oneida County Airport, Utica, NY
(Lat. 43°08'42" N., long. 75°23'02" W.)
Clay NDB
(Lat. 43°03'10" N., long. 75°15'52" W.)
Utica VORTAC

(Lat. 43°01'35" N., long. 75°09'52" W.)

Within a 4.2-mile radius of the Oneida County Airport; and that airspace extending upward from the surface within 1.8 miles each side of the 317° bearing from the Clay NDB extending from the 4.2-mile radius to 2.6 miles northwest of the NDB and within 1.8 miles each side of the Utica VORTAC 306° radial extending from the 4.2-mile radius to 0.8 mile northwest of the VORTAC, excluding the portion within the Rome, NY, Class D airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA NY E2 White Plains, NY [New]

Westchester County Airport, White Plains, NY
(Lat. 41°04'01" N., long. 73°42'27" W.)

Within a 4.1-mile radius of the Westchester County Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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Paragraph 6004—Class E airspace areas designated as an extension to a Class D surface area

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AEA NY E4 Elmira, NY [Revised]

Elmira/Corning Regional Airport, Elmira, NY
(Lat. 42°09'34" N., long. 76°53'30" W.)
Elmira VOR/DME
(Lat. 42°05'39" N., long. 77°01'30" W.)
ERINN OM
(Lat. 42°12'18" N., long. 76°49'09" W.)

That airspace extending upward from the surface within 1.8 miles each side of the Elmira VOR/DME 057° radial extending from the 4.2-mile radius to the VOR/DME and within 1.8 miles each side of the Elmira/Corning Regional Airport ILS localizer Northeast course extending from the 4.2-mile radius to 1.8 miles northeast of the ERINN OM and within 1.8 miles each side of the centerline of Runway 10 extended easterly from the 4.2-mile radius for 1.1 miles and within 1.8 miles each side of the centerline of Runway 28 extended westerly from the 4.2-mile radius for 3.7 miles. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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AEA NY E4 Poughkeepsie, NY [Revised]

Kingston VORTAC
(Lat. 41°39'55" N., long. 73°49'20" W.)

That airspace extending upward from the surface within 3.1 miles each side of the Kingston VORTAC 025° radial extending from the VORTAC to 8.3 miles northeast of the VORTAC and within 1.8 miles each side of the Kingston VORTAC 231° radial extending from the 4-mile radius to 9.2 miles southwest of the VORTAC and within 3.1 miles each side of the Kingston VORTAC 050° radial extending from the VORTAC to 9.2 miles northeast of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA NY E4 Utica, NY [Revised]

Clay NDB
(Lat. 43°03'10" N., long. 75°15'52" W.)
Utica VORTAC
(Lat. 43°01'35" N., long. 75°09'52" W.)

That airspace extending upward from the surface within 1.8 miles each side of the 317° bearing from the Clay NDB extending from the 4.2-mile radius to 2.6 miles northwest of the NDB and within 1.8 miles each side of the Utica VORTAC 306° radial extending from the 4.2-mile radius to 0.8 mile northwest of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on August 22, 1994.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 94–22901 Filed 9–14–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AEA–11]

Modification of Class D Airspace and Establishment of Class E Airspace; Various Locations, State of West Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace area at Martinsburg, WV and Parkersburg, WV, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also establishes Class E airspace in these areas when the associated control tower is closed. Additionally, this action modifies the Class E airspace area at Bluefield, WV. Controlled airspace to the surface is needed only when the flight service station at this location is open. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approaches.

DATES: Effective Date: 0901 U.T.C. December 8, 1994.

Comement Date: Comments must be received on or before October 15, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, AEA–500, Airspace Docket Number 94–AEA–11, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430. The official and the informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Jordan, Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION: .

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments, and if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to amend the regulation or to extend the effective date of the rule.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule that might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulatqions (14 CFR part 71) modifies the Class D airspace areas at Martinsburg, WV and Parkersburg, WV, by amending the areas effective hours to coincide with the associated control tower's hours of operation. This action also establishes Class E airspace in these areas when the associated control tower is closed. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at this airport. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the associated air traffic

control tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. This action also establishes Class E airspace during the hours the control tower is closed. Additionally, this action modifies the Class E airspace area at Bluefield, WV. Currently, this airspace is designated continuously as Class E extending upward from the surface of the earth. Nevertheless, controlled airspace to the surface is not needed when the flight service station is closed. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when these control towers are closed. As noted in the Airspace Reclassification Final Rule, published in the **Federal Register** on December 17, 1991, airspace at an airport with a part-time control tower should be designated as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is closed (56 FR 65645).

The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace designations are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify these Class D and establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; Executive Order 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000—General

* * * * *

AEA WV D Martinsburg, WV [Revised]

Eastern West Virginia Regional/Shepherd Field Airport, Martinsburg, WV
(Lat 39°24'07" N., long. 77°59'05" W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.2-mile radius of Eastern West Virginia Regional/Shepherd Field Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA WV D Parkersburg, WV [Revised]

Wood County Airport-Gill Wilson Field, Parkersburg, WV
(Lat 39°20'42" N.. long. 81°26'21" W.)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.2-mile radius of Wood County Airport-Gill Robb Wilson Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002—Class E airspace areas designated as a surface area for an airport

* * * * *

AEA WV E2 Bluefield, WV [Revised]

Mercer County Airport, Bluefield, WV
(Lat 37°17'45" N., long. 81°12'27" W.)
Bluefield VORTAC
(Lat 37°18'23" N., long. 81°11'39" W.)

Within a 3.9-mile radius of Mercer County Airport and within 2.7 miles each side of the Bluefield VORTAC 047° radial extending from the 3.9-mile radius to 8.3 miles northeast of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA WV E2 Martinsburg, WV [New]

Eastern West Virginia Regional/Shepherd Field Airport, Martinsburg, WV
(Lat 39°24'07" N., long. 77°59'05" W.)

Within a 4.2-mile radius of Eastern West Virginia Regional/Shepherd Field Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA WV E2 Parkersburg, WV [New]

Wood County Airport-Gill Robb Wilson Field, Parkersburg, WV
(Lat 39°20'42" N., long. 81°26'21" W.)

Within a 4.20-mile radius of Wood County Airport-Gill Robb Wilson Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on August 25, 1994.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 94–22902 Filed 9–14–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 20

Federal Claims Collection; Collection of Debts by Federal Income Tax Refund Offset

AGENCY: Office of the Secretary, Labor

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Labor is supplementing its regulations implementing the Debt Collection Act of 1982 to reflect the requirement of the Cash Management Improvement Act Amendments of 1992 that Federal agencies refer delinquent debt to the Internal Revenue Service (IRS) for collection by offset from a Federal income tax refund that may be due to the delinquent debtor. These regulations are necessary for the Department's

participation in the IRS offset program. The IRS offset program has proven to be a cost-effective mechanism for collection of delinquent debt.

DATES: *Effective Date*: These regulations are effective September 15, 1994. *Comments:* Comments must be submitted on or before November 14, 1994.

ADDRESSES: Send comments to Robert Barnhard, Division of Planning and Internal Control, Office of Financial Integrity, Office of the Chief Financial Officer, Department of Labor, Room S–4502, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Robert Barnhard, (202) 219–8184.

SUPPLEMENTARY INFORMATION: The Department of Labor published in the **Federal Register** on February 6, 1985 and February 5, 1987 final regulations implementing the Debt Collection Act of 1982 (DCA). Subpart A implements the credit reporting provisions of the DCA: Subpart B, administrative offset; Subpart C, assessment of interest, penalties and administrative costs; and Subpart D, salary offset. These regulations were duly published in the **Federal Register** as proposed rules, with comments considered and discussed during final rule-making.

In 1992 the Congress passed and the President signed into law the Cash Management Improvement Act Amendments of 1992, which requires Federal agencies to participate in the IRS income tax refund offset program. This interim rule establishes a new Subpart E, and specifies the procedures the Department of Labor will follow with regard to referral by its constituent offices, administrations and bureaus of past-due legally enforceable debts to IRS for collection by income tax refund offset. This interim rule also establishes a new title for 29 CFR Part 20: Federal Claims Collection.

Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment prior to implementation of this interim rule. This waiver is based upon the need to have the regulations in place by January 5, 1995, in order for the Department to participate in the IRS income tax refund offset program for the 1995 offset year. The Department finds that the public interest will be served by participation in the program, and accordingly, good cause exists for waiving public comment. In addition, the Department finds that public comment is unnecessary because this rule merely implements a definite statutory scheme and the requirements contained in the regulations promulgated by the IRS.

Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d)(3). In order to participate in the IRS income tax refund offset program for the 1995 offset year, the Department must promulgate regulations that are effective by January 5, 1995. Therefore, pursuant to 5 U.S.C. 553(d)(3), good cause is found for making this rule effective immediately.

Executive Order 12866

This interim rule is not classified as a "significant rule" under Executive Order 12866 on Federal regulations, because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local 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 foreign markets. Accordingly, no regulatory impact assessment is required.

Regulatory Flexibility Act

Because no notice of proposed rule-making is required for interim rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analysis do not apply to this rule.

Paperwork Reduction Act

This interim rule is not subject to Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new information collection requirements.

List of Subjects in 29 CFR Part 20

Government employees, Loan programs, Credit, Administrative practice and procedure, Claims.

Accordingly, Part 20 of title 29 of the Code of Federal Regulations is amended as set forth below.

PART 20—FEDERAL CLAIMS COLLECTION

1. The authority citation for Part 20 is revised to read as follows:

Authority: 31 U.S.C. 3711 *et seq.*; Subpart D is also issued under 5 U.S.C. 5514; Subpart E is also issued under 31 U.S.C. 3720A.

2. The heading for Part 20 is revised to read as follows:

PART 20—FEDERAL CLAIMS COLLECTION

3. Part 20 is amended by adding Subpart E to read as follows:

Subpart E—Federal Income Tax Refund Offset

Sec.

20.101 Purpose and scope.
20.102 Redelegation of authority.
20.103 Definitions.
20.104 Agency responsibilities.
20.105 Minimum referral amount.
20.106 Relation to other collection efforts.
20.107 Debtor notification.
20.108 Agency review of the obligation.
20.109 Prior provision of rights with respect to debt.
20.110 Referral to IRS for tax refund offset.
20.111 Administrative cost charges.

Subpart E—Federal Income Tax Refund Offset

§ 20.101 Purpose and scope.

The regulations in this subpart establish procedures to implement 31 U.S.C. 3720A. This statute together with implementing regulations of the Internal Revenue Service (IRS) at 26 CFR 301.6402–6, authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States. The regulations apply to past-due legally enforceable debts owed to the Department by individuals and business entities. The regulations are not intended to limit or restrict debtor access to any judicial remedies to which he/she may otherwise be entitled.

§ 20.102 Redelegation of authority.

Authority delegated by statute or IRS regulation to the Secretary or Department is redelegated to the heads of the Department's constituent agencies. This authority may be further redelegated as necessary to ensure the efficient implementation of these regulations.

§ 20.103 Definitions.

For purposes of this subpart:

(a) *Tax refund offset* refers to the IRS income tax refund offset program operated under authority of 31 U.S.C. 3720A.

(b) *Past-due legally enforceable debt* is a delinquent debt administratively determined to be valid, whereon no more than 10 years have lapsed since the date of delinquency, and which is not discharged under a bankruptcy proceeding or subject to an automatic stay under 11 U.S.C. 362.

(c) *Agency* refers to the constituent offices, administrations and bureaus of the Department of Labor.

(d) *Individual* refers to a taxpayer identified by a social security number (SSN).

(e) *Business entity* refers to an entity identified by an employer identification number (EIN).

(f) *Taxpayer mailing address* refers to the debtor's current mailing address as obtained from IRS.

(g) *Memorandum of understanding* refers to the agreement between the Department and IRS outlining the duties and responsibilities of the respective parties for participation in the tax refund offset program.

§ 20.104 Agency responsibilities.

(a) As authorized and required by law, each Department of Labor agency may refer past-due legally enforceable debts to IRS for collection by offset from any overpayment of income tax that may otherwise be due to be refunded to the taxpayer.

(b) Prior to actual referral of a past-due legally enforceable debt for tax refund offset, the DOL agency heads (or their designees) must take the actions specified in § 20.107 and, as appropriate, § 20.106 and § 20.108.

(c) DOL agency heads must ensure the confidentiality of taxpayer information as required by IRS in its *Tax Information Security Guidelines.*

§ 20.105 Minimum referral amount.

The minimum amount of a debt otherwise eligible for referral is $25 for individual debtors and $100 for business debtors. The amount referred may include the principal portion of the debt, as well as any accrued interest, penalties and/or administrative cost charges.

§ 20.106 Relation to other collection efforts.

(a) Tax refund offset is intended to be an administrative collection remedy of last resort, consistent with IRS requirements for participation in the program, and the costs and benefits of pursuing alternative remedies when the tax refund offset program is readily available. To the extent practical, the requirements of the program will be met by merging IRS requirements into the Department's overall requirements for delinquent debt collection.

(b) Debts of $100 or more will be reported to a consumer or commercial credit reporting agency, as appropriate, before referral for tax refund offset.

(c) Debts owed by individuals will be screened for salary and administrative offset potential using the most current information reasonably available to the Department, and will not be referred for tax refund offset where such other offset potential is found to exist.

§ 20.107 Debtor notification.

(a) The agency head (or designee) of the creditor Labor Department agency shall send appropriate written demands to the debtor in terms which inform the debtor of the consequences of failure to repay claims. In accordance with guidelines as may be established by the Department's Chief Financial Officer, a total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of demand letters, agencies should give due regard to the need to act promptly so the ability to refer a debt for tax refund offset will not be unduly delayed.

(b) Before the Department refers a debt to IRS for tax refund offset, it will make a reasonable attempt to notify the debtor that:

(1) The debt is past-due;

(2) Unless the debt is repaid or a satisfactory repayment agreement established within 60 days thereafter, it will be referred to IRS for offset from any overpayment of tax remaining after taxpayer liabilities of greater priority have been satisfied; and

(3) The debtor will have a minimum of 60 days from the date of notification to present evidence that all or part of the debt is not past-due or legally enforceable, and the Department will consider this evidence in a review of its determination that the debt is past-due and legally enforceable. The debtor will be advised where and to whom evidence is to be submitted.

(c) The Department will make a reasonable attempt to notify the debtor by using the most recent address information obtained from the IRS, unless written notification is received from the debtor that notices from the Department are to be sent to a different address.

(d) The notification required by paragraph (b) of this section and sent to the address specified in paragraph (c) of this section may, at the option of the Department, be incorporated into demand letters required by paragraph (a) of this section.

§ 20.108 Agency review of the obligation.

(a) The individual responsible for collection of the debt will consider any evidence submitted by the debtor as a result of the notification required by § 20.107(b) and notify the debtor of the result. If appropriate, the debtor will also be advised where and to whom to request a review of any unresolved dispute.

(b) The debtor will be granted at least 30 days from the date of the notification required by paragraph (a) of this section to request a review of the determination of the individual responsible for collection of the debt on any unresolved dispute. The debtor will be advised of the result.

(c) The review required by paragraph (b) of this section will ordinarily be based on written submissions and documentation provided by the debtor. However, a reasonable opportunity for an oral hearing will be provided the debtor when the reviewing official determines that any remaining dispute cannot be resolved by review of the documentary evidence alone. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although the reviewing official should carefully document all significant matters discussed at the hearing.

§ 20.109 Prior provision of rights with respect to debt.

To the extent that the rights of the debtor in relation to the same debt have been previously provided under some other statutory or regulatory authority, the Department is not required to duplicate those efforts before referring a debt for tax refund offset.

§ 20.110 Referral to IRS for tax refund offset.

(a) By the date and in the manner prescribed by the IRS the Department will refer for tax refund offset the following information on past-due legally enforceable debts:

(1) Whether the debtor is an individual or a business entity;

(2) Name and taxpayer identification number (SSN or EIN) of the debtor who is responsible for the debt;

(3) The amount of the debt;

(4) The date on which the debt became past-due;

(5) Department-level, sub-Department-level and (as appropriate) account identifiers.

(b) As necessary to reflect changes in the status of debts/debtors referred for tax refund offset, the Department will submit updated information at the times and in the manner prescribed by IRS. The original submission described in paragraph (a) of this section will not be changed to increase the amount of the debt or to refer additional debtors.

(c) Amounts erroneously offset will be refunded by the Department or IRS in accordance with the Memorandum of Understanding.

§ 20.111 Administrative cost charges.

Costs incurred by the Department in connection with referral of debts for tax refund offset will be added to the debt and thus increase the amount of the offset.

Signed at Washington, D.C., this 9th day of September 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94-22793 Filed 9-14-94; 8:45 am]

BILLING CODE 4510-23-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in October 1994, and to multiemployer plans with valuation dates in October 1994. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the October 1994 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 set forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employer Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities," *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribed rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during October 1994 and multiemployer plans that have undergone mass withdrawal and have valuation dates during October 1994.

For annuity benefits, the interest rates will be 7.00% for the first 25 years following the valuation date and 5.25% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.50% for the period during which benefits are in pay status, 4.75% during the seven years directly preceding the benefit's placement in pay status, and 4.0% during any other years preceding the benefit's placement in pay status. (ERISA section 205(g) and Internal Revenue Code section 417(e) provide that private sector plans valuing lump sums not in excess of $25,000 must use interest assumptions at least as generous as those used by the PBGC for valuing lump sums (and for lump sums exceeding $25,000 must use interest assumptions at least as generous as 120% of the PBGC interest assumptions).) The above annuity interest assumptions represent an increase (from those in effect for September 1994) of .10 percent for the first 25 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions are unchanged from those in effect for September 1994.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during October 1994, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during October 1994, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients

thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 12 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rate Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the value of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
12	10–1–94	11–1–94	5.50	4.75	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	
October 1994	.0700	1–25	.0525	>25	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 12 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor

used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interest i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
12	10–1–94	11–1–94	5.50	4.75	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form: $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13(b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
* * *	*	*	*	*	*	*
October 1994	.0700	1–25	.0525	>25	N/A	N/A

Issued in Washington, DC, on this 12th day of September 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–22914 Filed 9–14–94; 8:45 am]

BILLING CODE 7708–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI24–01–6259a; FRL–5054–3]

Approval and Promulgation of State Implementation Plan; Michigan; Miscellaneous Rule Changes, Technical Changes

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA partially approves and partially disapproves a revision to the Michigan State Implementation Plan (SIP) incorporating technical changes to miscellaneous air control rules. These changes are not federally mandated, but the State has requested that USEPA incorporate the changes into the SIP.

DATES: This final rule will be effective November 14, 1994 unless notice is received by October 17, 1994 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be sent to:Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision and USEPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region V, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Megan Beardsley at (312) 886–0669 before visiting the Region 5 Office.)

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

FOR FURTHER INFORMATION CONTACT: Megan Beardsley, Environmental Scientist, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–0669.

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 1993 the State of Michigan requested that the USEPA revise its SIP to incorporate a number of technical rule changes that the State adopted in 1989. Most of these changes are minor, clarifying rules or removing definitions of terms no longer used in Michigan law, but some changes are more substantial.

Michigan's technical changes to miscellaneous rules were not required by the Clean Air Act (the Act) or other Federal law or policy. However, because the State requested that the changes be

incorporated into the SIP, USEPA must review the changes to assure that they are in accordance with the Act.

II. Evaluation of State Submission

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing its SIP, of which the revisions will become a part. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) similarly provides that each revision to an implementation plan submitted by a State under the Act must have been adopted by such State after reasonable notice and public hearing.

The State of Michigan held a public hearing on June 9, 1988 to solicit public comment on the miscellaneous rule changes. No comments were received. Michigan submitted the proposed SIP revision to USEPA on November 15, 1993.

The USEPA reviewed the proposed SIP revision to determine completeness in accordance with the completeness criteria for SIP revisions specified in 40 CFR part 51, appendix V. The USEPA found the submittal complete, and sent a letter stating this finding to the Governor's delegate on January 7, 1994.

B. Submittal Review

Most of the changes submitted by the State to USEPA clarified and strengthened the SIP. These changes are described below and in EPA's Technical Support Document for this document (M. Beardsley to Files, May 10, 1994).

Approvable Changes:

Throughout the rules included in this package, the State has updated and clarified references to other State rules. These changes are acceptable.

The State has deleted the definition for "green tire," (R 336.1107 (c)) and "undertread cementing" (R 336.1121) because the terms are no longer used in State rules. This is acceptable. The State has replaced the term "potential emissions" with "uncontrolled emissions" (R336.1121) and has defined this term. The new definition is consistent with that used by USEPA.

The State has revised a rule governing sulfur emissions (R 336.1403) to require shut-off devices for facilities that burn large quantities of sour gas and has exempted certain sour gas storage vessels from control requirements. The USEPA has no specific guidance on sour gas shut-off devices, but these changes are reasonable and acceptable revisions to the SIP.

The State has revised rules governing vapor recovery for gasoline and other organic compounds (R 336.1606–9) to replace the term "ozone nonattainment area" with "any county listed in table 61-a," which is a list of current ozone nonattainment areas. This change will make the vapor recovery rules applicable in the counties currently designated as nonattainment areas even after these areas are redesignated to attainment. This change strengthens the SIP and is approvable. In R 336.1608 and 336.1609, the State also has changed the wording of the rule to clarify that the rules apply to vapor recovery requirements at existing facilities rather than existing delivery trucks. This is approvable.

The State has changed the notification requirements for process turnarounds at petroleum refineries to allow notification "as soon as reasonably possible" (R 336.1616). Because USEPA has no notification requirements for turnarounds, this change is acceptable.

The State has deleted the rule (R 336.1626) regulating VOC emissions from rubber tire manufacturing. The State has no tire manufacturing facilities. This deletion is acceptable.

Michigan has changed R 336.1705 to clarify that rules apply to vapor recovery requirements at new fuel loading facilities rather than to new delivery trucks. This is a useful and approvable change.

Michigan has changed R 336.2005 on testing and sampling to list pressure and vacuum measurements in inches of water as well as pounds per square inch. This change is acceptable.

Changes Requiring Disapproval:

Several of the proposed SIP revisions submitted by the State of Michigan are not approvable by the USEPA. These changes and their deficiencies are described below and in detail in USEPA's Technical Support Document (M. Beardsley to Files, May 10, 1994).

(1) Michigan changed the definition of "good engineering practice design," (R 336.1107 (c)) in order to comply with Federal tall stack policy. This general change is acceptable, subject to USEPA rulemaking in response to the remand decision in *NRDC* v *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988); but the revised rule also includes provisions for exceptions to be made at the discretion of the State air commission (R 336.1107 (b) (iv)). Such exemptions are revisions to the SIP and, under section 110(l) of the Act, must be submitted to USEPA for approval. For this reason, USEPA cannot approve discretionary provisions. Since this provision is inseparable from the rest of the definition, the entire paragraph, R 336.1107 (b), must be disapproved.

Similarly, Michigan revised R 336.1241 (b), which includes language requiring sources to use meteorological data from National Weather Service stations unless they have air commission approval for the use of other data, and Michigan revised R 336.2005 (f) to allow the use of alternative test methods if they are approved by the air commission. Since each of these provisions is inseparable from the rest of its respective rule, USEPA must disapprove the entire requested revision for both rules.

(2) The State has updated citations to USEPA's "Guidelines on Air Quality Models" in R 336.1240. The guidelines have changed substantially since the dates cited in the revised rule, making the rule unapprovable as written. The rule also allows State discretion in approving alternate models (R 336.1240 (2) (b). As described above, this use of discretion is unapprovable. USEPA disapproves the State's requested revisions for this rule.

(3) Michigan changed R 336.1706 to clarify that the rule applies to new fuel loading facilities; however, in R 336.1706(1) the word "new" was retained in reference to delivery vessels. In conjunction with the changes made in 336.1609, this wording creates an exemption from the requirement for submerged filling for existing delivery vessels at new facilities. This exemption is contrary to USEPA guidance (*Control of Volatile Organic Emissions from Bulk Gasoline Plants*. EPA–450/2–77–035, December 1977), and the State has provided no justification for the exemption, which appreas to be a mistake. The rule is unapprovable.

(4) In R 336.2150, 336.2151, 336.2153, 336.2175, 336.2176, and 336.2199, the State has updated citations to USEPA performance specifications and standards for new sources. Because the specifications and standards have been substantially revised since the 1982 and 1983 versions cited in the revised Michigan rules, the rules are unapprovable.

C. Action

USEPA has reviewed Michigan's proposed SIP revision incorporating technical changes to miscellaneous rules and, as described above, has found that some of the proposed revisions meet the requirements of the Act and of USEPA policy, while others do not meet these requirements. Hence, the USEPA partially approves the revision request, approving the changes to the following Michigan Air Pollution Control Rules: R

[1] Also, section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

336.1107 (except paragraph (c)); R 336.1121, R 336.1403. R 336.1606, R 336.1607, R 336.1608, R 336.1609, R 336.1616, R 336.1626 (deleted), and R 336.1705.

Likewise, USEPA disapproves the State's request to incorporate into the SIP the submitted revisions to the following Michigan Air Pollution Control rules: R 336.1107 (c), R 336.1240, R 336.1241, R 336.1706, R 336.2005, R 336.2150, R 336.2151, R 336.2153, R 336.2175, R 336.2176, and R 336.2199.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on November 14, 1994. However, if we receive adverse comments by October 17, 1994, USEPA will publish a document that withdraws this action and will address all public comments in a subsequent final rule based on the proposal published in the proposal section of this **Federal Register**. The public comment period will not be extended or reopened.

IV. Miscellaneous

A. Applicability to Future SIP Decisions

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

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Exectutive Order 12866 review.

C. Regulatory Flexibility

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

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

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: August 8, 1994.

David A. Ullrich,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(95) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(95) On November 15, 1993, the State of Michigan requested revision to the Michigan State Implementation Plan (SIP) to incorporate miscellaneous technical rule changes that the State had made effective April 20, 1989.

(i) Incorporation by reference.

(A) Michigan Air Pollution Control Rules: R 336.1107 (except paragraph (c)); R 336.1121, R 336.1403. R 336.1606, R 336.1607, R 336.1608, R 336.1609, R 336.1616, R 336.1626 (deleted), and R 336.1705, effective April 20, 1989.

* * * * *

[FR Doc. 94–22782 Filed 9–14–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[TN–120–1–6528a; FRL–5069–9]

Approval and Promulgation of Implementation Plans Regarding Emergency Episodes, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Tennessee. This revision revises Tennessee's air pollution emergency episode plan requirements. The intended effect of this action is to incorporate by reference into the federally-enforceable SIP revised State regulations which meet current Federal requirements.

DATES: This final rule will be effective November 14, 1994 unless adverse or critical comments are received by October 17, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Ms. Karen Borel, at the Regional Office Address listed.

Copies of the material submitted by the State of Tennessee may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Tennessee Division of Air Pollution Control, 701 Broadway, Customs House, 4th Floor, Nashville, Tennessee 37247–1531.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555, ext 4197. Reference file TN–120–1–6528.

SUPPLEMENTARY INFORMATION:

On September 1, 1993, the State of Tennessee submitted a formal revision to its SIP incorporating changes in the State's emergency episode plan. The SIP revision consists of amendments to chapter 1200–3–15 of Tennessee's Air Pollution Control Regulations governing air pollution episode emergency plans. The amended revisions are summarized as follows:

1. Subparagraph (b) under paragraph (3) in section 1200–3–15.02 Episode Criteria has been revised. This subparagraph has been amended to revise the level of PM–10 that indicates an air pollution alert from 375 ug/m^3 to 350 ug/m^3. The reference to utilization of 3.0 COH's (Coefficient of Haze) has been deleted.

2. Subparagraph (c) under paragraph (3) in section 1200–3–15-.02 Episode Criteria has been revised. SO_2 and the particulate combined-product of SO_2 ppm and COH's are no longer used as air pollution alert indications. This subparagraph has now been reserved for future use.

3. Paragraph (3) of section 1200–3–15-.02 Episode Criteria has been amended. In subparagraph (e), and in the description of meteorological condition pollutants given below subparagraph (f), "oxidant" has been changed to "ozone."

4. Subparagraph (b) under paragraph (4) in section 1200–3–15.02 Episode Criteria has been amended. "Particulate" has been amended to "PM_{10}," the allowable level of PM_{10} has been revised from 625 ug/m^3 to 420 ug/m^3, and the use of COH levels as a pollution warning has been deleted.

5. Subparagraph (c) under paragraph (4) in section 1200–3–15.02 Episode Criteria has been amended. SO_2 and the particulate combined-product of SO_2 ppm and COH's are no longer used as air pollution alert indications. This subparagraph has now been reserved for future use.

6. Paragraph (4) of section 1200–3–15-.02 Episode Criteria has been amended. In subparagraph (e), and in the description of meteorological condition pollutants given below subparagraph (f), "oxidant" has been changed to "ozone."

7. Paragraph (5) of section 1200–3–15-.02 has been revised. The phrase "that should never be reached" has been changed to "which could cause an unreasonable risk to public health."

8. Subparagraph (b) of paragraph (5) in section 1200–3–15-.02 has been revised. "Particulate" has been amended to "PM_{10}," the allowable level of PM_{10} has been revised from 875 ug/m^3 to 500 ug/m^3, and the use of COH levels as a pollution warning has been deleted.

9. SO_2 and the particulate combined-product of SO_2 ppm and COH's are no longer used as air pollution alert indications. This subparagraph has now been reserved for future use.

10. Paragraph (5) of section 1200–3–15-.02 Episode Criteria has been amended. In subparagraph (e), and in the description of meteorological condition pollutants given below subparagraph (f), "oxidant" has been changed to "ozone."

These changes are consistent with requirements prescribed in 40 CFR part 51, appendix L. The revised requirements still conform with the triggering levels and lengths of air stagnation episodes prescribed in 40 CFR part 51, appendix L. In addition, the revised threshold levels for PM_{10} also conform with those prescribed in 40 CFR part 51, appendix L. Similarly, the removal of the COH threshold levels is also consistent with EPA's view that COH measurements do not reflect the best means of measuring combined SO_2 and PM_{10} levels. Currently, there is no requirement in either 40 CFR part 51, subpart H, or 40 CFR part 51, appendix L, which requires states to have COH threshold levels in their respective air pollution emergency episode plans.

Final Action

EPA is approving the aforementioned revisions contained in the State's September 1, 1993, submittal. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 14, 1994 unless, by October 17, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 14, 1994.

Under section 307(b)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for two years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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

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

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds.

Union Electric Co. v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 24, 1994.

Joseph R. Franzmathes,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(120) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(120) Revisions to the Tennessee Division of Air Pollution Control emergency episode plan, submitted on September 1, 1993. These revisions incorporate changes within chapter 1200–3–15-.02 of the Tennessee SIP into the existing regulations which are required in 40 CFR 52.1270.

(i) Incorporation by reference.

(A) Tennessee Air Pollution Control Regulations, Chapter 1200–3–15-.02, paragraphs (3), (4), and (5), effective June 26, 1993.

* * * * *

[FR Doc. 94–22784 Filed 9–14–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[MS–16–1–5988a; FRL–5070–4]

Approval and Promulgation of Implementation Plans Revision to New Source Review, Construction and Operating Permit Requirements, Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Mississippi State Implementation Plan (SIP), incorporating the State's changes to regulations for construction of new sources. Requirements for Prevention of Significant Deterioration are unchanged. These changes include provisions for public participation and public availability of information concerning applications for construction permits. These revisions were made to satisfy the requirements for issuing federally enforceable minor source construction permits. Also, the State has revised requirements for new or modified sources significantly impacting nonattainment areas by removing exemptions for certain source categories. The EPA interprets the provisions for "II. D. Permit Modification Due to Modification in Facilities" and "II. E. Modification of Permits Without Modification of Facilities" as not allowing permit relaxations without meeting the procedural and substantive requirements for a new permit to construct.

DATES: This final rule will be effective November 14, 1994 unless adverse or critical comments are received by October 17, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Kimberly Bingham at the EPA Region IV address listed below. Copies of the material submitted by the State of Mississippi may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460.

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Mississippi Department of Environmental Quality, Office of Pollution Control, Air Quality Division, 2380 Highway 80 West Jackson, Mississippi 39289–0385.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Stationary Source Planning Unit, Region IV, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404)347–3555 extension 4195.

SUPPLEMENTARY INFORMATION: On June 14, 1991, the State of Mississippi through the Department of Environmental Quality (DEQ) submitted a SIP revision incorporating changes in the State's New Source Review (NSR) program for permitting the construction of new sources. The revisions amend the State's permitting regulations APC–S–2 "Regulations for the construction and/or Operation of Air Emissions Equipment" to incorporate "moderate stationary sources" into the existing regulations which are required in 40 CFR part 51, subpart I. The State of Mississippi has defined certain synthetic minor sources (i.e. those sources which have voluntarily requested lowered emission or operational levels which may allow them to avoid being classified as a major stationary source) as "moderate stationary sources" and has incorporated the requirements for these sources into the State regulations. The submittal satisfies 40 CFR 51.160 because section VI.A. provides that a new or modified source must not cause a violation of any applicable rule or regulation (including provisions of the SIP) and must not interfere with attainment and maintenance of the National Ambient Air Quality Standard.

The Mississippi Department of Environmental Quality developed regulations to issue federally enforceable construction permits to minor sources so that any of these sources which would otherwise have the potential to emit greater than the applicability threshold for Prevention of Significant Deterioration (PSD) may be legally permitted below that threshold. The State's NSR permit and operating permit programs meet the requirements for new operating permit programs based on the criteria established in the June 28, 1989 **Federal Register** (54 FR 27274).

The major amendments to the SIP are:

(1) The entire submittal has been renumbered.

(2) Several definitions relating to PSD have been added that are consistent with Federal requirements. The added definitions are:

a. Incorporated by reference.
b. Corporate Officer.
c. DEQ.
d. Moderate Modification.
e. Moderate Stationary Source.
f. Modification.
g. Potential emissions increase.
h. Potential uncontrolled emissions.

(3) General Permit Requirements.

a. The section "General Permit Requirements," has been reworded to include a description of the types of permits that the permit board will issue.
b. The section "Tolerance Permits" has been deleted.

c. The section "Transfer of Permits" has been moved and changed to Permit Transfers. The section on Permit Transfers defines transfer and sets the parameters in which a transfer would be approved by the Permit Board.
d. The section "Preliminary Information Requirements," has been deleted.

(4) General Standards Applicable To All Permits.

a. The section "General Standards Applicable To All Permits," has been added and lists all of the applicable regulations that must be met in order to receive a permit.
b. The section "General Provisions," has been added and covers information that must be submitted to the Permit Board before a permit can be issued.
c. The section "Permit Suspension or Revocation," has been edited to better explain the various reasons that a permit can be suspended or revoked.
d. The sections "Permit Modification Due to Modification of Facilities" and "Modification of Permits Without Modification of Facilities" have been added and explain when a facility may modify its permit.

(5) Standards For Granting Permit To Operate An Existing Facility.

The section "Standards for Granting Permit To Operate," has been re-titled "Standards For Granting Permit To Operate An Existing Facility" and has several changes reflecting the renumbering of the submittal.

(6) Application For Permit To Construct And Permit To Operate New Facility.

The section "Application For Permit To Construct And Permit To Operate New Facility" has been amended and specifies the requirements for an application for a permit to construct and operate.

(7) Public Participation and Public Availability of Information.

The section "Public Participation and Public Availability of Information" is a new section and provides the public information and participation procedures on any application for a permit to construct.

(8) Application Review.

a. The section "Standards for Approving an Application for a Permit to Construct and a Permit to Operate a New Facility" has been modified and provides the substantive requirements for such permits.
b. The section "Air Quality Models" is a new section that explains when and which Air Quality Models may be used.
c. The section "Additional Requirements for Prevention of Significant Deterioration of Air Quality" has been removed.
d The section "Performance Evaluation Permit" has been removed.
e The section "Performance Testing" is modified to explain methods to be used for various types of testing.
f. The sections "Procedures For Renewal of Permit to Operate" and "Standards for Renewal of Permit to Operate" are new sections that give details on the procedures and standards for the renewal of a Permit to Operate.
g. The section "Emission Reporting," is a new section and explains the requirements for appropriate record maintenance.

On March 14, 1994, EPA received comments from the Office of General Counsel (OGC) concerning the State's definition of moderate modification. The OGC recommended that the State Attorney General clarify whether the "potential emissions increase" applies only to the particular change (i.e., the addition or modification of a unit) or to the potential emissions of the entire facility, including the change. In a letter dated June 21, 1994, the office of the Mississippi Attorney General responded to the issue stating, "The definition of 'moderate modification' is a modification which would constitute a major modification under...(PSD Regulations)...if the potential emissions increase was used in place of the net emissions increase..." The definitions of "major modification" and "net emissions increase" are adopted by reference from EPA's PSD rules and are therefore the same.

Since "net emissions increase" is defined to include the entire facility and not just the particular change by the PSD rules, the "potential emissions increase" applies to the potential emissions increase of the entire facility.

Final Action

EPA is approving the aforementioned revisions in this submittal. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 14, 1994 unless, by October 17, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 14, 1994.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2)).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214092225), as revised by an October 4, 1993, memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory

flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 2560966 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 1, 1994.

Joe R. Franzmathes,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401097671q.

Subpart Z—Mississippi

2. Section 52.1270 is amended by adding paragraph (c)(24) to read as follows:

§1A52.1270 Identification of plan.

* * * * *

(c) * * *

(24) The Mississippi Department of Environmental Quality submitted revisions on June 14, 1991, to "Permit Regulations for the construction and/or Operation of Air Emissions Equipment" of Regulation APC-S092. These revisions incorporate "moderate stationary sources" into the existing regulations which are required in 40 CFR part 51, subpart I.

(i) Incorporation by reference.

(A) Mississippi Commission on Environmental Quality Permit Regulations for the Construction and/or Operation of Air Emissions Equipment, Regulation APC-S092, effective on May 28, 1991.

(B) Letter of June 21, 1994, from the Mississippi Office of the Attorney General to the Environmental Protection Agency.

(ii) Additional material. None.

[FR Doc. 94–22786 Filed 9–14–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[FRL–5072–2]

Prevention of Significant Deterioration; South Dakota; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is providing notice that it granted delegation of authority to the State of South Dakota on July 6, 1994 to implement and enforce the Federal Prevention of Significant Deterioration (PSD) permitting regulations. This delegation was a result of a November 12, 1993 request for delegation from the State. EPA is consequently revising 40 CFR 52.2178 to indicate that all future PSD permit applications and information should be submitted to the South Dakota Department of Environment and Natural Resources, rather than to the EPA Region VIII office.

DATES: The delegation of PSD authority became effective on July 6, 1994.

ADDRESSES: Copies of the delegation of authority request are available for inspection during normal business hours at the following offices: Air Programs Branch, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; and the Division of Environmental Regulation, Department of Environment and Natural Resources, Joe Foss Building, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART–AP, Air Programs Branch, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION: On November 12, 1993, the Governor of South Dakota submitted a request for delegation of authority to implement and enforce the Federal PSD permitting regulations. After a thorough review of the State's implementation and enforcement procedures, the Regional Administrator determined that such delegation was appropriate subject to the conditions set forth in the following official letter to the Secretary of the South Dakota Department of Environment and Natural Resources. Therefore, pursuant to the authority delegated to him by the Administrator, the Regional Administrator has formally notified the Secretary of the South Dakota Department of Environment and Natural Resources by the following letter that EPA has relinquished full PSD regulatory authority in accordance with 40 CFR 52.21(u) to the State of South Dakota, effective July 6, 1994:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

July 6, 1994

Robert E. Roberts,
Secretary, Department of Environment and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501–3181

Dear Mr. Roberts: Thank you for your November 12, 1993 request for delegation of Prevention of Significant Deterioration (PSD) authority to South Dakota. The intent of delegating PSD authority is to reduce duplicate new source permit reviews by our respective air programs and provide prospective applicants with one less agency to deal with in obtaining a construction permit.

Region VIII staff have evaluated the practices and procedures used by the State of South Dakota for review of construction permit applications and have determined that the technical, administrative, and enforcement elements of the State's air program are adequate to implement a delegated PSD program. Therefore, the EPA hereby grants to the State of South Dakota authority to implement the PSD regulations found in 40 CFR 52.21 and any subsequent revisions to the regulations, as well as determinations and interpretations which EPA makes related to the regulations. This delegation is made in accordance with the provisions found in 40 CFR 52.21(u), Delegation of Authority.

This delegation is based upon the following terms and conditions:

1. Authority is delegated for all sources located in the State of South Dakota subject to review for the Prevention of Significant Deterioration. This includes all source categories listed in 40 CFR 52.21 for each pollutant regulated by the Clean Air Act. However, this delegation does not include sources proposing to construct on Indian Reservations in accordance with 40 CFR 52.21(u)(3). Further information on EPA's interpretation of "Indian Reservations" will be forthcoming in future rulemaking actions.

2. The South Dakota Department of Environment and Natural Resources (SDDENR) and EPA will develop a communication system which accomplishes the following:

a. The EPA will ensure that the Aerometric Information Retrieval System/AIRS Facility Subsystem (AIRS–AFS) is updated to include the most recent compliance information as of the time of this delegation for sources in the State of South Dakota which have been issued a PSD permit by EPA.

b. The SDDENR will forward to the EPA, at the onset of the public comment period, a summary of (1) the findings related to each PSD application and (2) the justification of the SDDENR's preliminary determination. Should there be comments or concerns about the pending PSD permit, EPA will communicate these comments and concerns to the SDDENR as soon as possible before the closing of the public comment period.

c. The SDDENR will forward to EPA copies of the final actions on PSD permit applications at the time of issuance.

d. The status of incomplete permit applications will be provided to EPA on an as needed basis.

3. Prior EPA concurrence is to be obtained on any matter involving the interpretation of sections 160–169 of the Clean Air Act or 40 CFR 52.21 to the extent that implementation, review, administration or enforcement of these sections have not been covered by EPA determinations or guidance.

4. This delegation of authority becomes effective as of the date of this letter. Where it is convenient to both SDDENR and EPA and a benefit to the applicant, any PSD review already initiated by EPA prior to this delegation shall be transferred to the SDDENR for completion.

5. The primary responsibility for enforcement of the PSD regulations in the State of South Dakota will rest with the SDDENR. The SDDENR will enforce the provisions and regulations that pertain to the PSD program. If the State enforces the delegated provisions in a manner inconsistent with the terms and conditions of this delegation of the Clean Air Act, EPA may exercise its enforcement authority contained in the Clean Air Act with respect to sources within the State of South Dakota subject to the PSD provisions.

6. If the Regional Administrator determines that the State is not implementing or enforcing the PSD program in accordance with the terms and conditions of this delegation, the requirements of 40 CFR section 52.21, or the Clean Air Act, this delegation, after consultation with the SDDENR, may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the State.

7. Permits issued under this delegation should contain language stating that the PSD requirements have been satisfied.

8. The SDDENR will report to EPA by means of the AIRS–AFS the compliance status of subject sources.

9. The State will at no time grant any waivers to the permit requirements, approve any compliance schedule, or issue any administrative order which violates any presently effective PSD provisions.

10. The SDDENR will not accept dispersion modeling which is not consistent with 40 CFR Part 51, Appendix W—Guideline on Air Quality Models (Revised), without receiving prior concurrence from EPA. The SDDENR will consider new information on the dispersion modeling and other aspects of PSD as periodically issued by EPA.

A notice announcing this delegation will be published in the **Federal Register** in the near future. Unless EPA receives written notice from the SDDENR of objections within 10 days of the receipt of this letter, it will be deemed that the State has accepted all the terms and conditions of this delegation.

Sincerely,

Kerrigan Clough,

Acting Regional Administrator.

The Regional Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. This delegation became effective on July 6, 1994. Therefore, it serves no purpose to delay the technical change of this addition of the State address to the Code of Federal Regulations.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 6, 1994.

Jack W. McGraw,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart QQ—South Dakota

2. Section 52.2178 is amended by adding a new paragraph (c) to read as follows:

§ 52.2178 Significant deterioration of air quality.

* * * * *

(c) All applications and other information required pursuant to § 52.21 from sources located in the State of South Dakota, except from those sources proposing to locate on Indian reservations, shall be submitted to the Director of the Division of Environmental Regulation, Department of Environment and Natural Resources, Joe Foss Building, Pierre, South Dakota 57501 instead of the EPA Region VIII office.

[FR Doc. 94–22788 Filed 9–14–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TX–30–1–6527a; FRL–5069–6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Site Specific Particulate Control Plan for ASARCO, El Paso

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves a revision to the Texas State Implementation Plan (SIP) addressing a request for a waiver from certain industrial roadway paving for the ASARCO copper smelter in El Paso, Texas. Specifically, in lieu of paving, this action approves an alternate particulate control plan for certain industrial unpaved roads at the El Paso ASARCO copper smelter.

DATES: This final rule will become effective on November 14, 1994,unless notice is received by October 17, 1994, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T–AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 655–7258.

SUPPLEMENTARY INFORMATION:

Background

When the EPA approved the El Paso moderate area PM–10 (particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers) SIP on January 18, 1994 (please reference 59 FR 2532), certain sections of Texas Regulation I were incorporated by reference into the Texas SIP. One such section was 111.147 concerning particulate control for roads, streets and alleys, the first part reading as follows:

111.147. Roads, Streets, and Alleys.

No person may cause, suffer, allow, or permit any public, industrial, commercial, or private road, street, or alley to be used without taking at least the following

precautions to achieve control of dust emissions:

(1) Application of asphalt, water, or suitable oil or chemicals on the following unpaved surfaces, except in the City of El Paso (El Paso) and the Fort Bliss Military Reservation, except as noted in Section 111.141 of this title (relating to Geographic Areas of Application and Date of Compliance), where the use of paving materials is the only acceptable method of dust control, unless otherwise specified:

(A) Industrial Facility Roadways—all major inplant roads and all truck or other heavy-duty vehicle pathways. Major in-plant roads shall be defined as those which are designed to accommodate two-way traffic and are at least 30 feet wide at at least one point, measuring the distance from the edge of the undisturbed earth on either side of the established roadway. The Executive Director, with the concurrence of the United States Environmental Protection Agency, may grant a waiver from the requirement to pave an industrial facility roadway if the owner of the roadway demonstrates that the cost of paving is economically unreasonable compared to other methods of dust control specified in subsection (1) * * *

On January 30, 1992, as per section 111.147(1)(A), ASARCO requested a waiver from paving the slag haul road and certain segments of other low-traffic roads at its El Paso copper smelter. In order for the Executive Director of the Texas Natural Resource Conservation Commission (TNRCC) and the EPA to grant the waiver, ASARCO had to adequately demonstrate that the cost of paving was economically unreasonable compared to other methods of dust control (i.e., the use of water or water/chemical dust suppressant mixtures).

Analysis of State Submission

A. Procedural Background

The Clean Air Act (CAA) requires States to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing (see also section 110(l) of the CAA). Also, the EPA must determine whether a submittal is complete, and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

After providing adequate notice, the State of Texas held a public hearing on February 18, 1992, to entertain public comment on Permit No. 20345 for ASARCO Inc., El Paso. Following the public hearing, Permit No. 20345 was approved by the Texas Air Control Board (TACB) on May 8, 1992. Earlier, on January 30, 1992, ASARCO requested a waiver from paving certain industrial roadways at its El Paso copper smelter. The TNRCC, formerly the Texas Air Control Board (TACB), adopted the waiver on March 9, 1994, in a Commission Order. This Order also sets out an alternate particulate control plan for certain unpaved industrial roads at ASARCO based on Permit No. 20345. The Order was submitted as a SIP revision to the EPA by cover letter from the Governor dated March 30, 1994.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. A letter dated May 19, 1994, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

B. Review of ASARCO Waiver Request

In the March 30, 1994, SIP revision package from the Governor, substantial documentation was provided showing that the cost of paving the slag haul road and other industrial roadways at the El Paso ASARCO copper smelter was indeed economically unreasonable compared to alternate particulate control methods. The EPA has reviewed ASARCO's cost calculations and finds that the calculations indeed adequately demonstrate that the cost of paving the slag haul road and certain other industrial vehicle routes is economically unreasonable compared to the cost of using other acceptable particulate control methods (i.e. water and chemicals). In addition, the alternate particulate control plan provides for adequate PM–10 emission reductions, indeed, more reductions than paving would provide. Following are summary tables of the cost comparisons and PM–10 emission reductions: Slag Haul Road: Uncontrolled PM–10 emissions=2.31 tons/year (t/y)

Control method	Cost/ton of PM–10 reduced	Actual PM–10 reductions obtained
Paving	$199,000	0.94 t/y
Daily watering + chemical spray	23,000	1.62 t/y

Other Roads: Uncontrolled PM–10 emissions=9.84 t/y

Control method	Cost/ton of PM–10 reduced	Actual PM–10 reductions obtained
Paving	$42,000	2.19 t/y
Continuous wetting + chemical spray	16,000	9.84 t/y

In conducting their analysis, ASARCO used the emission factor calculations from the EPA document entitled "Compilation of Air Pollution Emission Factors (AP–42)", and conducted on-site silt sampling from the slag haul road and four other industrial vehicle routes.

In lieu of paving, ASARCO will use the following as alternate particulate control methods for the slag haul road and other applicable unpaved roads: (1) Continuous wetting using an automatic sprinkler system; or (2) daily watering and twice weekly application of a chemical oil spray. ASARCO must maintain a log record for a two year period showing the amount of water and chemical applied daily for unpaved roads not maintained in a continuously wetted condition. These dust control methods are described in federally enforceable permit No. 20345, Special Provisions 31 and 33, and in the enclosure to a June 8, 1993, letter from the TACB to the EPA. The June 8, 1993, letter is being approved in this action as incorporation by reference material.

Final Action

This action approves a revision to the Texas SIP to include an alternate particulate control plan (in lieu of paving) for certain industrial unpaved roads at the El Paso ASARCO copper smelter. In approving this alternate control plan, the EPA concurs with the State of Texas in granting a waiver from certain industrial roadway paving for the ASARCO copper smelter in El Paso as per Texas Regulation I, § 111.147(1)(A). The EPA concurs with the Executive Director of the TNRCC that the El Paso ASARCO copper smelter has adequately demonstrated that the cost of paving certain industrial roadways is economically unreasonable compared to the cost of other methods of dust control (i.e., the use of water or water/chemical dust suppressant mixtures).

The EPA has reviewed these revisions to the Texas SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this

Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, this action will be effective November 14, 1994, unless, by October 17, 1994 notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 14, 1994.

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

Miscellaneous

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Note: Incorporation by reference of the SIP for the State of Texas was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: August 26, 1994.

W.B. Hathaway,

Acting Regional Administrator (6A).

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(83) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(83) A revision to the Texas SIP to include an alternate particulate control plan for certain unpaved industrial roadways at the ASARCO copper smelter in El Paso, submitted by the Governor by cover letter dated March 30, 1994.

(i) Incorporation by reference.

(A) Texas Natural Resource Conservation Commission Order No. 94–01, as adopted by the Texas Natural Resource Conservation Commission on March 9, 1994.

(B) TNRCC Attachment 3 containing the Texas Air Control Board permit number 20345 for the ASARCO primary copper smelter in El Paso, Texas, issued May 11, 1992.

(C) TNRCC Attachment 4 containing the June 8, 1993, letter from Mr. Troy W. Dalton, Texas Air Control Board (TACB), to Mr. Thomas Diggs, U.S. EPA Region 6, addressing the ASARCO Inc. (El Paso) waiver request from TACB Regulation I, Section 111.147(1)(A), including the enclosure entitled "Waiver Provisions to Texas Air Control Board Regulation 111.147(1)(A) for ASARCO, Incorporated, El Paso Account No. EE–0007–G."

(ii) Additional material.

(A) March 9, 1994, SIP narrative addressing the alternate particulate control plan (in lieu of paving) for certain unpaved industrial roadways at the ASARCO copper smelter in El Paso.

[FR Doc. 94–22789 Filed 9–14–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IN43–2–6644; FRL–5072–4]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Final rule; withdrawal.

SUMMARY: On July 19, 1994 (59 FR 36700), the United States Environmental Protection Agency (USEPA) approved a revision to the Indiana State Implementation Plan (SIP) for ozone. The action approved Indiana's 1990 base year ozone precursor emissions inventory for Lake and Porter Counties. The emissions inventory was submitted by the State of Indiana to satisfy a Federal requirement that States containing ozone nonattainment areas submit inventories of actual ozone precursor emissions. The USEPA is withdrawing this final rule due to the adverse comments received on this action. In a subsequent final rule USEPA will summarize and respond to the comments received and announce final rulemaking action on this requested Indiana SIP revision.

EFFECTIVE DATE: September 15, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–6057.

List of Subject in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: September 1, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–22867 Filed 9–14–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 60

[FRL–5072–7]

Standards of Performance for New Stationary Sources: Delegation of Authority to the State of Washington and Six Local Air Authorities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of Authority.

SUMMARY: Section 111(c) of the Clean Air Act permits EPA to delegate to the states the authority to implement and enforce the standards set out in 40 CFR part 60, Standards of Performance for New Stationary Sources (NSPS). On April 5, 1994, the Director of the Washington Department of Ecology (WDOE) submitted to the EPA Regional Office a request for delegation of authority to the WDOE and six local air pollution control authorities. Included in that request was a copy of the WDOE regulations which adopt by reference the federal emission standards and testing procedures set forth in 40 CFR part 60 as in effect on January 1, 1993, with certain exceptions.

EFFECTIVE DATE: August 25, 1994.

ADDRESSES: Materials in support of this delegation may be examined during normal business hours at the following location: Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue AT–082, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: John Keenan, Air Programs Branch AT–082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 553–1817.

SUPPLEMENTARY INFORMATION: Pursuant to section 111 of the Clean Air Act as amended, the Administrator of the Environmental Protection Agency (EPA) has promulgated regulations establishing standards of performance for new stationary sources (NSPS). Section 111(c) directs the Administrator to delegate his or her authority to implement and enforce NSPS to any State which has submitted adequate procedures. Nevertheless, the Administrator retains concurrent authority to implement and enforce the standards following delegation of authority to the State.

On April 5, 1994, the Director of the Washington Department of Ecology (WDOE) submitted to the EPA Regional Office a request for delegation of authority to the WDOE and six local air pollution control authorities. Included in that request was a copy of the WDOE regulations which adopt by reference the federal emission standards and testing procedures set forth in 40 CFR part 60 as in effect on January 1, 1993, with certain exceptions.

After a thorough review of the request, the Director of the Air and Toxics Division has determined that for the source categories set forth in the below letter to the Director, delegation is appropriate, subject to the conditions set forth in paragraphs 1 through 13 of that letter. Therefore, pursuant to the authority delegated to him by the Regional Administrator, the Air and Toxics Division Director notified the Director of WDOE, that authority to implement and enforce the New Source Performance Standards in effect on January 1, 1993, was delegated to the WDOE and the local authorities.

Effective immediately, all reports required pursuant to the standards of performance for new stationary sources listed 40 CFR 60.4(b)(WW) as indicated in the this letter should be submitted to the appropriate state or local authority, as appropriate, at the following addresses:

Washington Department of Ecology, Post Office Box 47600, Olympia, WA 98504.
Benton-Franklin Counties Clean Air Authority (BFCCAA), 650 George Washington Way, Richland, WA 99352.
Northwest Air Pollution Authority (NWAPA), 302 Pine Street #207, Mt. Vernon, WA 98273–3852.
Olympic Air Pollution Control Authority (OAPCA), 909 Sleater-Kinney Rd. SE, Suite 1, Lacey, WA 98503.
Puget Sound Air Pollution Control Authority (PSAPCA), 110 Union Street, Suite 500, Seattle, WA 98101.
Southwest Air Pollution Control Authority (SWAPCA), 1308 N.E. 134th Street, Suite D, Vancouver, WA 98685–2747.
Spokane County Air Pollution Control Authority (SCAPCA), West 1101 College Avenue, Health Building, Room 403, Spokane, WA 99201.

The notification letter is as follows:

Mary Riveland, Director, Washington Department of Ecology, Post Office Box 47600, PV–11, Olympia, WA 98504–7600

Dear Ms. Riveland:

This letter is in response to the April 5, 1994, request on behalf of the Washington Department of Ecology (WDOE) for delegation of authority for implementation and enforcement of the Standards of Performance for Stationary Sources (NSPS) promulgated by EPA prior to July 1, 1993 to WDOE and subdelegation to each of six local air pollution control authorities. The local authorities covered in this delegation are as follows: Benton-Franklin Counties Clean Air Authority (BFCCAA), Northwest Air Pollution Authority (NWAPA), Olympic Air Pollution Control Authority (OAPCA), Puget Sound Air Pollution Control Authority (PSAPCA), Southwest Air Pollution Control Authority (SWAPCA), and Spokane County Air Pollution Control Authority (SCAPCA).

The Environmental Protection Agency (EPA) has determined that Chapter 70.94 of the Revised Code of Washington (RCW) and Chapter 173–400 of the Washington Administrative Code (WAC) generally provide for an adequate and effective procedure for implementation and enforcement of the NSPS by the State of WDOE and the local authorities. While the request is for delegation for the NSPS promulgated prior to July 1, 1993, WAC 73–400–115 adopts 40 CFR Part 60 as in effect on January 1, 1993. Accordingly, EPA hereby delegates to the WDOE and each of the six local authorities listed above, subject to the conditions set forth in paragraphs 1 through 13, the authority for implementation and enforcement of the standards of performance for new stationary sources promulgated in 40 CFR Part 60 prior to January 1, 1993, specifically, Subparts A, D, Da, Db, Dc, E, Ea, F, G, H, I, J, K, Ka, Kb, L, M, N, Na, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AAa, BB, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, WW, XX, AAA, BBB, DDD, FFF, GGG, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, SSS, TTT, UUU, and VVV.

This Delegation is based upon the following conditions:

1. Enforcement of the NSPS in the State will be the primary responsibility of WDOE and each of the local authorities. EPA may, as appropriate, exercise its concurrent enforcement authority pursuant to section 113 of the Clean Air Act as amended, with respect to sources which are subject to the NSPS.

2. If the Regional Administrator determines that a State or local authority procedure for enforcing or implementing the NSPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or part. Any such revocation shall be effective as of the date specified in a Notice of Revocation.

3. The Regional Administrator of Region 10 delegates his authority to implement and enforce the NSPS to local air pollution control authorities in the State of Washington. The WDOE does not have the authority to delegate this authority.

4. A new request for delegation will be required for any standards not included in this delegation, including any standards which are promulgated or revised after January 1, 1993. Implementation and enforcement of new or revised standards remains the responsibility of EPA until such time as WAC 173–400 is revised and submitted along with a new delegation request and such request is approved by EPA.

Acceptance of this delegation of NSPS does not commit the WDOE or any local authority to request or accept delegation of future standards and requirements.

5. The Compliance Assurance Agreement for Air between WDOE and EPA remains in effect and clearly defines roles and responsibilities including timely and appropriate (T&A) enforcement response and maintenance of the AIRS Facility Subsystem.

6. WDOE and EPA will develop a system of communication sufficient to guarantee that each office is always fully informed and current regarding compliance status of the subject sources and interpretation of the regulations including those sources in the jurisdiction of a local authority.

7. WDOE or each local authority, as appropriate, will either input into the AIRS Facility Subsystem, or provide EPA with a written copy of a source's notifications of:

a. Commencement of construction, or reconstruction;

b. Anticipated and actual startup;

c. Any physical change to an existing facility which may increase the emission rate of any air pollutant to which the standard applies;

d. The date upon which demonstration of the continuous emissions monitoring system performance commences in accordance with 40 CFR 60.13(c);

e. Continuous opacity monitoring system data results will be used to determine compliance with the applicable opacity standard during a performance test required by 40 CFR 60.8 in lieu of Method 9 observation data as allowed by 40 CFR 60.11(e)(5); and,

f. Performance testing.

8. WDOE or each local authority, as appropriate, will either electronically update the PC–CEMS database system on at least a quarterly basis, or provide EPA with a written copy of a source's excess emissions reports and/or summary reports.

9. WDOE and each local authority will require affected facilities to utilize the methods specified in 40 CFR part 60 in performing source tests pursuant to the regulations. NSPS regulations require performance testing of all affected facilities (40 CFR 60.8).

10. This delegation is also subject to all EPA policy guidance and determinations issued pursuant to 40 CFR Part 60.

11. Specification or approval of minor changes in testing and monitoring methods, procedures and equipment are delegated to WDOE and each local authority. Minor changes are defined as ones that do not affect the stringency of the emission limitation or standard, are site specific, and have no national significance. Examples of minor changes include selecting alternative sample traverse points to avoid interference from an obstruction in the stack, adding one or more moisture collection impingers to a particulate sampling train for a high moisture situation, and extending the sampling time to increase sensitivity of a wet chemistry test method. Specification and approval of non-minor changes, equivalent methods, alternative methods, and shorter sampling times/smaller volumes are not delegated to WDOE or any local authority, but remain the responsibility of the Assistant Administrator for Air and Radiation or his designee, as detailed in Section 7–14 of the EPA Delegations Manual.

12. This delegation does not cover sources under the jurisdiction of the State of Washington Energy Facility Site Evaluation Council (EFSEC).

13. This delegation does not apply to any section of 40 CFR part 60 that specifically indicates that the authority may not be delegated to the state.

A notice announcing this delegation will be published in the **Federal Register** in the near future. The notice will state effective immediately, all reports required pursuant to the federal NSPS from sources located in the State should be submitted to WDOE or the appropriate local authority. Any reports which are received in this office between todays date and the date of publication in the **Federal Register** will be forwarded to WDOE.

Since this delegation is effective immediately, there is no requirement that WDOE or any of the local authorities notify EPA of its acceptance. Unless EPA receives from written notice of objections within 10 days of the date of receipt of this letter, WDOE and each of the local authorities will be deemed to have accepted all the terms of the delegation.

Sincerely yours,

Jim McCormick,

Director, Air and Toxics Division.

cc: Benton-Franklin Counties Clean Air Authority
Northwest Air Pollution Authority
Olympic Air Pollution Control Authority
Puget Sound Air Pollution Control Authority
Southwest Air Pollution Control Authority
Spokane County Air Pollution Control Authority

This action is issued under the authority of section 111 of the Clean Air Act, as amended, 42 U.S.C. 7411(c).

Dated: August 25, 1994.

Phillip G. Millam,

Acting Director, Air and Toxics Division.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Cooper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc.

For the reasons set out in the preamble, 40 CFR part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority cite continues to read as follows:

Authority: 42 U.S.C. 7401–7601q.

2. Section 60.4 paragraph (b) is amended by revising paragraph (WW) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(WW)(i) Washington: Washington Department of Ecology, Post Office Box 47600, Olympia, WA 98504.

(ii) Benton-Franklin Counties Clean Air Authority (BFCCAA), 650 George Washington Way, Richland, WA 99352.

(iii) Northwest Air Pollution Authority (NWAPA), 302 Pine Street, #207, Mt. Vernon, WA 98273–3852.

(iv) Olympic Air Pollution Control Authority (OAPCA), 909 Sleater-Kinney Rd. SE - Suite 1, Lacey, WA 98503.

(v) Puget Sound Air Pollution Control Authority (PSAPCA), 110 Union Street, Suite 500, Seattle, WA 98101.

(vi) Southwest Air Pollution Control Authority (SWAPCA), 1308 N.E. 134th Street, Suite D, Vancouver, WA 98685–2747.

(vii) Spokane County Air Pollution Control Authority (SCAPCA), West 1101 College Avenue, Health Building, Room 403, Spokane, WA 99201.

(viii) [Reserved].

(ix) The following is a table indicating the delegation status of the New Source Performance Standards for the State of Washington.

DELEGATION OF AUTHORITY—NEW SOURCE PERFORMANCE STANDARDS STATE OF WASHINGTON

Subpart	Description	WDOE [1]	BFCCAA [2]	NWAPCA [3]	OAPCA [4]	PSAPCA [5]	SWAPCA [6]	SCAPCA [7]
A	General Provisions	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
D	Fossil-Fuel-Fired Steam Generators.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
Da	Electric Utility Steam Generating Units.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93

DELEGATION OF AUTHORITY—NEW SOURCE PERFORMANCE STANDARDS STATE OF WASHINGTON—Continued

Subpart	Description	WDOE [1]	BFCCAA [2]	NWAPCA [3]	OAPCA [4]	PSAPCA [5]	SWAPCA [6]	SCAPCA [7]
Db	Industrial-Commercial-Institutional Steam Generating Units.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
Dc	Small Industrial-Commercial-Institutional Steam Generating Units.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
E	Incinerators	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
Ea	Municipal Waste Combustion	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
F	Portland Cement Plants	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
G	Nitric Acid Plants	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
H	Sulfuric Acid Plants	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
I	Asphalt Concrete Plants	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
J	Petroleum Refineries	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
K	Petroleum Liquid Storage Vessels 6/11/73–5/19/78.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
Ka	Petroleum Liquid Storage Vessels After 5/18/78–7/23/84.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
Kb	Volatile Organic Liquid Storage Vessels After 7/23/84.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
L	Secondary Lead Smelters	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
M	Brass & Bronze Ingot Production Plants.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
N	Iron & Steel Plants: BOPF Particulate.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
Na	Iron & Steel Plants: BOPF, Hot Metal & Skimming Stations.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
O	Sewage Treatment Plants	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
P	Primary Copper Smelters	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
Q	Primary Zinc Smelters	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
R	Primary Lead Smelters	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
S	Primary Aluminum Reduction Plants.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
T	Wet Process Phosphoric Acid Plants.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
U	Superphosphoric Acid Plants	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
V	Diammonium Phosphate Plants.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
W	Triple Superphosphate Plants.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
X	Granular Triple Superphosphate Storage Facilities.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
Y	Coal Preparation Plants	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
Z	Ferroalloy Production Facilities.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
AA	Steel Plant Electric Arc Furnaces 10/21/74–8/17/83.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
AAa	Steel Plant Electric Arc Furnaces & Argon-Oxygen Decarburization Vessels after 8/7/83.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
BB	Kraft Pulp Mills	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
CC	Glass Manufacturing Plants	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
DD	Grain Elevators	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
EE	Surface Coating of Metal Furniture.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
GG	Stationary Gas Turbines	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
HH	Lime Manufacturing Plants	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
KK	Lead-Acid Battery Manufacturing Plant.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
LL	Metallic Mineral Processing Plants.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
MM	Automobile & Light Duty Truck Surface Coating Operations.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
NN	Phosphate Rock Plants	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
PP	Ammonium Sulfate Manufacture.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93

DELEGATION OF AUTHORITY—NEW SOURCE PERFORMANCE STANDARDS STATE OF WASHINGTON—Continued

Subpart	Description	WDOE[1]	BFCCAA[2]	NWAPCA[3]	OAPCA[4]	PSAPCA[5]	SWAPCA[6]	SCAPCA[7]
QQ	Graphic Arts Industry: Publication Rotogravure Printing.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
RR	Pressure Sensitive Tape & Label Surface Coating Operations.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
SS	Industrial Surface Coating: Large Appliances.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
TT	Metal Coil Surface Coating ..	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
UU	Asphalt Processing & Asphalt Roofing Manufacturer.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
VV	SOCMI Equipment Leaks (VOC).	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
WW	Beverage Can Surface Coating Operations.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
XX	Bulk Gasoline Terminals	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
AAA	Residential Wood Heaters ...	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
BBB	Rubber Tire Manufacturing ..	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
DDD	Polymer Manufacturing Industry (VOC).	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
FFF	Flexible Vinyl and Urethane Coating and Printing.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
GGG	Equipment Leaks of VOC in Petroleum Refineries.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
HHH	Synthetic Fiber Production Facilities.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
III	VOC Emissions from SOCMI Air Oxidation Unit Processes.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
JJJ	Petroleum Dry Cleaners	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
KKK	VOC Emissions from Onshore Natural Gas Production.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
LLL	Onshore Natural Gas Production (SO2).	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
NNN	VOC Emissions from SOCMI Distillation Facilities.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
OOO	Nonmetallic Mineral Processing Plants.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
PPP	Wool Fiberglass Insulation Manufacturing Plants.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
QQQ	VOC Emissions from Petroleum Refinery Wastewater Systems.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
SSS	Magnetic Tape Coating Facilities.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
TTT	Surface Coating of Plastic Parts for Business Machines.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
UUU	Calciners & Dryers In Mineral Industries.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93
VVV	Polymeric Coating of Support Substrates Facilities.	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93

[1] WDOE—State of Washington Department of Ecology.
[2] BFCCAA—Benton Franklin Counties Clean Air Authority.
[3] NWAPCA—Northwest Air Pollution Control Authority.
[4] OAPCA—Olympic Air Pollution Control Authority.
[5] PSAPCA—Puget Sound Air Pollution Control Agency.
[6] SWAPCA—Southwest Air Pollution Control Authority.
[7] SCAPCA—Spokane County Air Pollution Control Authority.

[FR Doc. 94–22858 Filed 9–14–94; 8:45 am]
BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–72

RIN Number: 3090–AF38

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This action adopts Office of Management and Budget (OMB) Circular A–110 establishing consistency and uniformity among Federal agencies in the administration of grants and agreements with institutions of higher education, hospitals, and other non-profit organizations.

OMB issued Circular A–110 in 1976 and, except for a minor revision in February 1987, the Circular contains its original provisions. To update the Circular, OMB established an interagency task force to review the Circular. The task force solicited suggestions for changes to the Circular from university groups, non-profit organizations and other interested parties and compared, for consistency, the provisions of similar provisions applied to State and local governments. This regulation reflects the results of these efforts.

EFFECTIVE DATE: September 15, 1994.

FOR FURTHER INFORMATION CONTACT: John P. Dyer, General Services Administration, Public Buildings Service, Office of Procurement, 18th and F Streets, NW., Room 7316, Washington, DC 20405. Telephone: (202) 501–0907 Extension 46.

SUPPLEMENTARY INFORMATION: With this final rule, the General Services Administration adopts rules and regulations governing the administration and use of grants and cooperative agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations. This final rule establishes consistency and uniformity with other Federal agencies in the employment and management of grants and cooperative agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations. There are no deviations or differences between the model regulation promulgated by the Office of Management and Budget, on November 29, 1993, and these General Services Administration regulations governing the same.

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

Regulatory Flexibility Act

The General Services Administration has determined that this rule will not have a significant economic impact on a substantial number of small entities under their Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

Note: For additional information, see related documents published at 57 FR 39018, August 27, 1992, and 58 FR 62992, November 29, 1993.

List of Subjects in 41 CFR Part 105–72

Accounting, Administrative practice and procedures, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 41 CFR Part 105–72 is added as follows:

PART 105–72—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

Subpart 105–72.1—General

Sec.
105–72.100 Purpose.
105–72.101 Definitions.
105–72.102 Effect on other issuances.
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Appendix A to Part 105–72—Contract Provisions

Authority: 40 U.S.C. 486(c).

Subpart 105–72.1—General

§ 105–72.100 Purpose.

This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Federal awarding agencies shall not impose additional or inconsistent requirements, except as provided in § 105–72.103, and § 105–72.204 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§105–72.101 Definitions.

(a) Accrued expenditures means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and

(3) other amounts becoming owed under programs for which no current services or performance is required.

(b) Accrued income means the sum of:

(1) Earnings during a given period from

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) Closeout means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

(h) Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) Cost sharing or matching means that portion of project or program costs not borne by the Federal Government.

(j) Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(k) Disallowed costs means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) Excess property means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) Exempt property means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) Federal awarding agency means the Federal agency that provides an award to the recipient.

(p) Federal funds authorized means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) Federal share of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) Funding period means the period of time when Federal funding is available for obligation by the recipient.

(s) Intangible property and debt instruments means, but is not limited to trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) Obligations means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) Outlays or expenditures means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) Prior approval means written approval by an authorized official evidencing prior consent.

(x) Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 105–72.304 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income.

Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) Project costs means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) Project period means the period established in the award document during which Federal sponsorship begins and ends.

(aa) Property means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(bb) Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) Recipient means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) Small awards means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000).

(ff) Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in paragraph 105–72.101(e).

(gg) Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

(hh) Supplies means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(ii) Suspension means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.s 12549 and 12689, "Debarment and Suspension."

(jj) Termination means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) Third party in-kind contributions means the value of noncash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(ll) Unliquidated obligations, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) Unobligated balance means the portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) Unrecovered indirect cost means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) Working capital advance means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 105–72.102 Effect on other issuances.

For awards subject to this regulation, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this regulation shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 105–72.103.

§ 105–72.103 Deviations

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this regulation when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this regulation shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies.

§ 105–72.104 Subawards.

Unless sections of this regulation specifically exclude subrecipients from coverage, the provisions of this regulation shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 41 CFR 105–71.

Subpart 105–72.2—Pre-Award Requirements

§ 105–72.200 Purpose.

Sections 105–72.201 through 105–72.207 prescribes forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 105–72.201 Pre-award policies.

(a) Use of Grants and Cooperative Agreements, and Contracts. In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) Public Notice and Priority Setting. Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 105–72.202 Forms for applying for Federal assistance.

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Federal awarding agency.

(c) For Federal programs covered by E.O. 12372, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Federal awarding agencies that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

§ 105–72.203 Debarment and suspension.

Federal awarding agencies and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, "Debarment and Suspension." This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 105–72.204 Special award conditions.

If an applicant or recipient:

(a) Has a history of poor performance,

(b) Is not financially stable,

(c) Has a management system that does not meet the standards prescribed in this regulation,

(d) Has not conformed to the terms and conditions of a previous award, or

(e) Is not otherwise responsible;

Federal awarding agencies may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 105–72.205 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs."

§ 105–72.206 Resource Conservation and Recovery Act.

Under the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 codified at 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247 through 254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 105–72.207 Certifications and representations.

Unless prohibited by statute or codified regulation, each Federal awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart 105–72.30—Post-Award Requirements/Financial and Program Management

§ 105–72.300 Purpose of financial and program management.

Sections 105–72.301 through 105–72.308 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 105–72.301 Standards for financial management systems.

(a) Federal awarding agencies shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 105–72.602. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 105–72.302 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b)(1) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(i) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and

(ii) Financial management systems that meet the standards for fund control and accountability as established in § 105–72.301.

(2) Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Federal awarding agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met. Federal awarding agencies may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal

awarding agency shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraphs (h)(1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, "Managing Federal Credit Programs." Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows:

(1) Except for situations described in paragraph (i)(2), Federal awarding agencies shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use womenowned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless paragraphs (k)(1), (2) or (3) of this section apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this regulation, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement. Each Federal awarding agency shall adopt the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have the option of using this form for construction programs in lieu of the SF–271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. Each Federal awarding agency shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF–270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

§ 105–72.303 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Federal awarding agency.

(7) Conform to other provisions of this regulation, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraphs (c)(1) or (2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an

employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraph (g)(1) or (2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 105–72.304 Program income.

(a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

(1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2), program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3).

(d) In the event that the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 105–72.204.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See § 105–72.400 through § 105–72.407).

(h) Unless Federal awarding agency regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 105–72.305 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Federal awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from Federal awarding agencies for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with OMB Circular A–21, "Cost Principles for Institutions of Higher Education," OMB Circular A–122, "Cost Principles for Non-Profit Organizations," or 45 CFR part 74

Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by this regulation and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in paragraph (e) are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j), do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from Federal awarding agencies for budget revisions whenever paragraphs (h)(1), (2) or (3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 105–72.307.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 105–72.306 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations shall be subject to the audit requirements contained in OMB Circular A–133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions."

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act (31 U.S.C. 7501–7) and Federal awarding agency regulations implementing OMB Circular A–128, "Audits of State and Local Governments."

(c) Hospitals not covered by the audit provisions of OMB Circular A–133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of the Federal awarding agency or the prime recipient as incorporated into the award document.

§ 105–72.307 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance

with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 105–72.308 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

Subpart 105–72.40—Post-Award Requirements/Property Standards

§ 105–72.400 Purpose of property standards.

Sections 105–72.401 through 105–72.407 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of § 105–72.401 through § 105–72.407.

§ 105–72.401 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 105–72.402 Real property.

Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following.

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Federal awarding agency.

(b) The recipient shall obtain written approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the Federal awarding agency.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b), the recipient shall request disposition instructions from the Federal awarding agency or its successor Federal awarding agency. The Federal awarding agency shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 105–72.403 Federally-owned and exempt property.

(a) Federally-owned property. (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal awarding agency. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further Federal agency utilization.

(2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(b) Exempt property. When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is "exempt property." Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 105–72.404 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Federal awarding agency which funded the original project, then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for

which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(4) The Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The Federal awarding agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When the Federal awarding agency exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 105–72.405 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 105–72.406 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) Unless waived by the Federal awarding agency, the Federal Government has the right to paragraph (c)(1) and (2) of this section.

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 105–72.404(g).

§ 105–72.407 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Subpart 105–72.50—Post-Award Requirements/Procurement Standards

§ 105–72.500 Purpose of procurement standards.

Sections 105–72.501 through 105–72.508 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 105–72.501 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 105–72.502 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 105–72.503 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 105–72.504 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraph (a)(1), (2) and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the

range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange timeframes for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, "Debarment and Suspension."

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this regulation.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 105–72.505 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 105–72.506 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection,

(b) Justification for lack of competition when competitive bids or offers are not obtained, and

(c) Basis for award cost or price.

§ 105–72.507 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 105–72.508 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the

contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

Subpart 105–72.60—Post-Award Requirements/Reports and Records

§ 105–72.600 Purpose of reports and records.

Sections 105–72.601 through 105–72.603 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 105–72.601 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 105–72.306.

(b) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph (f) of this section, performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semiannual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) Federal awarding agencies may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 105–72.602 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF–269 or SF–269A, Financial Status Report.

(i) Each Federal awarding agency shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Federal awarding agency shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semiannual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.

(2) SF–272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the Federal awarding agency shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. The Federal awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and

two copies of the SF–272, 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or,

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in § 105–72.301, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(4) Federal awarding agencies may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) Federal awarding agencies may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 105–72.603 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Federal awarding agency. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc., as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.

(d) The Federal awarding agency shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Federal awarding agency shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal awarding agency.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Subpart 105–72.70—Post-Award Requirements/Termination and Enforcement

§ 105–72.700 Purpose of termination and enforcement.

§ 105–72.701 and § 105–72.702 set forth uniform suspension, termination and enforcement procedures.

§ 105–72.701 Termination.

(a) Awards may be terminated in whole or in part only if paragraph (a)(1), (2) or (3) of this section apply.

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Federal awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial

termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a) (1) or (2).

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 105–72.801(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 105–72.702 Enforcement.

(a) Remedies for noncompliance. If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions outlined in § 105–72.204, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) Hearings and appeals. In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraph (c) (1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations (see § 105–72.203).

Subpart 105–72.80—After-the-Award Requirements

§ 105–72.800 Purpose.

Sections 105–72.801 through 105–72.803 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 105–72.801 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may approve extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with § 105–72.401 through § 105–72.407.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Federal awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 105–72.802 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 105–72.306.

(4) Property management requirements in § 105–72.401 through § 105–72.407.

(5) Records retention as required in § 105–72.603.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in § 105–72.803(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 105–72.803 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by paragraph (a) (1), (2) or (3) of this section.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, Federal Claims Collection Standards.

Appendix A to Part 105–72—Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision

requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

Dated: July 14, 1994.

Roger W. Johnson,

Administrator of General Services.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 371

[Docket No. 940954–4254; I.D. 090994B]

Pacific Salmon Treaty; Preemption

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

ACTION: Final Rule; Preemption and closure.

SUMMARY: NOAA closes Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A to commercial fishing for sockeye salmon with net gear for the remainder of 1994. This action is taken to implement a determination by the Under Secretary for Oceans and Atmosphere, NOAA (Under Secretary) to supersede a regulation of the Lummi Indian Tribe (Tribe) which would place the United States in jeopardy of not fulfilling its international obligations under the Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at

Ottawa, January 28, 1985 (Treaty). This action is intended to protect the integrity of the management system established by the Treaty and fulfill international obligations of the United States under the Treaty.

DATES: The closure is effective from 0001 hours, local time, September 10, 1994, through 2400 hours, local time, December 31, 1994. Comments must be received by September 30, 1994.

ADDRESSES: Send comments to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION:

Definitions

For purposes of this action:

Area 7 means Puget Sound Salmon Management and Catch Reporting Area 7, which includes those waters of Puget Sound southerly of a line projected true west from the Sandy Point light; northerly of a line projected from the Trial Island light, to vessel traffic-lane buoy R, to the Smith Island light, to the most northeasterly of the Lawson Reef lighted buoys (RB 1, Qk Fl Bell), to Northwest Island, to the Initiative 77 marker on Fidalgo Island; and westerly of a line projected from Sandy Point to Point Migley, thence along the eastern shoreline of Lummi Island to Carter Point, thence to the most northerly tip of Vendovi Island, thence to Clark Point on Guemes Island following the shoreline to Southeast Point on Guemes Island, thence to March Point on Fidalgo Island, excluding those waters of East Sound northerly of a line projected due west from Rosario Point on Orcas Island.

Area 7A means Puget Sound Salmon Management and Catch Reporting Area 7A, which includes those waters of Puget Sound northerly of a line projected true west from the Sandy Point light.

Commercial fishing means fishing for the purpose of sale or barter of the catch.

Net gear means gill nets (including set nets), purse seines, reef nets, and beach seines.

Background

Section 6 of the Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3635, authorizes the Under Secretary to supersede any treaty Indian tribal regulation determined by the Secretary to place the United States in jeopardy of not fulfilling its international obligations under the Treaty. Article III, paragraph 1 of the Treaty states that "With respect to stocks subject to this Treaty, each Party shall conduct its fisheries and its salmon enhancement programs so as to * * * prevent overfishing and provide for optimum production * * *". The risk of overfishing of a stock increases when the entire total allowable catch (TAC) is taken, and any remaining harvest would reduce the spawning escapement below the target level. Fishing into the spawning escapement also increases the risk of not achieving optimum production.

Article IV, paragraph 3 of the Treaty provides that the country of origin shall submit preliminary information for the ensuing year to the other party to the Treaty and to the Pacific Salmon Commission (commission), including the spawning escapement required. Based on a total run-size estimate of 17.53 million sockeye, and a spawning escapement goal provided to U.S. domestic managers by Canada of 5.65 million sockeye, the TAC of Fraser River sockeye salmon in 1994 for both countries is 11.88 million fish. Total commercial and non-commercial catches accounted for to date include 9.796 million sockeye by Canada and 2.043 million sockeye by the United States, for a total harvest of 11.839 million. Thus, there would appear to be 41,000 sockeye remaining for harvest between both countries.

However, the Fraser River sockeye run is divided into four major components, each with its own spawning escapement goal and TAC. Three of the stock components have already migrated through the Fraser River harvest areas into the Fraser River and are no longer available for harvest. Only the late-run stock remains in the fishing areas. The Commission staff estimates the size of the late run to be 9.3 million fish. Canada has established a net (spawning) escapement goal of 3.26 million late-run sockeye. The total commercial and non-commercial catch of late-run sockeye by both countries is 6.314 million; 0.102 million have migrated up the river and 2.884 million are estimated by the Commission's technical staff to be holding off the river mouth, waiting to migrate up the river to the spawning grounds. Assuming that none of the late-run sockeye estimated to be remaining are harvested, the total late-run sockeye spawning escapement would be only 2.986 million fish, or approximately 0.247 million fewer than the spawning escapement goal of 3.26 million fish. Consequently, no Fraser River sockeye remain available for harvest.

Based on this information, Canadian commercial fisheries were terminated for the balance of the season on September 1, 1994. On September 2, 1994, U.S. domestic fishery managers agreed to terminate both non-treaty Indian and treaty Indian commercial fisheries for sockeye in Washington State waters after a treaty Indian fishery in Area 7A was completed on September 4, 1994.

Regulation number 94–20 of the Tribe, adopted September 8, 1994, opens a commercial salmon fishery that would target stocks of Canadian origin in Area 7A, effective from 5 a.m., September 10, 1994, through 8 p.m., September 13, 1994. This fishery would harvest late-run Fraser River sockeye salmon that have been identified as being necessary for spawning escapement in order to achieve optimum production for late-run sockeye from the Fraser River. Considerable uncertainty exists regarding the amount of sockeye salmon that might be taken by the Lummi fishery. Late-run sockeye are milling in the area off the mouth of the Fraser River and catches could be highly variable. Based upon the variability in catches observed earlier this season, catches could range from very low to up to 100,000 fish. Thus, the harvest of any additional sockeye salmon by the United States during the 1994 season, especially if catches were large, would increase the risk of overfishing and increase the risk of not achieving optimum production, as referred to in Article III, paragraph 1(a) of the Treaty.

By letter dated September 9, 1994, the U.S. Department of State informed the Under Secretary that the Tribe's regulation places the United States in jeopardy of not fulfilling its international obligations under Article III, paragraph 1(a) of the Treaty. Also on September 9, 1994, the Under Secretary, pursuant to 16 U.S.C. 3635, informed the Tribe that its regulation is inconsistent with the Treaty and places the United States in jeopardy of not fulfilling its international obligations, requested the Tribe to rescind the regulation, and informed the Tribe of his intent to promulgate Federal regulations if remedial action was not taken. The Tribe did not rescind its regulation.

Secretarial Action

The Under Secretary, on behalf of the Secretary of Commerce and pursuant to 16 U.S.C. 3636(a), promulgates this Federal regulation to supersede regulation number 94–20 of the Tribe. It is unlawful for any person to engage in commercial fishing for sockeye salmon with net gear, or to take and retain, land, or possess sockeye salmon taken in the

course of commercial fishing with net gear, in Area 7 or Area 7A, from 0001 hours, local time, September 10, 1994, through 2400 hours, local time, December 31, 1994.

Additional Information

Areas 7 and 7A are not areas where terminal fisheries are conducted; terminal fishing areas of the Tribe are located outside Areas 7 and 7A, and are not affected by this regulation.

Additional notice of this regulation is being published in local newspapers in the major fishing ports affected, and is available through the following toll-free (within area code 206) telephone hotlines:

All-citizen fisheries: 1–800–562–6513;

Treaty Indian fisheries: 1-800–562–6142;

Washington Department of Fisheries: 1–800–562–5672.

Classification

This rule is necessary and appropriate to carry out obligations of the United States under the Treaty, and as such, involves a foreign affairs function. Therefore, pursuant to 16 U.S.C. 3636(a), it is not subject to the ordinary rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553 *et seq.*

This rule is necessary to respond to an emergency situation and is consistent with the Treaty, the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631–3644), and other applicable law, including U.S. obligations to Canada and to U.S. treaty Indians. The Secretary of the Interior, the Secretary of Transportation, and the Pacific Fishery Management Council have been consulted.

For the purposes of E.O. 12866, this action is being issued pursuant to the emergency procedures provided in section 6(a)(3)(B). NOAA has notified the Office of Management and Budget.

Dated: September 9, 1994.

D. James Baker,

Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration.

[FR Doc. 94–22792 Filed 9–9–94; 4:32 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 59, No. 178
Thursday, September 15, 1994

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 201

[Docket No. 93–126–1]

Imported Seed

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are planning to revise the "Imported Seed" regulations issued under the Federal Seed Act (FSA) so that they reflect both the 1982 transfer of authority for portions of the FSA from the Agricultural Marketing Service, U.S. Department of Agriculture, to the Animal and Plant Health Inspection Service (APHIS) and recent amendments to the FSA.

We are also considering revising the regulations to respond to developments in the seed industry; among other changes, we are considering revising the list of noxious weeds under the FSA, establishing a reciprocal seed import certification program with Canada, and allowing APHIS to enter into compliance agreements with U.S. companies who wish to import Canadian seed for cleaning.

This notice solicits public comment on these issues.

DATES: Consideration will be given only to comments received on or before October 31, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–126–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Biological Assessment And Taxonomic Support, Plant Protection and Quarantine, APHIS, USDA, 6505 Belcrest Road, room 624, Federal Building, Hyattsville, MD 20782, (301) 436–8896.

SUPPLEMENTARY INFORMATION:

Background

In 1939, Congress enacted the Federal Seed Act (FSA), directing the U.S. Department of Agriculture (USDA) to regulate interstate commerce in seeds and the USDA and the Department of Treasury to regulate foreign commerce in seeds. Title III of the FSA, "Foreign Commerce," requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of certain noxious weeds as a condition of entry into the United States. On October 1, 1982, the Agricultural Marketing Service (AMS) of the USDA transferred authority for issuing and enforcing regulations under Title III (7 CFR 201.101 through 201.230; referred to below as the regulations) to the Animal and Plant Health Inspection Service (APHIS).

We are planning to revise the regulations to reflect this transfer of authority, as well as recent amendments to the FSA. We are also considering revising the regulations in response to developments in the seed industry.

Recent Amendments to the FSA

We are planning to remove the pure live seed requirements (7 CFR 201.102) from the regulations, since a January 8, 1983, amendment to the FSA repealed the pure live seed requirements for imported seed.

Exemptions from Seed Import Requirements

Section 201.101 of the regulations exempts from the import requirements 48 types of seed if imported for purposes other than seeding. We are considering exempting all vegetable and agricultural seeds from import requirements if imported for purposes other than seeding.

Noxious Weed Seeds

We are considering expanding the list of noxious weeds under § 201.108 of the regulations to include seeds of all the plants considered to be noxious weeds under the Federal Noxious Weed Act regulations in 7 CFR 360.

Seed Import Certification Program With Canada

Imported vegetable and agricultural seeds are examined at the port of entry wherever Plant Protection and Quarantine (PPQ) inspectors are present. At the Canadian border, however, U.S. Customs Service officers sample shipments of imported seed and mail the samples to the USDA Seed Examination Facility (SEF) in Beltsville, MD, where they are tested. Testing of samples at SEF determines whether a seed shipment meets FSA labeling requirements and whether it contains noxious weeds at or below acceptable levels. Only after SEF examination can an imported seed shipment from Canada be approved for entry.

During the last 5 years, seed imports from Canada have increased by about 47 percent, with no corresponding increase in SEF staffing or funding; delays in testing samples and releasing seed shipments have resulted. Meanwhile, the annual percentage of Canadian seed shipments refused admission by SEF because of noxious weed content has remained at around 3 percent. Moreover, the same 6 U.S. companies have imported 90 percent of the seed rejected for noxious weed content.

Therefore, we are considering initiating a seed import certification program with Canada. Under this program, APHIS would allow Canadian-grown seed shipments to enter the United States without SEF testing for noxious weed content, if accompanied by certification from a registered seed technologist or a senior member of the Commercial Seed Analysts Association of Canada. The certification would indicate that the seed shipment meets FSA labeling and noxious weed requirements and also is free of seeds from any of the noxious weeds listed under the Federal Noxious Weed Act regulations (7 CFR 360). This program would be reciprocal, as Canada already allows U.S.-grown seed to enter Canada under a similar program.

We believe that a certification program could lighten the SEF workload

associated with Canadian-grown seed shipments without compromising the integrity of the seed examination program and thus free up resources for other important SEF activities, such as identification of nonindigenous weed seeds intercepted at ports of entry, identification of insect and pathogen host material, and examination of high-risk seed shipments for noxious weed contamination.

Compliance Agreements

Several U.S. companies currently import for cleaning Canadian seed containing noxious weeds. When SEF determines that a seed sample contains noxious weeds, they send a notice to the importer refusing entry for that shipment. The importer is then required, within one year, to clean the shipment under the supervision of an PPQ inspector or inspector designate. The shipment must then be sampled and retested for noxious weed content. If the shipment is not cleaned and retested within a year, it must be exported or destroyed.

We are considering allowing U.S. seed importers wishing to import seed from Canada for cleaning to enter into compliance agreements with APHIS and their State governments. The compliance agreements would detail approved methods for destruction of seed screenings. Also, the agreements would not require cleaning to be supervised by an APHIS inspector or inspector designate, but would provide for unannounced visits to the cleaning facilities by APHIS and State inspectors. We would continue to require cleaned seed to be retested for noxious weed content.

It is likely that the 6 U.S. companies currently importing the majority of Canadian seed containing noxious weeds would enter into such compliance agreements. We believe that the establishment of compliance agreements also would reduce the heavy Canadian seed testing workload at SEF and free up resources needed for other important SEF activities, while maintaining the integrity of the seed examination program. Further, a seed certification program would reduce the processing time required for Canadian seed imports to enter the United States.

Vegetable and Agricultural Seed Sampling

We are considering updating the tables of imported seed types in § 201.221a, based on changes in seed industry practices and scientific developments. We are considering changing scientific names of certain listed seeds to those currently recognized by the scientific community and the USDA Germplasm Resource Information Network. Also, we are considering adding seed types to the tables so that they might be consistent with the AMS lists of seed types regulated for interstate shipment.

Commenters may wish to address the following questions:

1. If a certification program with Canada is established, should APHIS keep records of Canadian seed imports entering under a seed import certification program? Would it be important for APHIS to keep records as to which companies are importing how much and what type of seed? Would such recordkeeping create an unnecessary paperwork burden?

2. If seed import compliance agreements with U.S. companies are established, should APHIS be able to end an agreement following a single violation of that agreement? Should Canadian seed entering the United States for cleaning under a compliance agreement be tested by an accredited Canadian laboratory prior to entry?

We will consider comments that are received within 45 days of publication of this notice in the **Federal Register**. We will publish a proposal in the **Federal Register** regarding any proposed amendment of the regulations. This proposal would include discussion of issues raised by the comments. Further, if we propose to amend the regulations, we will hold a public hearing concerning that proposal, as required by 7 U.S.C. 1592(c).

Authority: 7 U.S.C. 1592.

Done in Washington, DC, this 9th day of September 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–22851 Filed 9–14–94; 8:45 am]

BILLING CODE 3410–34–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI24–01–6259b; FRL–5054–4]

Approval and Promulgation of State Implementation Plan; Michigan; Miscellaneous Rule Changes, Technical Changes

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes partial approval and partial disapproval of a revision to the Michigan State Implementation Plan (SIP) incorporating technical changes to miscellaneous air control rules. These changes are not federally mandated, but the State has requested that USEPA incorporate the changes into the SIP. In the final rules section of this **Federal Register**, the USEPA is acting on this matter in a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the partial approval and partial disapproval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If the USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by October 17, 1994.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the redesignation request and USEPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Megan Beardsley at (312) 886–0669 to arrange an appointment before visiting the Region 5 Office.)

A copy of this SIP revision is also available at the Office of Air and Radiation, Docket and Information Center (Air Docket 6102), room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Megan Beardsley, Environmental Scientist, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–0669.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 8, 1994.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 94–22783 Filed 9–14–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[TN–120–1–6528b; FRL–5070–1]

Approval and Promulgation of Implementation Plans Regarding Emergency Episodes, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Tennessee for the purpose of establishing a revision to the State's emergency episode plan requirements. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by October 17, 1994.

ADDRESSES: Written comments should be addressed to: Ms. Karen Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the material submitted by the State of Tennessee may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Tennessee Division of Air Pollution Control, 701 Broadway, Customs House, 4th Floor, Nashville, TN 37247–1531.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–2864. Reference file TN–120–1–6528.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: August 24, 1994.

Joseph R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 94–22785 Filed 9–14–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[MS–16–1–5988b; FRL–5070–5]

Approval and Promulgation of Implementation Plans Revision to New Source Review, Construction and Operating Permit Requirements, Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revision submitted by the State of Mississippi for the purpose of incorporating the State's changes to regulations for construction of new sources. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rational for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by October 17, 1994.

ADDRESSES: Comments may be mailed to Kimberly Bingham at the EPA Region IV address listed below. Copies of the material submitted by the State of Mississippi may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), US Environmental Protection Agency, 401 M Street, SW., Washington DC 20460.

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Mississippi Department of Environmental Quality, Office of Pollution Control, Air Quality Division, 2380 Highway 80 WestJackson, Mississippi 39289–0385.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Stationary Source Planning Unit, Region IV, US Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347–3555 ext. 4195.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: September 1, 1994.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 94–22787 Filed 9–14–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[TX–30–1–6527b; FRL–5069–7]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Site Specific Particulate Control Plan for ASARCO, El Paso

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA in this action proposes to approve a revision to the Texas State Implementation Plan (SIP) addressing a request for a waiver from certain industrial roadway paving for the ASARCO copper smelter in El Paso, Texas. Specifically, in lieu of paving, this action proposes to approve an alternate particulate control plan for certain industrial unpaved roads at the El Paso ASARCO copper smelter. In the final rules section of this **Federal**

Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by October 17, 1994.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202.Texas Natural Resource Conservation Commission, P.O. Box 13087,Austin, Texas 78711-3087.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 655-7258.

SUPPLEMENTARY INFORMATION:

See the information provided in the direct final action of the same title which is located in the final rules section of this **Federal Register**.

Dated: August 26, 1994.

W.B. Hathaway,

Acting Regional Administrator (6A).

[FR Doc. 94-22790 Filed 9-14-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 152

[OPP-300350; FRL-4872-4]

RIN 2070-AC18

Pesticides; Exemption of Certain Substances from Federal Insecticide, Fungicide, and Rodenticide Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would exempt from regulation under section 25(b)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) certain substances when used, sold, or distributed as pesticide active ingredients. EPA believes regulation of these substances is not necessary to prevent unreasonable adverse effects on the environment, and these substances are not of a character necessary to be subject to FIFRA in order to carry out its purposes. Substances exempted are pesticides and would continue to be distributed and sold as pesticides after promulgation of a final rule. If exemptions are established, false claims and advertising would still be subject to jurisdiction of the Federal Trade Commission or could result in civil liabilities for the manufacturer and distributor. This proposal, and any subsequent final rule, would not establish or alter exemptions or tolerances for the listed substances under provisions of the Federal Food, Drug and Cosmetic Act.

DATES: Written comments, identified by the document control number, [OPP-300350], must be received on or before November 14, 1994.

ADDRESSES: Comments, in triplicate, should bear the document control number and be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, 1921 Jefferson Davis Hwy., Crystal City, VA 22202.

Information submitted in any comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter Written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Richard F. Mountfort, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-305-5446.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

This rule is being proposed pursuant to authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. EPA regulates pesticides under FIFRA through a registration system. Except as provided by other sections of FIFRA, section 3 provides that all pesticides must be registered by EPA prior to distribution or sale. As defined by FIFRA section 2(u)(1), a pesticide "is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest." The products that are subject to this proposed rule are considered to be pesticides, for example, if they are intended to kill or repel a pest, such as biting flies, or to prevent or mitigate a pest, such as moths. EPA registers pesticides on the basis of data adequate to show that the pesticide, when used in compliance with the terms and conditions of registration or in accordance with widespread and commonly recognized practice, will not pose unreasonable adverse effects on the environment. The term "unreasonable adverse effects on the environment" means any unreasonable effect to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide.

FIFRA section 25(b) authorizes the Administrator to exempt, by regulation, from the requirements of FIFRA any pesticide which she determines to be of a character which is unnecessary to be subject to the Act in order to carry out the purposes of FIFRA. EPA is proposing to amend 40 CFR 152.25 to exempt from regulation under FIFRA the following substances when used, sold, or distributed as an active ingredient of a pesticide. EPA believes that regulation of these substances under FIFRA is not necessary to prevent unreasonable adverse effects on man or the environment. In addition, EPA

believes that the regulatory burden imposed by regulation as pesticides is not justified. This action is being taken at EPA's initiative.

Castor oil (U.S.P. or equivalent)
Cedar oil
Cinnamon
Citric acid
Citronella
Cloves and clove oil
Corn gluten meal
Corn oil
Cottonseed oil
Dried blood
Eugenol
Garlic
Geraniol
Geranium oil
Lauryl sulfate
Lemongrass oil
Linseed oil
Malic acid
Mint and mint oil
Peppermint and peppermint oil
2-Phenethyl propionate (2-phenylethyl propionate)
Potassium sorbate
Putrescent whole egg solids
Rosemary and rosemary oil
Sesame (includes ground sesame plant)
Sodium chloride (common salt)
Sodium lauryl sulfate
Soybean oil
Thyme and thyme oil
White pepper
Zinc metal strips (consisting solely of zinc metal and impurities)

In evaluating the risk to human health and the environment posed by each of these substances when used, sold, or distributed as an active ingredient of a pesticide, EPA assessed the pesticide according to the following factors. The list is not meant to be exclusive; not every factor is applicable to each substance proposed for exemption; and each substance need not meet each factor. The list provides a common starting point toward reaching a decision.

1. The pesticide is a substance that is widely distributed in commerce and available to the general public throughout the United States for nonpesticidal uses without any evidence of significant adverse effects to humans or the environment.

2. The pesticide is a substance that has a nontoxic mode of action and/or is generally considered nontoxic. For example, putrescent whole egg solids (rotten eggs) repel deer because of the eggs' strong offensive odor. Other qualifying substances might be common human foods or substances listed by the Food and Drug Administration as Generally Recognized As Safe (GRAS) in 21 CFR part 182, 184, or 186.

3. The Agency is unaware of any experimental data, including laboratory animal toxicity tests, or other information, either in Agency files (data submissions, section 6(a)(2) reports, etc.) or published literature, indicating that the pesticide substance or structurally related substances have the potential for significant adverse effects to humans or the environment.

4. The pesticide's use patterns (application rate, frequency, manner of application) result in negligible incremental human or environmental exposure.

5. The pesticide is presumed to be nonpersistent because its composition consists of materials known to rapidly degrade in the environment to environmental constituents by normal biological, physical or chemical processes that can be reasonably expected to exist where the pesticide is applied.

The substances affected by this proposal would be exempt when used, sold, or distributed as single-ingredient pesticides. Pesticide products (formulations) containing active ingredients that would be exempt under this proposal are eligible if the only other ingredients are (1) active ingredients named in this exemption; or (2) inert ingredients named in this exemption. The inert ingredients included have been identified by EPA as Minimal Risk Inerts (List 4A). The Agency is issuing Minimal Risk Inerts (List 4A) in a separate notice appearing in this issue of the Federal Register.

Proposed § 152.25(g)(2) would require that, to qualify for exemption, each pesticide product containing the substance bear a label that clearly and intelligibly identifies all ingredients. It would not be necessary to list percentages of ingredients or use EPA format in listing ingredients.

Products containing these substances that claim either to control or mitigate microorganisms that pose a threat to human health, or carriers of such microorganisms, would be excluded from the exemption under proposed § 152.25(g)(3). Those uses involve public health issues, and lack of efficacy cannot be determined by the user.

EPA invites comment on the substances included in the proposal and comment on the factors used in this proposal.

In addition, EPA invites suggestions for additional substances for such exemption (these may be substances not currently contained in any pesticide product) and other factors that might be appropriate to consider in determining whether a substance should be exempted from regulation under section 25(b). Persons identifying additional candidates for exemption should explain how these factors apply to the pesticide or offer any other relevant explanation to support their proposal. The Agency will consider such suggestions for future rulemaking or other reduced regulation.

II. Agency Determination

The pesticide active ingredients proposed in this document for exemption have been considered as follows:

1. *Widely distributed in commerce and available to the general public.* Castor oil, cedar oil, cinnamon, citric acid, citronella, cloves, corn gluten meal, corn oil, cottonseed oil, dried blood, garlic, geraniol, geranium oil, lauryl sulfate, lemongrass oil, linseed oil, malic acid, mint, peppermint, rosemary, sesame, soybean oil, sodium chloride (common salt), sodium lauryl sulfate, and zinc metal strips.

2. *Common foods or constituents of common foods.* Cinnamon, citric acid, cloves, corn gluten meal, corn oil, garlic, malic acid, mint, peppermint, rosemary, sesame, soybean oil, sodium chloride (common salt), thyme, and white pepper.

3. *Listed by the Food and Drug Administration as GRAS.* Cinnamon, citric acid, citronella, eugenol, garlic, geraniol, geranium oil, lemongrass oil, malic acid, mint, peppermint, 2-phenethyl propionate, rosemary, sodium chloride (common salt), thyme, and white pepper.

4. *Nontoxic mode of action.* All listed pesticides have nontoxic modes of action except sodium chloride (common salt).

5. *No significant adverse effects to humans or the environment.* The Agency is unaware of any information or data showing significant adverse effects to man or the environment for any of the pesticides or structurally related substances included in this proposal. The public is invited to cite or submit any information regarding the effects of any of these substances. The Agency will remove a pesticide from exemption if data which document significant adverse effects to humans or the environment are submitted.

6. *Negligible human or environmental exposure.* None of the proposed candidates has significant additional exposure potential for humans or the environment when used as a pesticide. This conclusion is based on either an understanding of current pesticide use patterns or widespread distribution and use for nonpesticidal purposes.

7. *Nonpersistance.* All of the listed pesticides would be expected to rapidly degrade in the environment; are naturally occurring; or are otherwise not considered to be persistent based on

their characteristics, properties, and known degradation pathways.

Cedar oil, citronella, geranium oil, and lemongrass oil are generally constituents of lotions and other products for use directly on human skin. The substances are also commonly used in perfumery. Citronella, geranium oil, and lemongrass oil are essential oils and listed as GRAS substances by FDA. Exposure of or effects on humans or the environment attributable to use of these substances as arthropod repellents is indistinguishable from use as fragrances/perfumes. The Agency believes that it is unnecessary to regulate these substances as pesticides in order to carry out the purposes of FIFRA.

The Agency also invites comment on other essential oils that may be suitable candidates for exemption. There are many essential oils used in preparation of perfumes and fragrances. The Agency considers the variety and potential range of toxicity of substances included under the term "essential oils" to be too broad for "essential oils" to be exempted generically.

Potassium sorbate is a common food additive and preservative and is permitted under Food and Drug Administration regulations as a preservative.

These proposed exemption determinations are based on EPA's assessment of currently available information. Once finalized, exemption determinations are subject to change through further rulemaking if EPA becomes aware of information indicating that continued exemption of a substance from regulation under FIFRA section 25(b) is not consistent with the purposes of FIFRA.

III. Further Reduced Regulation Activity

The Agency intends to pursue additional reduced regulation initiatives where such activity can relieve regulatory burdens without endangering public health or environmental protection. There may be a number of possible options such as reduced data requirements and specific review procedures for reduced risk pesticides in addition to exemption by rulemaking. The Agency invites suggestions and comments on additional regulatory relief measures.

For pesticides currently registered and eligible for exemption under this proposed rule, the Agency would invite requests for voluntary cancellation of affected product registrations after publication of a final rule. The Agency does not intend to process further applications to register products eligible for exemption after publishing a final rule.

IV. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a section of the economy, productivity, competition, jobs, the environment, public safety, or State, local or tribal governments or communities (also known as " economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another Agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. The Agency has determined that this rule is "not significant" within the meaning of that term as set forth in section 3(f) of Executive Order 12866. Under the terms of the executive order, EPA has determined that this rule is "not significant" and is, therefore, not subject to OMB review.

B. Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.). EPA has determined that this rule will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

Accordingly, I certify that this rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This rule contains no information collection requests. Therefore, the Paperwork Reduction Act of 1980 is not applicable.

D. Other Statutory Requirements

In accordance with FIFRA section 25, a draft of this proposal was submitted to the FIFRA Science Advisory Panel (SAP) and to the U.S. Department of Agriculture (USDA). The Science Advisory Panel has waived review of the proposed rule and will waive a review of the final rule if it is issued. The USDA has responded that it has no objections to the proposed rule.

Copies of the proposed rule were also forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate.

List of Subjects in 40 CFR Part 152

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

Dated: September 8, 1994.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 part 152 be amended as follows:

PART 152—[AMENDED]

1. The authority citation for part 152 continues to read as follows:

Authority: 7 U.S.C. 136-136y.

2. In § 152.25, by adding new paragraph (g) to read as follows:

§ 152.25 Exemptions for pesticides of a character not requiring FIFRA regulation.

* * * * *

(g) *Minimum Risk Pesticides*—(1) *Active ingredients.* The following active ingredients are exempt from the requirements of FIFRA when used, sold, or distributed alone or in combination with other substances listed in this paragraph, provided that all of the criteria of this paragraph (g)(1) are met.

Castor oil (U.S.P. or equivalent)
Cedar oil
Cinnamon
Citric acid
Citronella
Cloves and clove oil
Corn gluten meal
Corn oil
Cottonseed oil
Dried blood
Eugenol
Garlic
Geraniol
Geranium oil
Lauryl sulfate
Lemongrass oil
Linseed oil
Malic acid
Mint and mint oil
Peppermint and peppermint oil
2-Phenethyl propionate (2-phenylethyl propionate)
Potassium sorbate
Putrescent whole egg solids
Rosemary and rosemary oil
Sesame (includes ground sesame plant)
Sodium chloride (common salt)

Sodium lauryl sulfate
Soybean oil
Thyme and thyme oil
White pepper
Zinc metal (strips consisting solely of zinc metal and impurities)

(i) Each product containing the substance must bear a label identifying all ingrtedients of the product. Such identification need not conform to the requirements of part 156 of this chapter, but must identify ingredients by common or chemical name.

(ii) The substance or product must not bear claims either to control or mitigate microorganisms that pose a threat to human health or carriers of such microorganisms.

(2) *Permitted inerts.* A pesticide product exempt under paragraph (g)(1) shall not lose that exemption by inclusion in such product of one or more of the following ingredients:

Acetic acid
Agar
Alfalfa
Alfalfa meal
Almond hulls
Almond shells
Alpha cellulose
Apple pomace
Attapulgite-type clay
Beef fat
Beeswax
Beet powder
Bentonite
Bone meal
Bran
Bread crumbs
Calcareous shale
Calcite
Calcium carbonate
Canary seed
Cane syrup
Carbon dioxide
Cardboard
Carrageenan
Carrots
Casein
Cheese
Chlorophyll
Cinnamon
Citric acid
Citrus meal
Citrus pectin
Citrus pulp
Clam shells
Cloves
Cocoa
Cocoa shells
Coco shell flour
Cod liver oil
Coffee grounds
Cookies
Cork
Corn
Corn cobs
Corn flour
Corn meal
Corn oil
Cornstarch
Corn syrup
Cotton
Cottonseed meal
Cottonseed oil
Cracked oats
Cracked wheat
Dextrin
Dextrose
Dolomite
Douglas-fir bark, ground
Eggs
Egg shells
Edible fish meal
Edible fish oil
Flour
Fuller's earth
Gelatin
Glue, as depolymerized animal collagen
Glycerin
Granite
Grape pomace
Graphite
Ground oats
Guar gum
Gum arabic
Gum tragacanth
Gypsum
Hearts of corn flour
Hydrogenated vegetable oils
Honey
Invert sugar
Invert syrup
Kaolinite-type clay
Lactose
Lanolin
Lard
Latex
Lecithin
Lime
Limestone
Linseed oil
Malt flavor
Meat meal
Meal scraps
Medicated feed
Mica
Milk
Millet seed
Mineral oil, U.S.P.
Molasses
Montmorillonite-type clay
Nitrogen
Nutria meat
Nylon
Oatmeal
Oats
Olive oil
Onions
Orange pulp
Oyster shells
Paper
Paprika
Paraffin wax
Peanut butter
Peanut oil
Peanuts
Peanut shells
Peat moss
Pecan shell flour
Pectin
Polyethylene film
Polyethylene pellets
Potatoes
Pumice
Raisins
Red cedar chips
Red dog flour
Rice
Rice hulls
Rubber
Rye flour
Safflower oil
Sawdust
Seaweed, edible
Shale
Soapstone
Sodium bicarbonate
Sodium chloride
Sorbitol
Soybean hulls
Soybean meal
Soybean oil
Soy flour
Soy protein
Sucrose
Sugarbeet meal
Sunflower seeds
Tallow
Vanillin
Vermiculite
Vitamin C
Vitamin E
Walnut flour
Walnut shells
Water
Wheat
Wheat germ oil
Whey
Wintergreen oil
Wool
Xanthan gum
Yeast

[FR Doc. 94–22855 Filed 9–14–94; 8:45 am]
BILLING CODE 6560–50–F

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039 and 1145

[Ex Parte No. 346 (Sub-No. 36)]

Rail General Exemption Authority—Exemption of Non-Ferrous Recyclables and Railroad Rates on Recyclable Commodities

AGENCY: Interstate Commerce Commission.

ACTION: Proposed Rulemaking; Extension of Comment Due Date.

SUMMARY: By decision served August 23, 1994 (59 FR 43529, August 24, 1994), the Commission sought public comment by September 23, 1994, on a proposal to exempt partially from regulation the rail transportation of certain non-ferrous recyclables. The due date for comments is extended to October 24, 1994. The Association of American Railroads and the Institute of Scrap Recycling Industries, Inc., have advised the Commission that they are participating jointly in a related proposal (namely, Ex Parte No. 346 (Sub-No. 35), with comments due September 23, 1994 [*see* 59 FR 43528]), and require additional time to coordinate the development of joint comments in this proceeding. Many of the same staff will participate

in both rulemakings. The request is reasonable; therefore, the extension will be granted.

DATES: Comments are due on October 24, 1994.

ADDRESSES: Participants must send an original and 10 copies of their comments referring to Ex Parte No. 346 (Sub-No. 36) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

Decided: September 9, 1994.

By the Commission, Vernon A. Williams, Acting Secretary.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–22828 Filed 9–14–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List the Coral Pink Sand Dunes Tiger Beetle as Endangered and Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the Coral Pink Sand Dunes tiger beetle (*Cicindela limbata albissima*) and designate critical habitat under the Endangered Species Act of 1973 as amended. The Service finds that the petition presents substantial information indicating that the requested action may be warranted.

DATES: The finding announced in this document was made on September 8, 1994. To be considered in the 12-month finding for this petition, information and comments should be submitted to the Service by November 14, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England (See **ADDRESSES** section), telephone: (801/524–5001).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and a notice regarding the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, the Service also is required to promptly commence a review of the status of the species involved if one has not already been initiated by the Service. The Service initiated a status review for the Coral Pink Sand Dunes tiger beetle (*Cicindela limbata albissima*) when it categorized the species as a category 2 candidate species in the 1984 Invertebrate Notice of Review (49 *FR* 21664). This notice meets the requirement that a notice be published for a 90-day finding made earlier for the petition discussed below.

A petition, dated April 19, 1994, was submitted by Mr. Ken A. Rait on behalf of the Southern Utah Wilderness Alliance located in Salt Lake City, Utah, and was received by the Service on April 21, 1994. A letter acknowledging receipt of the petition was mailed to the petitioner on May 6, 1994. The petitioner requested the Service to list the Coral Pink Sand Dunes tiger beetle as endangered and to designate critical habitat. The petition was based on a recent report of the Coral Pink Sand Dunes tiger beetle's biology, population status, and threats (Knisley and Hill 1994).

The only known population of the Coral Pink Sand Dunes tiger beetle is at the Coral Pink Sand Dunes in Kane County in extreme southern Utah. Measurements of the Coral Pink Sand Dunes tiger beetle population has demonstrated an adult population of 2,000 to 2,400 individuals in early May. The adult population generally decreases during the summer with a minor increase beginning in late August. Overwintering adult populations may be, typically, as large as 300 individuals. The adult Coral Pink Sand Dunes tiger beetle population experienced a severe population decline in late summer 1993 with a 1993–1994 overwintering adult population of less than 100 individuals (Knisley and Hill 1994).

Listing Factors

The following are the five listing criteria as set forth in section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act and their applicability to the current status of the Coral Pink Sand Dunes tiger beetle.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Off-road vehicle activity is destroying and degrading the species' habitat, especially the interdunal swales of the larval population.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Recreational off-road vehicle activity is causing direct mortality of individuals of the Coral Pink Sand Dunes tiger beetle, especially adults. The species has been heavily collected since its discovery and publication of the species description.

C. *Disease or predation.* There is no known threat.

D. *The inadequacy of existing regulatory mechanisms.* The Coral Pink Sand Dunes tiger beetle is not, currently, directly protected by any regulatory mechanism.

E. *Other natural or manmade factors affecting its continued existence.* The reason(s) for the 1993 population collapse is not fully known, but weather conditions reducing or retarding pupation and emergence of adults are thought to have contributed to this population collapse.

The Service has reviewed the petition, the literature cited in the petition, and other literature and information available in the Service's files. The distribution and population of the Coral Pink Sand Dunes tiger beetle is among the most restricted and smallest of any animal species. The species and its habitat are being adversely impacted by ongoing recreational off-road vehicle use. The species is vulnerable to exploitation by specimen collectors. Given the species extreme endemism and small population, the species existence is vulnerable to any localized stochastic event threatening its population.

On the basis of the best scientific and commercial information available, the Service finds the petition presents substantial information that listing this species may be warranted.

The Service's 90-day finding contains more detailed information regarding the

above decisions. A copy may be obtained from the Service's Salt Lake City Office (see ADDRESSES above).

Reference Cited

Kinsley, C.B. and J.M. Hill. 1994. Coral Pink Sand Dunes tiger beetle, *Cicindela limbata albissima* current status and biology. Unpublished Status Report on file with the U.S. Fish and Wildlife Service and Bureau of Land management. Salt Lake City, Utah. 36 pp.

Author

The primary author of this document is John L. England (see ADDRESSES section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. *et seq.*)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: September 8, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–22896 Filed 9–14–94; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AB73

Endangered and Threatened Wildlife and Plants; Proposed Determination of Endangered Status for the Alabama Sturgeon With Critical Habitat; Notice of Comment Period Extension

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of comment period extension.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposed endangered status for the Alabama sturgeon (*Schphirhynchus suttkusi*) under the Endangered Species Act of 1973, as amended (Act), on June 15, 1993, and extended the deadline for a final decision until December 15, 1994. The present comment period ends September 15, 1994, and is extended an additional 30 days with this notice. The Service seeks additional comment on only the scientific point of whether or not this sturgeon still exists.

DATES: All comments received by October 17, 1994, will be considered in the final decision.

ADDRESSES: All comments on this proposed rule should be sent to U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806. The complete administrative file for this rule is available for inspection, by appointment, during normal business hours at this office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above Asheville address (704/665–1195; Ext. 228) or Mr. Robert S. Butler, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216 (904/232–2580).

SUPPLEMENTARY INFORMATION:

Background

In the June 15, 1993, **Federal Register** (58 FR 33148), the Service proposed a rule to list the Alabama sturgeon as endangered with critical habitat. Through associated notifications, interested parties were requested to submit factual reports and information that might contribute to the development of a final to list the Alabama sturgeon with critical habitat. There were several public comment periods, the last of which ended February 15, 1994.

Under Section 4 of the Act (16 U.S.C. 1533), the Fish and Wildlife Service (Service) has 1 year to finalize a proposed rule to list a species as endangered or threatened. Section 4(b)(6)(B), as implemented at 50 CFR 424.17(a)(iv), allows the Service to extend the deadline for a period of 6 months if there is substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned.

On June 21, 1994 (59 FR 31970), the Service extended the deadline until December 15, 1994, because of the scientific uncertainty over whether the sturgeon still exists, and reopened the comment period until September 15, 1994. In that notice, the Service determined for the purposes of the Act that *Scaphirhynchus suttkusi* warrants recognition as a valid species (59 FR 31972).

In an effort to obtain additional information from the scientific community on the existence of the sturgeon, the Service further extends the present comment period until October 17, 1994. This date allows approximately 8 weeks for Service to compile all new information and comments, review previous comments, and process the final decision document before publication by December 12, 1994. Besides this comment period for additional scientific information, the Service will be conducting further sampling surveys on portions of the Alabama River where sturgeon might remain; these will be made through early November 1994 or later as river conditions permit.

Public Comments

The Service is primarily seeking comments presenting scientific information on the issue of whether the species continues to exist, in particular, from the scientific community. Comments may also be made as to what information would be needed to substantiate the extinction of this species if the commenter believes this is still a question. All previous comments (orally at public hearings or written) submitted since June 15, 1993, will be considered in the final decision, which is due no later than December 15, 1994.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: September 12, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–22973 Filed 9–14–94; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 59, No. 178
Thursday, September 15, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 9, 1994.

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

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

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

New Collection

• Rural Electrification Administration

Electric System Construction Policies and Procedures

REA Form 168b, 168c, 180, 181, 187, 198, 200, 201, 203, 213, 224, 231, 238, 251, 254, 257, 307, 764, 786, 790, 792, 792b, 792c, 800, 830, and 831

On occasion

Small businesses or organizations; 232 responses; 629 hours

Fred Gatchell (202) 720–1398

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 94–22795 Filed 9–14–94; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 94–086–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that six environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the release into the environment of nonindigenous biological control agents. The environmental assessments provide a basis for our conclusion that the release into the environment of the biological control agents will not present a risk of introducing or disseminating plant pests within the United States and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Matthew H. Royer, Chief Operations Officer, Biological Assessment and Taxonomic Support, Operational Support, Plant Protection and Quarantine, APHIS, USDA, room 626, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8896. For copies of the environmental assessment and finding of no significant impact, write to Ms. Deborah Knott at the same address. Please refer to the title of the environmental assessment when ordering copies.

SUPPLEMENTARY INFORMATION: Under the Federal Plant Pest Act as amended (7 U.S.C. 150aa *et seq.*) and the Plant Quarantine Act of 1912 as amended (7 U.S.C. 151 *et seq.*) (the Acts), the U.S. Department of Agriculture (USDA) has broad authority to regulate the importation, interstate movement, and release into the environment of organisms in order to prevent the dissemination of plant pests into the United States or interstate. The Animal and Plant Health Inspection Service (APHIS) regulates plant pests under regulations promulgated pursuant to the Acts and contained in 7 CFR part 330 (referred to below as the regulations). The regulations require, among other things, that a permit be obtained for the movement of a plant pest into or through the United States or interstate. The regulations and Acts also allow the Department to include in the permit conditions to prevent the dissemination of plant pests.

Under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), APHIS typically prepares an environmental assessment before issuing a permit for the release in the United States of a nonindigenous organism.

In accordance with applicable regulations, APHIS has received applications for permits for the release into the environment of nonindigenous biological control agents. In the course of reviewing each permit application, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit application. APHIS has issued permits for the release into the environment of the organisms listed below after concluding that their release will not present a risk of the introduction or dissemination of plant pests within the United States and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact associated with releasing the

biological control agents into the environment.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits for the release into the environment of the following biological control agents:

Organism	Title of environmental assessment	Date of finding of no significant impact
Eretmocerus sp. B, Class Insecta, Order Hymenoptera, Family Aphelinidae.	"Field Release of a Nonindigenous Wasp (*Eretmocerus* sp. B) for Biological Control of Sweetpotato Whitefly" (March 1994).	3/11/94
Ageniaspis citricola, (Logvinovskaya), Class Insecta, Order Hymenoptera, Family Encyrtidae.	"Field Release of a Nonindigenous Wasp (*Ageniaspis citricola* Logvinovskaya) for Biological Control of Citrus Leafminer (*Phyllocnistis citrella* Stainton)" (April 1994).	4/29/94
Tetranychus lintearius (Dufour), Class Arachnida, Order Acari, Family Tetranychidae.	"Field Release of the Nonindigenous Gorse Spider Mite, *Tetranychus lintearius* Dufour (Acari: Tetranychidae), for Biological Control of Gorse, *Ulex europaeus* L. (Leguminosae)" (May 1994).	5/12/94
Calosoma sycophanta, Class Insecta, Order Coleoptera, Family Carabidae.	"Field Release of a Nonindigenous Predatory Beetle (*Calosoma sycophanta*) for Biological Control of Gypsy Moth" (May 1994).	5/23/94
Nanophyes marmoratus and *N. brevis,* Class Insecta, Order Coleoptera, Family Curculionidae.	"Release of Two Nonindigenous Beetles, *Nanophyes marmoratus* and *N. brevis,* for Biological Control of Purple Loosestrife, Lythrum salicaria" (May 1994).	6/1/94
Aphytis, Class Insecta, Order Hymenoptera, Family Aphelinidae.	"Field Releases of a Nonindigenous Species of *Aphytis* (sp. T93015) for Biological Control of Armored Scale Insects" (July 1994).	7/12/94

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) NEPA, (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 9th day of September 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–22852 Filed 9–14–94; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Deadwood Ecosystem Analysis, Boise National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Lowman Ranger District of the Boise National Forest will prepare an environmental impact statement on a proposal to initiate ecosystem management and restoration projects in the Deadwood River drainage. This proposal will consist of watershed improvements, wildlife habitat maintenance, vegetation restoration and prescribed fire. A landscape scale analysis approach has been applied to the Deadwood Ecosystem. Using the National Hierarchical of Ecological Units the Deadwood Landscape has been classified into progressively smaller areas of uniform ecological potentials for use in ecosystem management. Ecological units have been delineated by similar patterns of (1) potential natural communities, (2) soils, (3) hydrological function, (4) landforms and topography, (5) lithology, (6) climate, (7) air quality and (8) natural processes for cycling plant biomass and nutrients.

Data for the analysis was processed using timber stand examination data, aerial photography interpretations, existing stream and soil surveys, road inventories, recreation planning records, cultural resource surveys, historical accounts from the State of Idaho and State Fish and Game, Native Americans, Boise Forest historical and planning records, satellite imagery, local and regional Geographical Information Systems (GIS) coverages and conversations with local residents. Land system inventories, vegetation data, historical accounts, and fire history are the key elements used in determining landscape elements, patterns, and processes.

COMMENTS: Comments concerning the scope of the analysis should be received in writing on or before November 1, 1994. Mail comments to, or for further information contact, Dautis Pearson Lowman Ranger District, Boise National Forest, HC 77 Box 3020, Lowman, ID 83637, Telephone: 208–259–3361.

SUPPLEMENTARY INFORMATION: Analysis on the Deadwood drainage has applied a landscape level analysis process to determine existing ecosystem conditions. From this analysis we have determined what ecosystems need to be maintained across the landscape dependent on the physical environment and the types of neighboring ecosystems. Focusing on the maintenances of the pieces we will be pursuing species and biological diversity at all levels. Restoration practices to meet these goals will be determined according to land suitability and biological needs. Integration of the social and political aspects of Deadwood ecosystem analysis have been examined at their appropriate scale.

The purposes of the Deadwood Landscape Analysis proposal is to (1) restore and maintain the health and long-term sustainability of the Deadwood ecosystem through treatment of identified high risk and hazard stands, so that natural processes can be used to maintain the ecosystem in the future. (2) to maintain species diversity at the landscape level by maintaining a minimum of 40 percent of the landscape in the matrix, 50 percent in patch condition and 10 percent in corridors. This will ensure that healthy and viable populations of all the native species of flora and fauna characteristic of the Deadwood Ecosystem will be present now and into the future. (3) minimize risks to users, and maintain long-term ecological integrity along the southern portion of the Deadwood River corridor. (4) compare existing ecological conditions with historic and determine a historic range of variability specific to the Deadwood Ecosystem, for all resources. (5) ensure long-term persistence of the aquatic ecosystem encompassing goals and objectives of the draft Bull Trout Conservation Agreement (BTCA) developed by the State of Idaho. (6) priorities treatment of sites at high risk individually (suited and unsuited) from fire, insect and disease which are threatening neighboring low risk sites. (7) treat a

percentage of the sites in the northern portion of the drainage which may be within the historic range but have altered fire regimes, in order to avoid or reduce the severity of potential fire. (8) map and establish recreational sites and determine elements that may be compromising the ecological integrity of the Deadwood drainage. Provide a plan to relocate and/or develop these areas and establish guidelines for outfitter and public recreation. (9) monitor and apply adaptive management techniques to ensure that treatments meet goals and objectives of ecosystem and landscape desired conditions.

This preliminary analysis has demonstrated through risk and hazard assessment the large number of stands at risk from insect and disease epidemics and catastrophic wildfires. Past logging practices, fire suppression and drought have all attributed to a shift in species composition and density. This conversion of diverse landscapes to homogeneous landscapes will decrease plant and animal diversity, species viability, and distribution, moving the area outside the historic range of variability. In order to maintain structural diversity and spatial heterogeneity across the landscape over time, all acres in the Deadwood landscape need to be considered.

Deadwood Landscape Integrated Proposed Action: The Proposed Action will consider all 152,966 acres in the Deadwood drainage over the next 10 years where treatment is necessary. Monitoring of changes across the landscape will be crucial to the success of this project as to allow for adaptive management as monitoring results indicate needed adjustments. This proposal will be divided into fire groups, cover types, and structural classes by Ecological Management Units (EMU). Treatment by EMUs would vary at the site level scale, depending on site specific stand conditions and the relationship to the landscape level scale.

Project Features: Construct a shallow water important (partnership with BOR) on approximately 10 acres of the Deadwood Reservoir to create or restore wetland habitat for waterfowl and associated species.

Protect and maintain Whitehawk Basin, monitoring change conditions. Evaluate the use of prescribed and/or prescribed natural fire to maintain the integrity of the meadow. Protect Tranquil Basin area maintaining the riparian meadow. Monitor changes.

Evaluate past harvest along the west side of the reservior to determine species composition shift from previous methods. Restore through thinning and reforestation.

Develop a drainage basin recreation plan based on ecological, social and economical needs, including outfitter and guide permits for the lower Deadwood River area.

Reconstruction and/or modification of approximately 30 miles of existing roads, to control sedimentation and erosion hazards. Build approximately 10 miles of road to access areas south of Deadwood Reservoir. This road would begin from the No-man road #503 and run south along the Deadwood River. Build approximately 6 mines of new road along Scott Creek for access into Six Mile Creek and Scott Creek. Build approximately 3 miles of road to access areas northwest of Deadwood Reservoir along Goat Creek, and Wild Buck Creek. Build approximately 2 miles of road to access areas southwest of Deadwood Reservoir in the Trail Creek area. All new roads and approximately 10 miles of existing roads would be closed, obliterated and revegetated at the end of the project. Road closures would be determined on wildlife needs and soil requirements.

Riparian areas and Meadows: Approximately 8,000 acres of streamside riparian and dry and wet meadows exist throughout the drainage. Extensive stream surveys will be concluded this summer as stated in the above methodology. To ensure long-term persistence of bull trout the aquatic ecosystem assessment will encompass goals and objectives of the Bull Trout Conservation Agreement (BTCA) developed by the State of Idaho. The agreement promotes bull trout recovery by maintaining and restoring the ecological processes that create and maintain good fish habitat. The key concept of the BTCA is to maintain and restore viable, multiple life populations of the species by establishing site-specific riparian management objectives relative to critical habitat parameters essential for bull trout productivity. Stream improvement projects, silvicultural treatment, and prescribed fire will be used on these acres to maintain or enhance water quality, maintain or improve conditions for viable fish populations and to prevent encroachment or deterioration of the riparian meadows. Some of these areas are at high risk to fire and spruce beetles. Most of these areas are at a moderate hazard except for those subdrainages next to high risk, high hazard upland sites.

Miscellaneous Cover Types, Fire Group 0: Approximately 2,700 acres of brushfields exist predominately in the southern portion of the Deadwood drainage. Extensive site inventories will be concluded on these areas during the summer of 1994. At present dominate use of these areas are winter range for deer and elk. These areas are at low risk and hazard. We propose to use prescribed fire on these acres to enhance wildlife winter range taking pressure off of the Lowman Fire area. Treatment of stands in Fire Groups 2, 3 and 4 adjacent to these brushfields would be treated first so that underburning of these stands could take place at the same time.

Structure Class 1, Grass/Forbs: Fire Group 3—Warm moist ponderosa pine habitat types. Approximately 3,500 acres of previously harvested areas exist in this Fire Group 3. These stands currently have 500—900 TPA and basal area is not known. Diseased overstories would be removed to control Douglas-fir mistletoe. Fire Group 4—Cool dry Douglas-fir habitat types. Approximately 4,000 acres in Fire Group 4 in the central portion of the Deadwood drainage would be treated with the same treatment. These stands are at low risk and hazard. Due to the response of trees at these smaller diameters, TPA would vary as to species. Fire Group 7—Cool habitat types usually dominated by lodgepole pine. Approximately 1,000 acres in Fire Group 7 located in the upper central area would be non-commercially thinned. Approximately 2,000 acres in Fire Group 4 in the central portion would be treated with the same treatment. These stands are at low risk and hazard. Due to the response of trees at these smaller diameters, TPA would vary as to species. Fire Group 8, 9–8—Dry, lower subalpine habitat types. Fire Group 9—Moist, lower subalpine habitats. Stands which are predominately avalanche chutes and areas of less then 5 trees per acre (TPA) would be monitored for successional changes. Areas of the Deadwood Summit fire in Fire Group 9 would also be monitored for recovery rate and succession transition.

Structure Class 2, seedlings/saplings: Approximately 3,000 acres of Fire Groups 3, 4, 7 exist from previous harvest and other disturbances. Treatment may include overstory removal of diseased trees and pre-commercial thinning. Non-commercial and/or commercial thinning of lodgepole stands in Fire Group 7 to 150—300 TPA (27 Basal Area (BA)) to release understories of Douglas-fir and subalpine fir. In Fire Group 8, thirty percent of the dense stands where Douglas-fir beetle has invaded would be treated given the guidelines of the prescriptions. The remainder of these stands would be left untreated to maintain this component at the

landscape level. Prescribed fire will be used where applicable after treatment.

Structure Class 3, poles/saplings: No treatment other then non-commercial thinning would occur on these acres unless their relationship to other stands creates a hazard.

Structure Class 4, immature-mature: Fire Group 5—Moist Douglas-fir habitats. These stands are collapsing from Douglas-fir bark beetle attacks. Apply prescription for high risk on approximately 5,000 acres.

Structure Class 5, mature to over-mature: In fire groups 3 and 4 harvest 4,500 acres using prescription guidelines. Prescribed fire would be used after silvicultural treatment. These stands are at high risk and high hazard and constitute high hazards to stands in close proximity. The stands in fire group five are collapsing from Douglas-fir bark beetle attacks. Apply prescription for high risk on approximately 2,000 acres. Reduce density in thick lodgepole areas on 4,400 acres in Fire Group 7 using commercial and pre-commercial thinning following prescription guidelines for associated risk and hazard. On approximately 1,000 acres of dense stands of subalpine fir in Fire Group 7, create openings following prescriptions guidelines. The remainder of these acres would be left. The 9,000 acres of Fire Group 8 apply the same treatment to these dense and contiguous stands of subalpine fir creating openings on approximately 3,500 acres following prescription guidelines for risk and hazard. These stands are at low risk but high hazard because of the contiguous acre. The 2,700 acres of Fire Group 9, structure class 5 are open patchy areas which are within the historic range and would not be treated. They would be re-evaluated after 5 years.

Structure Class 6 over-mature: Harvest 8,000 acres of the 15,000 acres which are at high risk and high hazard to prescription guidelines in fire groups 3, 4 and 5. Approximately 1,000 acres could be treated with prescribed fire, but is located in steep and rugged terrain. These stands are at high risk and high hazard and constitute high hazards to stands in close proximity. Reduce density in thick lodgepole areas on 600 of the 18,000 acres in Fire Group 7 using commercial and non-commercial thinning following prescription guidelines for associated risk and hazard. Harvest 10,000 acres following prescription guidelines for risk and hazard. Reduction of fire hazard would also occur. Approximately 5,000 acres of the 18,000 acres in these fire groups are lodgepole pine thickets along the northern portion of the Deadwood River. Commercial and non-commercial thinning following prescription guidelines would be administered. The remaining acres are open patchy areas effected by climate and poor or high hazard soils. They are at low risk and hazard and would receive no treatment. The 3,000 acres of Fire Group 8 apply the same treatment to these dense and contiguous stands of subalpine fir creating openings on approximately 1,500 acres following prescription guidelines for risk and hazard. Acres in fire group 9 (7,000) are open patchy areas. These acres would receive no treatment in order to maintain the diversity of this structure class across the landscape. Five thousand acres of this fire group are open stands on high hazard soils at low risk and hazard and would not be treated. Fire Group 10—Cold, upper subalpine habitats. The potential 1,500 acres that exist on the high ridgetops of upper Deadwood Summit support some whitebark pine. Burning of these areas may help to maintain dwindling populations. Harvest methods would vary by slope, access, and soil hazard analysis.

PUBLIC INVOLVEMENT MEETING: September, 1994: Public Meetings Boise, Idaho September, 1994: Public Meeting Garden Valley, Idaho.

POTENTIAL COOPERATING AGENCIES: Idaho Department of Fish and Game, USDI, Fish and Wildlife Service, Boise Field Office, Bureau of Reclamation, USDA Forest Service, Intermountain Research Station, Boise, Idaho, USDA Forest Service, Intermountain Research Station, Moscow, Idaho.

PUBLIC/AGENCY CONTACTS: Contacts have been made with the U.S. Fish and Wildlife Service as to threatened and endangered species listed for the project area and landowners in or near the project area. A summary of the project methodology was mailed to key individuals, groups and agencies for a response to analysis procedure.

SCHEDULE: Project Action Report signed by Acting Forest Supervisor: September 1, 1994. Public Meetings: September 15, 1994 in Boise and September 21, 1994 in Garden Valley. EIS Data: October 15, 1994. Draft EIS: January 1, 1995. Final EIS: March 1, 1995. Implementation: June 1995.

RESPONSIBLE OFFICIAL: Cathy Barbouletos, Boise National Forest, Acting Forest Supervisor.

Dated: September 1, 1994.

Cathy Barbouletos,

Acting Forest Supervisor.

[FR Doc. 94–22832 Filed 9–14–94; 8:45 am]

BILLING CODE 3410–11–M

Newberry National Volcanic Monument Advisory Council Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Newberry National Volcanic Monument Advisory Council Meeting.

SUMMARY: The Newberry National Volcanic Monument Advisory Council will meet on October 5, 1994 at the Bend/Fort Rock Ranger District, 1230 NE 3rd Street in Bend, Oregon. The meeting will begin at 8:30 a.m. and continue until 4:00 p.m. Agenda items to be covered include: review of the Final Environmental Impact Statement and Management Plan for the Monument, staff reports on the summer season, upcoming Monument events, and implementation of the Plan.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Carolyn Wisdom, Project Coordinator, Fort Rock Ranger District USFS, 1230 NE 3rd, Bend, OR 97701, (503) 383–4702 or 383–4704.

Dated: September 7, 1994.

Sally Collins,

Deschutes National Forest Supervisor.

[FR Doc. 94–22833 Filed 9–14–94; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System; Idaho

The Statewide central filing system of Idaho has been previously certified, pursuant to Section 1324 of the Food Security Act of 1985, on the basis of information submitted by the Idaho Secretary of State, for farm products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by Pete T. Cenarrusa, Secretary of State, for an additional farm product produced in that State as follows:

ostriches, emus, and rheas

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.18(e)(3), 2.56(a)(3), 55 F.R. 22795.

Dated: September 8, 1994.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

[FR Doc. 94–22820 Filed 9–14–94; 8:45 am]

BILLING CODE 3410–KD–P

Animal and Plant Health Inspection Service

[Docket No. 94–094–1]

Receipt of a Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under FOR FURTHER INFORMATION CONTACT.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
94–221–01	Monsanto Agricultural Company	8/09/94	Wheat plants genetically engineered to express marker genes.	Arizona.

Done in Washington, DC, this 9th day of September 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–22853 Filed 9–14–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Michel V. Diago; Order Denying Permission To Apply for or Use Export Licenses

On February 25, 1993, following a plea of guilty to one count of a superseding information, Michel V. Diago (Diago) was convicted in the U.S. District Court for the Northern District of California of violating the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (the Act).[1] Diago was convicted of attempting to export U.S.-origin computer parts from the United States to Cuba without the validated export license required by the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1994)) (the Regulations).

Section 11(h) of the Act provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Regulations for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the Act, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any export license previously issued to such a person.

Having received notice of Diago's conviction for violating the Act, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Diago permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on February 25, 2003. I have also decided to revoke all export licenses issued pursuant to the Act in which Diago had an interest at the time of his conviction.

Acccordingly, it is hereby ordered:

I

All outstanding individual validated licenses in which Diago appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Diago's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II

Until February 25, 2003, Michel V. Diago, 1183 Calle del Arroyo, Sonoma, California 95476, hereby is denied all privileges of participating, directly or

[1] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III

After notice and opportunity for comment as provider in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Diago by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provision of this Order.

IV

As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any eexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V

This Order is effective immediately and shall remain in effect until February 25, 2003.

VI

A copy of this Order shall be delivered to Diago. This Order shall be published in the **Federal Register**.

Dated: September 7, 1994.

Charles M. Guernieri,

Acting Director, Office of Export Licensing.

[FR Doc. 94–22769 Filed 9–14–94; 8:45 am]

BILLING CODE 3510–DT–M

Action Affecting Export Privileges; Jing Ping Li; Order Denying Permission To Apply for or Use Export Licenses

On September 17, 1993, Jing Ping Li (Li) was convicted in the U.S. District Court for the Eastern District of Virginia of violating Section 38 of the Arms Export Control Act (22 U.S.C.A. 2778 (1990)) (the AECA), among other crimes. Specifically, Li was convicted on two counts of knowingly and willfully exporting and causing to be exported second generation military specification image intensifying tubes, from the United States to Hong Kong, New Territories, without obtaining the required licenses or written approval from the U.S. Department of State.

Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1994)) (the Regulations) for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any export license previously issued to such a person.

Having received notice of Li's conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Li permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on September 17, 2003. I have also decided to revoke all export licenses issued pursuant to the Act in which Li had an interest at the time of his conviction.

Accordingly, it is hereby ordered:

I. All outstanding individual validated licenses in which Li appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Li's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until September 17, 2003, Jing Ping Li, 125 Castilian Drive, Virginia Beach, Virginia 23462, and currently incarcerated at Federal Correctional Institution, Registry No. 25208–083, P.O. Box 1000, Petersburg, Virginia 23804–1000, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity:

(i) As a party or as a representative of a party to any export license application submitted to the Department;

[1] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

(ii) In preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining from the Department or using any validated or general export license, reexport authorization or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and

(v) In financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Li by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity:

(i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or

(ii) Order, buy, receive, use, sell, delivery, store, dispose of, forward, transport, finance, or otherwise service or participate:

(a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States;

(b) In any reexport thereof; or

(c) In any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This order is effective immediately and shall remain in effect until September 17, 2003.

VI. A copy of this Order shall be delivered to Li. This Order shall be published in the **Federal Register.**

Dated: September 7, 1994.

Charles M. Guernieri,

Acting Director, Office of Export Licensing.

[FR Doc. 94–22768 Filed 9–14–94; 8:45 am]

BILLING CODE 3510–DT–M

Bureau of Export Administration Action Affecting Export Privileges; David R. Rosen; Order Denying Permission To Apply for or Use Export Licenses

On June 26, 1990, David R. Rosen (Rosen) was convicted in the U.S. District Court for the Eastern District of Pennsylvania of violating Section 38 of the Arms Export Control Act (22 U.S.C.A. 2778 (1990)) (the AECA), among other crimes. Rosen was convicted on two counts of knowingly and willfully exporting and causing to be exported defense articles, specifically DSU-15 optical receivers and infra-red domes, from the United States to Taiwan, without obtaining the required licenses or written approval from the U.S. Department of State.

Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991, Supp. 1993, and Pub. L. 103–277, July 5, 1994)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1994)) (the Regulations) for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any export license previously issued to such a person.

Having received notice of Rosen's conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Rosen permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on June 26, 2000. I have also decided to revoke all export licenses issued pursuant to the Act in which Rosen had an interest at the time of his conviction.

Accordingly, *it is hereby ordered*:

I. All outstanding individual validated licenses in which Rosen appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Rosen's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until June 26, 2000, David R. Rosen, 15 Sheffield Road, Natick, Massachusetts 01760, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

[1] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Rosen by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until June 26, 2000.

VI. A copy of this Order shall be delivered to Rosen. This Order shall be published in the **Federal Register.**

Dated: September 7, 1994.

Charles M. Guernieri,

Acting Director, Office of Export Licensing.

[FR Doc. 94–22771 Filed 9–14–94; 8:45 am]

BILLING CODE 3510–DT–M

Action Affecting Export Privileges; Bin Wu; Order Denying Permission To Apply for or Use Export Licenses

On September 17, 1993, Bin Wu (Wu) was convicted in the U.S. District Court for the Eastern District of Virginia of violating Section 38 of the Arms Export Control Act (22 U.S.C.A 2778 (1990)) (the AECA), among other crimes. Specifically, Wu was convicted on five counts of knowingly and willfully exporting and causing to be exported second generation military specification image intensifying tubes, from the United States to Hong Kong, New Territories, without obtaining the required licenses or written approval from the U.S. Department of State.

Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1994)) (the Regulations) for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any export license previously issued to such a person.

Having received notice of Wu's conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Wu permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on September 17, 2003. I have also decided to revoke all export licenses issued pursuant to the Act in which Wu had an interest at the time of his conviction.

Accordingly, *it is hereby ordered:*

I. All outstanding individual validated licenses in which Wu appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Wu's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until September 17, 2003, Bin Wu, 201 North Palm Avenue, Virginia Beach, Virginia 23462, and currently incarcerated at Federal Correctional Institution, Schuylkill, Registry No. 25213–083, P.O. Box 759, Minersville, Pennsylvania 17954, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Wu by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying

[1] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflecting in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until September 17, 2003.

VI. A copy of this Order shall be delivered to Wu. This Order shall be published in the **Federal Register**.

Dated: September 7, 1994.

Charles M. Guernieri,

Acting Director; Office of Export Licensing.

[FR Doc. 94–22772 Filed 9–14–94; 8:45 am]

BILLING CODE 3510–DT–M

Action Affecting Export Privileges; Pinzhe Zhang, Also Known as Peter Zhang; Order Denying Permission To Apply for or Use Export Licenses

On September 17, 1993, Pinzhe Zhang, also known as Peter Zhang (Zhang), was convicted in the U.S. District Court for the Eastern District of Viginia of violating Section 38 of the Arms Export Control Act (22 U.S.C.A. 2778 (1990)) (the AECA), among other crimes. Specifically, Zhang was convicted on three counts of knowingly and willfully exporting and causing to be exported second generation military specification image intensifying tubes, from the United States to Hong Kong, New Territories, without obtaining the required licenses or written approval from the U.S. Department of State.

Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991, Supp. 1993, and Pub. L. 103–277, July 5, 1994)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 C.F.R. parts 768–799 (1994)) (the Regulations) for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any export license previously issued to such a person.

Having received notice of Zhang's conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Zhang permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on September 17, 2003. I have also decided to revoke all export licenses issued pursuant to the Act in which Zhang had an interest at the time of his conviction.

Accordingly, *it is hereby ordered:*

I. All outstanding individual validated licenses in which Zhang appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Zhang's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until September 17, 2003, Pinzhe Zhang, also known as Peter Zhang, 82 W. 49th Street, Apartment A, Norfolk, Virginia 23518, and currently incarcerated at Federal Correctional Institution, Registry No. 25241–083, P.O. Box 1000, Petersburg, Virginia 23804–1000, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in Section 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Zhang by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until September 17, 2003.

[1] The act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consulation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

VI. A copy of this Order shall be delivered to Zhang. This Order shall be published in the **Federal Register**.

Dated: September 7, 1994.

Charles M. Guernieri,

Acting Director, Office of Export Licsensing.

[FR Doc. 94–22773 Filed 9–14–94; 8:45 am]

BILLING CODE 3510–DT–M

National Institute of Standards and Technology

[Docket No. 940549–4149]

Computer Systems Laboratory Cooperative Agreement Program—Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The Computer Systems Laboratory (CSL) National Institute of Standards and Technology (NIST) announces funding availability for cooperative agreements to support its ongoing programs in the following fields of research: Human—Computer Interfaces, Image Recognition, Parallel Processing, Wireless communications, and Collaborative Engineering. Specific details are outlined below in the Program Objectives section. The purpose of the CSL program is to expand the research being performed in these fields and disseminate resulting information publicly for potential commercial use. Applicants must submit an abbreviated proposal for preliminary screening; based on the merit of the abbreviated proposal applicants will be advised whether a full proposal should be submitted. A proposal shall deal with only one area of research.

DATES: Abbreviated proposals must be received at the address listed below no later than 3 p.m. EDT on October 17, 1994. Proposals transmitted by facsimile or electronic mail will not be accepted. Each applicant submitting an abbreviated proposal will receive a written recommendation regarding whether or not to prepare and submit a full proposal. Such notification will be mailed/faxed on or before November 18, 1994. Full proposals must be received by 3 p.m. EDT on December 19, 1994. Cooperative agreements are expected to be awarded on or before April 3, 1995.

ADDRESSES: Abbreviated proposals and full proposals should be submitted to The National Institute of Standards and Technology, Computer Systems Laboratory, Building 225, Room A216, Gaithersburg, Maryland 20899–0001; Attention: Mary Ruhl. Each application package should be clearly marked "CSL Cooperative Agreement" and identify the field of research.

FOR FURTHER INFORMATION CONTACT: Technical inquiries should be directed to the following Program Managers: David Pallett, (301) 975–2935 [Manager, Speech Recognition]; Donna Harman, (301) 975–3569 [Manager, Text Retrieval]; Charles Wilson, (301) 975–2080 [Manager, Image Recognition]; Gordon Lyon, (301) 975–5679 [Manager, Parallel Processing]; Wayne McCoy, (301) 975–2984 [Manager, Signal Processing Systems]; Fernando Podio, (301) 975–2947 [Project Leader, Collaborative Engineering]. Inquiries should be general in nature. Special inquiries as to a laboratory's needs, the usefulness or merit of any particular project, or other inquiries with the potential to provide any competitive advantage to an applicant are not acceptable.

SUPPLEMENTARY INFORMATION:

Authority

As authorized by 15 U.S.C. 272, the Computer Systems Laboratory conducts a basic and applied research program directly and through cooperative agreements to eligible recipients.

Program Description

The objectives of the CSL Cooperative Agreement Program are to: (1) Support its ongoing programs in the research fields of Human-Computer Interfaces, Image Recognition, Parallel Processing, Wireless Communications, and Collaborative Engineering; (2) expand the research being performed in these fields; and (3) disseminate resulting information publicly for potential commercial use. Federal assistance is for cooperative agreements to support these objectives. Since CSL has ongoing efforts in these research areas, the cooperative agreements will involve a close working relationship between CSL and the recipients. The results of the research will be made publicly available for potential commercialization. The beneficiaries of this program are commercial end users of various techniques that are furthered by the research enabled by these cooperative agreements.

All proposals submitted must be in accordance with the program objectives listed below. Details on ongoing CSL research are provided in order that applicants may submit proposals consistent with CSL objectives. NIST shall retain title to all intangible property developed under the cooperative agreement and shall make such property available for public use without any obligation to the recipient. The appropriate Program Manager for each field of research may be contacted for clarification of the program objectives and activities.

I. Human—Computer Interfaces

The primary objective is to design and develop natural language user interfaces (spoken and written) to computers. CSL efforts focus on developing a spoken natural language user interface to electronic library catalogs and improving natural language approaches for text retrieval from large text collections.

I.A. Spoken Language User Interfaces

NIST has initiated a project to investigate the feasibility of building a spoken natural language user interface to electronic libraries, as a specific instance of spoken language user interfaces to information services. The prototype system will be built from a technology base of (D)ARPA-sponsored spoken language systems research (e.g., Air Travel Information Systems).

Late in FY 1994, a prototype system is to be built, consisting of a library catalog information kiosk. Users will be able to use spoken natural language to obtain library catalog information with simple human-computer dialogues (e.g., "What's the title of Julia Child's recent book? Is it in the collection at this library? What is the catalog number?"). For the initial prototype system, library catalog data is to be accessed from a subset of Library of Congress MARC files comprising of approximately 10,000 titles. In CY 1995, user-interface data will be collected and the system capabilities enhanced. During development, NIST will use the prototype system to collect a corpus of spoken natural language data to be shared with the spoken language research community through the Linguistic Data Consortium, to encourage other researchers to join in development of this technology.

In FY '96 and beyond, this technology is to be extended to permit user spoken language access to on-line library catalog information over ordinary telephone lines, and to provide expanded spoken natural language information search and retrieval services for electronic libraries. To accomplish this, more robust speech recognition technology must be developed, and method of dialogue management developed to paraphrase and summarize information for presentation using speech synthesis technology.

I.B. Text Retrieval

The primary objective is to design and develop algorithms for improving the performance of text retrieval against large amounts of text. NIST has emphasized the testing of text retrieval algorithms using natural language access against large amounts of text for the past five years. This included building and testing a very fast prototype retrieval system that allowed the use of simple English phrases as the input query and returned a list of documents ranked in order of likely relevance to that query. This project was followed by continued research using this prototype.

To continue this work, proposals most compatible with CSL's ongoing research in text retrieval are requested that use the large (3 gigabyte) text collection developed at NIST for Text Retrieval Conferences. This research should involve natural language approaches to text retrieval, including document ranking. Specific topics are (1) the use of multi-term content indicators for retrieval and (2) the design of user tools to improve initial queries.

The research involving these complex content indicators should be directed toward identification of complex content indicators in brief natural language statements of information need, efficiently search for occurrences of them in an indexed document collection, and incorporating the matches effectively into a weighting and ranking model. These complex content indicators might range from simple word combinations (e.g., phrases) to more abstract representations of words or concepts and their semantic relationships (such as causal relationships).

The research into design of user tools can investigate the use of relevance feedback in large test collections, implement user studies as to what tools are needed by various user populations, or deal with the design and testing of novel tools that allow users to improve their queries.

II. Image Recognition

The primary objective in this research area is to design and develop image pattern recognition algorithms which will generate improved performance in commercial applications. The image pattern recognition algorithms should address image segmentation and contextual checking of classified images. Examples include efforts to improve image segmentation of handwritten text or improved extraction of specific visual material from cluttered images such as a face in a crowd or a drawing in a technical document. This segmentation should lead naturally to improved image classification and sufficient understanding to allow indexing of image databases without domain specific constraints.

III. Parallel Processing

The primary objective is to design and develop algorithms, measurement tools, and related software for Parallel Processor platforms. General techniques and software tools for debugging and tuning parallel codes often ignore important points, such as scalability or portability. An opportunity exists for novel solutions that address such pivotal aspects. These can be hitherto untried concepts, or well-designed empirical investigations that shed insight on the demands special to the parallel programming task. Both software and hardware approaches can be used. The publication "System Software and Tools for High Performance Computing Environments" (edited by P. Messina and T. Sterling, SIAM, 1993) is a good survey of the issues and problems of interest.

IV. Wireless Communications

This primary objective is to devise, test, and demonstrate adaptive error control strategies for a variety of information types (e.g., speech, image, video) for use in wireless communications. A principal barrier to the realization of the National Information Infrastructure will be in interfacing networks of fundamentally different characteristics while providing uniform, transparent end-to-end service. For example, the wireline technologies being proposed will provide bit transfer rates from 64 Kb/s to over 2 Gb/s, while wireless technologies are expected to be in the range of 10 Kb/s to perhaps 1 Mb/s. The strategies for efficient use of network services will be very different for the different technologies used. Central to such strategies are compression and encoding methodologies. For wireless services, compression and encoding have to take into account inherently lower transmission bandwidth and much higher levels of noise and interference than for wireline services. When the services must be transparently interconnected, there must be a way for these networks to adapt to dynamic transmission environments.

Proposals most compatible with CSL's on-going research in Wireless Communications would target:

—Examining the effects of signal transmission for various source encoding techniques by means of appropriate metrics (e.g., Signal to Noise Ratios (SNR), perceptual differences, and spectral distortions);
—Identifying critical characteristics of reference source signals that are most influential to receive quality and devising strategies as part of the encoding scheme to protect the critical characteristics of the source signal;
—Devising precise evaluation methodologies and metrics;
—Examining characteristics of various transmission technologies (e.g., modulation schemes);
—Devise strategies for transparent transmission considering information type, network characteristics, physical environment (e.g., noise), and appropriate security/privacy techniques.

V. Collaborative Engineering

The primary objective is to assist industry in applying state-of-the-art collaborative engineering technology to engineering and manufacturing applications. This efforts includes research on high performance computing and communication (HPCC) and interconnectivity among heterogeneous systems.

In real-time collaborative computing environments, a group of individuals need to share an application and objects of this application. In addition, they need to work on the objects to modify them, et. Reliable real-time operations require protocols for application synchronization and command synchronization. For example, transferring mouse movements and keystrokes require that the information gets reliably to all the partners in the right sequence.

Proposals most compatible with CSL's on-going research in Collaborative Engineering would include research on synchronization of real-time shared applications. For example, the design and development of protocols for applications synchronization (e.g., two CAD applications to be able to work in real-time) and command synchronization (e.g., mouse movements). This work will allow differently configured applications to perform the same actions simultaneously and transparently to the user.

Funding Availability

Approximately $900,000 is available to support cooperative agreements under this program. The number of awards will depend on the quality of the proposals received and the amount of funding requested by the proposals under consideration for award. The Computer Systems laboratory Research Program is limited to innovative ideas generated by the proposal writer on what specific tasks will be performed and how. Any additional years of

project funding will be subject to annual competition.

Matching Requirements

There are no matching requirements.

Type of Funding Instrument

Due to the substantial involvement by various divisions of the CSL, cooperative agreements will be awarded. Cooperative agreements will generally involve a close working relationship between CSL and the recipient, and it is expected that the recipient will periodically visit and work at the NIST Gaithersburg, Maryland site with the guidance of NIST scientists.

Eligibility

Eligible applicants under the CSL program is limited to colleges and universities.

Award Period

NIST intends to fund cooperative agreements for a one (1) year period.

Preliminary Screening Process

Applicants must submit an abbreviated proposal prior to submitting a full proposal. The purpose of the abbreviated proposal is to provide applicants with feedback regarding whether the proposed projects are sufficiently promising relative to the selection criteria to warrant preparation of a full proposal. The abbreviated proposal shall include a budget synopsis. The abbreviated proposal is limited in length to no more than 10 pages (8½×11 inch) plus the title page. Forms or certifications for the full proposal shall not be included in the abbreviated proposal. Applicants will be notified in writing whether or not a full submission is invited. Proposals will receive an independent, objective review by a panel composed of at least three persons knowledgeable about the particular scientific area described above that the proposal addresses. Each applicant must submit one signed original and two copies of each proposal.

Full Proposal Review Process

Full proposals are limited in length to no more than 30 pages (8½×11 inch) plus the title page. Proposals will receive an independent, objective review by a panel composed of at least three persons knowledgeable about the particular scientific area described above that the proposal addresses. The proposals will be evaluated on a competitive basis. Each applicant must submit one signed original and two copies of each proposal along with Standard Form 424 (Rev 4/92) and other required forms, as referenced under the provisions of OMB Circular A–110.

Application Kit

An application kit, containing all required application forms and certifications is available by calling Trudy Cummings at (301) 975–2946. An application kit includes the following:

SF424 (Rev 4/92)—Application for Federal Assistance
SF424A (Rev 4/92)—Budget Information—Non-Construction Programs
SF424B (Rev 4/92)—Assurances—Non-Construction Programs
CD 511 (7/91)—Certification Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying
CD 512 (7/91)—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions and Lobbying
SF–LLL—Disclosure of Lobbying Activities
SF–LLL–A—Disclosure of Lobbying Activities Continuation Sheet

Evaluation Criteria

The criteria to be used in evaluating the proposals include technical factors, qualifications of personnel, and reasonability of cost in relation to proposed project scope. Technical factors include: Technical merit of proposal, rationality of approach, compatibility of proposal with needs of targeted area of research, use of new approaches and new methods, and availability of resources. Technical personnel qualifications factors include: Previous technical work with respect to subject area, performance on previous cooperative agreements, grants, or contracts, and academic qualifications with regard to proposed research area (include curriculum vitae and list of publications).

Technical FActors—Total=65%
—technical merit of proposal: 35%
—rationality of approach: 10%
—compatibility of proposal with needs of targeted area of research: 10%
—use of new approaches and new methods: 5%
—availability of resources: 5%
Personal Qualifications—Total=25%
—previous technical work with respect to subject area: 10%
—academic qualifications with respect to proposed research area: 19%
—performance on previous cooperative agreements, grants, or contracts: 5%
Reasonability of cost with proposed project scope—Total=10%

Selection Procedure

Award recommendations shall be made by the panels based on the scores of the proposals determined in accordance with the evaluation criteria. The chief of each CSL division will make the final award recommendation to the NIST Grants Officer taking into account the score received by the applicant, available funding, and the compatibility of the proposal with the CSL programs. The highest-scored proposals may not necessarily receive award; award is dependent on the compatibility of the proposal with the CSL program.

Paperwork Reduction Act

The Standard Form 424 and Standard Form LLL mentioned in this notice are subject to the requirements of the Paperwork Reduction Act and have been approved by OMB under Control Numbers 0348–0043 and 0348–0046.

Primary Application Certification

All primary applicants must submit a completed form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace

Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying

Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of the 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000 and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosure

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

5. Lower-Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to NIST. SF–LLL submitted by any tier recipient or subrecipient should be submitted to NIST in accordance with the instructions contained in the award document.

Preaward Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of NIST to cover preaward costs.

No Obligation for Future Funding

If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Name Check Reviews

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

False Statements

A false statement on an application is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Buy American-Made Equipment or Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 602 (a) and (b).

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

i. The delinquent account is paid in full,

ii. A negotiated repayment schedule is established and at least one payment is received, or

iii. Other arrangements satisfactory to DoC are made.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Federal Policies and Procedures

Recipients and subrecipients under the Computer Systems Laboratory Research Program are subject to all Federal Laws and Federal and Departmental policies, regulations, and procedures applicable to Federal financial assistance awards. The Computer Systems Laboratory cooperative agreements program does not directly affect any state or local government. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Dated: September 8, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–22759 Filed 9–14–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 090994C]

New England Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on September 21–22, 1994, to consider actions affecting the New England fisheries in the exclusive economic zone (EEZ).

The meeting will be held at the Newagen Seaside Inn, Route 27 south, Southport Island, Cape Newagen, ME; telephone: (617) 231–0422. The meeting will begin on September 21, at 8:30 a.m. and on September 22, at 8:00 a.m.

The Council meeting will begin on September 21 with a report from the Groundfish Committee. Subjects scheduled for discussion include:

(1) The establishment of objectives and management options for groundfish in view of the recent stock assessments,

(2) Resubmission of the winter flounder state waters exception,

(3) Reporting requirements for the bait fishery,

(4) Impacts of fishing with small mesh,

(5) Impacts of beam trawling on groundfish stocks,

(6) Groundfish bycatch in other fisheries, and

(7) A request for an experimental fishery for northern shrimp.

Late in the morning, the Council will be briefed on the reauthorization of the Magnuson Fishery Conservation and Management Act. The Lobster Committee will provide an update on the progress made by the Effort Management Teams during the early afternoon session.

Abbreviated Rulemaking Action—Atlantic Sea Scallops

The meeting will continue with consideration of final action on adjustments to the Atlantic Sea Scallop Fishery Management Plan (FMP) under the framework for abbreviated rulemaking contained in Amendment 4 to the plan (59 FR 2757, January 19, 1994). The Council will consider public comments in making its recommendations to the Regional Director for the Northeast Region (Regional Director) under the provisions for abbreviated rulemaking cited above. If the Regional Director concurs with the measures proposed by the Council, he will publish them as a final rule in the **Federal Register.**

The Council will consider public comments and final action on the following: A framework measure that would exempt fishermen from several of the gear restrictions mandated by Amendment 4 to the Scallop FMP and allow them to participate in state waters sea scallop fisheries under state rules.

The Amendment 4 program controls the number of days fishermen may harvest sea scallops, mandates gear restrictions by limiting dredge width

and ring size and requires data reporting and vessel tracking devices. Maine, New Hampshire, and Massachusetts have separate stocks of sea scallops within their jurisdiction and various state rules to govern those fisheries, some of which are more restrictive than the Federal regulations. Since these stocks were not factored in when the days-at-sea limits were developed, the Council currently allows fishermen operating in state waters to participate in these traditional fisheries without accruing days which apply to fishing for scallops in the EEZ.

A problem arises, however, because anyone who possesses a Federal permit must abide by Federal regulations regardless of where the fishery takes place—whether in state or Federal waters. If these rules apply during the upcoming scallop season in state waters, fishermen holding a Federal permit and fishing in Maine, for example, must use 3¼ inch rings in their gear while a fisherman who holds a Maine State permit only, may use 3-inch rings. The larger ring size allows more scallops to escape and affords those using 3-inch rings a much greater harvesting advantage.

The Council proposes to remedy this situation with an exemption to several of the Amendment 4 gear provisions. Fishermen operating in state waters and who hold a Federal sea scallop limited-access permit must adhere to the sea scallop regulations of that state and must have a vessel tracking system onboard and in operation while they are in the state program. Vessels fishing under a general permit may possess up to 400 lb (0.18 metric tons) of sea scallops per day and also will qualify for the exemption.

Any other pending business will then be addressed by the Council at this time.

On September 22, Council discussion and possible action will focus entirely on general management goals. This will further refine or modify the list of goals developed at the most recent meeting of the Interspecies Committee. The intended result is a statement of what the Council would like to see the fisheries and the industry look like several years in the future. Such a statement would serve as a guide for selection of management strategies and measures and as a yard stick to monitor the level of management success.

The purpose of this session will be to allow expression of Council members' opinions and arguments. Comments from the floor will be limited, but may be accepted if time permits.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall (617) 231–0422, at least 5 days prior to the meeting date.

Dated: September 9, 1994.

David S. Crestin,

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

[FR Doc. 94–22864 Filed 9–14–94; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Availability of Patent License

Pursuant to the provisions of part 404 of title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces the availability of domestic and international licenses under United States Patent No. 5,301,203, which matured from application Serial No. 07/949,617 filed 23 September 1992 in the names of Laverne A. Schlie and Robert D. Rathge, and PCT/US93/02319 filed 22 March 1993 in the name of United States of America, as represented by the Secretary of the Air Force for "Scalable and Stable, Continuous Wave Photolytic Atomic Iodine Laser"; United States Patent Application Serial No. 07/949,615 filed 23 September 1992 in the names of Laverne A. Schlie and Robert D. Rathge, and PCT/US93/02318 filed 22 March 1993 in the name of the United States of America, as represented by the Secretary of the Air Force for "Repetitively Pulsed, Closed Cycle, Photolytic Atomic Iodine Laser"; and United States Patent Application No. 07/949,616 filed 23 September 1992 in the names of Laverne A. Schlie and Robert D. Rathge and PCT/US93/02317 filed 22 March 1993 in the name of the United States of America, as represented by the Secretary of the Air Force for "Turbo-Molecular Blower."

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Air Force Legal Services Agency, HQ AFLSA/JACP, 1501 Wilson Blvd, Room 805, Arlington, VA 22209–2403, Telephone No. (703) 696–9050.

Patsy J. Conner,

Air Force **Federal Register** *Liaison Officer.*

[FR Doc. 94–22774 Filed 9–14–94; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army, Corps of Engineers

Intent To Prepare an Environmental Impact Statement for a Proposed Flood Control Project at Wailupe Valley, Honolulu, HI

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Honolulu District, in partnership with the State of Hawaii, Department of Land and Natural Resources, and the City and County of Honolulu Department of Public Works, is proposing to develop solutions to the flooding problem caused by Wailupe Stream. Wailupe Stream is located on the east side of the island of Oahu in the community of Aina Haina. The completed project is expected to significantly reduce future flood damage.

ADDRESSES: U.S. Army Engineer District, Honolulu, ATTN: CEPOD–ED–PV, Fort Shafter, Hawaii 96858–5440.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Galloway, (808) 438–8876.

SUPPLEMENTARY INFORMATION:

1. The project may include the following items:

a. One or more debris dams located upstream of the existing boulder basin in Wailupe Gulch.

b. One or more debris dams located upstream of the entrance to Kului Gulch.

c. Channel improvements up to 7,000 feet long.

These features may be modified, or new features added as a result of the analysis to be performed as part of the feasibility/EIS process.

2. Alternatives to be considered include "No Action" and various alternative alignments and configurations of the debris dams and channel improvements.

3. At the request of the State of Hawaii Legislature following the New Year's Eve Flood of 1987–1988, the Corps conducted a reconnaissance study beginning in 1990 entitled "Urban Flood Control Study". The study found basic problems in the Wailupe Stream draining basin and determined that there was a federal interest in solving the debris flow and flooding problems.

4. A public scoping meeting to be held in Honolulu is being planned for September or October 1994, but no date has yet been set. The draft EIS is

expected to be available in September 1996.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–22835 Filed 9–14–94; 8:45 am]

BILLING CODE 3710–08–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 94–2]

Conformance With Safety Standards at DOE Low-Level Nuclear Waste and Disposal Sites

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning conformance with safety standards at DOE low-level nuclear waste and disposal sites. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before October 17, 1994.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole C. Morgan, at the address above or telephone (202) 208–6400.

Dated: September 12, 1994.

John T. Conway,

Chairman.

Dated: September 8, 1994.

The high-level radioactive wastes that are a result of weapons material production have been the strong focus of waste management activities of the Department of Energy (DOE). Considerably less attention has been placed upon the large volumes of low-level radioactive waste that have been generated to date and that are projected for the future. Operation of waste management facilities and the maintenance of the defense nuclear complex will continue to generate considerable low-level waste and the need for adequate waste storage and disposal facilities. This volume is likely to increase dramatically with the decommissioning and decontamination of excess facilities.

The Board and its staff have been reviewing low-level waste management within the defense nuclear complex pursuant to 42 U.S.C. 2286a(a)(1), which requires the Board to review and evaluate the content and implementation of standards, including DOE orders and regulations, at defense nuclear facilities. DOE Order 5820.2A, *Radioactive Waste Management*, and the Nuclear Regulatory Commission's regulation on low-level waste disposal, Code of Federal Regulations Section 10 Part 61, have provided the basic frame of reference for this review. Further, it was useful to examine the low-level waste management program of the Department in terms of its past, present, and the future operations.

The results of our review are summarized as follows:

- As of 1993, the DOE and its predecessor agencies have buried approximately 2.8 million cubic meters of low-level radioactive waste. This waste has largely been disposed of at six sites through the use of shallow land burial—Savannah River Site, Hanford, Idaho National Engineering Laboratory, Oak Ridge National Laboratory, Nevada Test Site, and Los Alamos National Laboratory.
- Low-level waste disposal as practiced by DOE contractors has not kept pace with the evolution of commercial practices. For example, DOE disposal programs are generally characterized by minimal barriers to infiltration and biologic intrusion, no requirements to protect inadvertent human intruders, and operational practices not geared toward maintaining integrity of the waste form and the cover.
- In 1988, DOE issued Order 5820.2A, *Radioactive Waste Management*, which adopted the basic performance objectives of the Nuclear Regulatory Commission's 10 CFR part 61. A key feature of the Order is the requirement to prepare a Performance Assessment (PA). This Performance Assessment is intended to demonstrate that the buried waste will remain sufficiently confined to pose no undue risk to public health and safety. Although the Order was issued six years ago, no defense nuclear facilities site has to date completed the performance assessment process.
- In establishing low-level waste burial ground source terms, current DOE guidance for performance assessments required by DOE Order 5820.2A allows the evaluators to neglect waste disposed of prior to 1988. Further, it allows evaluators to apply reference dose criteria to disposal facilities individually rather than assessing composite effects when contiguous burial facilities exist. A number of other factors also complicate site specific assessments. For example: (1) A commercial low-level waste burial site is situated adjacent to a DOE burial site at Hanford; (2) some sites have multiple burial grounds, a situation not explicitly addressed by DOE Order 5820.2A; and (3) agreements have been established with State/Environmental Protection Agency authorities for closeout of some burial sites under the Resource Conservation Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act provisions.
- Some effort is being made by those tasked with site waste management to have generators of waste provide long-range forecasts of the amount of wastes they will have to send for disposal, but the forecasts are beset with such uncertainty as to provide little confidence in the projections. This is especially true as the projections pertain to wastes from decontamination and decommissioning, and environmental restoration.

The DOE's burial of low-level waste in some locations within the complex actually constitutes nuclear waste storage, since inadequate emplacement may require later retrieval of the waste, further processing or packaging, and final disposal in a demonstrably adequate facility. Given the substantial volume of low-level waste buried prior to 1988 in old burial sites using practices which do not meet current standards, the lack of complete compliance with requirements of DOE Order 5820.2A at currently operating sites, and the likely dramatic increase in future waste volumes, the Board recommends that:

1. A comprehensive complex-wide review be made of the low-level waste issue similar to the review the Department conducted regarding spent nuclear fuel. As with spent fuel, the objective of such review should be the establishment of the dimensions of the low-level waste problem and the identification of necessary corrective actions to address safe disposition of past, present, and future volumes. The Implementation Plan provided the Board should include:

a. A regularized program for forecasting future burial needs relative to existing capacity, taking into account the projected programs for decontamination and decommissioning of defense nuclear facilities and environmental restoration activities as well as current operational units.

b. The development and issuance of additional requirements, standards or guidance on low-level waste

management that address safety aspects of waste form and packaging, burial ground siting and performance assessment, facility design, construction, operation, and closure, and environmental monitoring. Such guidance should reflect consideration of concepts of good practices in low-level waste management as applied in the commercial sector, both nationally and internationally, and results of DOE's technological developments and advisories to the State Compacts pursuant to the Low Level Radioactive Waste Nuclear Waste Policy Act of 1982, as amended.

c. Planned studies directed towards (1) improving modeling and predictive capability for assessing migration of radionuclides and (2) enhancing the stability of buried waste forms, deterring intrusion and inhibiting migration of radionuclides.

d. Studies of enhanced methods that can be used to reduce the volume of waste to be disposed of, such as compaction and more environmentally acceptable incineration.

e. Assessments of the safety merits/demerits of privatization of facilities for disposal of DOE low-levels wastes.

2. More immediate steps be taken to complete the performance assessment process for all active low-level waste burial sites as required by DOE Order 5820.2A. In so doing clarifying instructions should be issued to insure that:

a. Performance assessments are based upon the total inventories (past, present, and future) emplaced or planned for the burial site(s).

b. Performance objectives (dose criteria) of DOE Order 5820.2A are achieved for the composite of all low-level waste disposal facilities on the site.

3. If non-compliance with reference dose criteria set forth in DOE Order 5820.2A is found, an action plan with schedule be developed for bringing operations into compliance or other acceptable compensating measures be undertaken in the interim pending final closure.

John T. Conway,

Chairman.

September 8, 1994.

The Honorable Hazel R. O'Leary,
Secretary of Energy,
Washington, DC 20585

Dear Secretary O'Leary: On September 8, 1994, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimous approved Recommendation 94–2 which is enclosed for your consideration. Recommendation 94–2 deals with Conformance with Safety Standards at DOE Low-Level Nuclear Waste and Disposal Sites.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please arrange to have this recommendation promptly placed on the file in your regional public reading rooms.

The Board will publish this recommendation in the **Federal Register**.

John T. Conway,

Chairman.

[FR Doc. 94–22875 Filed 9–14–94; 8:45 am]

BILLING CODE 6820–KD–M

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities; Amendment

AGENCY: President's Board of Advisory on Historically Black Colleges and Universities, Education.

ACTION: Notice of amendment.

SUMMARY: This amends the notice published on September 6, 1994, on page 46040 in volume 59, number 171. The meeting of the President's Board of Advisors on Historically Black Colleges and Universities will be held at the Sheraton City Centre Hotel and Towers in Washington, D.C.

DATES AND TIMES: September 19, 1994, from 9:00 am to 5:00 pm.

ADDRESSES: Sheraton City Centre Hotel located on 1143 New Hampshire Avenue NW., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Catherine W. LeBlanc, Executive Director, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 7th and D Streets SW., Washington, DC 20202–5120. Telephone: (202) 708–8667.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–22791 Filed 9–14–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Golden Field Office; New York Support Office; Grant and Cooperative Agreement Awards: Coalition of Northeastern Governors, Policy Research Center, Inc.

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Golden Field Office, through the New York Support Office (NYSO), announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2), DOE intends to make a financial assistance award to the Coalition of Northeastern Governors, Policy Research Center, Inc., in support of the Northeast Regional Biomass Program (NRBP).

SUPPLEMENTARY INFORMATION: The Regional Biomass Program was established at the National level by Congress in 1983. Enabling legislation instructed DOE to support regional biomass energy programs for the development of appropriate regional bioenergy programs. Congress further defined the scope and direction of the program in 1984 by specifying that it carry out activities related to technology transfer, industry support, resource assessment, and matching local resources to conversion technologies. The program is designed to promote the responsible use of biomass energy in the Northeast and will serve the public purpose of increasing energy efficiency by reducing the need for fossil fuel and promoting renewable energy resources. The NRBP has three basic components. A state grant component provides funds (with a 50 percent matching requirement) to each of the eleven states in the region to strengthen and integrate the work of state agencies involved in biomass energy. The Applied Research and Technology Transfer Program Component produces a series of technical reports and studies in areas that have been identified as being important to the development of biomass energy programs in the region. The third component is a long-range planning effort with substantial involvement from the private sector to identify activities necessary to spur greater development and use of biomass energy in the Northeast. Profit, not-for-profit, university, and other organizations are eligible for these subcontracts, which are awarded on a competitive basis. The CONEG is currently administering the program for DOE in the Northeast and has been since 1983.

The proposed project period is twelve (12) months and is expected to begin in October 1994. DOE plans to provide funding in the amount of $759,000.

FOR FURTHER INFORMATION CONTACT: Charles F. Baxter, Director, U.S. Department of Energy, New York Support Office, Room 3437, New York, NY 10278.

Issued in Golden, Colorado on September 8, 1994.

John W. Meeker,

Contracting Officer.

[FR Doc. 94–22886 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–M

Notice of Intent To Make a Noncompetitive Financial Assistance Award to Florida A&M University

AGENCY: Albuquerque Operations Office, Department of Energy.

SUMMARY: The Albuquerque Operations Office (ALO) of the Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to renew a financial assistance grant on a noncompetitive basis with the Florida A&M University. Assistance of $10,416 will support students in a cooperative education program with the DOE. The proposed award will provide the recipient with financial resources necessary for the education and employment of students enrolled in the program.

DATES: Comments must be received no later than September 29, 1994.

FOR FURTHER INFORMATION: Address comments to the attention of Margaret Hodge, Contracts and Procurement Division, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185–5400. Telephone: (505) 845-5361.

SUPPLEMENTARY INFORMATION: The financial assistance is authorized under the DOE Organization Act, Public Law 95–91, as amended.

A non-competitive award is appropriate. In particular, this award meets the criteria of 10 CFR 600.(b)(2)(i)(A) in that the activity to be funded is a renewal of an activity presently being funded by DOE, and for which competition for support would have a significant adverse effect on continuity of the activity.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 94–22881 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–M

Finanical Assistance Award; Heritage College

AGENCY: U.S. Department of Energy, Richland Operations Office.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The award is planned for a three (3) year project cycle, consisting of three (3) separately funded one (1) year budget periods. The initial budget is estimated at $30,000, and $10,000 each year thereafter.

FOR FURTHER INFORMATION CONTACT: Patrick O'Donnell, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, Washington 99352, Telephone: (509) 376–2004.

SUPPLEMENTARY INFORMATION:

Grant Award Number: DE-FG06-94RL12995

Scope of Project: The proposed financial assistance award is a grant to Heritage College to establish an environmental monitoring station on the campus of the College in Toppenish, Washington. The Station will consist of a variety of instruments for collection environmental measurements, including equipment for collection radiological air samples and monitoring ambient radiation levels. It will also include a covered informational display containing real-time meteorological and radiological information. The station will be used by Pacific Northwest Laboratory (PNL) to collect routine radiation data for the Hanford Site environmental monitoring program. It will also be used by the college to supplement and/or enhance its own environmental science programs. The station design will be based upon the needs of both the college and PNL.

In addition to the air sampling and radiation monitoring capabilities, equipment will also be installed to measure and record solar radiation, air temperature, relative humidity, precipitation, wind direction and other data.

Pacific Northwest Laboratory is currently performing activities similar to those proposed for the Heritage College site at other locations within the state of Washington. The public benefit derived from these activities would be greatly enhanced with Department of Energy financial support for the Heritage College site. It has been determined that a grant instrument is appropriate since the Department of Energy anticipates limited direct involvement with the program.

Dated: September 2, 1994.

P.E. Rasmussen,

Acting Director procurement Division Richland Operations Office.

[FR Doc. 94–22746 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–M

Notice of Intent To Make a Noncompetitive Financial Assistance Award to Howard University

AGENCY: Albuquerque Operations Office, Department of Energy.

SUMMARY: The Albuquerque Operations Office (ALO) of the Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to renew a financial assistance grant on a noncompetitive basis with Howard University. Assistance of $38,241 will support students in a cooperative education program with the DOE. The proposed award will provide the recipient with financial resources necessary for the education and employment of students enrolled in the program.

DATES: Comments must be received no later than September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Address comments to the attention of Margaret Hodge, Contracts and Procurement Division, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185–5400. Telephone: (505) 845–5361.

SUPPLEMENTARY INFORMATION: The financial assistance is authorized under the DOE Organization Act, Public Law 95–91, as amended.

A noncompetitive award is appropriate. In particular, this award meets the criteria of 10 CFR 600.(b)(2)(i)(A) in that the activity to be funded is a renewal of an activity presently being funded by DOE, and for which competition for support would have a significant adverse effect on continuity of the activity.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 94–22882 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–M

Notice of Intent To Make a Noncompetitive Financial Assistance Award to the Navajo Nation

AGENCY: Albuquerque Operations Office, Department of Energy.

SUMMARY: The Albuquerque Operations Office (ALO) of the Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to enter into a noncompetitive financial assistance cooperative agreement with the Navajo Nation. Assistance of $300,000.00 will support technology development and personnel staff identification for the purpose of the development of an environmental assessment infrastructure for the Navajo Nation. The proposed award will provide the recipient with technical and administrative resources necessary to the identification, understanding, and

development of environmental issues impacting Tribal lands and its people.

DATES: Comments must be received no later than September 29, 1994.

FOR FURTHER INFORMATION: Address comments to the attention of Margaret Hodge, Contracts and Procurement Division, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185–5400. Telephone: (505) 845–5361.

SUPPLEMENTARY INFORMATION: The financial assistance is authorized under the DOE Organization Act, Public Law 95–91, as amended.

A non-competitive award is appropriate. In particular, this award meets the criteria of 10 CFR 600.(b)(2)(i)(B), (C), (D), and (E) in that—

(1) the work to be funded would have been conducted by the tribe using its own resources; however, DOE support of the activity will enhance the ability of the tribe to carry out the activities and benefit the public. DOE knows of no other entity which is conducting or is planning to conduct similar activities.

(2) the tribe is a unit of government and the activities to be funded are related to the performance of this governmental function within the tribe's jurisdiction.

(3) the tribe has the exclusive capability to implement the cooperative agreement in consonance with the spirit of a government-to-government relationship. The tribe is the governmental authority that has jurisdiction over Indian lands affected by DOE facilities and activities.

(4) the tribe is a sovereign entity for certain purposes, and in that respect, is similar to a foreign government. The purpose of the cooperative agreement is to extend the value of the previously signed Accord, thus affirming and strengthening the Government-to-Government relationship between DOE and the tribe.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 94–22878 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–P

Golden Field Office; New York Support Office

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Golden Field Office, through the New York Support Office (NYSO), announces that, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2), DOE intends to make a financial assistance award to the New York State Energy Office (NYSEO) to begin Phase II of the Energy Efficiency Procurement Collaborative.

SUPPLEMENTARY INFORMATION: This proposal is Phase II of the completed Phase I project funded by DOE to study and produce a report on the feasibility of establishing an Energy Efficiency Procurement Collaborative and a comprehensive data base of 12 types of energy-consuming equipment purchased by federal and state government agencies. The majority of states surveyed under Phase I expressed their urgent need for a comprehensive data base to assist them in procuring energy-efficient equipment as well as their interest in participating in collaborative procurement. The proposed award will serve the public purpose of increasing energy efficiency in every sector of the economy by enabling federal and state government agencies, and ultimately the industrial and commercial sectors, to knowledgeably select and purchase energy-efficient equipment with the benefits of collaborative procurement and by providing an expanded market for energy-efficient products. The proposal will also assist DOE in meeting the requirement of the Energy Policy Act of 1992 (EPACT) (by the year 2000, energy consumption in federal buildings is to be reduced 20% below 1985 levels), and Executive Order 12902 of March 8, 1994 (by the year 2005, energy use in federal buildings is to be cut by 30% below 1985 levels), and DOE's mission to improve energy efficiency in every economic sector.

The proposed project period is three years and is expected to begin in October 1994. DOE plans to provide initial funding for the project in the amount of $75,000. In-kind services will be provided by non-federal participants.

FOR FURTHER INFORMATION CONTACT: Charles F. Baxter, Director, U.S. Department of Energy, New York Support Office, Room 3437, New York, NY 10278.

Issued in Golden, Colorado on September 8, 1994.

John W. Meeker,

Contracting Officer.

[FR Doc. 94–22887 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance to Rocky Flats Local Impacts Initiative

AGENCY: Rocky Flats Field Office, DOE.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: The U.S. Department of Energy, Rocky Flats Field Office, gives notice of its plan to make a noncompetitive financial assistance award to the Rocky Flats Local Impacts Initiative (RFLII) based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(C). $4,000,000 will be provided to RFLII under DOE Grant No. DE–FG34–92RF00475 to implement the Rocky Flats Community Economic Conversion Plan. The goal of this Plan is to help the Rocky Flats community initiate economic development activities to make new, innovative use of facilities, equipment, and employee skills, or deploy technologies to the local area to create new commercial products, processes or services. The Plan focuses on supporting job creation for dislocated workers and to diversify the local economy away from defense spending by facilitating marketing and small business assistance, enhancing environmental and energy technologies, and developing a capability for technical manufacturing hands-on training. Priority is given to helping existing businesses expand and in job creation; creating new start-up companies, and in making the front range of Colorado a center for energy and environmental technologies. The Plan consists of four major activities: The Rocky Mountain Entrepreneur Resource Center; the Rocky Mountain Environmental Remediation and Technology Center; the Rocky Mountain Metals Manufacturing and Testing Academy; and the Regional Atmospheric Response Center. According to business plans, the $4 million in seed money will be leveraged with $34 million additional investments to sustain the activities for the next four to five years.

SUPPLEMENTARY INFORMATION: (1) The Rocky Mountain Entrepreneur Resource Center will be implemented by the Colorado Innovation Foundation, a business incubation corporation to assist displaced RF personnel and others to become successful entrepreneurs in the business of their choice. The Center will function collaboratively with the Tri-County Economic Development Offices, the Colorado Office of Business Development, and private enterprise partners to provide day-to-day business support and employment assistance.

(2) The Rocky Mountain Environmental Remediation and Technology Center is composed of three separate, but coordinated, programs under the overall management of the Colorado School of Mines: The Remediation Technology Center; the

Energy and Environment Education Center; and the International Environmental Assistance Center.

(3) The Rocky Mountain Metals Manufacturing and Testing Academy will implement a vocational education program that will provide students with the most comprehensive metals manufacturing curriculum available in the United States.

(4) The Regional Atmospheric Response Center will track hazardous chemical plumes in an emergency for state and local governments and private industry. The Center will apply state-of-the-art technology to emergency response teams so they can notify the public in time to take protective action.

FOR FURTHER INFORMATION CONTACT: Dorothy Gross, Contract Specialist, U.S. DOE, Rocky Flats Field Office, Contracts Management Division, P.O. Box 928, Golden, CO 80402–0928.

Leanne Smith,

Acting Deputy Manager.

[FR Doc. 94–22888 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–M

Notice of Intent To Make a Noncompetitive Financial Assistance Award to the San Ildefonso Pueblo

AGENCY: Albuquerque Operations Office, Department of Energy.

SUMMARY: The Albuquerque Operations Office (ALO) of the Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to enter into a noncompetitive financial assistance cooperative agreement with the San Ildefonso Pueblo. Assistance of $131,039 will support the study of pollution sources for the purpose of risk assessment. The proposed award will provide the recipient with technical and administrative resources necessary to the evaluation of environmental and cultural impacts of identified pollution sources.

DATES: Comments must be received no later than September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Address comments to the attention of Margaret Hodge, Contracts and Procurement Division, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185–5400. Telephone: (505) 845–5361.

SUPPLEMENTARY INFORMATION: The financial assistance is authorized under the DOE Organization Act, Public Law 95–91, as amended.

A non-competitive award is appropriate. In particular, this award meets the criteria of 10 CFR 600.7(b)(2)(i) (B), (C), (D), and (E) in that—

(1) The work to be funded would have been conducted by the tribe using its own resources; however, DOE support of the activity will enhance the ability of the tribe to carry out the activities and benefit the public. DOE knows of no other entity which is conducting or is planning to conduct similar activities.

(2) The tribe is a unit of government and the activities to be funded are related to the performance of this governmental function within the tribe's jurisdiction.

(3) The tribe has the exclusive capability to implement the cooperative agreement in consonance with the spirit of a government-to-government relationship. The tribe is the governmental authority that has jurisdiction over Indian lands affected by DOE facilities and activities.

(4) The tribe is a sovereign entity for certain purposes, and in that respect, is similar to a foreign government. The purpose of the cooperative agreement is to extend the value of the previously signed Accord, thus affirming and strengthening the Government-to-Government relationship between DOE and the tribe.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 94–22879 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–M

Notice of Intent To Make a Noncompetitive Financial Assistance Award to the San Ildefonso Pueblo

AGENCY: Albuquerque Operations Office, Department of Energy.

SUMMARY: The Albuquerque Operations Office (ALO) of the Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to enter into a noncompetitive financial assistance cooperative agreement with the San Ildefonso Pueblo. Assistance of $100,000 will support the development of a comprehensive proposal for funding from the DOE for the purpose of oversight, monitoring and evaluation of environmental and cultural issues associated with operations at DOE facilities at Los Alamos, New Mexico. The proposed award will provide the Pueblo with technical and administrative resources necessary to the identification, understanding, and development of environmental issues impacting the Pueblo lands and its people.

DATES: Comments must be received no later than September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Address comments to the attention of Margaret Hodge, Contracts and Procurement Division, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185–5400. Telephone: (505) 845–5361.

SUPPLEMENTARY INFORMATION: The financial assistance is authorized under the DOE Organization Act, Public Law 95–91, as amended.

A non-competitive award is appropriate. In particular, this award meets the criteria of 10 CFR 600.7(b)(2)(i)(B), (C), (D), and (E) in that—

(1) The work to be funded would have been conducted by the tribe using its own resources; however, DOE support of the activity will enhance the ability of the tribe to carry out the activities and benefit the public. DOE knows of no other entity which is conducting or is planning to conduct similar activities.

(2) The tribe is a unit of government and the activities to be funded are related to the performance of this governmental function within the tribe's jurisdiction.

(3) The tribe has the exclusive capability to implement the cooperative agreement in consonance with the spirit of a government-to-government relationship. The tribe is the governmental authority that has jurisdiction over Indian lands affected by DOE facilities and activities.

(4) The tribe is a sovereign entity for certain purposes, and in that respect, is similar to a foreign government. The purpose of the cooperative agreement is to extend the value of the previously signed Accord, thus affirming and strengthening the Government-to-Government relationship between DOE and the tribe.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 94–22880 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; University of Florida

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: Pursuant to 10 CFR 600.7(b)(2)(i)(D), The U.S. Department of Energy Region IV Support Office, through the Golden Field Office, intends to award a grant to the University of Florida to support a program to improve energy efficiency in the commercial buildings sector.

SUPPLEMENTARY INFORMATION: Energy Analysis and Diagnostic Centers (EADCs) have been established to provide technical assistance in the use of new energy efficient technology in the manufacturing sector. The Department of Energy has an interest in developing this concept and evaluating its feasibility in the commercial buildings area. In this pilot project, the University of Florida will conduct five audits of commercial buildings to test this approach. The project will assess the applicability of augmenting the existing EADC structure to conduct commercial buildings audits and will estimate the cost effectiveness of this approach.

Noncompetitive financial assistance is in accordance with the justifying criteria presented in 10 CFR 600. DOE has determined that support of this activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity. DOE plans to provide FY 1994 funding in the amount of $50,000 in support of this activity.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Attn: Fred Singleton, Atlanta Support Office, 730 Peachtree Street NE., Atlanta, Georgia 30308, 404–347–3482.

Issued at Golden, Colorado on September 6, 1994.

John W. Meeker,

Contracting Officer, Golden Field Office.

[FR Doc. 94–22889 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award a Financial Assistance Instrument to the Colorado Department of Health

AGENCY: Department of Energy.

ACTION: Notice of Non-Competitive Financial Assistance Award.

SUMMARY: The Department of Energy announces that, pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(A) to the Colorado Department of Public Health and Environment, Disease Control and Environmental Epidemiology Division under proposed grant number DE–FG01–94EH89530. Subject to the availability of Federal funds, total estimated funding in the amount of $9,768,125, will be provided to the Colorado Department of Health for this effort. The Department of Energy will provide funding to the Colorado Department of Health to complete projects currently underway under a previous grant. The Colorado Department of Health will continue activities that will determine the magnitude and extent of the overall hazards posed to human health in nearby communities by historical radiological and chemical emissions from the Rocky Flats Plant. The projects to be continued include a toxicity assessment and risk characterization based on information collected during a review of historical records, a public involvement program, support for the Colorado Central Cancer Registry and the Colorado registry for Children with Special Needs, and a soil sampling program for areas near Rocky Flats.

The Department of Energy has determined in accordance with 10 CFR 600.7(b)(2)(i)(A) that the "activity is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by the Department of Energy or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity." The continuity of the effort is critical at this time, because important questions and concerns about historical releases of hazardous materials from Rocky Flats still need to be addressed.

Additional historical records have been discovered that were not included in previous analyses, and there is a need to build credibility through expanded public involvement activities. The continuation of the dose reconstruction project will provide review, validation, and quality assurance of the results of the previous phase of the project, and it will provide risk information to help determine if epidemiologic studies of affected communities should be performed. Continuation of soil sampling is needed to address concerns about previous reliance on data generated by plant operators and the completeness and validity of the data.

The Colorado Department of Public Health has substantial expertise in this type of effort. They have identified personnel and resources capable of performing the activities, and they have extensive experience related to this research.

The period of performance is 36 months from the date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Berta Schreiber, HR–531.24, 1000 Independence Avenue SW., Washington, DC 20585.

Richard D. Updegrove,

Headquarters Operations Division B, Office of Placement and Administration.

[FR Doc. 94–22744 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–P

Albuquerque Operations Office; Financial Assistance for Advanced Utilities Concepts Division Program

AGENCY: Department of Energy, Albuquerque Operations Office.

ACTION: Notice of Intent to Make a Noncompetitive Financial Assistant Award to the Florida Solar Energy Center.

SUMMARY: The Albuquerque Operations Office (AL), pursuant to 10 CFR 600.7(b)(2), intends to award, on a noncompetitive basis, a grant with the Florida Solar Energy Center (FSEC) of Cape Canaveral, Florida.

DATES: Comments must be received no later than September 29, 1994.

FOR FURTHER INFORMATION PLEASE CONTACT: Address comments to the attention of Margaret Hodge, Contracts and Procurement Division, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185–5400, (505) 845–5361.

SUPPLEMENTARY INFORMATION: Based on a determination, pursuant to 10 CFR Part 600. 7(b)(2), which authorizes a financial assistance award to be made noncompetitively if the activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE or another federal agency, and for which competition would have a significant adverse effect on continuity or completion of the activity, AL gives notice of its intent to award a grant with FSEC under the project entitled "Sustainable Hydrogen Production." The public purpose to be served by this award is to advance the state of the art in hydrogen production from renewable energy sources. Research involves four hydrogen production projects for producing hydrogen from renewable energy sources. This grant is a continuation of work done under a contract between FSEC and the National Renewable Energy Laboratory. The grant will be for one year. The government's funding of

this grant is subject to the availability of funds.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 94–22883 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–P

Albuquerque Operations Office; Financial Assistance for Advanced Utilities Concepts Division Program

AGENCY: Department of Energy, Albuquerque Operations Office.

ACTION: Notice of Intent Make a Noncompetitive Financial Assistance Award to Princeton University.

SUMMARY: The Albuquerque Operations Office (AL), pursuant to 10 CFR 600.7(b)(2), intends to award, on a noncompetitive basis, a grant with Princeton University of Princeton, New Jersey.

DATES: Comments must be received no later than September 29, 1994.

FOR FURTHER INFORMATION PLEASE CONTACT: Address comments to the attention of Margaret Hodge, Contracts and Procurement Division, Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185–5400, (505) 845–5361.

SUPPLEMENTARY INFORMATION: Based on a determination, pursuant to 10 CFR Part 600,7(b)(2), which authorizes a financial assistance award to be made noncompetitively if the activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE or another federal agency, and for which competition would have a significant adverse effect on continuity or completion of the activity, AL gives notice of its intent to award a grant with Princeton University under the project entitled "Hydrogen Energy Systems Studies." The public purpose to be served by this award is to perform technical and economic assessments of hydrogen energy systems. Research will assess using hydrogen derived from natural gas in a transistion toward widespread use of renewable hydrogen as an energy carrier. This grant is a continuation of work performed under a contract between Princeton and the National Renewable Energy Laboratory. The project period will be for one year. The government's funding of this grant is subject to the availability of funds.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 94–22884 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–P

Albuquerque Operations Office; Financial Assistance for Advanced Utilities Concepts Division Program

AGENCY: Department of Energy, Albuquerque Operations Office.

ACTION: Notice of Intent to Make a Noncompetitive Financial Assistance Award to the University of Hawaii.

SUMMARY: The Albuquerque Operations Office (AL), pursuant to 10 CFR 600.7(b)(2), intends to award, on a noncompetitive basis, a grant to the University of Hawaii of Honolulu, Hawaii.

DATES: Comments must be received no later than September 29, 1994.

FOR FURTHER INFORMATION PLEASE CONTACT: Address comments to the attention of Margaret Hodge, Contracts and Procurement Division, Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185–5400, (505) 845–5361.

SUPPLEMENTARY INFORMATION: Based on a determination, pursuant to 10 CFR Part 600,7(b)(2), which authorizes a financial assistance award to be made noncompetitively if the activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE or another federal agency, and for which competition would have a significant adverse effect on continuity or completion of the activity, AL gives notice of its intent to award a grant with the University of Hawaii under the project entitled "Hydrogen from Renewable Resources." The public purpose to be served by this award is to advance technology in hydrogen production and lightweight hydrogen storage. Research includes photobiological production of hydrogen, photoelectrochemical production of hydrogen, thermochemical production of hydrogen from wet biomass, indenyl polyhydride complexes of hydrogen storage, and polyhydride systems engineering. This grant is a continuation of work done under a contract between the University of Hawaii and the National Renewable Energy Laboratory. The grant will be for three years. The government's funding of this grant is subject to the availability of funds.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 94–22885 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–P

Economic Regulatory Administration

Final Consent Order With Murphy Oil Corporation, Murphy Oil USA, Inc. and Murphy Exploration & Production Company

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Department of Energy (DOE) has determined that a proposed Consent Order between DOE and Murphy Oil Corporation, Murphy Oil USA, Inc. and Murphy Exploration & Production Company (Murphy), which was published for public comment in 59 FR 38169 (July 27, 1994), shall be made final. The Consent Order resolves matters relating to Murphy's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 through January 28, 1981. To resolve these matters, Murphy will pay to DOE $10,700,000. Following receipt of the settlement monies, the Economic Regulatory Administration (ERA) will petition DOE's Office of Hearings and Appeals (OHA) to implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V. Those procedures provide persons who claim to have suffered injury from the alleged overcharges with the opportunity to submit claims for payment.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, GC–44, 820 First Street, NE., Suite 810, Washington, DC 20585, (202) 523–3045.

SUPPLEMENTAL INFORMATION:

I. Introduction
II. Comments Received
III. Analysis of Comments
IV. Decision

I. Introduction

On July 27, 1994, ERA published a Notice announcing a proposed Consent Order between DOE and Murphy, which would resolve matters relating to Murphy's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 through January 28, 1981. 59 FR 38169. That Notice summarized the proposed Consent Order, which requires Murphy to pay to DOE $10,700,000 within thirty (30) days of the effective date of the Consent Order.

The July 27 Notice supplied information regarding Murphy's potential liability for violations of the regulations applicable to first sales of domestic crude oil (10 CFR §§ 212.72–212.74), the regulations exempting from

the price rules the sale of crude oil produced from "stripper well" properties (10 CFR §§ 210.32 and 212.54), and the normal business practices rule (10 CFR § 210.62(c)) in connection with Murphy's first sales of crude oil during the period September 1973 through December 1979. These matters were at issue in a Remedial Order (RO) that OHA issued to Murphy on June 17, 1992 (*Murphy Oil Corp.*, 22 DOE ¶ 83,005 (1992)), as modified by a decision and proposed order (D&PO) issued by an Administrative Law Judge of the Federal Energy Regulatory Commission (FERC) on January 24, 1994. *Ocean Drilling & Exploration Co., et al.*, 66 FERC ¶ 63,002 (1994). The D&PO is now pending before the Commission in Docket No. RO92–5–000. With interest, Murphy's current liability under the D&PO (including ERA's estimate of Murphy's liability for previously unaudited properties and unaudited time periods (yet to be adjudicated by OHA or FERC)) totals approximately $5.2 million.

The Notice also enumerated the considerations which underlay ERA's preliminary view that the settlement is favorable to the government and in the public interest. The Notice solicited written comments from the public relating to the terms and conditions of the settlement and whether the settlement should be made final.

II. Comments Received

Written comments were received from three parties: Oryx Energy Company, successor to Sun Exploration and Production Company (Sun), a working interest owner on certain crude oil production properties operated by Murphy; the Controller of California (Controller), a participant in the *Murphy/Ocean Drilling* administrative enforcement litigation before OHA and FERC; and a group consisting of six utilities, fourteen transporting companies and five manufacturers (UTM).

Sun objects to an "implication" it purportedly perceives in paragraph 503(b) of the proposed Consent Order, relating to DOE's promise not to sue any other person, "presumably including Sun", as a non-operating interest owner, for alleged crude oil pricing violations at Murphy-operated properties. Sun Comments at 1.[1] The Controller and UTM raise concerns about what each perceives to be an impermissible compromise associated with DOE's claim for restitution of overcharges on that portion of Murphy's violations that pertained to production subject to federal royalties.

III. Analysis of Comments

A. Applicability of the Consent Order to a party other than Murphy

Echoing allegations it has advanced in another forum,[2] Sun asserts that DOE's promise in paragraph 503(b) of the proposed Consent Order not to sue others for overcharges caused by Murphy "incorrectly implies" that DOE predicates Murphy's liability upon the "underlying liability of the other interest owners", when in fact, as Sun acknowledges, DOE's position in the enforcement litigation is "predicated solely upon Murphy's alleged misconduct in causing the overcharges." Sun Comments at 2. Sun urges DOE to delete the sentence from paragraph 503(b) of the proposed Consent Order (quoted in footnote 1) or, at a minimum, make clear that the quoted sentence does not apply to Sun and that the money DOE receives from Murphy is not attributable to resolving a liability that Sun might have to the DOE. *Id.* at 3–4.

Sun's objection misconstrues the effect and purpose of the proposed Consent Order. The proposed Consent Order "constitutes a legally enforceable contractual undertaking that is binding on" Murphy and DOE alone and resolves the liability of Murphy alone. (Paragraphs 501 and 701). The proposed Consent Order makes no findings concerning the relative rights of Murphy and other working interest owners (such as Sun) on properties where Murphy was the operator, and does not bind any of the working interest owners (such as Sun) who are not parties to its terms. *Id.* at paragraphs 302, 303, 501, 504. Furthermore, contrary to Sun's misperception, paragraph 503(b) does not "impl[y]" any basis of Murphy's alleged liability inconsistent with DOE's position in the *Murphy/Ocean Drilling* enforcement litigation. Thus, no modification or clarification of paragraph 503(b) is necessary.

B. Settlement Pertaining to the Issue of Federal Royalty

The Controller objects to any compromise of DOE's claim for restitution of overcharges paid to the federal government in the form of royalties, and dismisses the *Ocean Drilling* D&PO's proposed reduction of the overcharge in this regard as lacking "any plausible merit." Controller's Comments at 1. The Controller also asserts that the Final Settlement Agreement in the Stripper Well Litigation precludes both DOE and Murphy from agreeing to any "offset" to restitution owed by Murphy. To the extent that the DOE feels compelled to accept some compromise on the royalty issue, the Controller maintains that the amount of any offset should come wholly from the federal share without any effect on the States' share. *Id.*

UTM likewise believe that the D&PO erred on the federal royalty payment issue, and urge that ERA "seek to recover such royalties on the reduced overcharges from the federal agencies to which they were paid." UTM Comments at 2. If ERA does not do so, UTM request that ERA specify the amount of the benefit which the federal agencies have received as their share of the overcharges as reduced by the ALJ and as their share of the overcharges recognized in the settlement. *Id.* at 2–3. UTM believe that such calculations would be a necessary basis for an analysis by OHA of the proper distribution of the amount recovered from Murphy. *Id.* at 3.[3]

As an initial matter, it is neither practical nor appropriate to quantify the portion of the $10.7 million proposed settlement sum that exceeds the $5.2 million in restitution under the D&PO that can be ascribed to the royalty payment issue. ERA's evaluation of the risks of continued litigation considered the federal royalty question in combination with risk related to many other issues specified in the July 27 Federal Register Notice. 59 FR at 38170. Any attempt to parse the settlement process's achievement of the $10.7 million amount in order to quantify the portion that could be "attributable" to this issue would constitute an unwarranted invasion of the content of the negotiations that preceded the proposed settlement. Such an outcome would discourage settlement activity

[1] Paragraph 503(b) provides that:

In addition, where Murphy was the operator of a property that produced crude oil, the DOE shall not initiate or prosecute any enforcement action against any person for noncompliance with the federal petroleum price and allocation regulations relative to such property operated by Murphy.

[2] Sun brought a civil action against the government in the United States District Court for the District of Delaware, *Sun Company, Inc.* v. *United States*, 594 F. Supp. 652 (D. Del. 1984). The District Court granted the government's motion for summary judgment in an unpublished opinion, *Sun Company, Inc.* v. *United States*, No. 83–204 (D. Del. Jan. 26, 1993), *appeal docketed*, No. 93–1542 (Fed. Cir. Sept. 2, 1993).

[3] Over and above the approximately $5.2 million that represents Murphy's current liability under the D&PO, ERA calculates the D&PO rejected an additional $68,270 in principal amount as overcharges attributable to payment of federal royalty. Interest on that sum through June 30, 1994, equals $273,528.

and certainly would not advance the public interest.

Second, neither the Final Settlement Agreement in *In re Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), nor the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501 *et seq.*,[4] provides a guarantee that potential refund recipients such as the Controller or UTM be insulated from the effects of litigation risks associated with ERA's attempts to recover restitution in enforcement actions, whether such risk is realized in the course of litigation or the consideration of reasonable settlement. ERA's assessment of risk attributable to this issue is not at variance with PODRA or the Final Settlement Agreement in the *Stripper Well* litigation, and is completely consistent with ERA's authority to compromise claims pursuant to 10 CFR 205.199J.

Finally, the concerns of the Controller and UTM about the settlement of the federal royalty issue appear to be premised on their disagreement with the conclusion expressed in the D&PO rather than the question of the reasonableness of the resolution proposed. ERA likewise continues to believe that its interpretation in the litigation of this issue (as well as all the other issues in the case) is meritorious, but recognizes that the adjudicated results can often be at odds with the arguments proffered in litigation. There could be no question that if the federal royalty issue were not settled and were eventually to be lost in litigation, the potential beneficiaries could have no further argument or claim to any portion of the sum not recovered. Absent consideration of compelling policy principles, a resolution by settlement should be based on the possible and probable litigation outcomes; the federal royalty issue is one of those disputes subject to a litigated outcome and therefore appropriate to consider for compromise settlement.[5]

ERA has concluded that the comments of the Controller and UTM deal with matters more appropriately addressed within a proceeding pursuant to 10 CFR Part 205, Subpart V. ERA will not modify the proposed Consent Order in the manner advocated by the Controller of California and UTM.

IV. Decision

ERA has determined that it is in the best interest of the public to make the proposed Consent Order final without change. By this Notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between DOE and Murphy is made a final Order of the Department of Energy, effective on the date of publication of this Notice in the Federal Register.

Issued in Washington, DC, on September 9, 1994.

Robert R. Nordhaus,

Acting Administrator, Economic Regulatory Administration, General Counsel.

[FR Doc. 94–22890 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–P

[4] The Final Settlement Agreement (effected in 1986) and the PODRA (enacted in 1986) post date both Murphy's payment of the federal royalties (September 1973–January 1981) and the initiation of ERA's formal enforcement proceedings through a Notice of Probable Violation on January 28, 1981.

[5] This is particularly so for a question such as the federal royalty issue, which comprises just over 6.5% of Murphy's current liability under the D&PO and approximately 3.2% of the $10,700,000 settlement amount.

Office of Energy Efficiency and Renewable Energy

[Case No. F–075]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Rheem Manufacturing Company

AGENCY: Office of Energy Efficiency and Renewable Energy.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Rheem Manufacturing Company (Rheem) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's GRA upflow, and GSA downflow condensing gas furnaces.

Today's notice also publishes a "Petition for Waiver" from Rheem. Rheem's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Rheem seeks to test using a blower delay time of 20 seconds for its GRA upflow, and GSA downflow condensing gas furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than October 17, 1994.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–075, Mail Stop EE–43, Room 5E–066, Forrestal Building, 1000 Independence Avenue, SW.+, Washington, DC 20585, (202) 586–7140.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily, test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate

the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On July 15, 1994, Rheem filed an Application for Interim Waiver and a Petition for Waiver regarding blower time delay.

Rheem's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Rheem requests the allowance to test using a 20-second blower time delay when testing its GRA upflow, and GSA downflow condensing gas furnaces. Rheem states that the 20-second delay is indicative of how these furnaces actually operate. Such a delay results in an average of approximately 3.0 percent improvement in energy efficiency. Since current DOE test procedures do not address this variable blower time delay, Rheem asks that the Interim Waiver be granted.

Rheem's Petition for Waiver also requests DOE to grant relief from the DOE furnace test procedure relating to the above specification.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, 57 FR 34560, August 5, 1992, and 59 FR 30577, June 14, 1994; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991, and 59 FR 30579, June 14, 1994; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, 57 FR 54230, November 17, 1992, and 59 FR 30575, June 14, 1994; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992, and 59 FR 30578, June 14, 1994. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Rheem an Interim Waiver for its GRA upflow, and GSA downflow condensing gas furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations Part 430, the following letter granting the Application for Interim Waiver to Rheem was issued.

Pursuant to paragraph (b) of 10 CFR § 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the petition.

Issued in Washington, DC September 7, 1994.

Christine A. Ervin,

Energy Efficiency and Renewable Energy.

September 8, 1994.

Mr. Daniel J. Canclini,

Vice President-Product Development and Research Engineering, Rheem Manufacturing Company, P.O. Box 17010, Fort Smith, AR 72917–7010.

Dear Mr. Canclini: This is in response to your July 15, 1994, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for Rheem Manufacturing Company (Rheem) GRA upflow, and GSA downflow condensing gas furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, 57 FR 34560, August 5, 1992, and 59 FR 30577, June 14, 1994; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991, and 59 FR 30579, June 14, 1994; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, 57 FR 54230, November 17, 1992, and 59 FR 30575, June 14, 1994; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992, and 59 FR 30578, June 14, 1994. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Rheem's Application for Interim Waiver does not provide sufficient information to

evaluate what, if any, economic impact or competitive disadvantage Rheem will likely experience absent a favorable determination on its application.

However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Rheem's Application for an Interim Waiver from the DOE test procedure for its GRA upflow, and GSA downflow condensing gas furnaces regarding blower time delay is granted.

Rheem shall be permitted to test its GRA upflow, and GSA downflow condensing gas furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2 , 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperature. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

July 15, 1994.

Mr. Cyrus Nasseri,

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Dear Mr. Nasseri: This is a petition for waiver and application for interim waiver submitted pursuant to title 10 CFR Part 430.27. Waiver is requested from the furnace test procedure as prescribed in Appendix N to Subpart B of Part 430. The test procedure requires a 1.5 minute delay between burner and blower start-up. Rheem is requesting authorization to use a 20 second delay instead of 1.5 minutes for our Series (-)GRA upflow and (-)GSA downflow condensing type residential gas-fired furnaces.

Rheem will be manufacturing these appliances with an electronic device that controls the blower operation on a timing sequence as opposed to temperature.

Improved energy efficiency is achieved by reducing on cycle losses. Under the Appendix N procedures, the stack temperature is allowed to climb at a faster rate than it would with a 20 second blower on time, allowing energy to be lost out of the vent system. This waste of energy would not occur in actual operation. If this petition is granted, the true blower on time delay would be used in the calculations.

The current test procedures do not give Rheem credit for the energy savings which averages approximately 3%. Rheem is of the opinion that this reduction in energy is a worthwhile savings.

Rheem has most recently been granted previous waivers regarding blower on time to be used in the efficiency calculations for our (-)GED and (-)GKC series condensing furnaces and (-)GDG, (-)GVH, (-)GPH, (-)GLH series furnaces. Several other manufacturers of gas furnaces have also been granted a waiver to permit calculations based on timed blower operation. Also, ASHRAE Standard 103–1993, paragraph 9.51.2.2 specifically addresses the use of timed blower operation.

Confidential and comparative test data is available to you upon your request, confirming the above energy savings.

Manufacturers that domestically market similar products are being sent a copy of this petition for waiver and petition for interim waiver.

Sincerely,

Daniel J. Canclini,

Vice President-Product Development and Research Engineering.

[FR Doc. 94–22891 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EC94–28–000, et al.]

Florida Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

September 8, 1994.

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

1. Florida Power Corporation

[Docket No. EC94–28–000]

Take notice that on September 6, 1994, Florida Power Corporation (FPC) filed an application under Section 203 of the Federal Power Act for authorization to sell to Georgia Power Company (GPC) a one-third undivided ownership interest in a step-up transformer to be located at Intercession City, Florida.

FPC states that it is building a new combustion turbine generating unit at Intercession City, Florida. When the unit is complete, GPC will purchase a one-third ownership interest in the unit. Concurrently, FPC proposes to sell and GPC proposes to buy a one-third interest in the step-up transformer located at the generator site. FPC states that the interest in the step-up transformer is the only transmission-related asset being conveyed and therefore the only facility sale which requires the Commission's prior authorization.

Comment date: September 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power Corporation

[Docket No. ER94–1627–000]

Take notice that on September 6, 1994, Florida Power Corporation (FPC) filed an agreement for long term transmission service to be provided by FPC to Georgia Power Company (GPC).

FPC states that it is building a combustion turbine generating unit at Intercession City, Florida. When the unit is complete, GPC will purchase a one-third ownership interest in the unit. GPC will then be entitled to receive the unit's capacity and energy output from June-September of each year (Summer Period).

FPC will deliver GPC's Summer Period capacity and energy entitlements pursuant to the parties' long term transmission service agreement. FPC therefore requests an effective date for the long term transmission service agreement to coincide with the sale of the one-third interest in the generating unit, which is currently estimated to occur in December, 1995. FPC proposes to notify the Commission of the exact

date within ten days after the closing of the sale.

Comment date: September 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Golden Spread Electric

[Docket No. ER94–1307–000] Cooperative Inc.

Take notice that on August 29, 1994, Golden Spread Electric Cooperative, Inc. (Golden Spread) filed an amendment to its initial application in Docket No. ER94–1307–000 originally submitted on May 27, 1994. This amendment contains proposed changes to Golden Spread's FERC Electric Rate Schedule Nos. 12–22, and a related Special Facilities Agreement with one of its members, Midwest Electric Cooperative, Inc. Golden Spread has requested an effective date of September 16, 1994.

Comment date: September 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Power Company

[Docket No. ER94–1429–000]

Take notice that on August 26, 1994, Duke Power Company tendered for filing revised Appendix A to the Interchange Contract with Oglethorpe Power Corporation.

Comment date: September 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company

[Docket No. ER94–1512–000] of New Hampshire

Take notice that on August 31, 1994, Public Service Company of New Hampshire (PSNH) tendered for filing modifications to an Amendment that had previously been filed in the captioned docket to a Partial Requirements Resale Service Agreement between PSNH and the New Hampshire Electric Cooperative, Inc. (the NHEC). The original Amendment to the Partial Requirements Agreement reduces rates to the NHEC and was filed simultaneously with a new Interruptible Power Supply Agreement. Together, the Amendment and the Interruptible Power Supply Agreement substantially reduced the overall charges by PSNH to the NHEC for wholesale electric service. PSNH states that the modification to the Amendment that were negotiated and agreed to among the parties will result in slightly higher changes under the Partial Requirements Agreement. The increased charges are to cover increased costs to PSNH as a result of charges to accounting for post-retirement benefits other than pensions. PSNH further states that, notwithstanding this increase in charge under the Partial Requirements Agreement, overall charges to the NHEC for its wholesale electric service will be substantially reduced as a result of the restructured arrangements negotiated and agreed to by PSNH and the NHEC.

PSNH has renewed its request for an effective date for the Amendment, as modified, of October 1, 1994. However, by its terms, the increase in charges reflected in the modified Amendment are only applicable to electric service rendered on and after November 1, 1994.

PSNH states that copies of the filing were served on the NHEC and the New Hampshire Public Utilities Commission.

Comment date: September 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of New Hampshire

[Docket No. ER94–1513–000] of New Hampshire

Take notice that on August 31, 1994, Public Service Company of New Hampshire (PSNH) tendered for filing a signed Interruptible Power Supply Service Agreement (Interruptible Agreement) between PSNH and the New Hampshire Electric Cooperative (the NHEC), which revises in some respects the form of agreement originally filed with the Commission in the captioned proceeding.

PSNH states that the revisions to the Interruptible Agreement further clarify and reduce rates to the NHEC.

PSNH renews its request that the Commission permit the Interruptible Agreement, as revised, to become effective October 1, 1994, and states that a copy of the amendment to the filing was served on the NHEC and the New Hampshire Public Utilities Commission.

Comment date: September 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER94–1608–000] Company

Take notice that on August 30, 1994, Southern California Edison Company (Edison) tendered for filing a 1994 Settlement Agreement between Southern California Edison Company and the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California, and related Exhibits. Edison states that the 1994 Settlement Agreement and its related Exhibits resolve numerous disputes among Edison and the five Cities in a mutually agreeable and fair manner. Edison also states that the rate schedules do not provide for a rate increase. Edison requests the Commission to find the 1994 Settlement Agreement and to approve them in their entirety without change or condition.

Copies of the filing were served on the California Public Utilities Commission and their five Cities, which are jurisdictional customers of Edison.

Comment date: September 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Kentucky Utilities Company

[Docket No. ER94–1609–000]

Take notice that on August 29, 1994, Kentucky Utilities Company tendered for filing a revised executed contract for electric service with the City of Madisonville for its GE plant substation delivery point.

Comment date: September 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER94–1615–000]

Take notice that on September 1, 1994, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide non-firm transmission service to Boston Edison Company (BECO) under the NU System Companies' Transmission Service Tariff No. 2.

NUSCO states that a copy of this filing has been mailed to BECO.

NUSCO requests that the Service Agreement become effective on October 1, 1994.

Comment date: September 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER94–1624–000]

Take notice that on September 6, 1994, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a copy of the fully executed Emergency Service Agreement between PacifiCorp and Emerald People's Utility District.

PacifiCorp respectfully request that the Commission grant a waiver of prior notice pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations and that an effective date of September 1, 1994 be assigned.

Copies of this filing were supplied to the Public Utility Commission of Oregon.

Comment date: September 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER94–1625–000]

Take notice that on September 6, 1994, Wisconsin Electric Power Company (Wisconsin Electric), tendered

for filing an unexecuted Network Transmission Service Agreement (NTSA) between itself and The Wisconsin Public Power Inc. SYSTEM (WPPI). The NTSA would replace the services provided to WPPI under both the August 10, 1990 Conjunctive Transmission Service Agreement and five point-to-point service agreements under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 1, Rate Schedule T–1. This filing constitutes Wisconsin Electric's response to WPPI's August 5 transmission service request under Sections 211 and 213 of the Federal Power Act. Because the implementation of the NTSA would result in a reduction of transmission service revenues, Wisconsin Electric has submitted materials under the abbreviated filing requirements of the Regulations.

Wisconsin Electric requests an effective date of November 1, 1996, when the bilateral rate moratorium contained in the Conjunctive Transmission Service Agreement expires. Wisconsin Electric respectfully requests waiver of the 120 day advance notice requirement to permit the requested effective date.

Copies of the filing have been served on WPPI, Wisconsin Power and Light Company, Wisconsin Public Service Corporation, and the Public Service Commission of Wisconsin.

Comment date: September 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket No. ER94–1626–000]

Take notice that on September 6, 1994, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a transmission service agreement between itself and Heartland Energy Services, Inc. (HES).

Wisconsin Electric respectfully requests an effective date of sixty days after date of filing. Wisconsin Electric is authorized to state that HES joins in the requested effective date.

Copies of the filing have been served on UPPCO and the Public Service Commission of Wisconsin.

Comment date: September 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

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

Lois D. Cashell,

Secretary.

[FR Doc. 94–22799 Filed 9–14–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. QF94–155–000]

LSP-Whitewater Limited Partnership; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 9, 1994.

On September 6, 1994 LSP-Whitewater Limited Partnership of 101 East Main Street, Bozeman, Montana 59715, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the cogeneration facility will be located in the City of Whitewater, in Jefferson County, Wisconsin. The facility will consist of a combustion turbine generator, a heat recovery boiler and an extraction/condensing steam turbine generator. Steam recovered from the facility will be used by the University of Wisconsin-Whitewater Campus for campus heating and cooling and sending hot water to a new greenhouse to be constructed adjacent to the facility. The maximum net power production capacity of the facility will be 248.5 MW. The primary energy source will be natural gas. Construction of the facility is expected to commence on January 1, 1995.

Any person desiring to be heard or objecting to the granting of qualifying status 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 rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–22800 Filed 9–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC94–26–000, et al.]

Pennsylvania Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

September 7, 1994.

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

1. Pennsylvania Power & Light Company

[Docket No. EC94–26–000]

Take notice that on August 31, 1994, Pennsylvania Power & Light Company (PP&L) tendered for filing pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824(b), and Part 33 of the Commission's Regulations under the Federal Power Act, 18 CFR Part 33, an Application for Approval of Corporate Reorganization.

Pursuant to the proposed reorganization, PP&L will exchange all of its Common Stock for the stock of its subsidiary, PP&L Resources, Inc. (Resources), thereby creating a holding company structure. The purpose of the reorganization is to allow PP&L to continue to operate its regulated facilities as before, while allowing Resources to pursue a variety of unregulated business activities.

PP&L states that a copy of this filing has been served by mail upon the Pennsylvania Public Utility Commission.

Comment date: September 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Terra Comfort Corporation

[Docket No. EC94–27–000]

Take notice that on September 2, 1994, Terra Comfort Corporation (Terra Comfort) tendered for filing an Application for Authorization to sell jurisdictional facilities. Filing requirements were submitted pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Rules and Regulations.

Under the terms of an Agreement for sale of Generating Facilities, dated

August 19, 1994, Terra Comfort would sell to IES Utilities Inc. (IESU) all of the generating facilities and related assets presently used by Terra Comfort in providing capacity and energy to IESU pursuant to an existing contract between those entities. Terra Comfort also requests that the Commission issue an order terminating existing Terra Comfort FERC rate schedules effective with the closing of the proposed transaction.

Comment date: September 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Pennsylvania Power & Light Company

[Docket No. ER94–204–000]

Take notice that on August 26, 1994, Public Service Electric & Gas Company tendered for filing a Certificate of Concurrence in the above-referenced docket.

Comment date: September 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Power & Light Company

[Docket No. ER94–475–001]

Take notice that on August 29, 1994, Wisconsin Power and Light Company, tendered a compliance filing with the Federal Energy Regulatory Commission in the above referenced dockets. The compliance filing consists of conformed copies of T–1 and T–2 transmission Tariffs, a modified transmission service agreement between Wisconsin Power and Light Company (WPL) and Heartland Energy Services, Inc., and an updated service list.

Comment date: September 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corporation

[Docket No. ER94–1464–000]

Take notice that on August 29, 1994, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an executed Certificate of Concurrence by Louis Dreyfus Electric Power Inc. (Dreyfus). This Certificate of Concurrence is intended to satisfy Dreyfus' filing requirements due to the Exchange Unit provision in NMPC's Power Sales Tariff, and is being submitted to FERC as a supplement to the filing (of a Service Agreement) that Niagara Mohawk made on July 15, 1994.

NMPC renews its request for an effective date of July 18, 1994. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Dreyfus.

Comment date: September 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER94–1465–000]

Take notice that on August 29, 1994, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an executed Certificate of Concurrence by Enron Power Marketing, Inc. (Enron). This Certificate of Concurrence is intended to satisfy Enron's filing requirements due to the Exchange Unit provision in NMPC's Power Sales Tariff, and is being submitted to FERC as a supplement to the filing (of a Service Agreement) that Niagara Mohawk made on July 15, 1994.

NMPC renews its request for an effective date of June 21, 1994. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Enron.

Comment date: September 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mowhawk Power Corporaton

[Docket No. ER94–1466–000]

Take notice that on August 29, 1994, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an executed Certificate of Concurrence by The United Illuminating Company (UI). This Certificate of Concurrence is intended to satisfy UI's filing requirements due to the Exchange Unit provision in NMPC's Power Sales Tariff, and is being submitted to FERC as a supplement to the filing (of a Service Agreement) that Niagara Mohawk made on July 15, 1994.

NMPC renews its request for an effective date of July 18, 1994. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and UI.

Comment date: September 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER94–1467–000]

Take notice that on August 29, 1994, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an executed Certificate of Concurrence by LG&E Power Marketing (LG&E). This Certificate of Concurrence is intended to satisfy LG&E's filing requirements due to the Exchange Unit provision in NMPC's Power Sales Tariff, and is being submitted to FERC as a supplement to the filing (of a Service Agreement) that Niagara Mohawk made on July 15, 1994.

NMPC renews its request for an effective date of July 18, 1994. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and LG&E.

Comment date: September 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Pennsylvania Power Company

[Docket No. ER94–1577–000]

Take notice that on August 22, 1994, Pennsylvania Power Company (Penn Power) tendered for filing Electric Service Agreements between Penn Power and the Pennsylvania Boroughs of New Wilmington and Wampum (Boroughs). Penn Power states that these agreements provide for the sale of electric power by Penn Power to these two Boroughs for an additional five-year period. New Wilmington and Wampum are currently served under Penn Power's FPC Electric Service Tariff Nos. 30 and 31 respectively.

Comment date: September 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Public Service Corporation

[Docket No. ER94–1585–000]

Take notice that on August 23, 1994, Wisconsin Public Service Corporation (WPS) tendered for filing an executed Transmission Service Agreement between WPS and Consolidated Water Power Company. The Agreement provides for transmission service under the T–1 Transmission Tariff, FERC Original Volume No. 4.

WPS asks that the Agreement become effective as of August 15, 1994. Copies of the filing have been served on Consolidated Water Power Company and the Public Service Commission of Wisconsin.

Comment date: September 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Central Vermont Public Service Corporation

[Docket No. ER94–1587–000]

Take notice that on August 22, 1994, Central Vermont Public Service Corporation (CVPS), tendered for filing the Actual Cost Report for Service Year Billing 1993 associated with a Transmission Service Agreement

between Central Vermont and Vermont Electric Generation and Transmission Cooperative, Inc. dated September 6, 1984, as required under Article IV, Section A(2) of the Agreement.

Comment date: September 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER94–1588–000]

Take notice that on August 24, 1994, Southern California Edison Company (Edison) requested the Commission to disclaim jurisdiction and, in the alternative, tendered for filing the following procedure.

Edison-SMUD Power Sale Agreement Operating Procedure #1 (Procedure).

This Procedure sets forth details for scheduling and dispatching Operating Capacity and deliveries of Associated Energy under the terms of the 1988 Edison-Sacramento Municipal utility District (SMUD) Power Sale Agreement, FERC Rate Schedule No. 238.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Northern Power Exchange Corporation

[Docket No. ER94–1593–000]

Take notice that on September 1, 1994, National Power Exchange Corporation tendered for filing revised FERC Electric Rate Schedule No. 1.

Comment date: September 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Arizona Public Service Company

[Docket No. ER94–1607–000]

Take notice that on August 30, 1994, Arizona Public Service Company (APS) tendered for filing revised Exhibit B to the Wholesale Power Agreement between APS and Citizens Utilities Company (Citizens) (APS-FERC Rate Schedule No. 149).

Current rate levels are unchanged from those currently on file with the Commission, and no other significant change in service to this or any other customer results from the revision proposed herein. No new or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on Cities and the Arizona Corporation Commission.

Comment date: September 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. The Narragansett Electric Company

[Docket No. ER94–1610–000]

Take notice that on August 30, 1994, The Narragansett Electric Company, tendered for filing changes to certain adjustment factors affecting the retail rates charged under its borderline sales tariff. According to Narragansett, Rhode Island Public Utilities Commission has approved the tendered changes and made them effective as of specified dates during July 1994.

Comment date: September 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Company Services, Inc.

[Docket No. ER94–1611–000]

Take notice that on August 31, 1994, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric Power Company (collectively referred to as "Southern Companies") filed a Service Agreement dated as of August 17, 1994, between AES Power, Inc. and SCS for service under the Short-Term Non-Firm Transmission Service Tariff of Southern Companies.

Comment date: September 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Destec Power Services, Inc.

[Docket No. ER94–1612–000]

Take notice that Destec Power Services, Inc. on August 31, 1994, tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.205 and 385.207) and Section 35.12 of the Commission's Regulations under the Federal Power Act, 18 CFR 35.12, a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its FERC Electric Schedule No. 1, to be effective on September 1, 1994.

Destec Power Services, Inc. intends to engage in electric power and energy transactions as a marketer and a broker. In Destec Power Services, Inc.'s marketing transactions, Destec Power Services, Inc. proposes to charge rates mutually agreed upon by the parties. Destec Power Services, Inc. is not in the business of producing or transmitting electric power. Destec Power Services, Inc. does not currently have or contemplate acquiring title to any electric power transmission facilities or any electricity service franchises.

Comment date: September 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. Hadson Electric, Inc.

[Docket No. ER94–1613–000]

Take notice that on August 31, 1994, Hadson Electric, Inc. (Hadson Electric) tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1 to be effective on the date of the Commission order.

Hadson Electric intends to engage in electric power and energy transactions as a marketer and broker. In transactions where Hadson Electric sells electric energy it proposes to make such sales at rates, terms, and conditions to be mutually agreed to with the purchasing party. Hadson Electric is not in the business of generating, transmitting, or distributing electric power.

Comment date: September 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. Southern Company Services, Inc.

[Docket No. ER94–1614–000]

Take notice that on September 1, 1994, Southern Company Services, Inc., on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies), have tendered for filing amendments to unit poser sales (UPS) agreements between Southern Companies, and Florida Power Corporation, Florida Power & Light Company, Jacksonville Electric Authority, and the City of Tallahassee, Florida respectively. Specifically, the following amendments were submitted: (i) An Amendment dated April 15, 1994, to the Amended and Restated Unit Power Sales Agreement between JEA and Southern Companies dated May 19, 1982, as amended; (ii) an Amendment dated March 29, 1994, to the Amended and Restated Unit Power Sales Agreement between FPL and Southern Companies dated February 18, 1982, as amended; (iii) an Amendment dated April 21, 1994, to the Unit Power Sales Agreement between FPC and Southern Companies dated July 19, 1988, as amended; (iv) an Amendment dated March 29, 1994, to the Unit Power Sales Agreement between FPL and Southern Companies dated July 20, 1988, as amended; (v) an Amendment dated April 5, 1994, to the Unit Power Sales Agreement between JEA and Southern Companies dated August 17, 1988, as amended; and (vi) an Amendment dated August 1, 1994, to the Unit Power Sales Agreement dated December 8, 1990,

between Southern Companies and Tallahassee.

The parties to the above-referenced agreements propose to revise the agreements to modify the classifications methodology used to calculate operation and maintenance expenses, to provide for increased peak capacity, and to adjust the method by which net dependable capacity ratings are calculated. The parties request the amendments concerning operation and maintenance expenses to be made effective as of August 1, 1993, and request the other amendments be made effective as of January 1, 1993.

Comment date: September 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

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

Lois D. Cashell,

Secretary.

[FR Doc. 94-22801 Filed 9-14-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP94-744-000, et al.]

Florida Gas Transmission Company, et al.; Natural Gas Certificate Filings

September 7, 1994.

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

1. Florida Gas Transmission Company

[Docket No. CP94-744-000]

Take notice that on August 29, 1994, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP94-744-000, as supplemented on September 1, 1994, a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon and remove a meter station which served as a delivery facility for Deseret Ranches of Florida, Inc. (Deseret) in Osceola County, Florida, under FGT's blanket certificate issued in Docket No. CP82-553-000, pursuant to Section 7(b) 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.

FGT states that Deseret has requested, by letter dated June 14, 1994, FGT to remove the inactive meter station, which once served as a delivery point to Deseret under an agreement dated October 1, 1986, by and between FGT and Deseret. FGT further states that upon its restructuring of its services under Order 636, Deseret elected to change its energy source and did not execute a new service agreement with FGT. FGT indicates that the meter station served only Deseret. FGT also indicates that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to continue all services without detriment or disadvantage to FGT's other customers.

Comment date: October 24, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Gas Transmission Corporation and Texas Eastern Transmission Corporation

[Docket No. CP94-735-000]

Take notice that on August 24, 1994, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301 and Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP94-735-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation and exchange service between Texas Gas and Texas Eastern, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas and Texas Eastern state that a gas transportation and exchange agreement (Agreement) between Texas Gas and Texas Eastern provided for the parties to exchange up to 20,000 Mcf per day of natural gas between West Cameron Block 237, Offshore Louisiana and HIOS Block A-568, Offshore Texas. Texas Gas and Texas Eastern indicate that pending the delivery by Texas Eastern of the Block A-568 volumes of gas to Texas Gas, the Agreement also provided that Texas Eastern would transport 20,000 Mcf per day of natural gas for Texas Gas on an interim basis to a point of interconnection between the facilities of Texas Eastern and Transcontinental Gas Pipe Line Corporation (Transco) near Ragley, Louisiana, and certain points where Texas Eastern's and Texas Gas's system interconnected.

According to Texas Gas and Texas Eastern, Texas Gas and Texas Eastern mutually agreed to cancel the Agreement effective May 31, 1994, because the exchange services provided under the Agreement are no longer needed by either Texas Gas or Texas Eastern. Texas Gas and Texas Eastern indicate that there will be no abandonment of facilities related to the proposed abandonment of services.

Comment date: September 28, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP94-750-000]

Take notice that on August 30, 1994, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP94-750-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to abandon certain meter runs and sidetaps, under its blanket certificate issued in Docket No. CP82-402-000,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Natural seeks authorization to abandon two 10-inch meter runs and two sidetaps, one 12-inch and one 8-inch, located at Natural's Volo Meter and Regulator Station (Volo Meter Station), Lake County, Illinois. Natural states that the facilities were constructed pursuant to an order issued June 13, 1950,[2] to Texas Illinois Natural Gas Pipeline Company (Texas Illinois).[3] Natural states that the meter runs were not utilized and became surplus.

Natural states that Northern Illinois Gas Company (NIGAS), Natural's only customer, has requested changes at the Volo Meter Station which will allow NIGAS to receive gas at mainline pressure (800 psig maximum vs. a current delivery pressure of 350 psig). To accomplish this, NIGAS has agreed to install its own regulatory runs. Natural states that all work will take

[1] See, 20 FERC ¶ 62,415 (1982).

[2] See, 9 FPC, page 105, Docket No. G-1246.

[3] Natural acquired the assets of Texas Illinois by merger pursuant to an order dated September 29, 1960, issued in Docket No. CP60-97.

place inside the meter site or within the existing right-of-way.[4]

Comment date: October 24, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Williston Basin Interstate Pipeline Company

[Docket No. CP94–758–000]

Take notice that on September 2, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP94–758–000, an application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon a delivery tap and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Williston Basin proposes to abandon a delivery tap located on the 6-inch Redwing Lateral at Station No. 489+23, in the SE 1/4 Section 9, T149N, R101W, McKenzie County, North Dakota. Williston Basin states that the tap has not been used for several years and the landowner has requested that Williston Basin remove the above ground setting to ease farming operations.

Comment date: October 24, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, 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 385.214 or 385.211) 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 the 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 application if no 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 and/or permission and approval for the proposed abandonment are 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 applicant to appear or be represented at the hearing.

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

Lois D. Cashell,

Secretary.

[FR Doc. 94–22802 Filed 9–14–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. SA94–4–000]

American Gas Storage, L.P.; Petition for a Staff Adjustment

September 9, 1994.

Take notice that on September 1, 1994 American Gas Storage, L.P. (AGS) filed a Petition for a Staff Adjustment. The purpose of this petition is to permit AGS to establish rates for services performed pursuant to Section 311 of the NGPA which are comparable to the rates approved by the Texas Railroad Commission for intrastate service.

A copy of this filing has been served upon all of American Gas Storage, L.P.'s 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 September 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–22803 Filed 9–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA95–1–23–000 and TM95–2–23–000]

Eastern Shore Natural Gas Company; Proposed Changes in FERC Gas Tariff

September 9, 1994.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing on September 1, 1994 certain revised tariff sheets included in Appendix A attached to the filing. Such tariff sheets bear a proposed effective date of November 1, 1994.

Eastern Shore states the above referenced tariff sheets are being filed pursuant to § 154.305 of the Commission's regulations and Sections 21, 23, and 24 of the General Terms and Conditions of Eastern Shore's FERC Gas Tariff to reflect changes in Eastern Shore's jurisdictional sales rates.

Eastern Shore states the subject filing is its annual PGA filing and consists of the calculation of current adjustments for the Demand and Commodity purchased gas and transportation cost components, respectively, of Eastern Shore's jurisdictional sales rates proposed to be effective November 1, 1994. The subject filing also includes the calculation of Eastern Shore's annual Demand and Commodity surcharges proposed to be effective November 1, 1994 to amortize the Account No. 191 Unrecovered Purchased Gas Cost and Unrecovered Transportation Cost balances as of June 30, 1994.

Eastern Shore states the sales rates set forth herein reflect an overall change of $1.0006 per dt in the Demand Charge and an overall change of $0.1275 per dt in the Commodity Charge, as measured against Eastern Shore's quarterly PGA filed in Docket No. TQ94–6–23–000 on July 1, 1994 and approved to be

[4] Natural states that all other facilities at the Volo Meter Station requiring abandonment were constructed pursuant to § 2.55 of the Commission's Regulations. Therefore, Natural is not seeking abandonment authorization as to them.

effective on August 1, 1994 by letter order dated July 27, 1994.

Eastern Shore further states that pursuant to Section 24 of its FERC Gas Tariff it is filing to change certain of its storage service rates to track changes made by its pipeline suppliers which provide such services to Eastern Shore.

Eastern Shore states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or 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 Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 27, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–22804 Filed 9–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–327–001]

Florida Gas Transmission Company; Compliance Filing

September 9, 1994.

Take notice that on September 2, 1994, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

Substitute First Revised Sheet No. 177A

On July 25, 1994 FGT filed tariff sheets proposing modifications to the creditworthiness criteria associated with its permanent capacity release program. Subsequently, on August 31, 1994, the Commission issued an order directing FGT to file revised tariff language as discussed in FGT's August 24, 1994 answer to a pleading by Peoples Gas System, Inc. Therefore, in compliance with the Commission's order, in the instant filing FGT is revising § 18.G.1 on Substitute First Revised No. 177A consistent with FGT's August 24 Answer and the Commission's August 31 Order. Specifically, the revised provision will clarify that if at the time of relinquishment an Acquiring Shipper meets the creditworthiness standards, then the Relinquishing Shipper is fully relieved of liability to FGT, with respect to the amount of capacity relinquished.

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 September 16, 1994. Protests will be considered by the Commission in determining the appropriate actions 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. 94–22805 Filed 9–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–66–000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

September 9, 1994.

Take notice that on September 1, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the below listed tariff sheets to be effective October 1, 1994:

Second Revised Sheet No. 601
Fourth Revised Sheet Nos. 602 through 605
Fourth Revised Sheet No. 611
Second Revised Sheet No. 613

Natural states that the purpose of the filing is to update the Index of Purchasers contained in Natural's Tariff in accordance with § 154.41(a) of the Commission's Regulations.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective October 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 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 protests should be filed on or before September 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–22806 Filed 9–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–19–000]

Panhandle Eastern Pipe Line Company; Proposed Changes in FERC Gas Tariff

September 9, 1994.

Take notice that on August 31, 1994, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the tariff sheets listed on Appendix A to its FERC Gas Tariff, First Revised Volume No. 1, all of which are proposed to become effective October 1, 1994.

Panhandle states that this filing is being submitted to comply with Order No. 566 and § 250.16 of the Commission's Regulations, by (1) deleting § 6.7 of the General Terms and Conditions which relates to information on the pricing of service and the availability of capacity; (2) deleting items 15 and 16 from the Service Rights Request Form which refer to the marketing affiliate involvement in the transaction; and (3) deleting item 22 from the Service Rights Request Form which identifies the seller of the gas. In addition, Panhandle is revising Section 23 of the General Terms and Conditions to better describe the facilities shared with its marketing affiliate, 1 Source Energy Services Company, formerly Panhandle Trading Company.

Panhandle states that copies of this filing have been sent to all affected customers and applicable state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 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 September 16, 1994. Protests will be considered by the Commission 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 must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–22807 Filed 9–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–742–000]

Transcontinental Gas Pipe Line Corp.; Notice of Application

September 9, 1994.

Take notice that on August 29, 1994, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251 filed an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon certain facilities at the location where Transco will install a new river crossing at the Mississippi River, and requests such authorization by October 3, 1994, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that on July 6, 1994, it filed in Docket No. CP94–645–000 an application for certificate authorization to install approximately 4,100 feet of 360-inch diameter pipeline by horizontal directional drilling under the Mississippi River, at the location of its established pipeline crossing corridor of the Mississippi River between Point Coupee and West Feliciana Parishes, Louisiana. It is stated that approximately 900 feet of tie-in piping on the banks of the river will be required to connect the drilled crossing to Transco's existing mainline system. Transco states that the proposed installation will replace two 30-inch pipelines that have been exposed and damaged by Mississippi River channel scour and are now inoperable.

Transco states that by order dated August 12, 1994, the Commission issued a certificate to Transco authorizing installation of the 36-inch diameter pipeline by horizontal directional drilling.

Transco states that the instant application seeks authorization to abandon the two 30-inch pipeline crossings. Transco states that the two 30-inch pipelines will be abandoned as follows:

(1) Approximately 7,200 feet of the lines in the river bed will be abandoned in place. If piggable, these lines will be pigged until they are free of liquids, and then each end of the sections of lines to be abandoned will be cut below grade and welded closed with steel plates. The lines to be abandoned will be filled with water.

(2) Approximately 2,000 feet of on-bank tie-in piping will be removed.

Transco states that the retirement and removal work is estimated to cost $179,265. It is stated that the same contractor that will install the new crossing will also perform the retirement and removal work.

Transco submits that the public convenience and necessity requires issuance of the authorization requested herein because these abandonment activities are necessitated by installation of the new crossing of the Mississippi River. Transco requests that an order authorizing the abandonment activities described herein be issued by October 3, 1994, so that the contractor that will install the new crossing can also perform the retirement and removal work.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 26, 1994, file with the Federal Energy Regulatory Commission, 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 385.214 or 385.211) 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 the 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 application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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 Transco to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–22808 Filed 9–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–16–29–000]

Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

September 9, 1994.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on September 2, 1994 Sixth Revised Sheet No. 28 to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheet is proposed to be effective on August 1, 1994.

TGPL states that the purpose of the instant filing is to track a rate change attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule S–2. The tracking filing is being made pursuant to section 26 of the General Terms and Conditions of Volume No. 1 of TGPL's FERC Gas Tariff.

Included in appendix A attached to the filing is an explanation of the rate change and details regarding the computation of the revised S–2 rates.

TGPL states that copies of the filing are being mailed to each of its S–2 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 September 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–22809 Filed 9–14–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of July 11 Through July 15, 1994

During the week of July 11 through July 15, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

A. VICTORIAN, 7/13/94, LFA–0392

Dr. A. Victorian filed an Appeal from a determination issued by the Albuquerque Operations Office (Albuquerque) of the Department of Energy (DOE) in response to a request under the Freedom of Information Act (FOIA). Dr. Victorian sought documents concerning the DOE/Department of Defense Memorandum of Understanding for the non-lethal weapons program. In considering the Appeal, the DOE found that the search performed by Los Alamos National Laboratory was inadequate. In addition, the DOE found that Dr. Victorian did not adequately describe the document. Accordingly, the Appeal was granted and remanded to Albuquerque for a new determination.

JAMES W. SCOTT, JR., 7/13/94, LFA–0393

James W. Scott, Jr. (Appellant) filed an Appeal from a determination issued by the Oak Ridge Operations Office (Oak Ridge) in response to a request from the Appellant under the Freedom of Information Act. The Appellant sought information concerning his late grandfather, an employee of a DOE subcontractor. In considering the Appeal, the Office of Hearings and Appeals found that Oak Ridge performed an adequate search for documents related to the Appellant's request and that no responsive documents existed. Accordingly, the Appeal was denied in all respects.

MARK S. BOGGS, 7/12/94, LFA–0373

Mark S. Boggs filed an Appeal from a denial by the Freedom of Information and Privacy Acts Branch of a Freedom of Information Request. The appellant had sought records concerning possible removal of tissue samples from his mother's body for the purpose of testing the tissue for plutonium contamination. His request was prompted by a news article which indicated that during the cold war, tissue from the bodies of people who lived near nuclear plants had been removed and tested. In its determination, the FOIA Branch stated that it could not locate any responsive documents. After reviewing the matter, the DOE found that the FOIA Branch had conducted a thorough search for responsive documents, and that none had been located. Accordingly, the Appeal was denied.

US WEST COMMUNICATIONS FEDERAL SERVICES, INC., 7/13/94, LFA–0391

US West Communications, Federal Services, Inc. (US West) filed an Appeal from a determination issued by the Albuquerque Operations Office (Albuquerque) of the Department of Energy (DOE) in response to a request from US West under the Freedom of Information Act (FOIA). US West sought standard government contract forms 6432–A through 6432–F (containing unit prices) for the Integrated Technologies Corporation's fiber installation contract. In considering the Appeal, the Office of Hearings and Appeals found that Albuquerque performed an adequate search for the requested contract forms and that neither the forms nor unit prices existed for the fiber installation contract. Accordingly, the Appeal was denied.

Request for Exception

LAS ENERGY CORPORATION, 7/11/94, LEE–0113

LAS Energy Corporation filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. On May 26, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objections to the Proposed Decision and Order was filed with the Office of Hearings and Appeals of the DOE within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying LAS Energy's Application for Exception.

Request for Reconsideration and/or Rescission

CHEVRON U.S.A. INC. ECONOMIC REGULATORY ADMINISTRATION, 7/14/94, LRR–0015 LRZ–0025

Chevron U.S.A. Inc. (Chevron) filed a Motion for Reconsideration and the Economic Regulatory Administration (ERA) filed a Motion to Compel, relating to a Decision and Order which granted in part a Motion for Discovery filed by the ERA in a Proposed Remedial Order (PRO) proceeding involving Chevron, Case No. LRO–0004. Economic Regulatory Administration, 23 DOE ¶ 84,003 (1993) ("Discovery Order"). In its Motion for Reconsideration, Chevron requested that the firm not be required to produce full copies of its 1980 and 1981 income tax returns as directed in the Discovery Order. In the Motion to Compel, the ERA requested that Chevron be directed to comply fully with the Discovery Order and to produce immediately all responsive documents. In considering Chevron's motion, the DOE determined that substantial portions of Chevron's consolidated tax returns related to the firm's parent and affiliates, and was irrelevant to the matters concerned by the PRO. However, in considering the ERA's motion, the DOE further determined that Chevron had failed to produce other materials responsive to the discovery requests approved in the Discover Order. Accordingly, both Chevron's Motion for Reconsideration and the ERA's Motion to Compel were granted in part.

Refund Application

TEXACO INC./ WHEELING STEEL CORPORATION, TRW, INC., LASCO SHIPPING, INC., 7/11/94, RF321–19546, RF321–19566, RF321–19599

The DOE issued a Decision and Order dismissing three Applications for Refund filed by LK, Inc., a private filing service, on behalf of Wheeling Steel Corporation, TRW, Inc. and Lasco Shipping Co. The applications were signed only by an officer of LK, Inc. On several occasions, beginning on March 3, 1994, the DOE requested that LK, Inc. submit copies of the claims signed by responsible officials of the firms involved. However, LK, Inc. failed to submit the copies or show that it was authorized to file the applications. Consequently, the DOE ordered the applications dismissed.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public

Reference Room of the Office of Hearings and Appeals.

ATLANTIC RICHFIELD COMPANY/PEL'S ARCO, INC	RF304–13888	07/14/94
FARMERS UNION OIL COMPANY	RF272–86784	07/11/94
ST. FRANCIS MERCANTILE EQUITY	RF272–89672	
GULF OIL CORPORATION/FAULK'S GULF	RF300–18512	07/12/94
STAN TAUBER GULF	RF300–18516	
GULF OIL CORPORATION/WEIL PURCHASING CORPORATION	RF300–18389	07/12/94
ECONOMY OIL-WEIL BROTHERS	RF300–18390	
INTERSTATE VAN LINES, INC	RR272–140	07/14/94
OSBORNE TRUCK LINE, INC	RR272–141	
MARTIN TRUCKING, INC	RR272–142	
COVERED WAGON TRAIN, INC	RR272–143	
NATIONAL CAR RENTAL	RF272–93865	07/11/94
PENNSY SUPPLY, INC	RF272–69635	07/12/94
PENNSY SUPPLY, INC	RD272–69635	
WEBB'S TEXACO SERVICE	RF272–78409	07/14/94
LEN'S MOBIL MART	RF272–78410	
FOWLER-FARM-CITY-SALES, INC	RF272–78423	
THORNTON BROS. TEXACO STATION	RF272–78424	
ZIEGLER TRAHAN DAIRY *ET AL*	RF272–91638	07/14/94

Dismissals

The following submissions were dismissed:

NAME	CASE NO.
BALDWIN COUNTY BOARD OF EDUCATION.	RF272–82484
CITY OF NEWARK	RF272–85789
DOUGLAS COUNTY SCHOOL DISTRICT.	RF272–82729
ERIE CITY SCHOOL DISTRICT.	RF272–81787
EUGENE DOBAJ	RF272–78680
FORD CENTRAL C U SCHOOL DISTRICT.	RF272–82465
GREEN COUNTY HIGHWAY DEPARTMENT.	RF272–82721
INDEPENDENT FARMERS OIL COMPANY.	LEE–0118
MIKE DALTON	RF321–9714
SALEM STATE COLLEGE	RF272–82650
SPARTANBURG SCHOOL DISTRICT FIVE.	RF272–82997
ST. JOHN'S BAPTIST CHURCH.	RF272–78319
TOLLAND BOARD OF EDUCATION.	RF272–82879
WESTDALE TEXACO	RF321–20201
WESTDALE TEXACO	RF321–20201
WOODSTOCK BOARD OF EDUCATION.	RF272–82551
YORK TRUCK RENTAL INC	RF272–90032

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: September 7, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–22892 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Week of July 18 Through July 22, 1994

Office of Hearings and Appeals

During the week of July 18 through July 22, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

C.D. Varnadore & Betty Freels, 7/21/94, LFA–0375

C.D. Varnadore and Betty Freels (the Appellants) filed an Appeal from a partial denial by the DOE's Oak Ridge Operations Office (Oak Ridge) of a Request for Information which they had submitted under the Freedom of Information Act (FOIA). The Appellants had requested billing statements submitted by outside counsel to DOE contractors. In considering the Appeal, the DOE found that while some of the information that had initially been withheld under Exemption 4 should have been released to the public, some of the information requested by the Appellants was properly withheld under Exemption 4 since it was privileged and confidential. Accordingly, the Appeal was granted in part and the request was remanded to Oak Ridge for further processing.

David W. Loveless, 7/20/94, LFA–0390

David W. Loveless filed an Appeal from a partial denial by the DOE's Idaho Operations Office (Idaho Operations) of a Request for Information which he had submitted under the Freedom of Information Act (FOIA). Mr. Loveless had requested documents concerning the award of a contract by the DOE to MK-Ferguson, Inc. In considering the Appeal, the DOE found that Idaho Operations could properly invoke the "predecisional" privilege of Exemption 5 of the FOIA to withhold material in a Source Evaluation Board report that represented the deliberations and recommendations of the Board. The DOE also found that similar material in contract modification memoranda could be withheld under the privilege. The DOE, however, found that much of the material in the documents did not constitute deliberative material and, therefore, should be segregated and released to Mr. Loveless, unless covered by another FOIA exemption. Further, the DOE noted that the contract in question was awarded under the Federal Acquisition Regulations as amended by the DOE Acquisition Regulations. If any information was released under the debriefing provisions of these regulations, or otherwise made public during the contracting process, this information could not be withheld under Exemption 5. Finally, the DOE instructed Idaho Operations to consider the Memorandum to All Department Heads on FOIA matters issued by Attorney General Janet Reno. Accordingly, the Appeal was granted in part, and the request remanded to Idaho Operations for further action in

accordance with the instructions in the Decision.

Linda J. Carlisle, 7/22/94, LFA-0394

Linda J. Carlisle file an Appeal from a determination issued to her by the Director of the Utility Systems Division of the Office of Utility Technologies of the DOE's Office of Energy Efficiency and Renewable Energy in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that Mrs. Carlisle's original FOIA request was vague. Under these circumstances, under the DOE FOIA regulations, the agency has the obligation to contact the requester to clarify the request. The DOE contacted Mrs. Carlisle and determined that she sought six categories of information. Accordingly, the Appeal was granted in part and the clarified request was remanded to the Freedom of Information and Privacy Branch of the Reference and Information Management Division of the Office of Administrative Services to determine which offices may need to search for responsive documents.

Request for Exception

Little River Village Campground, Inc., 7/19/94, LEE-0127

Little River Campground, Inc. (Little River) filed an Application for Exception requesting permanent relief from the Energy Information Administration (EIA) requirement that it file Form EIA-728B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that Little River was experiencing a serious hardship of a temporary nature. Accordingly, temporary exception relief was granted to Little River from July 1994 until December 1994. Since Little River demonstrated that there was a clear need for an expeditious determination of the firm's Application for Exception, the DOE determined that exception relief should be made effective immediately through the issuance of a Final Decision and Order pursuant to 10 C.F.R. § 205.69C, rather than the issuance of a Proposed Decision and Order.

Refund Applications

Atlantic Richfield Company/Commonwealth Propane, Inc., 7/21/94, RF304-13307

The DOE issued a Decision and Order denying an Application for Refund filed by LK, Inc. (LK) in the Atlantic Richfield Company (Arco) refund proceeding on behalf of Commonwealth Propane, Inc. (Commonwealth). It was determined that LK failed to notify the DOE that Commonwealth's claim duplicated a previous filing. Therefore, LK was directed to submit, within thirty days of the date of the Decision and Order, an explanation of its role in the matter. The DOE determined that until this response was received, Arco refunds would be granted directly to the applicants that LK represents.

Enron Corporation/Farmers Union Central Exchange, Inc. Land O'Lakes, Inc., 7/18/94, RF340-160, RF340-161

Farmers Union Central Exchange, Inc. (CENEX) and Land O'Lakes (LOL) submitted Applications for Refund in the Enron Corporation refund proceeding. The DOE determined that in 1987 CENEX became the petroleum product supplier for the cooperative customers of LOL and Midland Cooperatives, Inc. (Midland), and therefore was entitled to a refund of $1,120,808 under the presumption of injury for cooperatives for Enron product purchased by CENEX, LOL and Midland and resold to those firms' member customers. This refund to CENEX was subject to reporting requirements and a dollar for dollar passthrough. With respect to Enron product that LOL resold to non-member customers during the refund period, the DOE found that the presumption of injury for cooperatives did not apply. However, the DOE found that LOL was entitled to a refund of $70,610 for these Enron purchases under the mid-range presumption of injury for resellers. Accordingly, the total refund granted to CENEX and LOL was $1,191,418.

Florida Public Utilities Co., 7/18/94, RF272-92184

The DOE issued a Decision and Order concerning the Application for Refund of Florida Public Utilities (FPU) in the crude oil overcharge refund proceeding. The DOE determined that the applicant resold the refined petroleum products that formed the basis of its application and thus passed on the costs of any overcharges to its customers. Therefore, the DOE concluded that FPU was not injured by any of the overcharges associated with the gallons that it purchased. Accordingly, the Application for Refund was denied.

Texaco Inc./Loop's Airport Texaco, 7/20/94, RF321-21005

On July 19, 1990, the DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning an Application for Refund filed by Loop's Airport Texaco, a retailer of Texaco products. That refund was based upon a statement by Bert N. Loop that he operated the retail outlet for the entire March 1973 to January 1981 refund period, and the volume of purchases at the location between those dates. Subsequently, another applicant filed an Application for Refund for the same retail location for the period beginning May 1978. Mr. Loop acknowledged that he left the outlet in 1978 and commenced operating another Texaco station for which he had not received any refund. The DOE found that Mr. Loop should repay, with interest, that portion of the refund attributable to purchases made after April 1978. However, this repayment obligation was reduced by the refund to which Mr. Loop was entitled with respect to the second Texaco station.

Texaco Inc./Major Oils, 7/22/94, RF321-4344

The DOE issued a Decision and Order concerning an Application for Refund filed by George R. Dunn on behalf of Major Oils in the Texaco Inc. refund proceeding. Mr. Dunn claimed that Major Oils purchased 36,530,672 gallons of Texaco motor gasoline and diesel fuel from Evans Oil during the consent order period. However, because Mr. Dunn could not substantiate his volume claim or show that the product he purchased originated with Texaco, the DOE denied the application.

Texaco Inc./Von Grantham Texaco, 7/22/94, RF321-20042, RF321-20043

The DOE issued a Decision and Order concerning Applications for Refund that were filed on behalf of Von Grantham Texaco by Von Grantham (Case No. RF321-20042) and by Joe Anna Grantham (Case No. RF321-20043), requesting refunds based on purchases of Texaco petroleum products. Mr. Grantham was the owner of Von Grantham Texaco during the refund period, and Ms. Grantham claimed that she was entitled to half of the portion of the refund attributable to purchases made while she and Mr. Grantham were married. In considering this request, the DOE found that the terms of the couple's two divorce decrees awarded to Mr. Grantham the right to the refund. Accordingly, the DOE issued a Decision and Order granting the Application for Refund filed by Mr. Grantham and denying the one filed by Ms. Grantham.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

ADCO CHEMICAL CO., INC	RF272–61760	07/22/94
ATLANTIC RICHFIELD COMPANY/GUNLOCKE CO., INC. *ET AL*	RF304–14362	07/19/94
ATLANTIC RICHFIELD COMPANY/RANDY'S SERVICE STATION	RF304–15458	07/18/94
BROWNING ELEMENTARY #9	RR272–118	07/18/94
DST PROPERTIES, INC	RC272–238	07/20/94
EAST ALABAMA PAVING CO., INC. *ET AL*	RF272–90012	07/20/94
GOOD HOPE REFINERIES/KERR-MCGEE CORPORATION	RF339–8	07/18/94
TRIANGLE REFINERIES, INC	RF339–9	
GULF OIL CORPORATION/CULOTTA GULF STATION	RF300–20414	07/22/94
GULF OIL CORPORATION/JERSEY CAPE OIL COMPANY	RF300–20399	07/18/94
STONE HARBOR REALTY	RF300–20400	
SHESTON OIL CO	RF300–20401	
GULF OIL CORPORATION/OLYMPIAN OIL CO	RF300–15978	07/22/94
GULF OIL CORPORATION/ROSEBORO GULF	RR300–184	07/18/94
JET GAS CORPORATION	RR300–249	
LOU-JAK TRUCKING SERVICE	RR272–139	07/19/94
SIDNEY TRUCK & STORAGE, INC. *ET AL*	RF272–93502	07/18/94
TEXACO INC./DANIEL TEXACO SERVICE STATION #2	RF321–11590	07/21/94
TEXACO INC./SHAW'S TEXACO *ET AL*	RF321–489	07/22/94
TEXACO INC./SOUTH COUNTY TEXACO *ET AL*	RF321–19810	07/18/94
TOWN OF TOWNSEND, MASS	RR272–121	07/18/94

Dismissals

The following submissions were dismissed:

NAME	CASE NO.
61ST STREET TEXACO	RF321–14423
BLOTT'S TEXACO	RF321–15751
BLOTT'S WESTGATE TEXACO.	RF321–15749
BURLINGTON TEXACO	RF321–16970
C&S OIL CO	RF321–14749
DALTONS SERVICE STATION.	RF321–15769
DESOTO, INC	RD272–42446
DESOTO, INC	RF272–42446
DOUG'S TEXACO	RF321–8814
EASTSIDE TEXACO	RF321–15750
FORGAY TEXACO	RF321–14491
HARDAWAY TEXACO	RF321–339
HAUSER TRUCKING CORP.	RF272–92575
HIGH SCHOOL TEXACO	RF321–8220
INTERSTATE TEXACO	RF321–19382
KATOLSKY TEXACO	RF321–540
M & H TEXACO	RF321–5919
MILLETT'S GLOBE TEXACO	RF321–8054
RAYS TEXACO	RF321–8307
UNIVERSAL SHEET METAL.	RF272–90356
WAYNE MOTT FARMS	RF300–18847
WILLIE QUALLS GULF SERVICE.	RF300–14003

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published looseleaf reporter system.

Dated: September 7, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–22893 Filed 9–14–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Proposed Decisions and Orders During the Week of July 18 Through July 22, 1994

During the week of July 18 through July 22, 1994, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 C.F.R. Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter. Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: September 9, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Brennan Oil & Heating Co., Inc., North Providence, RI, LEE–0130, Reporting Requirements

Brennan Oil & Heating Co., Inc. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that Brennan was a certainty firm and therefore could only be granted relief if it were experiencing extreme hardship. The DOE determined that it was not. Accordingly, on July 19, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

Schwebel Petroleum Company, Bakersfield, CA, LEE–0126, Reporting Requirements

Schwebel Petroleum Company filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found

that the firm was not suffering gross inequity or serious hardship as a result of the reporting requirement. Accordingly, on July 18, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 94–22894 Filed 9–14–94; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5072–5]

Arizona: Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Application of Arizona for Full Program Adequacy Determination, Public Hearing and Public Comment Period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945 (c)(1)(B), requires States to develop and implement regulatory programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator hazardous waste will comply with the revised federal MSWLF criteria (40 CFR Part 258). Section 4005(c)(1)(C) of RCRA, 42 U.S.C. 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether States have adequate regulatory programs for MSWLFs.

Approved state MSWLF programs provide interaction between the State and MSWLFs owners and operators regarding site-specific approval conditions. Only owners or operators located in States with approved programs can use the site-specific flexibility provided by 40 CFR Part 258 to the extent the state program allows such flexibility. EPA notes that regardless of the approval status of a State program or of any individual MSWLF facility, the federal MSWLF criteria will apply to all MSWLF facilities.

Arizona applied for a determination of adequacy under Section 4005 of RCRA. EPA has reviewed Arizona's application and is issuing for public comment a tentative determination that Arizona's regulatory program is adequate to ensure compliance with the revised MSWLF criteria.

Although RCRA does not require EPA to hold a public hearing on any determination to approve a State's MSWLF program, EPA Region IX has tentatively scheduled a public hearing on this determination. If a sufficient number of parties express interest in participating in a hearing by writing or calling the EPA Region IX contact given below within 30 days of the date of publication of this notice, EPA Region IX will hold a hearing on the date given below in the section entitled **DATES.** EPA Region IX will notify all persons who express such interest or who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the contact listed below in the section entitled **FOR FURTHER INFORMATION.** Representatives from the Arizona Department of Environmental Quality will participate in the public hearing on this subject, if one is held.

DATES: All comments on Arizona's application for a determination of adequacy must be received by U.S. EPA by the close of business on November 7, 1994. EPA Region IX has tentatively scheduled a public hearing for October 28, 1994.

ADDRESSES: Copies of Arizona's application for adequacy determination are available during the hours of 9 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Arizona Department of Environmental Quality, Program Development and Recycling Unit, 5th floor, 3033 North Central Avenue, Phoenix, Arizona 85012; or U.S. EPA Region IX Library, 75 Hawthorne Street, 13th floor, San Francisco, California 94105, phone (415) 744–1510. Written comments should be sent to Arthur Haubenstock, mail code RC–3–3, EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. Attn: Arthur Haubenstock, mail code RC–3–3, phone (415) 744–1355.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised criteria for MSWLFs (40 CFR Part 258). Subtitle D of RCRA, 42 U.S.C. 6941–6949(a), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop regulatory programs to ensure that MSWLFs comply with the federal criteria under 40 CFR Part 258. Section 4005 of RCRA, 42 U.S.C. 6945, also requires that EPA determine the adequacy of state MSWLF programs to ensure that facilities comply with the revised federal criteria. To facilitate this requirement, the Agency has drafted and is in the process of proposing a State and Tribe Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State and Tribe landfill regulatory programs.

EPA has approved, and will continue to approve, State MSWLF programs prior to the promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. EPA interprets the statutory requirements for States to develop "adequate" regulatory programs to impose several minimum standards. First, each State must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State must also provide for public participation in facility approval and enforcement as required in Section 7004(b) of RCRA, 42 U.S.C. 6974. Finally, the State must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State has submitted an "adequate" program based on the interpretation outlined above. EPA expects States to meet all of the criteria for all elements of a MSWLF program before it gives full approval to a MSWLF program. In addition, States may use the draft STIR as an aid in interpreting these requirements.

B. State of Arizona

On May 6, 1994, Arizona submitted an application for program adequacy determination. EPA Region IX reviewed Arizona's application and tentatively determined that all portions ensure compliance with the revised federal criteria. The State of Arizona has the authority to enforce the requirements of the revised federal MSWLF criteria at all MSWLFs in the State, with the exception of those located on tribal lands. EPA proposes to fully approve Arizona's MSWLF program.

The public may submit written comments on EPA's tentative determination until November 7, 1994. Copies of Arizona's application are available for inspection and copying at the location indicated in the section of this notice entitled **ADDRESSES.** If there is sufficient public interest, the Agency

will hold a public hearing on October 28 at 3 p.m. at Arizona Department of Environmental Quality, Public Meeting Room (South Mall area), 3033 North Central Avenue, Phoenix, Arizona.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Arizona's program. EPA will make a final decision on whether or not to approve Arizona's program and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the federal MSWLF criteria in 40 CFR Part 258 independent of any state enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a state program approved by EPA should be considered to be in compliance with the federal criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance with Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority

This notice is issued under the authority of Sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945, 6949a(c).

Dated: September 6, 1994.

John C. Wise

Acting Regional Administrator.

[FR Doc. 94–22854 Filed 9–14–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–00390; FRL–4911–4]

Pet Pesticide Product Label Statements; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting comments on proposed label statements for pesticide products registered for use on dogs and/or cats. The statements have been developed in a draft Pesticide Regulation (PR) Notice entitled, " Pet Pesticide Product Label Statements" which is available upon request. Interested parties may request a copy of the Agency's proposed policy as set forth in the ADDRESSES unit of this notice.

DATES: Written comments, identified by the docket number [OPP–00390], must be received on or before October 17, 1994.

ADDRESSES: The PR Notice is available from Janet Whitehurst, By mail: Program Management and Support Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 703, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6129. Submit written comments to: By mail: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Janet Whitehurst (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6129.

SUPPLEMENTARY INFORMATION: The PR Notice specifies statements that should be added to the labels of pesticide products which are registered for use on dogs and/or cats. The label statements outlined in the notice will help to ensure that products are used safely and risk of adverse effects to pets and humans is reduced. This **Federal Register** notice announces the availability of the draft PR Notice and solicits comment on the proposed policy. If, after reviewing any comments, EPA determines that changes to the Label Statements are warranted, the Agency will revise the draft PR Notice prior to release.

List of Subjects

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

Dated: September 8, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–22856 Filed 9–14–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30290B; FRL–4908–6]

Miles Inc.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Miles Inc., to register the pesticide products Folicur Technical and Folicur 3.6 F Foliar Fungicide containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Steve Robbins, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–6900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 28, 1988 (53 FR 37866), which announced that Mobay Corporation (now known as Miles Inc.) P.O. Box 4913, Kansas City,

MO 64120, had submitted an application to register the pesticide product Folicur Technical (File Symbol 3125–GIG), containing the active ingredient alpha-[2-(4-chlorophenyl)-ethyl]-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol at 93 percent, an active ingredient not included in any previously registered product.

The Agency also received an application from Miles Inc., to register the pesticide product Folicur 3.6 F Foliar Fungicide (3125–GOU), containing the active ingredient tebuconazole alpha-[2-(4-chlorophenyl)-ethyl]-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol at 38.7 percent. However, since the notice of receipt of application to register this product as required by section 3(c)(4) of FIFRA, as amended was inadvertently omitted in the notice of September 28, 1988 (53 FR 37866), interested parties may submit comments within 30 days from the date of publication of this notice for this product only.

The applications were approved on July 15, 1994, as Folicur Technical for formulation into end-use products and terrestrial food crop use (EPA Reg. No. 3125–383) and Folicur 3.6 F Foliar Fungicide for control of diseases on peanuts (EPA Reg. No. 3125–394).

The Agency has considered all required data on risks associated with the proposed use of tebuconazole, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of tebuconazole when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in a Chemical Fact Sheet on tebuconazole.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 2, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–22857 Filed 9–14–94; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

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

September 9, 1994.

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, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0019

Title: Application for a Radio Station License or Modification Thereof Under Part 23

Form Number: FCC Form 403

Action: Revision of a currently approved collection

Respondents: businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirements

Estimated Annual Burden: 2 responses, 5 hours average burden per response, 10 hours total annual burden

Needs and Uses: FCC Form 403 is used to license stations in the International Fixed Public Radiocommunications Services (Part 23). It is also used to make certain minor changes in the existing operations of the station. Applicants are advised to refer to Part 23 of the Commission's Rules before completing the form to determine if other showings are necessary in addition to those specified in the form. FCC Form 403 is used by the Commission staff to determine the applicant's eligibility to operate the station and to receive requested modifications to the facilities. The agency would not be able to determine the applicant's eligibility for acquiring a station license without this information.

OMB Number: 3060–0025

Title: Application for Restricted Radiotelephone Operator Permit—Limited Use

Form Number: FCC Form 755

Action: Reinstatement of a previously approved collection for which approval has expired

Respondents: Individuals or households

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 800 responses; 33 hours average burden per response; 264 hours total annual burden

Needs and Uses: In accordance with the Communications Act, applicants must possess certain qualifications in order to qualify for a restricted radiotelephone operator permit—limited use. This form is used by applicants that hold an Aircraft Pilot Certificate which is valid in the United States and need to operate aircraft radio stations. The form has been redesigned to include fee processing information. The data submitted on the FCC Form 755 aids the Commission in determining whether the applicant possesses these qualifications. If the data were not collected, it would be impossible to identify the person to whom the license were issued nor to determine whether that person possessed the qualifications required for the issuance of the license.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–22821 Filed 9–14–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Safbank Joint Venture

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, 800 North Capitol Street, NW., 9th Floor. 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 section 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.: 207–011157–005.

Title: Safbank Joint Venture Agreement.

Parties: The Bank Line Limited, The South African Marine Corporation Limited, Safbank Line Limited, Bank Line East Africa Limited.

Synopsis: The proposed amendment restates the basic Agreement to reflect the acquisition of Bank Line East Africa by Safbank Line Ltd., reflects changes to the share ownership of Safbank Line Ltd., and makes other non-substantive changes to the Agreement.

Agreement No.: 203–011305–001.

Title: Tricontinental Service Agreement.

Parties: Cho Yang Shipping Co., Ltd., DSR/Senator Joint Service.

Synopsis: The proposed amendment restates the basic agreement and deletes Eastbound/Westbound from the geographic scope. It also increases the maximum number of vessels and their U.S. trade capacity and modifies the Delegation of Authority provision. In addition, it makes other non-substantive changes to the Agreement.

Dated: September 12, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–22859 Filed 9–14–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Nu-Trans International, Inc., 3333 South Iron Street, Chicago, IL 60608, Officers: Darrell W. Sutton, President, Jerry J. Cappon, Vice President, James J. Falcione, Secretary/Treasurer

Graner Company, a division of Philips Electronic North America Corporation, 21 Grace Church Street, Port Chester, NY 10573, Officers: S.C. Tumminello, President, P.E.J. Boost, Exec. Vice President

Continental Freight Forwards Inc., 4 Canella Court, Belleville, NJ 07109, Officer: Sonia Hakim, Secretary

Phoenix International Business Logistics, Incorporated, 3620 Shoreline Drive, Portsmouth, VA 23703, Officer: Margaret A. Walker, President

Antonio J. Pulido-Morales dba H&S Intermodal, Inc., 4705 NW 7th Street, #405, Miami, FL 33126, Sole Proprietor

Vivian Cheung, 29 John Street, Ste. 903, New York, NY 10038, Sole Proprietor

E.T.A. Express Transport by Air, Inc., 467 Mundet Place, Hillside, NY 07205, Officers: Emanuele Tacchi, President, Angela Flynn, Vice President, Bernard X. Conlon, Vice President

By the Federal Maritime Commission.

Dated: September 9, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–22860 Filed 9–14–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket R–0846]

Federal Reserve Bank Services: Imputed Income on Clearing Balances

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment; extension of comment period.

SUMMARY: On August 16, 1994, the Board requested comment on a proposal to modify the methodology for imputing clearing balance income to more closely parallel the practices of a private sector service provider. The Secretary of the Board, acting under delegated authority, has extended the comment period by 30 days to give the public additional time to provide comments.

DATES: Comments must be received by October 21, 1994.

ADDRESSES: Comments should refer to Docket No. R–0846, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Greg Evans, Manager (202/452–3945), or Gwen Mitchell, Senior Accounting Analyst (202/452–3841), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: On August 16, 1994, the Board requested comment on a proposal to modify the methodology for imputing clearing balance income to more closely parallel the practices of a private sector service provider (see 59 FR 42832, August 19, 1994). Specifically, the Board requested comment on a proposal to change the rate used to impute clearing balance income from the 90-day Treasury bill coupon equivalent yield to a longer term Treasury rate based on the earning asset maturity structure of the largest bank holding companies (BHCs). The intended effect of the proposal is to promote competitive equity with private sector practices by matching the maturity structure for investment of clearing balances to the structure revealed in BHC data on investments.

The Board has received requests to extend the comment period. In order to accommodate the public's need for additional time, the comment period is extended until October 21, 1994.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, September 12, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–22824 Filed 9–14–94; 8:45 am]

BILLING CODE 6210–01–P

First Bancshares of Valley City, 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 October 10, 1994.

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

1. First Bancshares of Valley City, Inc., Valley City, North Dakota; to merge with Insurance By Strehlow, Inc., Casselton, North Dakota, and thereby indirectly acquire First State Bank of Casselton, Casselton, North Dakota.

2. First Interstate BancSystem of Montana, Inc., Billings, Montana; to acquire 100 percent of the voting shares of Citizens Bancshares, Inc., Hutchinson, Montana, and thereby indirectly acquire First Citizens Bank of Bozeman, Bozeman, Montana.

Board of Governors of the Federal Reserve System, September 9, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–22825 Filed 9–14–94; 8:45 am]

BILLING CODE 6210–01–F

Mid Illinois Bancorp, Inc., ESOP, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. 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 October 5, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Mid Illinois Bancorp, Inc., ESOP, Peoria, Illinois; to acquire 11.05 percent of the voting shares of Mid Illinois Bancorp, Inc., Peoria, Illinois, and thereby indirectly acquire South Side Trust & Savings Bank of Peoria, Peoria, Illinois.

2. Charles Weldon Morrison, Kimball, Nebraska; to acquire an additional 12.64 percent, for a total of 22 percent, of the voting shares of Lamoine Bancorp, Inc., LaHarpe, Illinois, and thereby indirectly acquire First State Bank of Western Illinois, LaHarpe, Illinois.

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

1. Irvin J. Burich and Thomas A. Burich Voting Trust, Hutchinson, Minnesota; to acquire 100 percent of the voting shares of Citizens Bancshares of Hutchinson, Inc., Hutchinson, Minnesota, and thereby indirectly acquire Citizens Bank & Trust Company, Hutchinson, Minnesota.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. T.K. Farris, Jr., Trustee of Thomas Kinder Farris Trust, Floydada, Texas; to acquire an additional 16.05 percent, for a total of 39.37 percent, of the voting shares of Floyd County Bancshares, Inc., Floydada, Texas, and thereby indirectly acquire The First National Bank, Floydada, Texas. In addition Martha White Farris, Floydada, Texas; also has applied to acquire an additional 7.27 percent, for a total of 9.6 percent, of the voting shares of Floyd County Bancshares, Inc., Floydada, Texas, and thereby indirectly acquire The First National Bank, Floydada, Texas.

Board of Governors of the Federal Reserve System, September 9, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–22826 Filed 9–14–94; 8:45 am]

BILLING CODE 6210–01–F

Trustmark Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

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

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their 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 September 29, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104

Marietta Street, N.W., Atlanta, Georgia 30303:

1. Trustmark Corporation, Jackson, Mississippi; to acquire Deville 1991 Limited Partnership, Vicksburg, Mississippi, and thereby engage in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y. The geographic scope for this activity is the state of Mississippi.

Board of Governors of the Federal Reserve System, September 9, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–22827 Filed 9–14–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Barium Chloride Dihydrate

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of barium chloride dihydrate, a white crystalline granule or powder, used in pigments, aluminum refining, leather tanning and coloring, the manufacture of magnesium metal, ceramics, glass, and paper products, as a pesticide, and in medicine as a cardiac stimulant.

Toxicology and carcinogenicity studies were conducted by administering barium chloride dihydrate (99% pure) in drinking water at concentrations of 0, 500, 1,250, or 2,500 ppm to groups of 60 F344/N rats and B6C3F$_1$ mice of each sex for two years.

Under the conditions of these 2-year drinking water studies, there was no evidence of carcinogenic activity [1] of barium chloride dihydrate in male or female F344/N rats that received 500, 1,250, or 2,500 ppm. There was no evidence of carcinogenic activity of barium chloride dihydrate in male or female B6C3F$_1$, mice that received 500, 1,250, or 2,500 ppm.

There were chemical-related increased incidences of nephropathy in male and female mice.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of Toxicology and Carcinogenesis Studies of Barium Chloride Dihydrate (CAS No. 10326–27–9) in F344/N Rats and B6C3F$_1$ Mice (Drinking Water Studies) (TR–432) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: September 8, 1994.

Kenneth Olden,

Director, National Toxicity Program.

[FR Doc. 94–22810 Filed 9–14–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Coumarin

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of coumarin, which is used in perfumes, cosmetics, and as a flavor-enhancing agent for foods.

Toxicology and carcinogenicity studies were conducted by administering coumarin (97% pure) in corn oil by gavage to groups of 60 male and female F344/N rats for up to 2 years at doses of 0, 25, 50, or 100 mg per kg body weight. Groups of 70 male and female B6C3F$_1$ mice were administered courmarin in corn oil by gavage at doses of 0, 50, 100, or 200 mg per kg body weight for up to 2 years.

Under the conditions of these 2-year gavage studies there were some evidence of carcinogenic activity [1] of coumarin in male F344/N rats based on increased incidences of renal tubule adenomas. There was equivocal evidence of carcinogenic activity of coumarin in female F344/N rats based on a marginally increased incidence of renal tubule adenomas. There was some evidence of carcinogenic activity of coumarin in male B6CF$_1$ mice based on the increased incidence of alveolar/bronchiolar adenomas. There was clear evidence of carcinogenic activity of coumarin in female B6C3F$_1$ mice based on increased incidences of alveolar/bronchiolar adenomas, alveolar/bronchiolar carcinomas, and hepatocellular adenomas. The marginally increased incidences of squamous cell papillomas of the forestomach in male and female mice receiving 50 mg/kg may have been related to courmarin administration.

The administration of coumarin to rats was also associated with an increased severity of nephropathy in the kidney and of bile duct hyperplasia in the liver, increased incidences of ulcers of the forestomach, and necrosis, fibrosis, and cytologic alteration of the liver. Administration of coumarin to mice was also associated with centrilobular hypertrophy, syncytial alteration, and eosinophilic focus in the liver.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of Coumarin (CAS No. 91–64–5) in F344/N Rats and B6C3F$_1$* Mice (Gavage studies) (TR–422) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: September 8, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–22814 Filed 9–14–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis; Studies of C.I. Direct Blue 218

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of C.I. Direct Blue 218, a copper chelated dye used for cellulose, acetate, nylon, silk, wool, tissue, papers, and textile goods with a urea-formaldehyde finish. C.I. Direct Blue 218 is one of five chemicals/dyes that are part of the National Toxicology Program's Benzidine Dye Initiative, established to determine the toxicity and carcinogenicity of representative benzidine congeners, congener-derived dyes, and benzidine derived dyes.

Two year toxicology and carcinogenesis studies were conducted by administering C.I. Direct Blue 218 in feed to groups of 60 male and female F344/N rats and B6C3F$_1$ mice at doses 0, 1,000, 3,000, or 10,000 ppm.

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Under the conditions of these 2-year feed studies, there was some evidence of carcinogenic activity[1] of C.I. Direct Blue 218 in male F344/N rats based on the occurrence of pharyngeal neoplasms. Squamous cell neoplasms of the forestomach may have been chemical related. There was no evidence of carcinogenic activity of C.I. Direct Blue 218 in female F344/N rats given 1,000, 3,000, or 10,000 ppm. There was clear evidence of carcinogenic activity of C.I. Direct Blue 218 in male and female B6C3F$_1$ mice based on increased incidences of hepatocellular adenomas and carcinomas. The occurrence of a few neoplasms of the kidney and small intestine in male mice may have been related to C.I. Direct Blue 218 treatment.

The administration of C.I. Direct Blue 218 produced an increased incidence of forestomach basal cell hyperplasia in rats and hepatocellular foci of cytologic alteration in mice.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of Toxicology and Carcinogenesis Studies of C.I. Direct Blue 218 (CAS No. 28407–37–6 in F344/N Rats and B6C3F$_1$ Mice) (TR–430) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: September 8, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–22812 Filed 9–14–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis; Studies of Corn Oil, Safflower Oil, and Tricaprylin

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the comparative toxicology studies of corn oil which has been used for years as a vehicle to administer unpalatable or volatile chemicals to rodents during hazard identification studies. The studies included the evaluation of safflower oil, and tricaprylin as well.

Comparative toxicology studies were conducted by administering corn oil, safflower coil, and tricaprylin by gavage to male F344/N rats for 2 years. Each vehicle was administered by gavage at volumes of 2.5, 5, or 10 mL/kg body weight once daily for 5 days per week. To evaluate the potential role of corn oil in promoting a pancreatic proliferative effect, 500 mg dichloromethane/kg body weight was administered in 2.5, 5 or 10 mL corn oil/kg body weight for 2 years to male F344/N rats. Dichloromethane was chosen because the chemical appeared to cause pancreatic proliferative lesions when administered by gavage in a corn oil vehicle but not when the exposure was by inhalation. In each of these studies, the term "dose" refers to the volume of gavage vehicle administered.

These studies were designed to evaluate the effects of various concentrations of an oil very high in polyunsaturated fat (safflower oil), an oil containing high levels of polyunsaturated and monounsaturated fats (corn oil), and an oil containing saturated medium-chain fatty acids (tricaprylin) on the incidence and pattern of neoplasms in the F344/N rat. In addition, safflower oil and tricaprylin were evaluated as replacements for the corn oil vehicle.

These studies demonstrate that safflower oil and tricaprylin do not offer significant advantages over corn oil as a gavage vehicle in long-term rodent studies. Corn oil, safflower oil, and tricaprylin each caused hyperplasia and adenoma of the exocrine pancreas, decreased incidences of mononuclear cell leukemia, and reduced incidences or severity of nephropathy in male F344/N rats. There was an increased incidence of squamous cell papillomas of the forestomach in F344/N rats receiving 10 mL tricaprylin/kg. Further, the use of corn oil as a gavage vehicle may have a confounding effect on the interpretation of chemical-induced proliferative lesions of the exocrine pancreas and mononuclear cell leukemia in male F344/N rats.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of Comparative Toxicology Studies of Corn Oil, Safflower Oil, and Tricaprylin (CAS Nos. 8001–30–7, 8001–23–8, and 538–23–8) in Male F344/N Rats as vehicle for Gavage (TR–426) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Dated: September 8, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–22813 Filed 9–14–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis; Studies of o-Benzyl-p-Chlorophenol

Ths HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of 0-benzyl-*p*-chlorophenol, an aryl halide biocide with use in hospitals and households as a broad-spectrum germicide in disinfectant solutions and soap formulations for general cleaning and disinfecting.

Two year toxiocology and carcinogenicity studies were conducted by administering o-benzly-*p*-chlorophenol to groups of 80 male and 80 female rats in corn oil by gavage 5 days a week for 103 weeks at doses of 0, 30, 60, or 120 mg/kg body weight for male rats and 0, 60, 120, or 240 mg/kg body weight for female rats. Groups of 70 male and 70 female mice were administered o-benzly-*p*-chlorophenol in corn oil by gavage at doses of 0, 120, 240, or 480 mg/kg body weight 5 days a week for 103 weeks.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenic activity[1] of *o*-benzly-*p*-chlorophenol in make F344/N rats receiving 30, 60, or 120 mg/kg body weight. There was equivocal evidence of carcinogenic activity of *o*-benzyl-*p*-chlorophenol in female F344/N rats based on the occurrence of two rare renal transitional cell carcinomas. There was some evidence of carcinogenic activity of *o*-benzyl-*p*-chlorophenol in male B6C3F$_1$ mice based on increased incidences of renal tubule adenoma and renal tubule adenoma or carcinoma (combined). There was no evidence of carcinogenic activity of *o*-benzyl-*p*-chlorophenol in female B6C3F$_1$, mice receiving 120, 240, or 480 mg/kg.

o-benzyl-*p*-chlorophenol was nephrotoxic for male and female F344/N rats and B6C3F$_1$ mice. The severity of nephropathy was increased in male and female rats and the incidence and severity of nephropathy was increased

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

in male and female mice. The incidence and severity of nephropathy increased with length of treatment. Other lesions considered to be associated with the nephropathy and the secondary hyperparathyroidism in male rats and in male and female mice included fibrous osteodystrophy and soft tissue mineralization. Increased incidences of squamous cell hyperplasia of the forestomach were observed in mice.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of Toxicology and Carcinogenesis Studies of *o*-Benzyl-*p*-Chlorophenol (CAS No. 120–32–1) in F344/N Rats and B6C3F$_1$ Mice (Gavage Studies) (TR–424) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: September 8, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–22811 Filed 9–14–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Hexachlorocyclopentadiene

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of hexachlorocyclopentadiene, an intermediate used in the manufacture of flame retardants, resins, and chlorinated cyclodiene pesticides.

Toxicology and carcinogenesis studies were conducted by exposing groups of 60 male and female F344/N rats and B6C3F$_1$ mice to atmospheres containing 0, 0.01, 0.05, or 0.2 ppm hexachlorocyclopentadiene (approximately 98% pure) for 2 years.

Under the conditions of these 2-year studies, there was no evidence of carcinogenic activity [1] of hexachlorocyclopentadiene in male or female F344/N rats or B6C3F$_1$ mice exposed to 0.01, 0.05, or 0.2 ppm.

Exposure of rats to hexachlorocyclopentadiene produced pigmentation of the respiratory epithelium of the nose, trachea (males), and bronchi and bronchioles of the lung. Squamous metaplasia of the laryngeal epithelium occurred in female rats exposed to hexachlorocyclopentadiene. Suppurative inflammation of the nose as well as pigmentation of the respiratory mucosal epithelium occurred in mice exposed to hexachlorocyclopentadiene.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of Hexachlorocyclopentadiene (CAS No. 77–47–4) in F344/N Rats and B6C3F$_1$* Mice (Inhalation Studies) (TR–437) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: September 8, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–22816 Filed 9–14–94; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis; Studies of Talc

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of Talc. Talc products are sold in a multitude of grades which have physical or functional characteristics especially suited for particular applications. Occupational and consumer exposures to talc are complex and can occur through pharmaceuticals and consumer products as well as in industrial settings by way of inhalation, ingestion or dermally.

Toxicology and carcinogenicity studies of talc (non-asbestiform, cosmetic grade) were conducted by exposing groups of F344/N rats to aerosols containing 0, 6, or 18 mg/m^3 talc for 113 weeks (males) or 122 weeks (females). Groups of B6C3F$_1$ mice were exposed similarly.

Under the conditions of these inhalation studies, there was some evidence of carcinogenic activity [1] of talc in male F344/N rats based on an increased incidence of benign or malignant pheochromocytomas of the adrenal gland. There was clear evidence of carcinogenic activity of talc in female F344/N rats based on increased incidences of alveolar/bronchiolar adenomas and carcinomas of the lung and benign or malignant pheochromocytomas of the adrenal gland. There was no evidence of carcinogenic activity of talc in male or female B6C3F$_1$ mice exposed to 6 or 18 mg/m3.

The principal toxic lesions associated with inhalation exposure to the same concentrations of talc in rats included chronic granulomatous inflammation, alveolar epithelial hyperplasia, squamous metaplasia and squamous cysts, and interstitial fibrosis of the lung. These lesions were accompanied by impaired pulmonary function characterized primarily by reducing lung volumes, reduced dynamic and/or quasistatic lung compliance, reduced gas exchange efficiency, and nonuniform intrapulmonary gas distribution. In mice, inhalation exposure to talc produced chronic inflammation of the lung with the accumulation of alveolar macrophages.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of Toxicology and Carcinogenesis Studies of Talc (CAS No. 14807–96–6) in F344/N Rats and B6C3F$_1$ Mice (Inhalation Studies) (TR–421) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: September 8, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–22817 Filed 9–14–94; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Food and Drug Administration

[Docket No. 94N–0271]

Environmental Assessments and Findings of No Significant Impact

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has received environmental

assessments (EA's) and issued findings of no significant impact (FONSI's) relating to the approval of 42 new drug applications (NDA's) listed in the table below. FDA is publishing this notice because Federal regulations require this information to be available to the public for inspection.

ADDRESSES: The EA's and FONSI's may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Christina L. Good, Center for Drug Evaluation and Research (HFD–102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758.

SUPPLEMENTARY INFORMATION: The National Environmental Policy Act (NEPA) requires all Federal agencies to "use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." (See 42 U.S.C. 4331(a).) Under NEPA, all Federal agencies must assess the possible environmental impact of, and alternatives to, major Federal actions significantly affecting the environment, and such assessments are to be made available to the public. (See 42 U.S.C. 4332, 40 CFR 1506.6, and 21 CFR 25.1(b).)

FDA implements NEPA through its regulations at 21 CFR part 25. Under those regulations, the approval of an NDA usually constitutes an action that requires the preparation of an EA. (See 21 CFR 25.22(a)(14).)

FDA recently approved 42 NDA's pertaining to the following products as listed in the table below:

Drug	NDA no.
Claritin (loratadine) Tablets	NDA 19–658
Ambiem (zolpidem tartrate) Tablets	NDA 19–908
Manoplax (flosequinan) Tablets	NDA 19–960
Mannitol Injection (Excel Plastic Containers)	NDA 20–006
Maxaquin (lomefloxacin hydrochloride) Tablets	NDA 20–013
Paroxetine (paroxetine hydrochloride) Tablets	NDA 20–031
Desogen (desogestrel and ethinyl estrodiol) Tablets	NDA 20–071
Imitrex (sumatriptan succinate)	NDA 20–080
I–131 MIBG (iobenguane sulfate I 131) Injection	NDA 20–084
Imagent GI (perflubron)	NDA 20–091
Zofran (ondansetron hydrochloride) Tablets	NDA 20–103
Oncopent (pentostatin) for Injection	NDA 20–122
Prohance (gadoteridol) Injection	NDA 20–131
Metastron (strontium chloride SR 89) Injection	NDA 20–134
Demadex (torsemide) Tablets	NDA 20–136
Demadex (torsemide) Injection	NDA 20–137
Lovenox (enoxaparin sodium) Injection	NDA 20–164
Proscar (finasteride) Tablets	NDA 20–180
Felbatol (felbamate) Tablets and Suspension	NDA 20–189
Alomide (lodoxamide tromethamine) Sterile Ophthalmic Solution 0.1%	NDA 20–191
Lamisil (terbinafine hydrochloride) Topical Cream 1%	NDA 20–192
Hivid (zalcitabine) Tablets	NDA 20–199
Dobutamine in 5% Dextrose Injection in Polyester CR3 Flexible Containers	NDA 20–201
Alkeran (melphalan hydrochloride) for Injection	NDA 20–207
Propulsid (cisapride) Tablets	NDA 20–210
Atrovent (ipratropium bromide) Inhalation Solution	NDA 20–228
Leustatin (cladribine) for Injection	NDA 20–229
Rhinocort (budesonide) Nasal Inhaler	NDA 20–233
Neurontin (gabapenton) Capsules	NDA 20–235
Serevent (salmeterol xinafoate) Inhalation Aerosol	NDA 20–236
Mepron (atovaquone) Tablets	NDA 20–259
LesCol (fluvastatin sodium) Capsules	NDA 20–261
Dobutamine in 5% Dextrose Injection in Glass Containers	NDA 20–269
Fragmin (dalteparin sodium) Injection	NDA 20–287
Octreoscan (kit for the preparation of Indium IN–111 pentetreotide) Injection	NDA 20–314
Orlaam (levomethadyl acetate hydrochloride) Oral Solution	NDA 20–315
Temovate (clobetasol propionate) Emollient Cream	NDA 20–340
Cerezyme (imiglucerase) for Injection	NDA 20–367
Zerit (stavudine) Capsules	NDA 20–412
Zosyn (sterile piperacillin sodium/tazobactam sodium)	NDA 50–684
Mycobutin (rifabutin) Capsules	NDA 50–689
Biaxin (clarithromycin) Granules for Oral Suspension	NDA 50–698

FDA has reviewed the EA's submitted for each of the NDA's in the table of this document and has determined that approval of these NDA's will not significantly affect the human environment. Therefore, under 21 CFR 25.32, the agency has prepared a FONSI for each of these NDA's and no environmental impact statements are required. This notice announces that the EA's and FONSI's for these human drug products may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 6, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–22761 Filed 9–14–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94E–0234]

Determination of Regulatory Review Period for Purposes of Patent Extension; Zemuron™ Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Zemuron™ Injection and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Zemuron™ Injection. Zemuron™ Injection (rocuronium bromide) is indicated for inpatients and outpatients as an adjunct to general anesthesia to facilitate both rapid sequence and routine tracheal intubation, and to provide skeletal muscle relaxation during surgery or mechanical ventilation. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Zemuron™ Injection (U.S. Patent No. 4,894,369) from Akzo Nobel, N.V., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated July 6, 1994, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Zemuron™ Injection represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Zemuron™ Injection is 1,889 days. Of this time, 1,627 days occurred during the testing phase of the regulatory review period, while 262 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* January 15, 1994. The applicant claims January 14, 1989, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 15, 1994, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* June 29, 1993. FDA has verified the applicant's claim that the new drug application (NDA) for Zemuron™ Injection (NDA 20–214) was initially submitted on June 29, 1993.

3. *The date the application was approved:* March 17, 1994. FDA has verified the applicant's claim that NDA 20–214 was approved on March 17, 1994.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 427 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before November 14, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before March 14, 1995, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 31, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–22760 Filed 9–14–94; 8:45 am]

BILLING CODE 4160–01–F

Office of Inspector General

Program Exclusions: August 1994

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of August 1994, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party.

Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject city, state	Effective date
Program-Related Convictions:	
Adams, Doris E, Benbrook, TX	08/30/94
Alexander, Deitrich, Shreveport, LA	08/30/94
Avery, Alfred C, Salem, OR	09/08/94
Driver, Paul, Dundee, MS	09/01/94
E Brown and Sons Transport Inc, Milwaukee, WI	09/01/94
Genena, Linda Y, Aubrey, TX	08/30/94
Gilmore, Andre W, Tacoma, WA	09/19/94
Grimaldo, Maria Lupie, Phoenix, AZ	09/01/94
Hamilton, Bertha, Charleston, MS	09/01/94
Hammond-Jones, Carol, Fort Worth, TX	08/30/94
Harrison, Joseph R, Philadelphia, PA	09/01/94
Hines, Larry, Baltimore, MD	09/01/94
Hosaka, Vincent, Honolulu, HI	09/01/94
Huehnerhoff-Roberts, Carol A, Bellevue, WA	09/01/94
Huff, Gary, West Des Moines, IA	09/01/94
Jacob, Eloria, Pascagoula, MS	08/30/94
Khan, Sohail, Jersey City, NJ	09/06/94
King, Tita, Meridian, MS	08/30/94
Lim, Franklin, New York, NY	09/06/94
Mann, Joel, Lansing, MI	09/01/94
McCollum, William E, Birmingham, AL	09/01/94
Mohit, Morteza, Bayside, NY	09/06/94
Montfort, Nephtali, New York, NY	09/06/94
Nissman, Harvey, Virginia Beach, VA	09/01/94
Odom, Johnny F, Counce, TN	09/01/94
Shakir, Khadija, Manhasset Hills, NY	09/06/94
Patient Abuse/Neglect Convictions:	
Black, Esther T, Slidell, LA	08/30/94
Dehner, Debra Kay, Fountain Hills, AZ	09/01/94
Fisher, Delynn, Pine Bluff, AR	08/30/94
Galimore, Glenn W, Klingman, AZ	09/01/94
Gilliland, Ann Darlene, Roanoke, AL	09/01/94
Harrington, Edith, Kaplan, LA	08/30/94
Hays, Stacy, Monticello, AR	08/30/94
Langston, Vivian, Meridian, MS	08/30/94
Lee, Timothy D, Boyce, LA	08/30/94
Manning, Margie Parson, Farmerville, LA	08/30/94
Mead, Mark M, Boise, ID	09/01/94
Morris, Jane A, Fair Haven, VT	09/01/94
Nardone, Louis, Phoenix, AZ	09/01/94
Northcott, Brenda Sue, Amarillo, TX	08/30/94
Paschal, Sherri L, Tallassee, AL	09/01/94
Peel, Sally, Diaz, Ar	08/30/94
Pinkard, Glenda R, Ferris, TX	08/30/94
Russell, Ethel, Little Rock, AR	08/30/94
Smith, Carlos A Jr, Glenmore, LA	08/30/94
Wells, Sherri, Canton, MS	09/01/94
Wesley, Lana M, Dallas, TX	08/30/94
Conviction For Health Care Fraud:	
Dworkin, Steven, New York, NY	09/06/94
Controlled Substance Convictions:	
Miller, Roger A, Morgantown, WV	09/01/94
License Revocation/Suspension:	
Aeschlimann, Werner E, Stoneham, MA	09/01/94
Agbebiyi, Jonathan, Phoenix, AZ	09/01/94
Artzberger, Louis G, Hopkinton, MA	09/01/94
Bonasia, Francis P, Haverhill, MA	09/01/94
Cerrone, Anthony, Hatboro, PA	09/01/94
Coe, Richard, Olathe, KS	09/01/94
Coleman, Rita M, Baldwin, MD	09/01/94
Conklin, Thomas J, Manchester, CT	09/01/94
Devore, William A, Oxford, OH	09/01/94
Hendrickson, Theodore H, Fairfield, CT	09/01/94
Jondle, Paul, Malden, MA	09/01/94
Jones, Neville, Richardton, ND	09/01/94
Leksa, Bruce J, Bellevue, WA	09/01/94
Marquez, Alberto B, Tucson, AZ	09/01/94
McCarthy, Mary E, E Bridgewater, MA	09/01/94
Messer, Sidney, Los Angeles, CA	09/01/94
O'Brien, Robert Burns, Houston, TX	08/30/94
Prophete, Judith, South River, NJ	09/06/94
Silverman, Charles T, Randolph, MA	09/01/94
Sliwoski, Charles E, Millbury, MA	09/01/94
Smith, Eric H, Westminster, CO	09/01/94
Stone, Richard B, Scottsdale, AZ	09/01/94
Sylvestre, Roger R, Pawtucket, RI	09/01/94
Tapper, Frederick S, Elizabeth, NJ	09/01/94
Federal/State Exclusion/Suspension:	
Hays, Leonard F, Eugene, OR	09/01/94
Default on Heal Loan:	
Beeck, Allen A, Akron, IA	09/01/94
Bryant, Thomas L, Detroit, MI	09/01/94
Chapman, Michelle A, Auburn Hills, MI	09/01/94
Cornely, Michael P, Pennsauken, NJ	09/01/94
Cuddington, Timothy J, Orangeburg, SC	09/01/94
Dye, Ralph M, Des Moines, IA	09/01/94
Edelson, Renny M, Plantation, FL	09/01/94
Garcia-Hernandez, Wanda I, San Juan, PR	09/01/94
Gelfond, William A, Atlanta, GA	09/01/94
Godley, Clifford E Jr, LaFayette, LA	08/30/94
Gunn, Nanette Q, Little Rock, AR	08/30/94
Harris, Conrad Wayne, Washington, DC	09/01/94
Koslov, Gleb M, Oakland, NJ	09/01/94
Law Daniel, Milwaukee, WI	10/09/93
Morris, Clifford H, Apeldoorn, Netherlands	09/01/94
Nobles, George Scott, Knoxville, TN	09/01/94
Polee, George, Nashville, TN	09/01/94
Radandt, Mark H, Franksville, WI	09/01/94
Radford, Rhea E, Houston, TX	08/30/94
Ransdell, Kerry L, Tempe, AZ	09/01/94
Schmidt, Jeffrey J, Colorado Springs, CO	09/01/94
Smith, Gary D, Gurnee, IL	09/01/94
Torkelsen, Scott S, Bronderslev 9700 Denmark	09/01/94
Twigg, Johathan W, Bay Saint Louise, MS	08/30/94
Van Gorden, Kurt F, Temecula, CA	09/01/94
Venable-Tesio, Kristie L Thomp, Edmond, OK	08/30/94
Ward, Herman V, Los Angeles, CA	09/01/94
Weake, Jeffrey R, Groton, MA	09/01/94
Wilbur, Raymond C, Northfield, MN	09/01/94
Peer Review Organization Case:	
Horng, Fang Shuh, Luray, VA	06/08/94

Dated: August 6, 1994.

James F. Patton,

Director, Health Care Administrative Sanctions, Office of Civil Fraud and Administrative Adjudication.

[FR Doc. 94–22836 Filed 9–14–94, 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-078-4333-04-261A]

Temporary Use Restrictions for the King Mountain Area of Colorado

AGENCY: Bureau of Land Management, Glenwood Springs Resource Area, Interior.

ACTION: Order of Area, Road and Trail Use Restriction.

SUMMARY: This order modifies a previous order limiting motorized vehicle use to designated roads and trails year round, and closing to snowmobile use, certain public lands in the Glenwood Springs Resource Area, Grand Junction District. The limitation to motorized vehicle use is continued but the boundary of the limited area is slightly modified. Camping within 200 yards from point source waters (springs, ponds or lakes) and within 150 feet from stream waters is prohibited. This order is issued under the authority of 43 CFR 8364.1 and 43 CFR 8341.2(a) as a temporary measure while off-highway vehicle (OHV) management throughout the Glenwood Springs Resource Area is reviewed and necessary resource management plan amendments are completed.

This order affects reconveyed land and public land situated in Eagle and Routt counties, thus described:

Sixth Principal Meridian,

Reconveyed Land (the old Visintainer Sheep Company Ranch)

T. 1 N., R. 84 W. Sec. 19 NE¼SE¼; Sec. 20 N½SW¼, SW¼SW¼; Sec. 21 SE¼NE¼, E½SE¼; Sec. 22 SW¼NE¼, S½NW¼, S½; Sec. 23 SW¼SW¼; Sec. 26 N½NW¼ all land west of Highway 131; Sec. 27 all land west of Highway 131; Sec. 28 NE¼, S½; Sec. 29 S½SE¼, SE¼SW¼; Sec. 30 Lots 2, 3, 4, E½NE¼, SW¼NE¼, SE¼NW¼, N½SE¼, SE¼SE¼; Sec. 31 Lots 1, 2, 3, 4, S½NE¼, E½W½, SE¼; Sec. 32 NE¼, S½NW¼, NE¼NW¼, S½; Sec. 33 N½NE¼, W½W½; Sec. 34 N½NW¼ all land west of Highway 131.

T 1 N., R. 85 W. Sec. 25 SE¼SW¼, SE¼.

Other Public Land (King Mountain)

T. 1 N., R. 84 W. Sec. 33 S½NE¼, E½W½, SE¼.

T. 1 S., R. 84 W. Sec. 4 Lots 2, 3, 4, SW¼, W½SE¼; Sec. 5; Sec. 6 Lots 1, 2, 3, E½SW¼, SE¼; Sec. 7 SE¼NE¼, E½NW¼, SE¼; Sec. 8 NE¼, E½NW¼, SW¼NW¼, S½; Sec. 9 S½NE¼, NW¼NE¼, NW¼, S½; Sec. 17 N½, N½S½, SW¼SW¼; Sec. 18; Sec. 19 Lots 1, 2, 3, 4, N½NE¼, SW¼NE¼, E½W½, SE¼; Sec. 20 Lots 1, 2, 3, NW¼NW¼, S½SW¼; Sec. 21 SW¼SW¼; Sec. 27 land west of the Elk Creek trail, Sec. 28 SW¼NE¼, S½NW¼, NW¼NW¼, SW¼, S½SE¼, NW¼SE¼; Sec. 29; Sec. 30 Lots 1, 2, E½NW¼, NE¼; Sec. 31 SE¼SW¼ land east of the Upper Luark Road, S½SE¼; Sec. 32 E½, N½NW¼, S½SW¼; Sec. 33 NE¼NE¼, NW¼, S½SW¼, NW¼SW¼, S½SE¼; Sec. 34 land west of Routt County Rd. 1.

T. 1 S., R. 85 W. Sec. 13 NE¼, N½SW¼, SE¼SW¼, SE¼; Sec. 24 NE¼, E½SE¼; Sec. 25 E½NE¼.

Blue Hill Archaeological District

T. 2 S., R. 84 W. Sec. 4 public land west of Eagle County Rd. 37; Sec. 5; Sec. 6; Sec. 7 land north of the Colorado River; Sec. 8 land north of the Colorado River.

T. 2 S., R. 85 W. Sec. 1 land east of the Upper Luark Road; Sec. 11 land south of County Road 47; Sec. 12 land north of the Colorado River; Sec. 13 land north of the Colorado River; Sec. 14 land north of the Colorado River. The area described totals approximately 16,080 acres of public land.

EFFECTIVE DATE: This restriction order shall be effective immediately, and shall remain in effect until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION: The supplementary information regarding the travel restrictions in the order published in the **Federal Register** on Friday, June 4, 1993 (F.R. Vol. 58, No. 106) remains valid; the restrictions are necessary to prevent unacceptable impacts from uncontrolled vehicle travel. The boundary adjustments of the limited area are needed to facilitate administration and enforcement of the travel restrictions by using prominent geographic features and existing roads to define the boundary instead of survey subdivision lines at several locations. Additionally, human occupancy adjacent to or near point source waters such as springs, ponds or lakes, interferes with wildlife access for watering and can adversely affect distribution of deer and elk and displace them from their habitat. Displacement of deer and elk from public lands down to wintering grounds too early in the year places undue pressure on the winter range and causes poor utilization of summer and transitional habitat. Additionally, camping activities adjacent to or near any surface waters contributes to degradation of water quality and riparian values.

All motorized vehicle use will remain limited to designated roads and trails year round. The roads and trails available for vehicle use shall include Eagle County roads #37, 47 and 301; Tepee Creek Rd. (BLM Road 8078), Stifel Creek trailhead, King Creek trailhead, Highway 131 trailhead, and the Highway 131 camp. Motorized travel on all other existing roads and trails, and off the roads and trails shall be prohibited. The area will remain closed to snowmobile use. Camping within 200 yards from any point source water, such as a spring, pond or lake, shall be prohibited. Camping within 150 feet from any perennial creek or stream shall be prohibited.

Persons who are exempt from the restrictions include:

1. Any Federal, State, or local officers engaged in fire, emergency and law enforcement activities.

2. BLM employees engaged in official duties.

3. Persons or agencies holding a valid easement across the restricted public land for access to private land, for purposes related to the access of private land on said easement only.

4. Persons or agencies holding a special use permit or right of way, or State adjudicated water right, for access to and maintenance and operations of authorized facilities within the restricted area, for purposes related to access for maintenance and operation of said authorized facilities, and provided such motorized use is limited to the routes specifically identified in the special use permit or right of way.

5. Grazing permittees during the permitted grazing season for grazing related purposes provided such motorized use is limited to existing roads and trails and subject to any additional conditions in the grazing permit. Any motorized use before or after the permitted grazing season necessary for maintenance and operation of range facilities shall require advance approval by the authorized officer specifically authorizing such use and subject to whatever restrictions are deemed necessary.

6. Persons camping at a designated or developed campground or campsite located closer to point source waters than the required minimum distance.

PENALTIES: Violations of this restriction order are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Michael S. Mottice, Area Manager,

Glenwood Springs Resource Area, P.O. Box 1009, Glenwood Springs, CO 81602; (303) 945–2341, or Mark Morse, District Manager, Grand Junction District, 2815 H Road, Grand Junction, Colorado 81506; (303) 244–3050.

Richard Arcand,

Acting District Manager.

[FR Doc. 94–22895 Filed 9–14–94; 8:45 am]

BILLING CODE 4333–04–P

[AZ–054–04–4210–03; AZA 24423, AZA 27319, AZA 28630]

La Paz and Mohave Counties, AZ; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Leasing of Public Lands, La Paz and Mohave Counties, Arizona.

SUMMARY: The following public lands will be leased under the provisions of Section 302 of the Federal Land Policy and Management Act of 1976 and 43 CFR Part 2920. The lands will be leased on a non-competitive basis. The lands will be leased to the specified individuals for the purpose identified:

1 AZA 24423—Robert and Mary Barlow, Residential Occupancy Lease

Gila and Salt River Meridian, La Paz County, Arizona

T 11 N., R. 18 W.,
Sec. 28, por. of lot 4.
Containing 0.020 acre, more or less.

This action will settle an unauthorized development on public lands. The lease will be for 40 years.

2. AZA 27319—Jack and Jean Gault, Residential Occupancy Lease

Gila and Salt River Meridian, La Paz County, Arizona

T. 11 N., R. 18 W.,
Sec. 13, SW¼SW¼ (within).
Containing 0.010 acre, more or less.

This action will settle an unauthorized development on public lands. The lease will be for 20 years.

3. AZA 28630—Eugene and Johannah Goad, Commercial Lease

Gila and Salt River Meridian, Mohave County, Arizona

T 20 N., R. 22 W.,
Sec. 12, por. of lot 5.
Containing 0.274 acre, more or less.

This action will convert the Goads present Bureau of Reclamation lease to BLM leasing authority. The lease will be for 25 years.

DATES: For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed leases to the address under the **ADDRESSES** caption of this notice.

Any adverse comments will be evaluated by the Area Manager who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the Area Manager, this Realty Action will become the final determination of the Bureau.

ADDRESSES: For further information or to submit comments regarding the proposed leases contact Debbie Rowland, Realty Specialist, Bureau of Land Management, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406, (602) 855–8017.

SUPPLEMENTARY INFORMATION: All three parcels are located on lands withdrawn by the Bureau of Reclamation. Reclamation has concurred with the proposed leasing action on the three parcels.

Dated: September 8, 1994.

Judith I. Reed,

District Manager.

[FR Doc. 94–22838 Filed 9–14–94; 8:45 am]

BILLING CODE 4310–32–M

[UT–050–4210–05; UTU–68967; 4–00152]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public lands in Wayne County, Utah have been examined and found suitable for classification for conveyance to Wayne County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Wayne County proposes to use the lands for a regional landfill.

Salt Lake Meridian

T.28 S., R.2 E.
Sec. 21: E1/2SE1/4NE1/4, E1/2E1/2SE1/4.
Sec. 22: SW1/4NW1/4, W1/2SW1/4, W1/2SE1/4SW1/4.
containing 200 acres more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Detailed information concerning this action is available at the office of Bureau of Land Management, 150 East 900 North, Richfield, Utah, 84701.

Publication of this notice constitutes notice to the grazing permittees of the Long Hollow Allotment and Loa Winter Allotment that their grazing leases may be directly affected by this action. Specifically, the permitted Animal Unit Months (AUMs) will not be reduced because of this sale, but the land (200 acres) will be excluded from the allotments effective upon issuance of the patent.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publications of this notice, interested persons may submit comments regarding the proposed conveyance or classification of the lands to the District Manager, Richfield District Office, 150 East 900 North, Richfield, Utah 84701. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a landfill.

Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not related to the suitability of the land for a landfill.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the

classification will become effective 60 days from the date of publication of this notice in the **Federal Register.**

Dated: September 6, 1994.

Jerry Goodman,

District Manager.

[FR Doc. 94–22839 Filed 9–14–94; 8:45 am]

BILLING CODE 4310–DQ–P

[CA–940–4210–10; CACA 7414, CACA 7417, CACA 7797, CACA 7827, CACA 8044, CAS 3734, CAS 079492]

Notice of Proposed Continuation of Withdrawals; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has proposed to continue withdrawals on 1320.67 acres for 20 years within the Modoc, Lassen, Tahoe, Klamath, and Plumas National Forests. The segregative effect on these withdrawals remains unchanged.

DATES: Comments should be received on or before December 14, 1994.

ADDRESSES: Comments should be sent to the California State Director, BLM, 2800 Cottage Way, Room E–2845, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, BLM California State Office, 916–978–4820.

SUPPLEMENTARY INFORMATION:

1. CACA 7414

The land is described as follows:

Mount Diablo Meridian

T. 34 N., R. 4 E.,
Sec. 15, SW¼NW¼NW¼, SW¼NW¼, N½NW¼SW¼, SE¼NW¼SW¼.

The area described contains 80.00 acres in Shasta County. The purpose of this withdrawal is to protect the Opdyke Ranger Station (now known as the Hat Creek Work Center).

2. CACA 7417

The land is described as follows:

Mount Diablo Meridian

T. 33 N., R. 7 W.,
Sec. 12, S½SE¼.

The area described contains 80.00 acres in Lassen County. The purpose of this withdrawal is to protect the Patterson Administrative Site.

3. CACA 7797

Mount Diablo Meridian

T. 45 N., R. 14 E.,
Sec. 26, E½SW¼NW¼.

The area described contains 20.00 acres in Modoc County. The purpose of the withdrawal is to protect the Plum Valley Administrative Site.

4. CACA 7827

Mount Diablo Meridian

T. 46 N., R. 15 E.,
Sec. 7, described by metes and bounds;
Sec. 8, described by metes and bounds.

The area described contains 50.40 acres in Modoc County. The purpose of the withdrawal is to protect the Buck Creek Administrative Site.

5. CACA 8044

Mount Diablo Meridian

T. 29 N., R. 4 E.,
Sec. 19, S½SE¼NE¼SW¼SE¼, NE¼SE¼SW¼SE¼, N½SE¼SE¼SW¼SE¼, N½S½SE¼SE¼SW¼SE¼.

The area described contains 5.63 acres in Tehema County. The purpose of the withdrawal is to protect the Mineral Ranger Station.

6. CAS 3734

Mount Diablo Meridian

T. 10 N., R. 9 E.,
Sec. 10, SE¼NE¼SW¼, N½NE¼SE¼SW¼, SW¼NW¼SE¼, N½NW¼SW¼SE¼.

The area described contains approximately 30.00 acres in Sierra County. The purpose of the withdrawal is to protect the Convict Flat Recreation Site.

7. CAS 079492

Humboldt Meridian

T. 11 N., R. 6 E.,
Sec. 2, NE¼SE¼, less that part of I.A. Survey No. 280.

The area described contains approximately 40.00 acres in Siskiyou County. The purpose of the withdrawal is to protect the Oak Bottom Guard Station and Campground.

Humboldt Meridian

T. 12 N., R. 6 E.,
Sec. 33, S½SE¼NE¼, NE¼SE¼, SE¼SE¼;
Sec. 34, NW¼NW¼NW¼, S½SW¼NW¼, NW¼SW¼, SW¼SW¼.

The area described contains approximately 210.00 acres in Siskiyou County. The purpose of the withdrawal is to protect the Ukonom Ranger Station-Administration Site.

Humboldt Meridian

T. 13 N., R. 6 E.,
Sec. 8, SW¼NE¼SW¼, NW¼SE¼SW¼.

The area described contains approximately 20.00 acres in Siskiyou County. The purpose of the withdrawal is to protect the Ti Bar Administration Site.

Mount Diablo Meridian

T. 46 N., R. 12 W.,
Sec. 12, portion of Tract 55.

The area described contains approximately 7.27 acres in Siskiyou County. The purpose of the withdrawal is to protect the Seiad Administrative Site.

Mount Diablo Meridian

T. 46 N., R. 8 W.,
Sec. 6, lot 1.

The area described contains approximately 32.80 acres in Siskiyou County. The purpose of the withdrawal is to protect the Beaver Mouth Campground.

Mount Diablo Meridian

T. 39 N., R. 10 W.,
Sec. 23, S½S½NE¼, N½N½SE¼;
Sec. 24, SW¼SW¼NW¼.

The area described contains approximately 90.00 acres in Siskiyou County. The purpose of the withdrawal is to protect the Trail Creek Recreation Area.

Mount Diablo Meridian

T. 40 N., R. 7 W.,
Sec. 14, N½N½.

The area described contains approximately 160.00 acres in Siskiyou County. The purpose of the withdrawal is to protect the Kangaroo-Lillypad Lakes Recreation Area.

Mount Diablo Meridian

T. 19 N., R. 13 E.,
Sec. 30, lot 4, E½SW¼.

The area described contains approximately 115.79 acres in Sierra County. The purpose of the withdrawal is to protect the Woodcamp Administrative Site.

Humboldt Meridian

T. 1 S., R. 7 E.,
Sec. 13, SE¼SE¼SE¼, N½SE¼SE¼, S½NE¼SE¼.
T. 1 S., R. 8 E.,
Sec. 18, SW¼ of lot 4 and S½NW¼ of lot 4 less H.E. Survey 264;
Sec. 19, NW¼ of lot 1, E½ of lot 1, NE¼NW¼ less H.E. Survey 264, and NW¼NE¼.

The area described contains approximately 138.78 acres in Trinity County. The purpose of the withdrawal is to protect the Forest Glen Recreation Area.

Mount Diablo Meridian

T. 38 N., R. 7 W.,
Sec. 8, N½SE¼, N½SE¼SE¼.

The area described contains approximately 100.00 acres in Trinity County. The purpose of the withdrawal is to protect the Eagle Flat Campground and Picnic Area.

Mount Diablo Meridian

T. 38 N., R. 7 W.,
Sec. 16, NE¼SE¼NE¼, S½SE¼.

The area described contains approximately 90.00 acres in Trinity County. The purpose of the withdrawal is to protect the Eagle Creek Campground.

Mount Diablo Meridian

T. 38 N., R. 7 W.,
Sec. 16, portions of the NE¼NW¼, NE¼.

The area described contains approximately 50.00 acres in Trinity County. The purpose of the withdrawal is to protect the Roadside-Streamside Zone.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the

land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: September 7, 1994.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 94–22840 Filed 9–14–94; 8:45 am]

BILLING CODE 4310–40–P

[OR–943–4210–06; GP4–199; OR–50856]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 1,009.48 acres of public lands for protection of the Pacific Ocean Coastline in Oregon. This notice closes the lands for up to two years from mining. The lands are closed to the agricultural laws by another existing withdrawal. The lands have been and will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by December 14, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon/Washington State Office, 503–280–7162.

SUPPLEMENTARY INFORMATION: On August 25, 1994, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

T. 3 S. R. 10 W.,
Sec. 30, lot 15.
T. 4 S., R. 10 W.,
Sec. 19, lots 1 and 15;
Sec. 29, lot 3.
T. 5 S., R. 10 W.,
Sec. 5, unnumbered lot in NE¼NW¼SW¼ and unnumbered lot in NW¼SE¼SW¼;
Sec. 6, lot 8;
Sec. 20, SE¼NE¼.
T. 8 S., R. 11 W.,
Sec. 3, lot 8.
T. 9 S., R. 11 W.,
Sec. 4, SW¼SW¼.
T. 13 S., R. 11 W.,
Sec. 28, lot 9.
T. 14 S., R. 12 W.,
Sec. 35, SE¼NE¼.
T. 18 S., R. 12 W.,
Sec. 2, lot 1.
T. 19 S., R. 12 W.,
Sec. 1, lots 1 and 2.
T. 41 S., R. 13 W.,
Sec. 6, lot 9;
Sec. 7, lot 2.
T. 26 S., R. 14 W.,
Sec. 38, NW¼NE¼.
T. 27 S., R. 14 W.,
Sec. 29, lot 3.
T. 33 S., R. 14 W.,
Sec. 31, lots 2, 6, and 7, and NE¼SE¼.
T. 34 S., R. 14 W.,
Sec. 6, lot 1;
Sec. 33, lots 1, 2, 3, and 7;
Sec. 34 NW¼NW¼.
T. 38 S., R. 14 W.,
Sec. 4, SE¼SW¼
Sec. 5, SW¼NE¼;
Sec. 34, SE¼NW¼.
T. 39 S., R. 14 W.,
Sec. 23, NW¼NW¼.
T. 30 S., R. 15 W.,
Sec. 12, NW¼SW¼.
T. 32 S., R. 15 W.,
Sec. 4, lots 1, 2, 3, and 4, S½NE¼NE¼, N½SE¼NE¼, and SW¼SE¼NE¼.
T. 34 S., R. 15 W.,
Sec. 1, lot 1.

The areas described aggregage 1,009.48 acres in Coos, Curry, Lane, Lincoln, and Tillamook Counties.

The purpose of the proposed withdrawal is to protect recreational and scenic values, wildlife habitat, archaeological and cultural interpretation, wetlands, and endangered species habitat along the Pacific Ocean coastline.

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 State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above 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 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Temporary land uses that may be permitted by the authorized officer during period of temporary segregation include leases, licenses, permits, rights-of-way, and disposal of mineral or vegetative resources other than under the mining laws.

Dated: September 7, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–22841 Filed 9–14–94; 8:45 am]

BILLING CODE 4310–33–M

[CO–050–4210–03]

Notice of Realty Action

AGENCY: Bureau of Land Management Interior.

ACTION: Notice of Realty Action, Lease of Pubic Lands in Chaffee County, Colorado; COC–55467.

SUMMARY: The following described lands have been examined and found suitable for lease under Section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713). Leasing of the land will authorize an area for an existing campground development and will allow the government to collect fair market rental. The land and prospective lessee are as follows:

New Mexico Principal Meridian, Colorado

T. 49 N., R. 9 E.,
Sec. 10: SE¼SW¼ (within).

The parcel contains approximately 0.7 acres adjacent to the main campground site. The parcel would be offered noncompetitively to Paul Draper of Four Seasons Campground for a term of five years at no less than fair market rental. The general terms and conditions for leases are found in 43 CFR 2920.7. The lessee would be required to reimburse the United States for reasonable costs incurred in processing and monitoring the lease, in accordance with 43 CFR 2920.6.

DATES: On or before October 17, 1994, interested parties may submit comments to the District Manager, Bureau of Land Management, 3170 East Main Street, Canon City, Colorado 81215–2200.

ADDRESSES: Bureau of Land Management, Canon City District, P.O. Box 2200, Canon City, Colorado 81215–2200.

FOR FURTHER INFORMATION CONTACT: Jan Fackrell, Realty Specialist (719) 275–0631.

SUPPLEMENTARY INFORMATION: Any adverse comments will be evaluated by the State Director, and he may vacate, modify, or continue this realty action.

Dated: September 2, 1994.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 94–22767 Filed 9–14–94; 8:45 am]

BILLING CODE 4310–JB–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 481X)]

CSX Transportation, Inc.—Abandonment Exemption—in Pike County, KY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by CSX Transportation, Inc., of 13.16 miles of railroad line between milepost 14.58 at Myra and milepost 23.00 at Shelby Gap, and between milepost 0.00 at Shelby Gap and milepost 4.74 at Fenn, in Pike County, KY, subject to standard labor protective conditions and an historic preservation condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 15, 1994. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) [1] must be filed by September 23, 1994, petitions to stay must be filed by September 30, 1994, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by October 5, 1994, and petitions to reopen must be filed by October 11, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 481X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Petitioner's representative: Charles M. Rosenberger, 500 Water St., Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services: (202) 927–5721.]

Decided: September 7, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–22830 Filed 9–14–94; 8:45 am]

BILLING CODE 7035–01–P

[1] See Exempt. of Rail Line Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203 or (202) 927–6246.

Comments on the following assessment are due 15 days after the date of availability:

AB–33 (Sub-No. 87X), Union Pacific Railroad Company—Abandonment Exemption—in Contra Costa County, California (Port Chicago Branch). Ea available 8/30/94.

AB–103 (Sub-No. 8X), The Kansas City Southern Railway Company—Abandonment and Discontinuance Exemption—Fort Smith & Van Buren Railway and Midland Valley Branch in Le Flore and Haskell Counties, Oklahoma. EA available 9/6/94.

Comments on the following assessment are due 30 days after the date of availability:

WC–1540, Alaska Cargo Transport, Inc.—Application for Water Contract Carrier License. Ea available 9/7/94.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–22829 Filed 9–14–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree

Notice is hereby given that a proposed Consent Decree and Settlement in *United States* v. *Evans Asset Holding Co.*, No. 94–1762–CIV–KING, (S.D. Fla.) entered into by the United States, the State of Minnesota and Evans Asset Holding Co., was lodged on August 25, 1994, with the United States District Court for the Southern District of Florida. The proposed Consent Decree and Settlement resolves certain claims of the United States and the State of Minnesota under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606, 9607, Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973, and a state environmental statute with respect to the following eleven CERCLA sites: Waste Disposal Engineering Site in Andover, Minnesota; the Oak Grove Landfill Site in Oak Grove, Minnesota; the East Bethel Site in East Bethel, Minnesota; the Carter Industrials, Inc. Site in Detroit, Michigan; the Land Reclamation Site in Racine, Wisconsin; the Hunt's Disposal Site in Caledonia, Wisconsin; the Lowry Landfill Site in Arapahoe County, Colorado; the USS Lead Refinery Site in East Chicago, Indiana; the Fort Wayne Reduction Site in Fort Wayne, Indiana; the Lindsley Lumber Site in Dania, Florida; the Dixie Caverns Site in Roanoke County, Virginia. Under the Consent Decree, Evans Asset Holding Company will pay the United States $654,313, and will pay the State of Minnesota $220,890.

The Department of Justice will receive comments relating to the proposed Consent Decree and Settlement for 30 days following the publication of this Notice. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Evans Asset Holding Co.*, D.J. Ref. No. 90–11–2–669. The proposed Consent Decree and Settlement may be examined at the Office of the United States Attorney for the Southern District of Florida, 299 East Broward Blvd., Fort Lauderdale, Florida 33301, the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be

obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $7.75 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–22777 Filed 9–14–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on August 30, 1994, a proposed Consent Decree in *United States* versus *Town of Onalaska, Wiconsin*, Civil Action No. 94 C 642S, was lodged with the United States District Court for the Western District of Wisconsin. This consent decree represents a settlement of claims of the United States and the State of Wisconsin against the Town of Onalaska for reimbursement of response costs and injunctive relief in connection with the Onalaska Municipal Landfill site ("Site") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*

Under this settlement between the United States, the State of Wisconsin, and the Town of Onalaska, the Town will pay the United States $110,000 in partial reimbursement of response costs incurred by the Environmental Protection Agency at the Site, perform operation and maintenance activities at the site throughout the contemplated thirty-year remedial action, secure access and title to properties adjacent to the site and impose conservation easements on such properties consistent with their location adjacent to a wildlife refuge, and institute appropriate institutional controls. Stipulated penalties may be imposed in the event the Town does not comply with the requirements of the Consent Decree. The consent decree also contains provisions allowing a new action against the Town to be commenced in the event undiscovered conditions or new information demonstrate that the remedial action at the Onalaska Landfill site is not protective of human health or the environment.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* versus *Town of Onalaska*, Wisconsin, DOJ Ref. 90–11–3–605A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Wisconsin, 120 North Henry Street, Room 420, Madison, Wisconsin 53703, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $11.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–22778 Filed 9–14–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Joint Stipulation

Notice is hereby given that on August 9, 1994 a proposed Joint Stipulation and Rule 54(b) Final Judgment in *Golnoy Barge, et al.* v. *M/T Shinoussa, et al.*, Civil Action Nos. H–90–2414, H–90–2476, and H–90–2488, was lodged with the United States District Court for the Southern District of Texas.

The claim in this action was filed by the United States on October 29, 1990 against the Shinoussa Shipping Corporation and the M/T Shinoussa, the Golnoy Barge Company and Apex R.E.&T, Inc., and Fidelis Shipping Corporation pursuant to the Clean Water Act, 33 U.S.C. 1251 *et seq.*, seeking response costs and natural resource damages resulting from the July 28, 1990, oil spill into Galveston Bay, Texas. The proposed Joint Stipulation and Rule 54(b) Final Judgment requires these vessel interests to pay $1.7 million to satisfy claims of the United States and the State of Texas for natural resource damages, costs incurred in conducting the assessment, state response costs, and other associated costs. The United States has already been reimbursed for $1.8 million in United States response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *Golnoy Barge, et al.* v. *M/T Shinoussa, et al.*, DOJ No. 90–11–2–331.

The proposed Joint Stipulation and Rule 54(b) Final Judgment may be examined at the Clerk's Office of United States District Court for the Southern District of Texas in Houston, Texas. Copies of the proposed Joint Stipulation and Rule 54(b) Final Judgment may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting a copy please enclose a check in the amount of $2.50—payable to the Treasurer of the United States.

Joel Gross,

Acting Section Chief, Environmental Enforcement Section.

[FR Doc. 94–22843 Filed 9–14–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Final (Consent) Judgment Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Final (Consent) Judgment in *United States* v. *Miramar West Development Corporation and Leonard Zedeck*, Civil Action No. 94–6558–Civ–Nesbitt (S.D. Fla.), was filed in the United States District Court for the Southern District of Florida on August 22, 1994, in Civil Action No. 94–6558–Civ–Nesbitt.

The proposed Final (Consent) Judgment concerns alleged violation of section 404(s) of the Clean Water Act, 33 U.S.C. § 1344, as a result of their failure to enhance and set aside for conservation purposes a mitigation area of approximately 9.4 acres of on site wetlands as a condition of a fill permit issued by the Department of the Army Corps of Engineers on June 16, 1978. The permit allowed defendants to fill approximately 25 acres of freshwater wetlands in conjunction with developing a housing tract. The proposed Final (Consent) Judgment requires Miramar West Development Corp. and Leonard Zedeck to pay a civil

penalty of $50,000 which is to be held in escrow by Defendants' agent until entry of the judgment, and for conveyance of two 5 acre parcels of Everglades' freshwater wetlands by a deed of conservation easement to the South Florida Water Management District. The parcels will be held in their natural condition in perpetuity. The Defendants also agree to pay a stipulated penalty of $1,000 per day for each day that they are late in meeting the terms of the consent judgment. Defendants also agree not to perform an unpermitted work in navigable waters of the United States in the future.

The Department of Justice will receive written comments relating to the proposed Final (Consent) Judgment for a period of 30 days from the date of publication of this notice. Comments should be addressed to Lisa B. Hogan, Assistant U.S. Attorney, Southern District of Florida, 99 N.E. 4th Street, Suite 328, Miami, Florida 33132, and should refer to *United States* v. *Miramar West Development Corp. and Leonard Zedeck*, Civil Action No. 94–6558–Civ–Nesbitt.

The proposed Final (Consent) Judgment may be examined at the Clerk's Office, United States District Court for the Southern District of Florida, 301 N. Miami Avenue, Miami, Florida 33128, in Civil Action No. 94–6558–Civ–Nesbitt.

Lois J. Schiffer,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 94–22842 Filed 9–14–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Settlement Agreement, and Competitive Impact Statement have been lodged with the United States District Court for the District of Arizona in *United States of America and State of Arizona* v. *Delta Dental Plan of Arizona, Inc., an Arizona Corporation*, Civil Action No. 94–1793PHXPGR. The Complaint in this case alleges that the defendant and co-conspirators agreed to restrain or eliminate the discounting of fees for dental services to other dental plans or consumers in the State of Arizona in violation of the Sherman Act, 15 U.S.C. 1. A second count, not subject to the Antitrust Procedures and Penalties Act, alleges that the same actions violated the Uniform Arizona Antitrust Act, A.R.S. § 44–1402. The proposed Final Judgment enjoins the defendant from maintaining, adopting, or enforcing a clause in dentist's contracts that requires the dentist to give the defendant the lowest fees offered to any person or dental plan. It also enjoins the defendant from demanding information about dentists' participation in other dental plans; monitoring dentist's fees to other persons or dental plans; writing to dentists about fees dentists charge to other plans; requiring a dentist to identify other plans he or she may participate in; seeking a vote of dentists on the levels of reimbursement; terminating, discriminating or retaliating against dentists who discount fees; treating dentists who discount fees differently from non-discounting dentists; and taking any other action to discourage dentists from discounting fees. Certain language in the defendant's contracts with dentists is voided. A companion Settlement Agreement requires, among other things, that the defendant notify dentists of the terms of the proposed Final Judgment, and reinstate any dentist dropped from the defendant's plan because of discounting, if the dentist so desires.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the Federal Register and filed with the Court. Comments should be directed to Gary R. Spratling, Chief, San Francisco Office, Box 36046, Antitrust Division, U.S. Department of Justice, San Francisco, California 94102 (telephone: (415) 556–6300).

Constance K. Robinson,

Director of Operations, Antitrust Division.

Barbara J. Nelson, Phillip R. Malone, Carla G. Addicks, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 10th Floor, San Francisco, California 94102, (415) 556–6300

Attorneys for the United States

Grant Woods, Attorney General, Sydney K. Davis, Chief Counsel, ID#004041, Suzanne M. Dallimore, ID#014151, Lisa L. Glow, ID#013232, Consumer Protection & Antitrust Section, Department of Law Building, Room #259, 1275 West Washington Street, Phoenix, Arizona 85007–2997, (602) 542–3702

Attorneys for the State of Arizona

In the United States District Court District of Arizona

United States of America, and State of Arizona, by and through its Attorney General Grant Woods, Plaintiffs, vs. Delta Dental Plan of Arizona, Inc., an Arizona Corporation, Defendant. Filed: August 30, 1994. Civil No. 94–1793PHXPGR.

Complaint

Count One

The United States of America, acting under the direction of the Attorney General of the United States, and the State of Arizona, acting under the direction of the Attorney General of the State of Arizona, bring this civil action to obtain equitable and other relief against the defendant named herein, and complain and allege as follows:

I

Jurisdiction and Venue

1. This Complaint is filed by the United States under Section 4 of the Sherman Act, 15 U.S.C. § 4, as amended, and by the State of Arizona under 15 U.S.C. § 26, to prevent and restrain a continuing violation by the Defendant of Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. The Defendant maintains an office, transacts business, and is found within the District of Arizona, within the meaning of 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II

Defendant

3. Delta Dental Plan of Arizona, Inc. ("Delta" or "the Defendant"), is an Arizona corporation with its principal place of business in Phoenix, Arizona. The defendant is a non-profit corporation whose participating providers consist of dentists licensed to practice in Arizona and who execute participating provider agreements with Delta. At material times, dentists comprised the majority of the Board of Directors of the Defendant.

4. At material times, approximately eight-five percent of dentists licensed to practice in Arizona were participating providers of the Defendant with power and authority to vote on matters concerning their payment for services rendered.

5. Whenever this Complaint refers to any corporation's act, deed, or transaction, it means that such corporation engaged in the act, deed, or transaction by or through its members, officers, directors, agents, employees, or other representatives while they actively were engaged in the management, direction, control, or transaction of its business or affairs.

III

Co-Conspirators

6. Various firms and individuals, not named as defendants in this Complaint, have participated as co-conspirators with the Defendant in the violations alleged in this Complaint, and have

performed acts and made statements in furtherance thereof.

IV

Trade and Commerce

7. At material times, the Defendant has engaged in the business of providing dental insurance coverage for patients in the State of Arizona. The Defendant contracts directly with individual dentists an groups of dentists for the provision of dental services to persons covered by the Defendant's dental insurance plans. The Defendant compensates contracting dentist on the basis of submitted fee schedules. Dentists agree to comply with the terms of the contractual agreements with the Defendant.

8. At material times, the confidential fee listings and participating dentist agreements between dentists and the Defendant contained provisions known as "most favored nation" clauses. These provisions stated that, for example, the dentists' "'usual fee' shall be deemed to be the lowest fee charged or offered and received as payment in full,"or "I agree to charge to Delta Dental my usual fees charged to all my other patients or the amount accepted as payment in full, whichever is less. * * *" In this case, the Defendant's most favored nation clauses had the effect of requiring participating dentists to charge fees to all other group dental care programs or non-Delta patients that were the same as or higher than the fees they charged to the Defendant.

9. At material times, payments from the Defendant constituted a significant portion of most individual dentist's receipts from the provision of dental services to patients having some form of dental insurance or coverage.

10. After the Defendant began actively enforcing the most favored nation clauses in its agreements with participating dentists, most of those dentists refused to discount their fees to non-Delta patients or competing dental plans because the most favored nation clauses would have required them to also lower all of their charges to the Defendant to the same level. Because most participating dentists receive such a significant portion of their income from serving Delta patients, the costs of having to lower their Delta fees would have been too great. Consequently, the effect of the Defendant's most favored nation clauses is to require participating dentists to charge all other patients or dental plans fees as high as or higher than those charged to the Defendant.

11. The Defendant's most favored nation clauses have caused large numbers of dentists who had previously chosen to reduce their fees to participate in competing discount dental plans to drop out of or resign from such plans. Participating dentists also have refused to join such plans.

12. Because such a large percentage of Arizona dentists participate in the Defendant's plan, and because revenue from serving the Defendant's patients is a significant part of many of those dentists' receipts, among other reasons, the Delta most favored nation clauses have resulted in many competing dental plans being unable to attract and/or retain sufficient numbers of dentists to serve their members. Many competing plans have had their ability to attract and serve groups of patients severely restricted and may be forced out of business.

13. Most dentists who are participants with the Defendant are independent, private practices and are in actual or potential competition with other participating dentists for the provision of dental services to patients.

14. The Defendant is a member of Delta Dental Plans Association, located in the State of Illinois, which is a nationwide network of dental insurance providers. The Defendant pays annual dues and an advertising assessment to this organization, and participates in a nationwide advertising campaign.

15. Certain corporate employers remit from outside the State or Arizona not insubstantial premium payments to the Defendant for providing dental career insurance to their employees.

16. Many businesses that remit premiums to the Defendant for providing dental care insurance to their employees are involved in selling products and services outside the State of Arizona. The premium levels paid by such businesses affect the prices of such products and services.

17. At material times, the Defendant and co-conspirators have utilized interstate banking facilities and purchased not insubstantial quantities of goods and services from outside the State of Arizona, for use in providing dental insurance coverage or dental services to patients.

18. The activities of the Defendant that are the subject of this Complaint, and the activities of their co-conspirators, have been within the flow of, and have substantially affected, interstate trade and commerce.

V

Violation Alleged

19. Beginning at a time unknown to the Plaintiffs and continuing through at least July 1994, the Defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. This offense is likely to recur unless the relief hereinafter sought is granted.

20. This combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the Defendant and co-conspirators to restrain or eliminate the discounting of fees for dental services to competing dental plans or to other consumers of dental services.

21. For the purpose of forming and effectuating this combination and conspiracy, the Defendant and co-conspirators did the following things, among others:

(a) agreed to adopt and enforce most favored nation clauses in the contracts and other agreements with dentists, for the purpose and with the effect of restraining or eliminating discount fees for dental services and restricting the ability of dentists to discount fees for dental services;

(b) enforced most favored nation clauses; and

(c) coerced participating dentists into dropping out of dental plans that competed with the defendant.

22. This combination and conspiracy had the following effects, among others:

(a) price competition among dentists for the provision of dental services has been unreasonably restrained;

(b) price competition among dentists for the provision of dental services to plans in competition with the defendant has been unreasonably restrained, in that, to recruit and retain a marketable panel of dentists, competing dental plans would have had to increase fees paid to dentists to the level charged by defendant;

(c) price competition among dental insurance plans has been unreasonably restrained, in that, most competing dental insurance plans have been unable to obtain or retain a sufficient number of dentists to provide services to their clients, because dentists have withdrawn from or refused to participate in dental insurance plans that pay them less than the defendant; and

(d) consumers of dental services in Arizona have been deprived of the benefits of free and open competition.

Count Two

The State of Arizona, acting under the direction of the Attorney General of the State of Arizona, complains and alleges as follows:

23. Each and every allegation contained in paragraphs 3–22 of this Complaint is here re-alleged with the

same force and effect as though said allegations were here set forth in full detail.

VI

Jurisdiction and Venue

24. Count Two of this Complaint is filed by the State of Arizona pursuant to the Uniform Arizona Antitrust Act, A.R.S. §§ 44–1402, *et. seq.*, and is properly before this Court under the doctrine of pendent jurisdiction, 28 U.S.C. § 1367.

VII

Violation Alleged

25. The conduct alleged in paragraphs 20 through 22 of this Complaint is in violation of the Uniform Arizona Antitrust Act, A.R.S. § 44–1402.

VIII

Prayer

Wherefore, the Plaintiffs pray:

1. That the Court adjudge and decree that the Defendant and co-conspirators engaged in an unlawful agreement, combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, as alleged in Count One of the Complaint.

2. That the Court adjudge and decree that the Defendant and co-conspirators engaged in an unlawful agreement, combination and conspiracy in unreasonable restraint of Arizona trade and commerce in violation of the Uniform Arizona Antitrust Act, A.R.S. § 44–1402, as alleged in Count Two of the Complaint.

3. That the Defendant, its members, officers, directors, agents, employees, and successors and all other persons acting or claiming to act on its behalf be enjoined, restrained and prohibited for a period of five years from, in any manner, directly or indirectly, continuing, maintaining, or renewing the alleged combination and conspiracy, or from engaging in any other combination, conspiracy, agreement, understanding, plan, program, or other arrangement having a similar purpose or effect as the alleged combination and conspiracy.

4. That the United States and the State of Arizona have such other relief as the nature of the case may require and the Court may deem just and proper.

Grant Woods,

Attorney General.

Sydney K. Davis,

Chief Counsel Consumer Protection & Antitrust Section.

Suzanne M. Dallimore,

Antitrust Unit Chief, Civil Division.

Lisa L. Glow,

Attorney, Antitrust Unit, State of Arizona.

Janet A. Napolitano,

United States Attorney, District of Arizona.

Anne K. Bingaman,

Assistant Attorney General.

Robert E. Litan,

Deputy Assistant Attorney General.

Mark C. Schechter,

Deputy Director of Operations.

Gary R. Spratling,

Chief.

Barbara J. Nelson,

Phillip R. Malone,

Carla G. Addicks,

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Antitrust Division, U.S. Department of Justice, Box 36046, 450 Golden Gate Avenue, San Francisco, California 94102, (415) 556–6300.

Barbara J. Nelson, Phillip R. Malone, Carla G. Addicks, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 10th Floor, San Francisco, California 94102, (415) 556–6300

Attorneys for the United States

Grant Woods, Attorney General, Sydney K. Davis, Chief Counsel, ID# 004041, Suzanne M. Dallimore, ID# 014151, Lisa L. Glow, ID# 013232, Consumer Protection & Antitrust Section, Department of Law Building, Room #259, 1275 West Washington Street, Phoenix, Arizona 85007–2997, (602) 542–3702

Attorneys for the State of Arizona

In the United States District Court—District of Arizona

United States of America, and State of Arizona, by and through its Attorney General Grant Woods, Plaintiffs, vs. Delta Dental Plan of Arizona, Inc., an Arizona Corporation, Defendant. Filed August 30, 1994. Civil No. 94–1793PHXPGR.

Settlement Agreement

This Agreement is made and entered into as of August 25, 1994, in the above-captioned matter.

Whereas, the Plaintiffs, State of Arizona and the United States of America, through their respective attorneys, filed a complaint on August 30, 1994, alleging violations of the Sherman Act, 15 U.S.C. § 1, and of the Uniform Arizona Antitrust Act, A.R.S. § 44–1402;

Whereas, the Defendant denies liability;

Whereas, there has been no determination by the Court that a violation of law has occurred; and

Whereas, the Plaintiffs, and Defendant, desiring to resolve their disputes without trial or adjudication of any issue of law or fact, have consented to the entry of the attached Final Judgment, filed herewith;

Now Therefore, in consideration of the covenants and undertakings here set forth, and intending this agreement to be legally binding, it is agreed by and between Defendant and the Plaintiffs as follows:

1. As used in this Settlement Agreement:

A. "Attorney General" means any duly authorized representative of the Office of the Attorney General, State of Arizona.

B. "State" means the State of Arizona, acting through its Attorney General.

C. "Person" means any natural person and any corporation, partnership, joint venture, formal or informal association, and any other legal entity.

D. "Party" means any person stipulating or otherwise consenting to the entry of the Final Judgment.

E. "Defendant" means Delta Dental Plan of Arizona, an Arizona Corporation.

F. "Complaint" means the Plaintiffs' complaint in this action.

G. "Term" means the term of this Settlement Agreement and Final Judgment.

H. "Participating Provider" and "Provider" means any dentist practicing in the State of Arizona who has entered into a Participating Dentist Agreement with the Defendant.

I. "Participating Dentist Agreement" means the Delta Dental Participating Dentist Agreement and Confidential Fee Listing document by which Defendant contracts with dentists in the State of Arizona, including all versions, amendments and additions thereto in effect at any time since January 1, 1990 and during the term of this Settlement Agreement and Final Judgment.

J. "Most Favored Nation Clause" or "MFN" means those provisions in the Defendant's participating dentist agreements that require that the participating dentist's usual and customary fee be the lowest fee charged or offered by that dentist to, or received from, any person or dental plan.

K. "This action" means the matter of *United States of America and State of Arizona* v. *Delta Dental Plan of Arizona, Inc.*, filed or to be filed in connection with this Settlement Agreement.

L. "Final Judgment" means the Final Judgment entered or to be entered in the above-referenced action.

M. "Affiliate" means any entity owned or controlled by Delta Dental.

2. The terms of the Final Judgment and Settlement Agreement shall apply to the Defendant and to the Defendant's officers, employees, members acting as corporate policy makers, directors, successors, assigns, subsidiaries, divisions and any other organizational units of any kind, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

3. Defendant agrees that a Final Judgment in the form attached to this Agreement as Exhibit A and incorporated herein by this reference may be filed and entered by the Court upon execution of this Settlement Agreement upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16) and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court, Defendant agrees to be bound to the terms of the Final Judgment.

4. Defendant agrees to refrain from maintaining, adopting, or enforcing an MFN or similar provision in participating dentist agreements, in corporate by-laws, in rules or regulations, or by any other means or methods.

5. Defendant agrees to comply with ¶ IV(A) of the Final Judgment.

6. Defendant agrees to refrain from taking any action, directly or indirectly, to coerce any dentist or member to refrain from offering discount fees to any person or dental plan within the State of Arizona or to refrain from participating in any dental plan.

7. Nothing contained in this Settlement Agreement shall restrict Defendant from examining, auditing or monitoring fees a dentist charges to Defendant, and taking appropriate action where there is good cause to believe that a participating dentist may have engaged in impermissible "irregularities in billing" as defined by A.R.S. § 32–1201.11.

8. Defendant agrees to amend its participating dentist agreements in accordance with the Final Judgment.

9. Defendant agrees to, within fifteen (15) days of the execution of this agreement, send a letter by first class mail to every dentist participating as of January 1, 1993, stating as follows:

Pursuant to Delta's settlement of an action brought by the Arizona Attorney General and the United States, Delta's Most Favored Nation pricing provisions in your participating Dentist Agreement are now void and of no force or effect. You are free to set your usual fees as you in your sole discretion determine. You are completely free to offer discounts to and to associate with, and to offer any price you want to any person or dental plan in the State or Arizona. Delta will not audit or monitor in any way the fees you charge other persons or dental plans in the future except in cases where there are reasonable grounds to suspect "irregularities in billing" as that term is defined in Arizona Revised Statutes § 32–1201.11, which deals with fraudulent billing. If you have been terminated as a Delta dentist for failing to honor the MFN provisions of your agreement and if you wish to be reinstated as a Delta dentist, please so state in writing within thirty days of the date of this letter and your request will be honored within five days of receipt.

Delta will not discriminate or retaliate against any dentist on the basis of his or her participation with a discount dental plan. Delta reserves the right to limit the number of dentists who may participate in any Preferred Provider Organization Delta may create, but will do so for reason unrelated to the dentist's fee discounting practices or his or her participation with any competing dental plan.

10. Defendant agrees to provide a declaration of service of the foregoing letter on Delta dentists to the Plaintiff's offices within five (5) days of its mailing.

11. Defendant agrees to reinstate terminated dentists in accordance with the letter described in ¶ 9.

12. Defendant agrees that no later than thirty (30) days from the entry of the Final Judgment, Defendant shall pay to the Attorney General's Antitrust Revolving Fund an amount agreed upon by the parties.

13. The State of Arizona agrees not to initiate debarment or termination proceedings relating to State of Arizona Contract No. A2–0093–001 upon any ground arising out of the complaint in the action. The State certifies that as of the date of execution of this Settlement Agreement, no termination or partial termination, suspension or debarment of that contract has been initiated, that no such proceeding is contemplated or planned and that the State has no present intention of initiating such a proceeding upon information processed as of the date of this Settlement Agreement. The State agrees to notify Defendant in writing consistent with its contractual and legal obligations of any termination that may be initiated in the future. Nothing in this Settlement Agreement shall be construed to alter or amend any provision contained in State of Arizona Contract No. A2–0093–001, or to afford any party any additional rights or benefits.

14. The term of this Settlement Agreement shall be for five years, from the date of entry of the Final Judgment.

15. In the event that Plaintiffs reasonably believe that Defendant has violated the provisions of the Final Judgment or Settlement Agreement, Defendant agrees that the Plaintiffs, or each of them, may move the court for an order, upon affidavits stating the factual grounds therefore, and the Court, after notice by regular mail to the last known address of the Defendant and to its attorney of record, and after a hearing at which Defendant shall have a reasonable opportunity to present evidence and legal argument, may enter an order which, among other remedies, may require Defendant to pay a penalty in such amount as is established by the Court, per violation of the Final Judgment or this Settlement Agreement, such penalty to be paid within 30 days of the date on which the order is mailed, regular mail, to the last known address of Defendant. The Court may also enter such other sanction, including debarment, as it deems appropriate.

16. Defendant agrees that upon failure to pay the penalty as provided in this section, or for any other violation of the Final Judgment or this Settlement Agreement, the plaintiffs or each of them may exercise all remedies available at law or in equity.

17. Nothing contained in this Settlement Agreement or the Final Judgment shall limit the rights of the United States from utilizing other investigative alternatives, such as the Civil Investigative Demand process provided by 15 U.S.C. 1311–1314, or a federal grand jury, or the State of Arizona from utilizing its civil investigative authority under A.R.S. § 44–1406.

18. Except as provided in paragraph 13, nothing contained in this Settlement Agreement or the Final Judgment shall affect the rights or remedies of any State agency arising out of any contractual relationship with, or regulatory authority over, Defendant.

19. By execution of this Settlement Agreement, the State of Arizona covenants and agrees to release, waive and forever discharge and to refrain forever from prosecuting or maintaining

any suit or action against the Defendant, or its present or past officers, directors, agents, employees, affiliates, predecessors, or any of its respective successors, assigns or representatives known or unknown, fixed or contingent, suspected or claimed which the State of Arizona ever had or may now have against Defendant or any of this covenant's beneficiaries pertaining to all matters that were or could have been asserted in the complaint arising out of antitrust law.

20. Nothing in this Settlement Agreement shall be deemed a release or waiver of any claims arising out of a breach of this Agreement.

21. Nothing in this Settlement Agreement or Final Judgment shall be construed to release or to confer any right whatsoever on any party or state agency not expressly named in it.

22. This Settlement Agreement, the Final Judgment, or any portion or draft thereof shall not be used as evidence, or construed in any way whatsoever as an admission by Defendant, the United States, or the State of Arizona with respect to any issue in this action.

23. Upon filing the Complaint, Final Judgment, and Settlement Agreement in this case, the State of Arizona will dismiss the complaint filed in *State of Arizona* v. *Delta Dental Plan of Arizona, Inc.*, No. CV 94–10142, filed in the Superior Court of the State of Arizona in and for the County of Maricopa.

24. Immediately upon Court approval of this Settlement Agreement and entry of the Final Judgment, the United States and the State of Arizona shall, at their own expense, and consistent with any federal or state law, return to Defendant all documents produced by Defendant to the Attorney General's Office and in the Plaintiffs' possession, custody, or control, and all copies thereof, or, at Plaintiffs' election, certify to counsel for Defendant that such documents have been disposed of in a manner mutually agreed upon by counsel for the parties.

25. This Settlement Agreement constitutes the entire agreement between the parties. All prior oral or written agreements, commitments or understandings with respect to the matters provided for herein are hereby set aside and no evidence of any oral or written agreements, commitments or understandings with respect to the matters provided for herein shall be admissible in any proceeding for any purpose absent written consent of all parties to this Settlement Agreement and Final Judgment.

26. Article headings contained in the Final Judgment are inserted for convenience of reference only, and shall not be deemed to be part of the Final Judgment for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions of it.

27. This Settlement Agreement shall be final upon execution. No delay in entry of the Final Judgment shall delay performance as agreed in this Settlement Agreement. In the vent that the United States withdraws its consent to this agreement or to the Final Judgment, the parties agree to re-negotiate this agreement in good faith.

28. This Settlement Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed an original and all of which shall constitute the same instrument.

29. Each of the parties to this Settlement Agreement represents and warrants that:

a. It has the power and authority to enter into this Settlement Agreement and to perform its obligations thereunder;

b. It has taken all action and has secured the consents of all persons necessary to authorize the execution, delivery and performance of this Settlement Agreement; and

c. This Settlement Agreement has been duly executed and delivered by it and constitutes a valid and binding obligation enforceable against it is accordance with its terms.

30. The Defendant will file a certified copy of a resolution of the Board of Directors of Defendant, authorizing entry into this stipulation and consenting to entry of the Final Judgment in the form of Final Judgment hereto attached.

31. The parties intend that if there is any ambiguity in this Settlement Agreement, it will be construed in favor of settlement of claims.

32. Nothing contained herein has been agreed to for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

In Witness Whereof, the parties hereto have executed this Settlement Agreement as of this 25th day of August, 1994.

Delta Dental Plan of Arizona, Inc., and Arizona Corporation

James E. Judd,

President and CEO.

State of Arizona

Suzanne M. Dallimore.

United States of America

Barbara J. Nelson.

In the United States District Court—District of Arizona

United States of America, and State of Arizona, by and through its Attorney General Grant Woods, Plaintiffs, vs. Delta Dental Plan of Arizona, Inc., an Arizona Corporation, Defendant. Civil No.

Final Judgment

Whereas, Plaintiffs, United States of America and State of Arizona, through their respective attorneys, filed their Complaint on August 30, 1994, alleging violations of the Sherman Act, 15 U.S.C. § 1 and the Uniform Arizona Antitrust Act, A.R.S. § 44–1402;

Whereas, the Defendant denies liability;

Whereas, there has been no determination by the Court that a violation of law has occurred;

Whereas, the Plaintiffs and Defendant, desiring to resolve their disputes without trial or adjudication of any issue of law or fact, have entered into a Settlement Agreement dated as of August 25, 1994 in which they have provided for the entry of this Final Judgment;

Whereas, this Final Judgment shall not be evidence against or an admission by any party with respect to any issue of fact or law; and

Whereas, this Final Judgment is filed in accordance with the terms of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, and is a consent judgment as that term is used in 15 U.S.C. § 16(a);

Now therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, it is hereby Ordered, Adjudged, and Decreed as follows:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Court has jurisdiction over Count Two of the Complaint pursuant to 28 U.S.C. § 1367(a). The Complaint states a claim upon which relief may be granted against the Defendant under Section 1 of the Sherman Act, 15 U.S.C. § 1, and under A.R.S. § 44–1402.

II

Definitions

As used herein, the term:

(A) "Defendant" means Delta Dental Plan of Arizona, Inc., an Arizona Corporation;

(B) "Most Favored Nation Clause" or "MFN" means those provisions in the Defendant's participating dentist agreements that require that the participating dentist's usual and customary fee be the lowest fee charged or offered by that dentist to, or received from, any person or dental plan;

(C) "Participating Dentist Agreement" means the Delta Dental Participating Dentist Agreement and Confidential Fee Listing document by which Defendant contracts with dentists in the State of Arizona including all versions, amendments and additions thereto in effect at any time since January 1, 1990 and during the term of this Final Judgment.

III

Applicability

(A) This Final Judgment applies to the Defendant and to the Defendant's officers, employees, members acting as corporate policymakers, directors, successors, assigns, subsidiaries, divisions and any other organizational units of any kind, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise. Within 60 days of entry, Defendant shall mail a copy of this Final Judgment to each dentist who was a member as of January 1, 1993.

(B) Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV

Injunction

(A) Within the State of Arizona, Defendant and its members are enjoined and restrained from any and all of the following conduct:

(1) Maintaining, adopting, or enforcing an MFN or similar provision in participating dentist agreements, in corporate by-laws, in rules or regulations, or by any other means or methods;

(2) Demanding information from dentists about their participation with any person or other dental plan;

(3) Examining, auditing, or monitoring the fees a dentist charges to any other dental plan or to any person other than a Delta Dental Plan participant;

(4) Sending written communication to dentists regarding the fees dentists charge to persons or dental plans other than Defendant's;

(5) Requiring any dentist to identify the dental plans with which he or she participates;

(6) Seeking any vote of dentists on the levels of reimbursement Defendant is to pay to its dentists;

(7) Terminating, or discriminating or retaliating against, any dentist because he or she offers discounted fees to any person or dental plan;

(8) Differentiating between dentists in payment or other treatment based on a dentist's discounting of fees; or

(9) Taking any other action, directly or indirectly, to coerce any dentist to refrain from offering discount fees to any person or dental plan within the State or Arizona or to refrain from participating in any dental plan, or to discourage any dentist from offering discount fees or participating in any dental plan.

However, nothing contained in this Final Judgment shall restrict Defendant from examining, auditing or monitoring fees a dentist charges to Defendant, and taking appropriate action, where there is good cause to believe that a participating dentist may have engaged in impermissible "irregularities in billing" as defined by A.R.S. § 32–1201.11.

(B) The following italicized language and all similar provisions of the Confidential Fee Listing and Participating Dentist Agreement shall be null and void and Defendant shall be entitled to no benefit from it, direct or indirect, prospective or retroactive:

Confidential Fee Listing

USUAL: A "usual fee" for a patient is a fee charged or offered and intended to be collected by an individual dentist or group of dentists; i.e. his/her own usual fee. *However, if a dentist or group of dentists charge a lower fee to patients who are members of any other individual or group dental care program for the same or similar service or procedure, the "usual fee" shall be deemed to be the lowest fee charged or offered and received as payment in full.*

Participating Dentist Agreement

5. I agree to charge Delta Dental my usual fees *charged to all my other patients or the amount accepted as payment in full, whichever is less,* for services rendered to Delta Dental's covered patients, and agree to accept Delta Dental's determination of reasonable fees for any procedure as full satisfaction of my fee where my usual fee for such services is determined to be in excess of the 90th percentile *or the customary range of charges made by dentists of similar training for the same service(s) within the same geographic area as determined by Delta Dental.*

(C) Defendant shall, within fifteen (15) days of the date of the Settlement Agreement, mail a letter to all participating dentists containing the language set forth in the Settlement Agreement, and shall certify to the Plaintiffs in writing, within five (5) days of mailing, that the letter was sent.

(D) No later than thirty (30) days from the date of entry of this Final Judgment, Defendant shall pay to the State of Arizona Attorney General's Antitrust Revolving Fund an amount to be agreed upon by the parties.

(E) Defendant shall comply in all respects with all provisions of the Settlement Agreement dated August 25, 1994.

V

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, modify it on the basis of changed circumstances, terminate any of its provisions, enforce compliance, and punish violations of its provisions.

Nothing in this provision shall give standing to any person not a party to this Final Judgment to seek any relief related to it.

VI

Access to Information

For the purposes of determining or securing compliance with the Final Judgment, Defendant agrees that from time to time:

(A) Duly authorized representatives of the United States, upon written request of the Assistant Attorney General in charge of the Antitrust Division, or the Attorney General of the State of Arizona, upon written request of the Attorney General, and on reasonable notice to Defendant, shall be permitted, subject to any legally recognized privilege, access, during office hours, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Defendant relating to any matters contained in this Final Judgment; and

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, or the Attorney General of the State of Arizona, it shall submit such written reports, under oath if requested, with respect to any of the matters contained in the Final Judgment.

The parties agree that Defendant shall have the right to be represented by counsel in any such process.

Any information provided to the Plaintiff under this section of the Final Judgment shall be kept confidential by the Plaintiffs and shall not be disclosed to third parties except as necessary to enforce the Final Judgment or as otherwise previously agreed or required by law.

VII

Term

This Final Judgment shall expire five years from the date of its entry.

VIII

Public Interest

Entry of this Final Judgment is in the public interest.

Dated this _____ day of _____, 1994.

United States District Judge

Resolution of the Board of Directors of Delta Dental Plan of Arizona, Inc.

Resolved, that Delta Dental Plan of Arizona, Inc., an Arizona non-profit corporation, shall enter into the Settlement Agreement and consent to the entry of a Final Judgment in the form exhibited to the Board of Directors, copies of which are attached to the minutes of the meeting at which this Resolution has been adopted.

Certificate

Michael C. Bailey, D.M.D., Secretary of Delta Dental Plan of Arizona, Inc., an Arizona non-profit corporation, hereby certifies that there is set forth above the full text of a Resolution of the Board of Directors of said Delta Dental Plan of Arizona, Inc., duly and regularly adopted at a meeting of said Board of Directors on August 6, 1994; that copies of the forms of Settlement Agreement and Final Judgment referred to in said Resolution are attached hereto as Exhibit "A" and Exhibit "B"; and that said Resolution is in full force and effect and has not been altered, amended or repealed.

Dated: August 6, 1994.

Michael C. Bailey, D.M.D.,

Secretary.

In the United States District Court, District of Arizona

United States of America, and State of Arizona, by and through its Attorney General Grant Woods, Plaintiffs, vs. Delta Dental Plan of Arizona, Inc., an Arizona Corporation, Defendant. Filed August 30, 1994. Civil No. 94–1793PHXPGR.

Final Judgment

Whereas, Plaintiff, United States of America and State of Arizona, through their respective attorneys, filed their Complaint on August 30, 1994, alleging violations of the Sherman Act, 15 U.S.C. § 1 and the Uniform Arizona Antitrust Act, A.R.S. § 44–1402;

Whereas, the Defendant denies liability;

Whereas, there has been no determination by the Court that a violation of law has occurred;

Whereas, the Plaintiffs and Defendant, desiring to resolve their disputes without trial or adjudication of any issue of law or fact, have entered into a Settlement Agreement dated as of August 25, 1994 in which they have provided for the entry of this Final Judgment;

Whereas, this Final Judgment shall not be evidence against or an admission by any party with respect to any issue of fact or law; and

Whereas, this Final Judgment is filed in accordance with the terms of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and is a consent judgment as that term is used in 15 U.S.C. 16(a);

Now Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, it is hereby Ordered, Adjudged, and Decreed as follows:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Court has jurisdiction over Count Two of the Complaint pursuant to 28 U.S.C. 1367(a). The Complaint states a claim upon which relief may be granted against the Defendant under Section 1 of the Sherman Act, 15 U.S.C. 1, and under A.R.S. § 44–1402.

II

Definitions

As used herein, the term:

(A) "Defendant" means Delta Dental Plan of Arizona, Inc., an Arizona Corporation;

(B) "Most Favored Nation Clause" or "MFN" means those provisions in the Defendant's participating dentist agreements that require that the participating dentist's usual and customary fee be the lowest fee charged or offered by that dentist to, or received from, any person or dental plan;

(C) "Participating Dentist Agreement" means the Delta Dental Participating Dentist Agreement and Confidential Fee Listing document by which Defendant contracts with dentists in the State of Arizona including all versions, amendments and additions thereto in effect at any time since January 1, 1990 and during the term of this Final Judgment.

III

Applicability

(A) This Final Judgment applies to the Defendant and to the Defendant's officers, employees, members acting as corporate policy makers, directors, successors, assigns, subsidiaries, divisions and any other organizational units of any kind, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise. Within 60 days of entry, Defendant shall mail a copy of this Final Judgment to each dentist who was a member as of January 1, 1993.

(B) Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV

Injunction

(A) Within the State of Arizona, Defendant and its members are enjoined and restrained from any and all of the following conduct:

(1) Maintaining, adopting, or enforcing an MFN or similar provision in participating dentist agreements, in corporate by-laws, in rules or regulations, or by any other means or methods;

(2) Demanding information from dentists about their participation with any person or other dental plan;

(3) Examining, auditing, or monitoring the fees a dentist charges to any other dental plan or to any person other than a Delta Dental Plan participant;

(4) Sending written communication to dentists regarding the fees dentists charge to persons or dental plans other than Defendant's;

(5) Requiring any dentist to identify the dental plans with which he or she participates;

(6) Seeking any vote of dentists on the levels of reimbursement Defendant is to pay to its dentists;

(7) Terminating, or discriminating or retaliating against, any dentist because he or she offers discounted fees to any person or dental plan;

(8) Differentiating between dentists in payment or other treatment based on a dentist's discounting of fees; or

(9) Taking any other action, directly or indirectly, to coerce any dentist to refrain from offering discount fees to any person or dental plan within the State of Arizona or to refrain from participating in any dental plan, or to discourage any dentist from offering discount fees or participating in any dental plan.

However, nothing contained in this Final Judgment shall restrict Defendant

from examining, auditing or monitoring fees a dentist charges to Defendant, and taking appropriate action, where there is good cause to believe that a participating dentist may have engaged in impermissible "irregularities in billing" as defined by A.R.S. § 32–1201.11.

(B) The following underlined language and all similar provisions of the Confidential Fee Listing and Participating Dentist Agreement shall be null and void and Defendant shall be entitled to no benefit from it, direct or indirect, prospective or retroactive:

Confidential Fee Listing

USUAL: A "usual fee" for a patient is a fee charged or offered and intended to be collected by an individual dentist or a group of dentists; i.e. his/her own usual fee. *However, if a dentist or group of dentists charge a lower fee to patients who are members of any other individual or group dental care program for the same or similar service or procedure, the "usual fee" shall be deemed to be the lowest fee charged or offered and received as payment in full.*

Participating Dentist Agreement

5. I agree to charge Delta Dental my usual fees *charged to all my other patients or the amount accepted as payment in full, whichever is less,* for services rendered to Delta Dental's covered patients, and agree to accept Delta Dental's determination of reasonable fees for any procedure as full satisfaction of my fee where my usual fee for such services is determined to be in excess of the 90th percentile *or the customary range of charges made by dentists of similar training for the same service(s) within the same geographic area as determined by Delta Dental.*

(C) Defendant shall, within fifteen (15) days of the date of the Settlement Agreement, mail a letter to all participating dentists containing the language set forth in the Settlement Agreement, and shall certify to the Plaintiffs in writing, within five (5) days of mailing, that the letter was sent.

(D) No later than thirty (30) days from the date of entry of this Final Judgment, Defendant shall pay to the State of Arizona Attorney General's Antitrust Revolving Fund an amount to be agreed upon by the parties.

(E) Defendant shall comply in all respects with all provisions of the Settlement Agreement dated August 25, 1994.

V

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, modify it on the basis of changed circumstances, terminate any of its provisions, enforce compliance, and punish violations of its provisions.

Nothing in this provision shall give standing to any person not a party to this Final Judgment to seek any relief related to it.

VI

Access to Information

For the purposes of determining or securing compliance with the Final Judgment, Defendant agrees that from time to time;

(A) Duly authorized representatives of the United States, upon written request of the Assistant Attorney General in charge of the Antitrust Division, or the Attorney General of the State of Arizona, upon written request of the Attorney General and on reasonable notice to Defendant, shall be permitted, subject to any legally recognized privilege, access, during office hours, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Defendant relating to any matters contained in this Final Judgment; and

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, or the Attorney General of the State of Arizona, it shall submit such written reports, under oath if requested, with respect to any of the matters contained in the Final Judgment.

The parties agree that Defendant shall have the right to be represented by counsel in any such process.

Any information provided to the Plaintiffs under this section of the Final Judgment shall be kept confidential by the Plaintiffs and shall not be disclosed to third parties except as necessary to enforce the Final Judgment or as otherwise previously agreed or required by law.

VII

Term

This Final Judgment shall expire five years from the date of its entry.

VIII

Public Interest

Entry of this Final Judgment is in the public interest.

Dated this _____ day of _____, 1994.

United States District Judge

Barbara J. Nelson, Phillip R. Malone, Carla G. Addicks, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 10th Floor, San Francisco, California 94102, (415) 556–6300

Attorneys for the United States

In the United States District Court District of Arizona

United States of America, and State of Arizona, by and through its Attorney General Grant Woods, Plaintiffs, vs. Delta Dental Plan of Arizona, Inc., an Arizona Corporation, Defendant. Filed: August 30, 1994. Civil No. 94–1793PHXPGR

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment (or "the Judgment") submitted for entry against and with the consent of Delta Dental Plan of Arizona, Inc., an Arizona Corporation, in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On August 30, 1994, the United States and the State of Arizona, acting under the direction of their respective Attorneys General, filed this civil antitrust suit. Count One of the Complaint, brought by both the United States and the State of Arizona, alleges that Delta Dental Plan of Arizona, Inc. ("Delta"), an Arizona corporation, and its co-conspirators conspired to unreasonably restrain competition by restraining or eliminating discounting of fees for dental services in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. Count One of the Complaint asks the Court to find that Delta has violated Section 1 of the Sherman Act, and further requests the Court to enjoin the continuance of the conspiracy. Count Two of the Complaint is brought solely by the State of Arizona and alleges a violation of the Uniform Arizona Antitrust Act, A.R.S. § 44–1402, by the same conduct. This Competitive Impact Statement addresses only the Court advanced by the United States, Count One.

Entry of the proposed Final Judgment will terminate the entire action, except that the Court will retain jurisdiction over the matter for further proceedings which may be required to interpret, enforce or modify the Judgment or to punish violations of any of its provisions.

II

Practices Giving Rise to the Alleged Violation

Defendant Delta is an Arizona corporation with its principal place of business in Phoenix, Arizona. The majority of the Board of Directors of Delta is made up of dentists. Delta contracts with businesses, government agencies, and other organizations to provide pre-paid dental care coverage to their employees. Delta contracts directly with dentists or groups of dentists to provide dental services to patients who are members of these covered groups. Delta compensates its participating provider dentists for their services on the basis of a fee for service determined by Delta in part using fee schedules submitted by each dentist.

Approximately 85 percent of the dentists in the state of Arizona have provider contracts with Delta. For most of these dentists, payments received from Delta for treating Delta member patients are a significant part of their income. Most of these dentists are in independent, private practice and actually or potentially compete with other participating Delta dentists to provide dental services to both Delta and non-Delta patients.

Defendant Delta's participating dentist agreements and confidential fee listings with dentists participating in its dental plan each contain what is called a "most favored nation" clause ("MFN"). These clauses on their face require that each dentist charge Delta the lowest price that dentist charges any patient or competing dental care plan. If dentists wish to reduce their fees for dental services to any other plan or patient, the MFN requires them to also reduce their fees to Delta to the same level. For the reasons described below, however, the actual effect of the MFN clauses has been to require participating Delta dentists to charge other dental plans and non-Delta patients fees that are as high as or higher than the fees the dentists charge to Delta.

Count One of the Complaint alleges that, beginning at a time unknown to the Plaintiffs and continuing through at least July 1994, Delta and its co-conspirators agreed, combined and conspired to unreasonably restrain or eliminate the discounting of fees for dental services to competing dental plans or to other consumers of dental services in violation of Section 1 of the Sherman Act. The Complaint alleges that, for the purpose and with the effect of forming and carrying out this conspiracy, Delta and its co-conspirators agreed to adopt and enforce an MFN in Delta's participating dentist agreements and confidential fee listings with participating dentists for the purpose of restraining or eliminating discount fees for dental services and restricting the ability of dentists to discount their fees, then enforced the MFN, and coerced dentists into dropping out of discount dental plans that were attempting to compete with Delta.

Had this case proceeded to trail, the Plaintiffs were prepared to prove that the conspiracy has unreasonably restrained price competition among dentists and between other dental insurance plans and Delta.

Delta's adoption and enforcement of the MFN in its agreements with participating dentists has restrained price competition among Arizona dentists for the provision of dental services because it has caused large numbers of dentists to refuse to discount their fees. Before the MFN was enforced, many Arizona dentists chose to reduce their fees to participate in various competing managed-care and other discount plans. For example, at one pint a competing discount plan claimed to have contracts with over 1000 participating dentists.

After Delta began enforcing the MFN clauses, however, most participating dentists refused to discount their fees to non-Delta patients or competing discount dental plans because, if they did, the MFN would require them to also lower all of their fees to Delta. Since most dentists in Arizona who participate with Delta receive a significant portion of their income from treating Delta patients, the cost to those dentists of discounting their fees to non-Delta patients or competing dental care programs would be too great to justify discounting. For the same reason, it would be too costly for most dentists to drop their participation in Delta's plan in order to avoid the MFN and be able to discount their fees to competing discount dental plans. Consequently, the MFN clauses have substantially restrained both the discounting that previously was occurring and future discounting that otherwise would have occurred.

The Plaintiffs were also prepared to prove that the conspiracy has unreasonably restrained competition between other dental insurance plans and Delta. Delta's vigorous enforcement of the MFN has forced large numbers of dentists who had previously been discounting their fees to resign from competing discount dental plans. The MFN has also prevented those and other dentists from joining competing discount plans. As a result, the competing discount plans have not been able to attract and/or keep a sufficiently large, qualified, and geographically varied panel of dentists necessary to adequately serve their members and make their plans commercially marketable to employers and other potential patient groups. Many competing plans were about to be forced out of business or had in fact seen their ability to attract and serve patient groups severely restricted, leading to a substantial reduction in competition with Delta.

The conspiracy has deprived Arizona dental consumers of the benefits of free and open competition. Delta's activities have deprived consumers of price competition among dentists who are no longer discounting their fees. The conspiracy has also denied patients the opportunity to choose among competing dental insurance plans offering different combinations of dentists, services, and price. This reduction in the availability of dental coverage alternatives, such as managed care and other discount plans, has substantially reduced the cost savings to consumers that such competing plans could provide if they were able to contract for dentists' services at discounted fees. In fact, in some smaller Arizona communities, all of the dentists providing services to patients under competing discount plans have resigned from those plans as a result of Delta's enforcement of the MFN, leaving consumers there without any access to lower-cost dental services.

The anticompetitive effects of the Delta MFN would not be mitigated by any willingness or ability of competing plans to raise their payments to participating dentists up to the level of the Delta payments. If other plans did so, they would no longer be achieving the same cost savings to pass on to dental care consumers. The MFN would still cause increased costs to consumers and would not result in Delta obtaining any reduction in its fees or costs.

Explanation of the Proposed Final Judgment

The Plaintiffs and Delta have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission of any party with respect to any issue of fact or law.

Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section VIII of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is accompanied by a Settlement Agreement between Plaintiffs and Delta. Section IV. (E) of the Final Judgment requires Delta to comply with all the terms of this Settlement Agreement. Paragraph 3 of the Settlement Agreement sets forth the parties' stipulation that the proposed Final Judgment may be entered when appropriate.

The proposed Final Judgment is intended to ensure that Delta eliminates its MFN and stops all similar practices that unreasonably restrain competition among dentists and dental care plans in the state of Arizona.

A. Scope of the Proposed Final Judgment

Section III of the proposed Final Judgment provides that the Final Judgment shall apply to Delta and to its officers, employees, members acting as corporate policy makes, directors, successors, assigns, subsidiaries, divisions and other organizational units, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

B. Prohibitions and Obligations

Under Section IV of the proposed Final Judgment, Delta is enjoined and restrained for a period of five years from maintaining, enforcing, or adopting an MFN or similar provision in its participating dentist agreements, in its corporate by-laws, in rules or regulations, or by any other means or methods. Other provisions of the Final Judgment ensure that the MFN's anticompetitive purpose or effects cannot be achieved in other ways. Specifically, delta is further enjoined and restrained from: (1) Demanding information from dentists about their participation with any person or other dental plan; (2) examining, auditing, or monitoring the fees a dentist charges to any person or to any other dental plan; (3) sending any written communication to dentists regarding the fees dentists charge to persons or dental plans other than the Defendant's; (4) requiring any dentist to identify the dental plans with which he or she participates; (5) seeking any vote of dentists on the levels of reimbursement that the Defendant is to pay to its dentists; (6) terminating, or discriminating or retaliating against, any dentist because he or she offers discounted fees to any person or dental plan; (7) differentiating between dentists in payment or other treatment based on a dentist's discounting of fees; and (8) taking any other action, directly or indirectly, to coerce any dentist to refrain from offering discount fees to any person or dental plan within the State of Arizona or to refrain from participating in any dental plan, or to discourage any dentist from offering discount fees or participating in any dental plan.

Section IV.(B) of the Final Judgment declares that specified portions of Delta's Confidential Fee Listing and Participating Dentist Agreement which constitute the MFN provisions, or any similar provisions, are null and void.

The Final Judgment excepts from its terms, and does not prohibit, Delta's auditing of dentists' fees for the purpose of determining compliance with A.R.S. § 32–1201.11, an Arizona state law relating to fraudulent billing.

The Final Judgment requires that, within 60 days of entry of the Final Judgment, Delta provide a copy of the Final Judgment to all dentists who were Delta members on January 1, 1993. (Section III.(A)).

Section IV.(C) of the Final Judgment obligates Delta to mail to all participating dentists, within 15 days of the date of the Settlement Agreement, a letter containing specific language set forth in Paragraph 9 of the Settlement Agreement. That language advises dentists, among other things, that the MFN pricing provisions in the Delta provider agreements are void; that the dentists are free to offer discounts to and to associate with, and to offer any price they want, to any person or dental plan in Arizona; and that Delta will not discriminate or retaliate against any dentist based on that dentist's participation with a discount dental plan. The language of the letter also advises dentists that, if they have been terminated as Delta members because of failure to honor the MFN provision, they will be reinstated if they so choose.

The Judgment also provides that the United States and Arizona will have access to information to enforce the judgment. (Section VI).

C. Effect of the Proposed Final Judgment on Competition

The relief required by the proposed Final Judgment will enjoin and eliminate a substantial restraint on price competition among dentists and between Delta and other dental plans in Arizona, by removing the limitations imposed by the MFN on dentists abilities to discount their fees and to join discount dental coverage plans if they so choose. The Judgment will stop the conspiracy between Delta and its co-conspirators by eliminating the anticompetitive MFN, and by preventing Delta and its co-conspirators from taking any other action to dissuade or discourage dentists from discounting or participating in competing dental plans. As a result, the conspiracy will no longer hamper discount dental plans' efforts to attract and maintain viable panels of dentists to serve their members. At the same time, Delta will still be able to compete with other dental plans because it will not be restricted from seeking and achieving lower-cost fees through other, legitimate means.

Significant discounting and price competition was occurring before enforcement of the MFN. Because the MFN is the mechanism that has been used to restrain or eliminate that discounting and to prevent discount plans from retaining participating dentists eliminating the MFN and similar restrictions will restore the competition lost as a result of the conspiracy. Additional relief, such as requiring changes in the dentist control of Delta's board, is not warranted since the Department of Justice discovered no evidence in this case that competition was suppressed by circumstances other than Delta's adoption and enforcement of the MFN.

The prohibitions and obligations in the proposed Final Judgment will restore to dental consumers in Arizona the benefits of free and open competition that were suppressed by Delta's adoption and enforcement of the MFN. Without the Delta MFN, consumers should have access to a greater and more meaningful selection of dental insurance alternatives. Discount dental plans should be able to achieve cost savings which they can pass on to consumers.

IV

Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be a full trial on the merits of the case. In the view of the Department of Justice such a trial would involve substantial cost to the United States and is not warranted because the proposed Final Judgment provides all the relief that is needed to remedy the violations of the Sherman Act alleged in the United States Complaint.

V

Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's

fees. Entry of the proposed Final Judgment will neither impair nor assist in the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Final Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against the Defendant in this matter.

VI

Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed judgment should be modified may submit written comments to Gary R. Spratling, Chief, San Francisco Office Department of Justice, Antitrust Division, 450 Golden Gate Avenue, San Francisco, California 94102, within the 60-day period provided by the Act. These comments, and the Government's responses to them, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to Paragraph 3 of the Settlement Agreement, to withdraw its consent to the proposed judgment at any time prior to its entry if the Department should determine that some modification of the judgment is necessary to the public interest. The proposed Judgment itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

VII

Determinative Documents

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Judgment. Consequently, none are filed herewith.

Dated: August 25, 1994.

Respectfully submitted,

Barbara J. Nelson,

Philllip R. Malone,

Carla G. Addicks,

Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 10th Floor, San Francisco, California 94102, (415) 556-6300.

Attorneys for the United States.

[FR Doc. 94-22844 Filed 9-14-94; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Controlled Substances: Established Revised 1994 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of final revised aggregate production quotas for 1994.

SUMMARY: This interim rule (59 FR 36784, July 19, 1994) which established 1994 revised aggregate production quotas for some controlled substances in Schedules I and II, as required under the Controlled Substances Act (CSA) (21 USC 826), is adopted without change.

EFFECTIVE DATE: This order is effective upon September 15, 1994.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994).

On July 19, 1994, an interim rule establishing revised 1994 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (59 FR 36784). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before August 18, 1994. No comments or objections were received. The interim rule is adopted without change.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator, pursuant to 59 FR 23637 (May 6, 1994), the Deputy Administrator hereby orders that the 1994 revised aggregate production quotas, expressed in grams of anhydrous base, be established as follows:

Basic class	Established revised 1994 quotas (in grams)
Schedule I:	
Cathinone	4
3,4-Methylenedioxymethamphetamine	14
Schedule II:	
Dextropropoxyphene	123,398,000
Hydrocodone	8,344,000
Hydromorphone	407,000
Noroxymorphone (for conversion)	1,781,000
Phenylacetone (for conversion)	3,352,000

Dated: September 9, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94-22866 Filed 9-14-94; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 93-58]

John Stanford Noell, M.D.; Denial of Application

On May 21, 1993, the Deputy Assistant Administrator (then-Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John Stanford Noell, M.D. (Respondent), of Charlotte, North Carolina, proposing to deny his application for a DEA Certificate of Registration, as a practitioner, under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f). Specifically, the Order to Show Cause alleged that in June 1962, Respondent

surrendered his Federal Narcotics Drug License for five years based upon his prescribing of narcotic drugs to persons without a legitimate medical purpose and not within the usual course of his professional practice; in 1975, Respondent prescribed various Schedule II through IV controlled substances to DEA undercover operatives for no legitimate reason and outside the usual course of his professional practice; on January 21, 1976, Respondent was convicted in the United States District Court for the Eastern District of Louisiana, of 16 Felony counts of illegal distribution of controlled substances, in violation of 21 U.S.C. 841(a)(1); Respondent's prior DEA Certificate of Registration, AN3396389, was revoked effective April 29, 1977; between December 1985 and January 1987, Respondent issued 26 controlled substance prescriptions as an employee of the Alcohol Rehabilitation Center which were issued outside the scope of his exemption as an employee of such facility; Respondent's application for a DEA Certificate of Registration, dated May 14, 1986, was denied effective May 25, 1988; in October 1989, Respondent manufactured or allowed another to manufacture marijuana, a Schedule I controlled substance, maintained a dwelling for selling marijuana and possessed drug paraphernalia; and Respondent's application for a DEA Certificate of Registration, dated November 3, 1988, was denied effective March 21, 1991.

Respondent, through counsel, timely filed a request for a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held, beginning on December 1, 1993.

On March 17, 1994, Judge Tenney issued his findings of fact, conclusions of law and recommended ruling, recommending that Respondent's application for a DEA Certificate of Registration be granted without restrictions. The Government filed exceptions to the administrative law judge's findings of fact, conclusions of law and recommended ruling. Respondent did not file a response to the Government's exceptions.

On April 22, 1994, Judge Tenney transmitted the record of the proceedings to the Deputy Administrator. The Deputy Administrator has considered the record in its entirety and adopts, in part, the findings of fact and conclusions of law of the administrative law judge, and rejects the recommended ruling of the administrative law judge. Pursuant to 21 CFR 1316.67, the Deputy Administrator hereby issues his final order in this matter based upon his findings of fact and conclusions of law set forth below.

The Deputy Administrator finds that, in June 1962, Respondent surrendered his Federal Drug License for a period of five years based upon his prescribing of narcotic drugs to persons without a legitimate medical purpose and not within the usual course of his professional practice. On August 1, 1968, the Louisiana State Board of Medical Examiners suspended Respondent's medical license for one year. In February 1971, the Federal Bureau of Narcotics and Dangerous Drugs conducted an accountability audit of Respondent's stock of dangerous drugs and found significant, unexplained shortages of many of these substances. As a result, Respondent's drugs were forfeited.

During 1975, Respondent prescribed a number of controlled substances to two undercover DEA agents for no legitimate medical purpose and outside the usual course of Respondent's professional practice. Based upon these facts, in the United States District Court for the Eastern District of Louisiana, Respondent pled *nolo contendere* to and was convicted of 16 felony courts of violating 21 U.S.C. 841(a)(1).

Thereafter, DEA sought to revoke Respondent's DEA registration, based upon the facts set forth above. After an evidentiary hearing, Respondent's prior DEA Certificate of Registration, AN3396389, was revoked effective April 29, 1977. The revocation was affirmed. *Noell* v. *Bensinger*, 586 F.2d 554 (5th Cir. 1978).

On July 25, 1978, the Louisiana Board of Medical Examiners revoked Respondent's medical license. Respondent applied for another DEA registration in the State of North Carolina and in March 1987, DEA sought to deny such application. The Government not only relied upon Respondent's past transgressions, it also alleged that Respondent issued 26 controlled substance prescriptions outside the scope of his exemption while working as a physician for the Alcoholic Rehabilitation Center (ARC) in Black Mountain, North Carolina.

Although Respondent had no DEA registration while he worked at ARC between December 1985 and December 1986, he was allowed to write controlled substance orders for ARC patients which could be dispensed only by the pharmacy located at the ARC complex. It was discovered, however, that Respondent issued 26 prescriptions for individuals who were not patients and such prescriptions were dispensed by vaious pharmacies other than the pharmacy located at the ARC complex. Most of these prescriptions were written for former patients of ARC but some of these prescriptions were issued to two indviduals who had no affiliation with ARC whatsoever. Although Respondent testified at the 1987 hearing and at the present hearing that he had no knowledge that issuing these prescriptions was unlawful, he admitted during cross-examination that he issued a number of the prescriptions after he was explicitly told by ARC personnel to stop issuing such prescriptions. Respondent also testified at the present hearing that he did not recall that a pharmacy existed at the ARC complex although the evidence clearly points to a contrary conclusion. As a result of these proceedings, Respondent's application for a DEA registration was denied effective May 25, 1988.

Respondent field another application for a DEA registration on November 3, 1988 and DEA again initiated proceedings to deny the application. A few weeks before the hearing regarding this application, Respondent was indicted in the State of North Carolina on one count of manufacturing a controlled substance, one count of maintaining a dwelling for selling a controlled substance and one count of possession of drug paraphernalia. The then-Administrator issued an order denying this application effective March 21, 1991; however, it was not based upon the events giving rise to the North Carolina indictment.

In the present proceedings, the Government introducted into evidence a trial transcript based upon the North Carolina indictment. A jury acquitted Respondent of all three charges. Nevertheless, the Deputy Administrator finds that Respondent was in constructive possession of marijuana based upon the following facts as revealed in the trial transcript.

On October 23, 1989, two state law enforcement investigators went to Respondent's residence. Although the venetian blinds on the front door were closed, the investigators could still see a bright light shining through the blinds. No one was home at that time, so the investigators returned the next day. A young man who lived with Respondent answered the door and gave the investigators permission to search the residence. On the upper level of the residence were Respondent's bedroom and make-shift room that contained a pool table with marijuana plants growing on it. A grow light was shining on the plants. Located in this area was other paraphernalia, such as an exhaust

fan, bedding rocks and plastic trays. The plastic trays contained lava or bedding rocks and were located just outside of a bathroom that was shared between the make-shift room and Respondent's bedroom.

The windows near the pool table had been painted black although blinds covered these windows. Also located in the upstairs portion of the house was a "roach" and a book on indoor horticulture located in plain view in the living room. The marijuana plants growing in the residence were at least a month old at the time of the search. In a small study/storage area between Respondent's bedroom and the common bathroom was a desk. Behind the desk were pots with marijuana growing in them, several of which had grown to the ceiling.

Respondent had treated the individual who lived with him for substance abuse sometime in the mid 1980's. This individual began living with Respondent in 1986. This individual's room was where the pool table was located.

Although Respondent testified in the current proceedings that he had never been in the individual's room, when he was interviewed by a state investigator, he admitted that he had been in the room on a prior occasion. Although Respondent maintained at the hearing that he had no idea that the individual was cultivating marijuana and that this explanation was corroborated by the individual, who claimed that he hid all the plants and paraphernalia from Respondent, in light of all of the other circumstances, such an explanation is not credible.

In evaluating whether Respondent's registration by the Drug Enforcement Administration would be inconsistent with the public interest, the Deputy Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(1) The recommendation of the appropriate State licensing board or professional 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 laws 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 and safety.

In determining whether an applicant's registration would be inconsistent with the public interest, the Deputy Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Deputy Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See David E. Trawick, D.D.S., Docket No. 88–69, 53 FR 5326 (1988).

The Deputy Administrator concurs with the opinion and recommended ruling of the administrative law judge to the extent that the first through fourth factors apply but based upon Respondent's lack of candor and inconsistent explanations disagrees with the administrative law judge's finding that factor five was not established. The Deputy Administrator also disagrees with the administrative law judge's conclusion that Respondent has established sufficient mitigating factors to justify granting the present application.

Although the Government highlighted Respondent's lack of candor and inconsistent defenses,the administrative law judge attributed this behavior to Respondent's past alcohol problem and his fading memory. During the hearing pertaining to the illegal prescribing of controlled substances to DEA undercover agents in 1975, Respondent maintained that these prescriptions were issued for legitimate medical reasons. At the present hearing, however, Respondent testified that he issued the prescriptions because he was under the influence of alcohol.

During the present hearing, regarding Respondent's issuing of controlled substance prescriptions outside the scope of his exemption while employed at ARC, Respondent testified that he stopped this practice after he was explicitly told to stop. It was only during cross-examination that Respondent admitted that he wrote several other prescriptions after he was instructed to not issue any more. This testimony was in essence a repeat of what occurred at the 1987 hearing; Respondent initially testified that he stopped issuing controlled substance prescriptions when confronted by ARC personnel, but when pressed during cross-examination, he admitted he issued several prescriptions after such warning. Since the violations occurred as late as December of 1986, it is unlikely that the 1987 testimony was due to a fading memory. Moreover, Respondent's argument that his capacity was diminished due to his use of alcohol was not at all applicable to the 1986 violations that occurred at ARC or to the constructive possession of marijuana in 1989, since Respondent stopped using alcohol in the late 1970's.

The Deputy Administrator finds that Respondent's inconsistent statements and unfounded explanations, along with his thirty year history of noncompliance with various controlled substance laws, are all indicative of his failure to understand the seriousness of his past violations. Moreover, Respondent has exhibited no remorse for his illegal activities.

The administrative law judge also discounted the evidence of a 1971 audit of Respondent's stock of controlled substances which revealed unexplained shortages, because this audit was not explicitly set forth in the Order to Show Cause. Since these allegations were set forth in the Government's Prehearing Statement, Respondent received adequate notice. Therefore, the Deputy Administrator has considered this evidence.

Accordingly, the Deputy 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) and 0.104 (59 FR 23637), hereby orders that the application for a DEA Certificate of Registration, submitted by John Stanford Noell, M.D., be, and it hereby is, denied. This order is effective September 15, 1994.

Dated: September 9, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–22781 Filed 9–14–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Privacy Act of 1974; Proposed Routine Uses For Several Systems of Records; Proposed Amendment to One System of Records

AGENCY: Office of the Secretary, Labor.

ACTION: Notice; publication of proposed routine uses for several systems of records and a proposed amendment to one system of records.

SUMMARY: The Privacy Act of 1974 requires that each agency publish notice of a proposed routine use to a system of records, as well as proposals to revise an existing system of records. This notice proposes that two new routine uses be added to a total of four existing systems of records. The first routine use will be added to four systems, and the second routine use will be added to three systems. Finally, the Department proposes that one system of records be amended with respect to the "RECORD SOURCE" category. These actions will

permit this Department to participate in the Internal Revenue Service Income Tax Refund Offset Program.

DATES: Persons wishing to comment on this proposal may do so by October 17, 1994.

EFFECTIVE DATE: Unless there is a further notice in the **Federal Register**, these two routine uses amendments, and this amendment to the "RECORD SOURCE" category for one system of records, will become effective on October 20, 1994.

ADDRESSES: Written comments may be mailed or delivered to Robert A. Shapiro, Associate Solicitor, Division of Legislation and Legal Counsel, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2428, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Miriam McD. Miller, Co-Counsel for Administrative Law, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N–2428, Washington, DC 20210, telephone (202) 219–8188.

SUPPLEMENTARY INFORMATION: In 1992 the Congress passed and the President signed into law the Cash Management Improvement Act Amendments of 1992, which requires Federal agencies to participate in the Internal Revenue Service (IRS) Income Tax Refund Offset Program. Within the near future the Department of Labor will be publishing a regulation to specify the procedures that this Department will follow with regard to referral, by its constituent offices, administrations and bureaus, of past due legally enforceable debts to IRS for collection by income tax refund offset. As part of this program, the Department must amend its notice for its Privacy Act systems of records.

This document proposes that two new routine uses be added to a total of four existing systems of records. The first routine use will be added to four systems, and the second routine use will be added to three systems. Finally, the Department proposes that one system of records be amended with respect to the "RECORD SOURCE" category. These actions will permit this Department to participate in the Internal Revenue Service Income Tax Refund Offset Program. This Department's most recent Privacy Act compilation was published in the **Federal Register** on September 23, 1993 at 58 FR 49549.

Proposed Routine Uses

1. The first proposed routine use will amend four existing systems of records. The affected systems are: DOL/GOVT–1, Office of Workers' Compensation Programs, Federal Employees' Compensation Programs File; DOL/OSEC–4, Credit Data on Individual Debtors; DOL/OASAM–1, Attendance, Leave and Payroll File; and DOL/OASAM–15, Travel and Transportation System. This amendment will permit the Department to send information to the Department of Defense and to the United States Postal Service in order for them to determine, by computer matching, whether or not the debtor is employed or retired from federal service or the U.S. Postal Service. If the employee or retiree is receiving money from a federal or postal agency, then the Department must seek debt collection from these funds instead of offset from the debtor's tax refund. This routine use will also verify the employee's current mailing address.

2. The second proposed routine use will amend three of the four above mentioned systems. These are: DOL/GOVT–1; DOL/OASAM–1, and DOL/OASAM–15. This amendment will permit the Department actually to refer the debt to the IRS for offset from any tax refund due to the debtor.

3. In a third amendment, we propose to amend DOL/OSEC–4, Credit Data on Individual Debtors, so that the "RECORD SOURCE CATEGORIES" will include information received from other agencies. This action will permit this Department to store information received from the Department of Defense, the United States Postal Service, and the IRS in a system of records.

The public, the Office of Management and Budget (OMB), and the Congress are invited to submit written comments on this document. A report on this document has been provided to OMB and to the Congress as required by OMB Circular A–130, Revised, and 5 U.S.C. 552a(r).

Accordingly, for all the above reasons, the Department proposes to amend its systems notices for the Privacy Act of 1974, as follows:

Amendment

Amendment No. 1

The Department hereby adds the below presented paragraph to the following four systems of records. It is added to the "ROUTINE USES" category for each of those four systems as follows:

A. The below presented paragraph is added to DOL/GOVT–1, Office of Workers' Compensation Programs, Federal Employees Compensation Act File, as paragraph "n.", under the "ROUTINE USES" category.

B. The below presented paragraph is added to DOL/OSEC–4, Credit Data on Individual Debtors, as paragraph "F.", under the "ROUTINE USES" category.

C. The below paragraph is added to DOL/OASAM–1, Attendance, Leave and Payroll File, as paragraph "F.", under the "ROUTINE USES" category.

D. The below paragraph is added to DOL/OASAM–15, Travel and Transportation System, as paragraph "I.", under the "ROUTINE USES" category.

This is the paragraph which is being added to the above systems of records to the "ROUTINE USES" category:

Records from this system of records may be disclosed to the Defense Manpower Data Center—Department of Defense and the United States Postal Service to conduct computer matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and are delinquent in their repayment of debts owed to the United States Government under certain programs administered by the United States Department of Labor in order to collect the debts under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, or by salary or administrative offset procedures.

Amendment No. 2

The Department of Labor hereby adds the below presented paragraph to the following three systems of records. It is added to the "ROUTINE USES" category for each of these three systems as follows.

A. The below presented paragraph is added to DOL/GOVT–1, Office of Workers' Compensation Programs, Federal Employees' Compensation Act File, as an additional sentence to paragraph "i.", under the "ROUTINE USES" category.

B. The below presented paragraph is added to DOL/OASAM–1, Attendance, Leave and Payroll Files, as an additional sentence to paragraph E.(1) under the "ROUTINE USES" category.

C. The below presented paragraph is added to DOL/OASAM–15, Travel and Transportation System, as an additional sentence to paragraph "F.", under the "ROUTINE USES" category.

This is the paragraph which is being added to the above systems of records to the "ROUTINE USES" category:

Records from this system of record may be disclosed to the Internal Revenue Service for the purpose of offsetting a Federal claim from any income tax refund that may be due to the debtor.

Amendment No. 3

DOL/OSEC–4, Credit Data on Individual Debtors, is amended by revising the "RECORD SOURCE CATEGORIES" to read as follows:

DOL/OSEC–4

SYSTEM NAME

Credit Data on Individual Debtors.

* * * * *

RECORD SOURCE CATEGORIES

Information in this system is obtained from consumer credit reports, agency investigative reports, debtor's personal financial statements, correspondence and records relating to hearings on the debt, from federal agencies, and from other DOL systems of records.

* * * * *

Signed at Washington, DC this 9th day of September, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–22794 Filed 9–14–94; 8:45 am]

BILLING CODE 4510–23–M

MERIT SYSTEMS PROTECTION BOARD

Notice of Availability of Appeal Forms

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The Merit Systems Protection Board (MSPB) now maintains stock of the MSPB Appeal Form (OF–283). Henceforth, agencies should direct all supply requests for the current edition of this form to the Financial and Administrative Management Division, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419. The telephone number is (202) 653–7263. The FAX number is (202) 635–5589. A reasonable supply of the form will be made available to agencies without charge. Agencies are also authorized to reproduce the form locally.

EFFECTIVE DATE: September 15, 1994.

FOR FURTHER INFORMATION CONTACT:

Dick Dorr, Financial and Administrative Management Division, (202) 653–7263.

Dated: September 9, 1994.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 94–22766 Filed 9–14–94; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–070]

Intent to Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant a Patent License.

SUMMARY: NASA hereby gives notice of intent to grant DACO Technologies, Inc., of Florahome, Florida, an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in U.S. Patent Application No. 08/088,963, entitled "Compatible Hyperthermal Oxygen Atom Generator," which was filed on July 2, 1993. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Council (Intellectual Property) whether to grant the exclusive license.

DATE: Comments to this notice must be received by November 14, 1994.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358–2041.

Dated: September 6, 1994.

Edward A. Frankle,

General Council.

[FR Doc. 94–22862 Filed 9–14–94; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

Cleveland Electric Illuminating Co., et al.; Perry Nuclear Power Plant, Unit No. 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 70.24 for Facility Operating License No. NPF–58 issued to the Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company (the licensees) for operation of the Perry Nuclear Power Plant (PNPP), Unit No. 1, located in Lake County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt PNPP from the requirements of 10 CFR 70.24(a)(1) to install a criticality monitoring system for the handling, use, and storage of special nuclear material in the form of unirradiated nuclear fuel assemblies and 10 CFR 70.24(a)(3) to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm and to conduct drills and designate responsible individuals for such emergency procedures.

The proposed action is in accordance with the licensee's application for exemption dated February 28, 1992.

The Need for the Proposed Action

Power reactor license applicants are evaluated for the safe handling, use, and storage of special nuclear materials. The proposed exemption from criticality accident requirements is based on the original design for radiation monitoring at PNPP as discussed in a Safety Evaluation Report, NUREG–0887. The exemption was granted with the original Part 70 license but it expired with the issuance of the Part 50 license when the exemption was inadvertently not included in that license. Therefore, the exemption is needed to clearly define the design of the plant as evaluated and approved for licensing.

Environmental Impact of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the exemption is granted. Inadvertent or accidental criticality will be precluded through compliance with the Perry Technical Specifications, facility procedures, and compliance with the restrictions placed on the exemption. The restrictions are: personnel involved in fuel handling activities are trained in the radiological consequences of fuel handling prior to participating in fuel handling activities; equipment used in fuel handling activities is preoperationally tested;

criticality analyses are performed and maintained to ensure criticality cannot result when stored fuel assemblies are optimally moderated; fuel enrichments are less than 5 weight-percent U–235; a documented fuel assembly storage plan is in effect allowing storage of fuel only in authorized locations; fuel storage containers are stacked no more than three high; reactor engineer or licensed reactor operator will verify proper spacing of fuel assemblies during receipt, inspection, and storage; and the minimum edge-to-edge distance between a group of three fuel assemblies and all other fuel assemblies shall be 12 inches. Since these measures provide assurance that criticality will not occur during receipt, inspection, use, and handling and storage of fuel, this is an acceptable alternative to a monitoring system. The exemption from 10 CFR 70.24(a)(3) does not preclude maintaining emergency procedures for fuel handling accidents as discussed in Chapter 15 of the Safety Analysis Report. Since the proposed exemption does not otherwise affect radiological plant effluents nor cause any significant occupational exposures, the NRC staff concludes that there are no radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the NRC staff concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Becuase the Commission's staff has concluded that there are no significant environmental impacts associated with the proposed action, any alternatives would have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Perry Nuclear Power Plant, Units 1 and 2, dated August 1982.

Agencies and Persons Consulted

The NRC staff consulted with the Ohio State official regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to the proposed action, see the licensee's exemption request dated February 28, 1992, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 6th day of September 1994.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Project—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–22869 Filed 9–14–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8989]

Envirocare of Utah, Inc.; 11e.(2) Byproduct Material Disposal Facility; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is issuing an exemption from the requirement of 10 CFR part 40, appendix A, criterion 7 for at least a full year of preoperational monitoring prior to any major site construction at the Envirocare of Utah, Inc. (Envirocare) 11e.(2) byproduct material disposal site near Clive, Utah.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant Envirocare an exemption from the requirements of 10 CFR part 40, appendix A, criterion 7 for at least one full year of preoperational monitoring for organic constituents in the Point of Compliance (POC) wells prior to major site construction at the 11e.(2) byproduct material disposal facility. In accordance with 10 CFR 40.14, the NRC staff, upon its own initiative, has proposed this exemption.

The Need for the Proposed Action

Envirocare of Utah, Inc. has conducted preoperational monitoring in the POC wells for hazardous constituents specified in License Condition 11.1 of Byproduct Material License SMC–1559. Envirocare has completed at least one full year of preoperational monitoring for all hazardous constituents in the POC wells at the site with the exception of the nine organic constituents. Sampling of the organic constituents in the POC wells was conducted by Envirocare in November of 1993, and February, April, and July of 1994. In order to complete one full year of preoperational monitoring, however, Envirocare would need to take another round of samples from the POC wells in November, 1994 prior to any major site construction. Envirocare, however, wants to begin disposal operations in early September, 1994 in order to receive the 11e.(2) byproduct material from the West Chicago Kerr McGee facility.

The purpose for requiring one full year of preoperational monitoring data is to establish the background ground-water quality based on data which is representative of seasonal variations, and to assure a statistically significant number of samples is taken. The staff has determined that the sampling conducted by Envirocare for the organic constituents provides adequate representative samples from each of the four seasons and provides a statistically significant number of samples. In addition, each of these four samplings has shown that the nine organic constituents in each well are at or below the lower limit of detection. Envirocare, in its submittal dated August 31, 1994, has also proposed that the background ground-water quality for the organic constituents in the POC wells be set at the lower limit of detection. Therefore, the NRC staff concludes that the background ground-water quality values for the nine organic constituents set at the lower limit of detection, as indicated by the sampling results, provide the same level of protection for public health, safety, and the environment from non-radiological hazards at the site as would be achieved by full compliance with 10 CFR part 40, appendix A, criterion 7.

Environmental Impact of the Proposed Action

The proposed action does not involve any significant environmental impacts. Since the proposed action does not involve a change in facility operation or configuration, there is reasonable assurance that the proposed action

would not increase the probability or the consequences of an accident, or reduce the level of protection for public health, safety, and the environment from radiological and non-radiological hazards. No changes would be made in the types or quantities of effluents that may be released offsite. Further, there would be no significant increase in the allowable individual or cumulative radiation exposure. Accordingly, the NRC concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the NRC concludes that there are no significant non-radiological impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the NRC has concluded that there are no significant environmental impacts associated with the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Environmental Impact Statement (NUREG–1476, August, 1993).

Agencies and Persons Consulted

The NRC staff initiated this exemption. The NRC staff did not consult with any other agency or persons regarding the environmental impact of the proposed action.

Finding of No Significant Impact

Based upon this environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the NRC staff's Safety Evaluation Report regarding the licensee's background ground-water quality submittal dated September 8, 1994, which is available for public inspection at the NRC's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555.

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

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–22868 Filed 9–14–94; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is a proposed Revision 3 to Regulatory Guide 1.118, and it is temporarily identified as DG–1028, "Periodic Testing of Electric Power and Protection Systems." The guide will be in Division 1, "Power Reactors." DG–1028 is being developed to provide current guidance on methods acceptable to the NRC staff on periodic testing of the electric power and protection systems of nuclear power plants.

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by November 15, 1994.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 30th day of August 1994.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 94–22870 Filed 9–14–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–400]

Carolina Power & Light Company

Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw its application for license amendment, dated July 21, 1992, as supplemented September 3, 1992. The application would have amended Facility Operating License No. NPF–63 for the Shearon Harris Nuclear Power Plant, Unit 1, located in Wake and Chatham Counties, North Carolina.

The proposed amendment would have changed the Technical Specifications (TS) to add new programmatic requirements governing radioactive effluents, radiological environmental monitoring and solid radioactive wastes to the administrative controls section of the TS.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 28, 1992 (57 FR 48814). Because of major changes in the original submittal, the licensee has chosen to withdraw the previous amendment application and provide a new amendment request.

For further details with respect to this action, see the application for amendment dated July 21, 1992, as supplemented September 3, 1992, and the licensee's letter dated August 19, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the

Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Dated at Rockville, Maryland, this 7th day of September 1994.

For the Nuclear Regulatory Commission.

Ngoc B. Le,

Project Manager, Project Directorate II-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-22871 Filed 9-14-94; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 99000143]

AVI Capital, L.P.; Notice of Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by AVI Capital, L.P. at One First Street, Suite 12, Los Altos, California 94022, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et seq.*), and the Rules and Regulations promulgated thereunder. Its principal area of operation will be Northern California's Silicon Valley (Santa Clara County) and selected areas on the West Coast such as Southern California, Oregon and Washington.

AVI Capital, L.P. will be managed by AVI Capital Management, L.P., General Partner, which consists of three experienced General Partners with successful track records in Silicon Valley. The individual General Partners are Peter Wolken, Barry Weinman, and Brian Grossi. Additionally, AVI Capital Management, L.P. will be affiliated with four Special Limited Partners who are Gene Flath, Jean-Louis Gassee, Ken Levy, and Jack Loustaunou. Four of the General and Special Limited Partners of AVI Capital Management, L.P. have been active with the prior venture capital partnerships Associated Venture Investors, L.P. (AVI) and Associated Venture Investors II, L.P. (AVI II) over the past eleven years, providing significant continuity.

The following limited partners will own 10 percent or more of the proposed SBIC:

Name	Relationship to applicant	Percentage of ownership directly/indirectly
AVI III L.P.	Limited Partner	Directly owns 73.8% of AVI Capital, L.P.
AVI I SVP	Limited Partner	Directly owns 14.2% of AVI Capital, L.P.
Motorola Corp	Passive Institutional L.P. of AVI III	Indirectly owns 15% of AVI Capital, L.P.
3M Corp	Passive Institutional L.P. of AVI III	Indirectly owns 22% of AVI Capital, L.P.
Mutual of Omaha	Passive Institutional L.P. of AVI III	Indirectly owns 15 of AVI Capital, L.P.
Sitra—Helsinki, Finland	Passive Institutional L.P. of AVI III	Indirectly owns 15% of AVI Capital, L.P.

The Applicant will raise private capital from institutional sources comprising Associated Ventures III L.P. (AVI III) and AVI Partners Growth Fund II, L.P. (AVI PGF II), and individual sources comprising AVI Silcon Valley Partners, L.P. (AVI SVP). Although less than ten percent, AVI PGF II will be a limited partner and directly own 7.5% of Applicant.

There are four limited partners of the Limited Partner Partnerships which are expected to indirectly own ten percent or more of the capital of Applicant. Such investors, which are each a Limited Partner of AVI III are: Motorola Corporation, 3M Corporation, Mutual of Omaha Insurance Company, and Sitra. These organizations are all passive investors of the partnership, and directly or indirectly have no control of the management nor of the decision-making of the Fund. In addition, none of such organizations owns 33% of the capital committed to Applicant.

The Applicant will began operations with private capital of $13.37 million and plans to make investments principally in California's Silicon Valley in Information Technology start-up companies; e.g. software, enabling hardware, publishing and electronic distribution, mobile computing, and multimedia. The Applicant will also consider extraordinary investments in selected areas on the West Coast (such as Southern California, Oregon, or Washington). The Applicant plans to invest in approximately 20 companies over a period of five years with an average total investment of $2 million per company. The Applicant plans to target companies which need funds to develop or complete development of a product or service, increase production, recruit personnel and execute its sales and marketing strategy.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Los Altos, California.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: September 9, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94-22764 Filed 9-14-94; 8:45 am]

BILLING CODE 8025-01-M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted by October 17, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the

Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: *Agency Clearance Officer:* Cleo Verbillis, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: 8A Capability Statement.
Form No.: SBA Form 1815.
Frequency: Annual.
Description of Respondents: 8(a) Program Participants.
Annual Responses: 8,000.
Annual Burden: 4,000.

Cleo Verbillis,

Chief, Administrative, Information Branch.

[FR Doc. 94–22765 Filed 9–14–94; 8:45 am]

BILLING CODE 8025–01–M

Casper District Advisory Council; Public Meeting

The U.S. Small Business Administration Casper District Advisory Council will hold a public meeting from 2 pm to 5 pm on Thursday, October 27, 1994, at the Holiday Inn, 115 E. Park, Thermopolis, Wyoming and Friday, October 28, 1994 from 8 am to 3 pm., regularly scheduled meeting 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 Mr. James P. Gallogly, District Director, U.S. Small Business Administration, Federal Building, Room 4001, 100 East B Street, P.O. Box 2839, Casper, Wyoming 82602–2839 (307) 261–5761.

Dated: September 12, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–22861 Filed 9–14–94; 8:45 am]

BILLING CODE 8025–01–M

Buffalo District Advisory Council; Public Meeting

The U.S. Small Business Administration Buffalo District Advisory Council will hold a public meeting at 10 a.m. on Wednesday, October 5, 1994, at the Niagara Falls Convention Center, Niagara Falls, New York 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 Mr. Franklin J. Sciortino, District Director, U.S. Small Business Administration, Room 1311, 111 West Huron Street, Buffalo, New York 14202, (716) 846–4301.

Dated: September 12, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–22863 Filed 9–14–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2075]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

SUMMARY: The Retail Price Schedule is the source of information used in establishing and justifying temporary lodging, travel per diem, and post (cost of living) allowances for all Federal civilian employees, statutory salaried employees, and Uniformed Services personnel assigned to foreign and non-foreign areas. The following summarizes the information collection proposal submitted to OMB:

Type of request—Existing collection.
Originating office—Bureau of Administration, Office of Allowances.
Title of information collection—Retail Price Schedule, Hotel and Restaurant Report of the Retail Price Schedule, and Living Pattern Questionnaire.
Frequency—Quarterly and Annually.
Respondents—Businesses or other for profit, and Federal agencies or employees.
Estimated number of respondents—684.
Average hours per response—7 hours.
Total estimated burden hours—1,799.

Section 3504(h) of Public Law 96–511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Jefferson Hill (202) 395–3176.

Dated: September 1, 1994.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 94–22779 Filed 9–14–94; 8:45 am]

BILLING CODE 4710–24–M

[Public Notice 2076]

International Telecommunications Advisory Committee Radiocommunication Sector Study Group 4; Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector Study Group 4, will meet on October 7, 1994, from 10 am to 1 pm in Room 1617M4 at the U.S. Department of Commerce, 14th St. & Pennsylvania Ave., NW., Washington, DC.

Study Group 4 deals with matters relating to the fixed satellite service. The purpose of the meeting is (1) to review the activities of the Working Parties and Task Groups, (2) to insure that studies are underway on all priority issues and (3) any other matters within the competence of this Study Group.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the Chairman, Dr. Robert Hedinger, (908) 234–7550.

Dated: September 6, 1994.

Warren G. Richards,

Chairman, U.S. ITAC for ITU-Radiocommunication Sector.

[FR Doc. 94–22845 Filed 9–14–94; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice 2077]

Privacy Act of 1974, as Amended; Removal of a System of Records

Notice is hereby given that the Department of State is removing a system of records, STATE–41, pursuant to the provisions of the Privacy Act of 1974, as amended [5 U.S.C. 552a(r)], and in accordance with the "Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany Concerning the Transfer of the Berlin Document Center to the Federal Republic of Germany." As agreed, the Government of the Federal Republic of Germany has provided a microfilm copy of the holdings of the Berlin Document Center to the National Archives and Records Administration for access in the United States. For information about access, contact William H. Cunliffe, Director, Center for Captured German and Related Records (NNG), the National Archives and Records Administration, Washington, DC 20408, telephone: 202–501–5383.

Dated: September 7, 1994.

Patrick F. Kennedy,

Assistant Secretary for the Bureau of Administration.

[FR Doc. 94–22847 Filed 9–14–94; 8:45 am]

BILLING CODE 4710–24–M

UNITED STATES INFORMATION AGENCY

Training Program With the Newly Independent States: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan

ACTION: Notice—request for proposals.

SUMMARY: The Office of Citizen Exchanges, Division of Russia/Eurasia of the United States Information Agency's Bureau of Education and Cultural Affairs announces a competitive grants program. Public or private non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) may apply to develop training programs in (1) local government and public administration, (2) business administration and business development, (3) rule of law, and (4) independent media development for the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Fulbright-Hays Act and the Freedom Support Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Application Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/PN–95–16.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Wednesday, November 30, 1994. Faced documents will not be accepted, nor will documents postmarked on November 30, 1994 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Office of Citizen Exchanges, Russia/Eurasia Division, E/PN, Room 216, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, tel: 202–619–5326, fax: 202–619–4350, to request an Application Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Specialist Ruth Leeb on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges, Russia/Eurasia Division or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges, Russia/Eurasia Division may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Application Package and send only complete applications to: U.S. Information Agency, Ref.: E/P–95–16, Office of Grants Management, E/XE, Room 336, 301 4th Street SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview: USIA is interested in proposals that encourage the growth of democratic institutions in the NIS. The main areas are local government and public administration; rule of law; business management; and media.

The projects may include: internships; study tours; short-term, non-technical training; consultations; and extended, intensive workshops taking place in the United States or in the countries listed in this announcement.

We encourage applicants to design creative training programs aimed at non-English speakers both for in-country as well as for U.S.-based training projects. USIA is interested in proposals whose designs take into account the need for ongoing sharing of information and training. Examples include: "train the trainers" models; the creation of indigenous training centers; plans to create professional networks or professional associations to share information.

Note: While this competition may fund programs in which American universities work with NIS counterparts, it is not intended to be a university linkage program. Such programs are funded by USIA's Office of Academic Programs (E/A) and proposals whose purpose is to exchange faculty or otherwise support direct academic links should be submitted under the E/A RFP for the University Linkage Programs.

Local Government and Public Administration

USIA is interested in proposals for training programs that foster effective administration of local and regional governments.

Programs in Public Administration for Kazakhstan will not be accepted.

Proposals are encouraged for the following themes/topics which have been requested by USIA's posts in Ukraine and Russia:

- Russia: Projects that build the capacity of local training institutions and that use Russian language materials are strongly encouraged. Proposals that show support from local administrations in Russia—city or oblast—will receive priority. USIA is particularly interested in exchange programs designed for regional legislators. A principle preoccupation of Russian lawmakers at the moment is the relationship between national and regional governments and the division of power between them. Programming that takes place in the United States for these local officials should include meetings and discussions in Washington, DC and in state capitols. Programs that emphasize the practical ramifications of a federated system of government will receive particular consideration. Proposals should be very specific, emphasizing concrete, tangible results that leave something behind in Russia once projects are completed.
- Ukraine: Priority will be given to programs on themes such as: setting up

a civil service and the concept of merit-based recruitment; the relationship between government and business; how to create a business-friendly environment through local laws and practices; combating corruption in law enforcement officials; governmental budgeting processes; taxation; privatization of government services; models of local government, including city manager, city council, county government; regional planning at multi-city, multi-county level; and administration of civic organizations such as library school boards, community centers. Ukrainian partner institutions might include the Institute of Public Administration in Kiev, the Lviv Management Institute, the International Management Institute in Kiev, or similar institutions.

Rule of Law

For all NIS countries, USIA is interested in proposals for parliamentary exchanges that offer a substantive professional visit to the United States for groups of elected legislators and their staffs, at both national and regional levels. The focus of these programs should be essentially political in nature since other U.S. Government funders are providing technical assistance to NIS parliaments. Programs can be designed around a specific theme (e.g., budget and finance, legislative and parliamentary procedure, oversight of law enforcement) or can serve as a vehicle to introduce leaders of NIS parliaments to U.S. Congressional leadership. Establishing contacts with U.S. Members of Congress is a major goal of the program. Proposals for groups composed of deputies or a combination of deputies and professional staff are acceptable, but mixing of local and national officials in one group is not encouraged (unless a compelling program rationale is given). Visits to state legislatures in the United States are encouraged. Particular care must to be taken to coordinate participate lists with the American Embassy in the given NIS country. In general, the American Embassies will issue the formal invitations to parliamentarians to participate in a given program.

For Russia, USIA is interested in programs in civics education that focus on the role of citizenry in fostering good government and the importance of ethics in government. Seminars in Russia and the development of materials in Russian are encouraged.

For Ukraine, USIA is interested in programs that offer training in the administration of local courts.

Business Administration and Development

USIA will consider projects in Business Administration and Development for all NIS countries except Russia and Kazakhstan. Preference will be given to projects in Ukraine and the Central Asian countries.

USIA's definition of business development and administration is broad. It includes: small business development, economic privatization and agri-business development, including food distribution systems or the role of family farms. USIA is interested in projects that strengthen university business departments and provide management training for people already in the work place. In addition, the following USIS posts have expressed interest in the following specific themes:

- Ukraine: Proposals are encouraged on the following themes: Business ethics; entrepreneurship; how to start a small business; how to promote business; and business curriculum development.

Independent Media Development

USIA is interested in media training proposals that focus on journalistic training, management of media organizations and foster independent media. Journalistic training in basic skills and concepts could include: effective writing, investigative reporting, objectivity, the clear labeling of editorials and opinion pieces, intellectual property issues and ethics.

Media management training (both print and electronic) should focus on management of media as a business: management techniques, desk top publishing, advertising, marketing, distribution, personnel, public relations, and the financial benefits and pitfalls of journalistic advocacy. USIS posts in the following countries have indicated their priority themes:

- Russia: Special consideration will be given to media training projects that offer U.S.-based internships for Russian journalists and media managers. USIA is interested in proposals that employ an open competition mechanism in Russian to select participants. Interested organizations should have experience placing both journalists and media managers in internships in the United States.
- Georgia: Proposals in media training that include a U.S.-based internship for six to eight weeks for print and TV journalists. The participants would be selected directly by the U.S. Embassy.
- Kazakhstan: USIA is particularly interested in proposals that focus on the business of media. There are many independent media outlets in Kazakhstan that are trying to make the transition to a market-driven news business, and the Agency is interested in proposals that promote the idea of journalism as a business. Training programs in news reporting, television production and the ethics of journalism are also encouraged. Priority will be given to proposals that contain both in-country and U.S.-based programming. Programs for non-English speakers will be given priority.
- Ukraine: The following topics have priority: ethics in journalism; straight news reporting; marketing and advertising in print and broadcast media.
- Kyrgyzstan: Media proposals for Kyrgyzstan will not be accepted in this competition.

Guidelines: Programs must comply with J–1 visa regulations. Please refer to program specific guidelines in the Application Package for further details.

Proposed budget: Organizations must submit a comprehensive line item budget based on the specific guidance in the Program and Budget Guidelines sections of the Application Package. Proposals for less than $200,000 will receive preference.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants are invited to submit an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Application Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency contracts office, as well as the USIA Office of East European and NIS Affairs and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Cross Cultural/Area Expertise:* Proposals should reflect the institution's expertise in the subject area and should address specific areas of concern facing countries involved in the project. Additionally, projects should show evidence of sensitivity to historical, linguistic and other cross cultural factors and should demonstrate how this sensitivity will be used in practical aspects of the program, such as pre-departure orientations or briefings of American hosts.

6. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or on-going activities and efforts that further the principle of diversity within both the organization and the program activities.

7. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

8. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

9. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

10. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

11. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

12. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

13. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about March 15, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: September 9, 1994.

John P. Loiello,

Associate Director, Educational and Cultural Affairs.

[FR Doc. 94–22874 Filed 9–14–94; 8:45 am]

BILLING CODE 8230–01–M

College and University Affiliations Program (CUAP): Administrative Services

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency announces an open competition to assist in the administration of the FY 1995 College and University Affiliations Program (CUAP) competition. Public and non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) may apply.

The purpose of this grant is to assist in the administration of Step II of the FY 1995 CUAP competition which includes technical review of approximately 45-50 proposals, coordination of academic review panels, provisions of panel appraisal reports on each proposal, and related correspondence.

The CUAP supports partnerships between U.S. and foreign institutions of higher education in the arts, humanities, and social sciences which include faculty and staff exchange, curriculum development, and collaborative research.

Overall grant making and funding authority for this program is contained in the Fulbright-Hays Act also known as the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the peoples of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Programs and projects must conform with Agency requirements and guidelines outlined in the Application Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/ASU–95–06.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5:00 p.m. Washington, DC time on Friday, October 28, 1994. Faxed documents will not be accepted, nor will documents postmarked on October 28, 1994 but received at a later date. It is the

responsibility of each grant applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Office of Academic Programs; Advising, Teaching, and Specialized Programs Division; Specialized Programs Unit; U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, phone: (202) 619–5289, fax: (202) 401–1433, Internet address: sborja@usia.gov, to request an Application Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the USIA Program Officer/Specialist Ms. Deborah Trent or Ms. Sue Borja on all inquiries and correspondence.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Academic Programs; Advising, Teaching, and Specialized Programs Division; Specialized Programs Unit or submitting their proposals. Once the RFP deadline has passed, the Specialized Programs Unit staff may not discuss this competition in any way with applicants until after the proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Application Package and send only complete applications to: U.S. Information Agency, Ref.: E/ASU–95–02, Office of Grants Management, E/XE, Room 336, 301 4th St., SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorized legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The recipient of this award will administer the technical and academic reviews for Step II of the FY 1995 College and University Affiliations Program (CUAP). CUAP is designed to support partnerships between U.S. and foreign institutions of higher education in the arts, humanities, and social sciences with the goal of strengthening mutual understanding. The CUAP supports curriculum development, faculty and staff development, and collaborative research through three-year grants up to a total of $120,000.

Guidelines

Project Description

The applicant shall review proposals for compliance with the technical requirements published in the Request for Proposals (RFP) for the FY 1995 CUAP competition (RFP to be provided in the application packet). The applicant shall coordinate the academic review of technically eligible, comprehensive proposals and provide the Agency with a panel appraisal report on each proposal based upon academic review criteria published in the FY 1995 CUAP RFP.

The applicant shall designate a coordinator, subject to Agency approval, to implement and chair all technical and academic reviews. The applicant shall produce correspondence to the applicants in response to inquiries regarding the technical and academic review of their proposals and notify applicants of their funding status.

All official documents should highlight the U.S. government's role as program sponsor and funding source.

Eligibility

Non-profit organizations based in the Washington, D.C. metropolitan area, with experience in international education with an emphasis on educational exchanges, are invited to submit proposals for a cooperative agreement award from the Agency.

Proposed Budget

Budget award will not exceed $60,000. A comprehensive, line-item budget based on the specific guidance in the Application Package, must be submitted with the proposal.

Allowable costs for the program include the following:

1. Salaries and benefits;
2. Local ground transportation for staff travel;
3. Office Expenses: Equipment rental/repair, office supplies, postage and delivery, telephone/telefax, photocopying/printing, meeting and conference expenses;
4. Consultant Fees and Honoraria for panelists;
5. Panelists' expenses:
   a. Airfare;
   b. Ground transportation;
   c. Per diem, not to exceed current rates authorized in the Federal Travel Regulations.
6. Indirect costs.

Please refer to the Application Package for complete budget guidelines.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines stated herein and in the Application Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's Office of Contracts, as well as the USIA geographic area offices and the USIA posts overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards resides with the USIA grants officer.

Review Criteria

Technical eligible applications will be competitively reviewed according to the following criteria:

1. *Quality of Program Plan/Ability to Achieve Program Objectives:* Agenda and plan should adhere to the program overview and guidelines described above and in the Application Package. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the organization will meet the program's objectives and plan.

2. *Institution's Record/Ability/Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. Proposals should demonstrate responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

3. *Cost-Effectiveness/Cost-Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

4. *Project Evaluation:* Proposals should include a plan to evaluate the program's success.

5. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity as stated above (see

"Supplementary Information"). Proposals should describe the process of selecting academic review panelists who are diverse.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final award cannot be made until funds have been fully appropriated by Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about January 20, 1994. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: September 6, 1994.

John P. Loiello,

Associate Director, Educational and Cultural Affairs.

[FR Doc. 94–22630 Filed 9–14–94; 8:45 am]

BILLING CODE 8230–06–M

Edmund S. Muskie Fellowship Program Washington Workshop and the Freedom Support Act Graduate Fellowship Washington Workshop

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of Academic Programs, Academic Exchanges, European Division of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award program. Public or private non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) and with key staff based in the Washington, DC metropolitan area to assist in the administration of the Edmund S. Muskie Fellowship Program Washington Workshop and/or the Freedom Support Act Washington Workshop.

The grant recipient(s) in conjunction with other organizations shall plan and implement a five day conference for approximately 150 Muskie Fellows in February 1995 and/or a similar five day conference for approximately 240 Freedom Support Act Graduate Fellows in April 1995. The workshops are subject to availability of funds.

The overall goal of each workshop is to provide the Fellows with a better understanding of democratic institutions in the U.S. Support is offered for a series of intensive seminars that will enhance Fellows' understanding of social, cultural, and political institutions and provide insight on such topics as the U.S. political system, U.S. economic policy, U.S. foreign policy, international trade and U.S. domestic policies.

In addition, the workshop is intended to provide the following:

1. Opportunities for interaction among Fellows;

2. Opportunities for professional networking;

3. An introduction to the organizations responsible for implementing the Muskie and Freedom Support Act (FSA) Graduate Fellowship Programs;

4. An opportunity to visit the nation's capital;

5. Opportunities to interact with the Members of Congress who made their U.S. experience possible. Overall grant making authority for these programs is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

The funding authority for the Muskie Program cited above is provided through the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Public Law 103–236. The funding authority for the FSA Graduate Program cited above is provided through the Freedom for Russian and Emerging Eurasian Democracies and Open Markets Support Act, Fiscal Year 1992, Public Law 102–511, 22 USC 501 Et Seq.

Programs and projects must conform with Agency requirements and guidelines outlined in the Application Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/AEE–95–08.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Wednesday, October 5, 1994. Faxed documents will not be accepted, nor will documents postmarked on October 5, 1994 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Academic Exchanges Division, European Branch, E/AEE, Room 246, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, tel: (202) 619–5341, fax: (202) 260–7985, to request an Application Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the USIA Program Specialist, Catherine Alderton, (caldertoausia.gov), on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Academic Exchanges Division or submitting their proposals. Once the RFP deadline has passed, the Academic Exchanges Division may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Application Package and send only complete applications to: U.S. Information Agency, Ref.: E/AEE–95–08 (Graduate Workshops), Office of Grants Management, E/XE, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

The Edmund S. Muskie Fellowship Program was established in 1991 to provide opportunities for qualified citizens of Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan to study

business administration, economics, law, or public administration in the United States. The Freedom Support Act Graduate Fellowship Program was established in 1992 to provide opportunities for qualified citizens of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan to study education administration, library and information science, public policy, and communications/journalism as well as the four fields covered by the Muskie Program noted above. The overall goal of these programs is to encourage economic and democratic development in these countries. The programs include enrollment in one- or two-year degree programs at the master's level. Participants on both programs are eligible to participate in internships relevant to their field of study. Fellowships are granted through an open basis of academic excellence, knowledge of the field of specialization, and leadership potential.

Overview

The Edmund S. Muskie Fellowship Washington Workshop and the Freedom Support Act Graduate Fellowship Workshop were established to bring together Fellows on each program from across the Untied States for an intensive workshop in Washington, DC. The workshops are intended to serve as important supplements to the Fellows' on-going programs of academic work and professional development. The workshops are expected to provide the Fellows with a substantive look at the social, cultural, economic and political institutions in the U.S., and illustrate how these institutions functionally relate to the subject disciplines studied by the Fellows. Activities for the workshops should include interactive panel discussions with practitioners in the fields on various economic and democratic issues, an opportunity for the Fellows to meet the Members of Congress who made the Edmund S. Muskie Fellowship Program and the Freedom Support Act Graduate Fellowship Program possible, opportunities for professional networking, an introduction to the organizations responsible for administering the Muskie and FSA Fellowships, and other activities that will reflect the local and national culture and history of the U.S. At the end of each workshop, it is expected that the Fellows will have an enhanced understanding of U.S. democratic and economic systems so that they may better serve as the leaders of economic development and democratic institution building in their home countries. In addition, it is anticipated that the Fellows will be able to establish long-lasting professional and personal contacts to lay the foundation for home country and regional support networks, professional associations, and ties to U.S. counterparts.

Guidelines

Eligibility

Non-profit organizations with key staff based in the Washington, DC metropolitan area and available for frequent meetings with the Washington, DC based Agency staff are invited to submit proposals for a cooperative agreement award from the Agency. Organizations should have experience in conference management, professional exchanges and/or international exchanges. Organizations should clearly indicate in their proposals whether they wish to be considered for one or both workshop awards.

Proposed Budget

Applicants are invited to submit an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. While separate component budgets are optional, an all-inclusive, line item budget and a summary budget, as shown in the Application Package, must be provided with each proposal.

The Agency anticipates making one or two awards. The award for the Edmund S. Muskie Fellowship Washington Workshop will not exceed $80,000, which is to include all program and administrative costs. The award for the Freedom Support Act Graduate Fellowship Program Workshop will not exceed $100,000, which is to include all program and administrative costs. Funding for the Fellows' accommodation, travel to Washington and per diem expenses have already been allocated. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. The Agency also reserves the right to revise programmatic and administrative functions without additional funding.

Allowable Costs

Grant-funded items of expenditure may include but are not limited to the following categories:

(1) Administrative Expenses

—Administration (salaries, benefits, communications, staff transportation), including administration of tax withholding and reporting as required by federal, state, and local authorities;
—Direct Cost (office supplies, postage and delivery, telephone and facsimile, equipment rental); and
—Indirect Costs.

(2) Program Expenses

—Local transportation (including taxis, charter buses and charter vans);
—Opening and closing events;
—Coffee breaks, continental breakfasts, working lunches;
—Keynote event at the Department of State;
—Printing;
—Speakers' expenses and honoraria:
—Photographer; and
—Promotional Materials.

The application should demonstrate cost-sharing (dollar and in-kind) in both program and administrative expenses.

No grants funded under this program will include profit or fee.

Gifts, gratuities, entertainment, or alcoholic beverages are unallowable.

Fellows' per diem will be reduced accordingly for any meals provided during the Workshop.

Please refer to the Application Package for complete budget guidelines.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Application Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the budget and contracts offices, as well as the USIA Office of Academic Exchanges and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible.

Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Value to U.S.-Partner Country Relations: Proposed projects, which will be assessed by USIA's geographic area desk and overseas officers, should demonstrate program need, potential impact, and significance in the partner country(ies).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. The proposal should clearly demonstrate the organization will provide sufficient staff coverage on-site and at off-site workshop events for groups of this size.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful conferences or similar programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Project Evaluation: Proposals should include a plan to evaluate the activity, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit a final report after each workshop.

9. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. Cost-sharing: Proposals should maximimize cost-sharing through other private sector support as well as institutional direct funding contributions.

11. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or on-going activities and efforts that further the principle of diversity within both the organization and the program activities.

12. Cross Cultural Sensitivity and Experience Working with Participants from the former Soviet Union and Baltic countries: Proposals should demonstrate the applicant's ability and/or experience in working with graduate level students and/or mid-career professionals from this region of the world.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about November 16, 1994. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: September 6, 1994.

John P. Loiello,

Associate Director, Educational and Cultural Affairs.

[FR Doc. 94–22631 Filed 9–14–94; 8:45 am]

BILLING CODE 8230–01–M

U.S.-NIS Summer Language Teacher Exchange Program

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of Academic Programs, Academic Exchanges Division, European Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Public and non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) may apply to develop a summer 1995 language teacher exchange program for in-service professionals from the United States and selected countries in the New Independent States (NIS). The goal of the U.S.-NIS Summer Language Teacher Exchange Program is to improve and promote the teaching of American English and culture in the NIS, and the teaching of the diverse languages and cultures of the NIS countries in the United States. USIA expects to award grants to one or two organizations to conduct an intensive summer language enhancement program of five to twelve weeks in duration through academic course work, seminars, workshops, and practica, for up to 40 language teachers in each direction. USIA will give preference to proposals that exchange participants, to the extent feasible, from all twelve eligible countries in the NIS. Combined project awards to U.S. organizations will not exceed $240,000. These exchanges are subject to the availability of funding for Fiscal Year 1995.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title (U.S.-NIS Summer Language Teacher Exchange Program) and reference number E/AEE–95–06.

DATES: Deadline for proposals: One original and nine copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, October 21, 1994. Faxed documents will not be accepted, nor will documents postmarked on October 21, 1994 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

DURATION: The exchange of participants for the U.S.-NIS Summer Language Teacher Exchange Program should be a minimum of five weeks in duration, but should not exceed a maximum of twelve weeks. It is expected that the program will occur during the summer of 1995.

FOR FURTHER INFORMATION CONTACT: Office of Academic Programs, Academic Exchanges Division, European Branch, E/AEE, Room 246, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, telephone (202) 619–5341, fax (202) 260–7985, internet treed@usia.gov, to request an

Application Package, which includes more detailed award criteria; all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the USIA Program Officer Rhonda E. Boris on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Academic Programs, Academic Exchanges Division, European Branch or submitting their proposals. Once the RFP deadline has passed, USIA officers may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Application Package and send the original and nine copies of the completed application to: U.S. Information Agency, Ref.: E/AEE–95–06 Summer Language Teacher Exchange Program, Office of Grants Management, E/XE, Room 336, 301 4th Street SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION:

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Programs and projects must conform with Agency requirements and guidelines outlined in the Application Package. USIA projects and programs are subject to the availability of funds.

Overview

The U.S. Information Agency offers support for programs which bring citizens from the NIS who are English language instructors to the U.S., and bring U.S. citizens who are language instructors in one or more of the languages and cultures of the following eligible countries: Armenia, Azerbaijan,* Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan, to the NIS for advanced language study and teaching enhancement. Grantees should demonstrate an effort to recruit from all eligible countries as feasible. Programs must be two-way. While it is desirable to place American teachers of NIS languages in as many NIS countries as possible, USIA does not require strict reciprocity of placements. However, USIA does expect participants to be placed as a group or in subgroups at one or more locations. Participants are expected to study and travel as a group or in subgroups.

For NIS participants, the study program must focus on American English. For U.S. participants, the study program must focus on NIS languages such as Armenian, Azeri, Byelorussian, Georgian, Kazakh, Kyrgyz, Russian, Ukrainian, Uzbek, or other related Altaic, Slavic, and Uralic languages, and integrate area studies into course work where feasible. Programs must provide a professional development component for American and NIS language instructors. Programs in the U.S. are expected to be conducted in English. Programs in the NIS are expected to be conducted in the native or instructional language of the specific host country.

Applications should provide a detailed description of the type of language and teaching instruction, citing academic course work that enhances the knowledge and skills of the NIS and U.S. participants. Courses offered may include, but are not limited to, foreign language teaching methodologies, techniques, and principles, skills building, materials review and development, creative uses of technology in the foreign language classroom, American English and NIS languages for specific purposes (e.g., business, law, social sciences), techniques in testing and evaluation, and training teacher trainers. Applications should also provide a detailed description of area studies and cultural components, and cite opportunities for professional development for the American and NIS language instructors. All participants, when they return home, are expected to share with colleagues and students the knowledge, teaching techniques, and professional resources gained during the U.S.-NIS Summer Language Teacher Exchange Program.

Guidelines

Language Qualifications

Participants should have sufficient fluency in the native or instructional language of the host country to be able to pursue university-level study. Participants should be able to converse in the language of the host country without the aid of interpreters.

Institutional Commitment

Proposals must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and NIS partner institutions' directors, or in the form of a signed agreement between by the same persons. Letters of endorsement must describe each institution's or organization's commitment and make specific reference to the proposed program and each institution's activities in support of that program. Documentation of support from government ministries or academies will be acceptable when appropriate, replacing individual documentation from each foreign educational institution involved. Applicants must submit this documentation as part of the complete application; letters and agreements will not be accepted if sent separately to USIA. Applying institutions are expected to make their own arrangements with appropriate foreign institutions.

Proposal Narrative

The proposal narrative describing the program must conform to the Guidelines dated June 1994 and must include any subgrants to be issued. The narrative must also describe in detail the abilities of the participating organizations to adapt to the changing exchanges environments in the countries eligible for participation in this program. The proposal should also detail the program activities in each country, including the courses offered, course syllabi, proposed reading/materials list, curriculum vitae of instructors, and how the courses related to the enhancement of participants' language and teaching skills. Proposals should describe host sites and provide a thorough justification for the selection of the host sites.

Participant Selection

The proposal must include detailed descriptions of the selection processes for both American and NIS participants. Participants must be citizens of the U.S. or one of the countries of the NIS and must be high school teachers or college-level faculty currently involved in the

*Please note: Programs with Azerbaijan are subject to restrictions of Section 907 of the Freedom Support Act: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation and no U.S. participant overseas may work for the Government of Azerbaijan or any of its instrumentalities. In addition, the Government of Azerbaijan and/or its instrumentalities will have no control in the actual selection of the participants.

instruction of the language to be studied. U.S. and NIS participants must be recruited nationally. Priority will be given to proposals that demonstrate the widest geographic representation of participant recruitment. Preference will be given to projects in which participants are recruited through open, merit-based competition.

Orientation/Debriefing Programs

Participants should be provided with a substantive and comprehensive orientation to the country of their visit. Proposals should describe these orientation programs, including costs, in detail. The Office of Academic Programs, Academic Exchanges Division, European Branch strongly encourages applicants to develop orientation materials which include, but are not limited to, an outline of the exchange program with suggested goals and objectives, relevant background information, and information about U.S. institutions and individuals involved in the exchange. At the conclusion of the program, applicants are encouraged to organize an activity in which the participants meet to consider how they can best apply, upon return to their home countries, the knowledge and skills gained during the exchange program.

Logistics

Applicants will be responsible for most arrangements associated with this exchange program. These include organizing a coherent progression of activities, providing international and domestic travel arrangements for all participants, making lodging and local transportation arrangements for visitors, orienting and debriefing participants, preparing any necessary support material, and working with host institutions and individuals to achieve maximum program effectiveness.

Visa/Insurance/Tax Requirements

Programs must comply with J visa regulations and should reference this adherence in the proposal narrative. Program participants must carry the requisite level of health and accident insurance. Applicants may budget for insurance expenses and are responsible for ensuring that participants have adequate insurance coverage. Please refer to program specific guidelines in the Application Package for further details. Proposals must comply with reporting and withholding regulations for federal, state, and local taxes as applicable. Applicants should demonstrate tax regulation adherence in the proposal narrative and budget notes.

Proposed Budget

USIA will make one or two project awards to U.S. organizations in a wide range of amounts, but combined awards will not exceed $240,000, which includes program and administrative costs.

USIA reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000, and proposed budgets should not exceed this amount.

All organizations must submit a comprehensive, all-inclusive line item budget, the details and format of which are contained in the application packet. The budget should list separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. The budget must also list all sources of support for the program in fiscal year 1995, including both cash and in-kind contributions.

Allowable Costs

Allowable costs for the program may include, but are not limited to, the following categories:

Program Costs

—International travel (via American flag carrier);
—Domestic travel;
—Excursionary travel and lodging for cultural enrichment (not to exceed $200 per participant);
—Maintenance and per diem;
—Academic program costs (tuition, book allowance);
—Travel and partial maintenance costs for supervisors or resident directors, for no more than one program supervisor per twenty participants;
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker);
—Cultural enrichment expenses (admissions, tickets, etc.; limited to $150 per participant);
—Medical insurance for participants (participants are covered by the Agency's self-insurance policy when USIA is funding over fifty per cent of the total cost of the project); and
—Taxes and visa fees.

Administrative Costs

(Not to exceed 20% of the requested budget.)

—Salaries and benefits;
—Communications (e.g., fax, telephone, e-mail, postage);
—Office supplies;
—Administration of tax withholding and reporting as required by Federal, State and local authorities and in accordance with relevant tax treaties;
—Other direct costs; and
—Indirect costs.

Please Note: It is required that requested administrative funds, including indirect costs, not exceed 20 percent of the total amount requested from USIA; administrative expenses should be cost-shared. (See the accompanying guidelines for complete cost-sharing and auditing requirements.)

REVIEW PROCESS: USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the application package, including the Guidelines for Preparing Proposals. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the budget and contracts offices, as well as the USIA Office of NIS and East European Affairs. Proposals may also be reviewed by the Agency's Office of General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant assistance resides with USIA's grants officer.

REVIEW CRITERIA: Technically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality of the program idea:* Proposals should exhibit academic rigor and excellence, thorough conception of project, demonstration of meeting participants' needs, contributions to understanding the partner country, proposed follow-up, and qualifications of program staff and participants.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information, and the establishment of long-term institutional and individual linkages.

5. *Value of U.S.-partner country relations:* Proposed program should receive positive assessments by USIA's

geographic area desk and overseas officers of program need, potential impact, and significance of the project with the partner country (ies).

6. *Institutional capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's record/ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirement for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

9. *Program evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, which ever is less frequent.

10. *Cost effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Support of diversity:* Proposals should demonstrate the applicant's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or on-going activities and efforts that further the principle of diversity within both their organization and their organization and their activities. Preference will be given to proposals that demonstrate efforts to include participants from diverse regions, and of different socio-economic and ethnic backgrounds, to the extent feasible for the applicant institutions.

Preference Factor

Preference will be given to proposals that:

1. Demonstrate the widest geographic representation through participant recruitment;

2. Include an area studies component;

3. Include a thorough orientation component for all participants;

4. Provide for an approximately equal number of American and NIS participants; and

5. Recruit participants through open, merit-based competition.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this request for proposals does not constitute an award commitment on the part of the government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified in writing of the results of the review process on or about December 1, 1994. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: September 12, 1994.

John P. Loiello,

Associate Director, Educational and Cultural Affairs.

[FR Doc. 94–22872 Filed 9–14–94; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of System Notice

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) is considering adding two new routine uses to, and is amending other parts of, a system or records entitled Current and Former Accredited Representative, Claims Agent, and Representative and Claims Agent Applicant and Rejected Applicant Records—VA (01VA022) as set forth in the **Federal Register** 40FR38095 (8/26/75) and revised in 47FR1460 (1/13/82) and 54FR30969 (7/25/89). VA is amending the system by revising the System Name and the paragraphs for System Location, Categories of Individuals Covered by the System, Categories of Records in the System, Authority for Maintenance of the System, Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses, and Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System, including Storage, Retrievability and Safeguards.

VA has decided, as a matter of policy, to authorize those individuals approved by VA to represent claimants for VA benefits under 38 CFR 14.626–.635 to have remote, on-line access to the automated Veterans Benefits Administration (VBA) claim records of those individuals whom they represent. In order to implement this policy, VA has published a notice of proposed rulemaking (59 FR 37008 (7–20–94)) to add sections 38 CFR 14.640 through 14.643.

In the course of providing expanded remote access to accredited representatives of veterans service organizations, claims agents and attorneys approved to represent veterans under 38 CFR 14.629 and persons recognized pursuant to 38 CFR 14.630, VA will have to maintain certain information about these individuals. The following discussion explains the various types of information which the Department will create as part of the expanded remote access program, where and how it will be maintained, and the security for it.

Each individual approved for expanded read-only remote access to automated veterans claim records will receive several access codes from the VBA Central Office Security Officer. (Later this responsibility will be transferred to the VBA Regional Office of jurisdiction for the first claims folder to which access is sought.)

The VBA Central Office Security Officer will obtain these various codes from the following sources and provide them to each person granted access. The Security Officer will not retain a copy of this information. Each representative, claims agent or attorney will be issued a user identification code and personal password for the Department's computerized electronic communications system, IDCU (Integrated Data Communications Utility), by the security office responsible for IDCU in Martinsburg, West Virginia, which will retain records of these codes in automated form. Only security personnel at Martinsburg may access these codes.

When the individual uses these codes to access IDCU, he or she will be routed automatically to the migration gateway to VBA's automated Benefits Delivery Network (BDN); access to any other IDCU activity will not be possible. At the migration gateway to the BDN, the individual will use a "login" identification code, and a personal password to obtain access to the BDN.

Initially, the VBA Central Office Security Officer will issue the migration gateway access codes in response to requests for remote access. These codes will be stored in automated form in Central Office. At some point, the Security Officer for the local VBA Regional Office of jurisdiction for the first claim to which access is sought will assume these responsibilities to issue and store the migration gateway codes. That Regional Office will retain the "login" identification code in automated form. The security officer of the Regional Office of jurisdiction, security personnel at the VBA automated Benefits Delivery Center (BDC) in Hines, Illinois, and the VBA Central Office Security Officer will be the only agency personnel who may access the "login" identification codes. An individual's personal password will remain in the computer system, but no one, including system security officers or system managers, may access it. If a person forgets his or her migration gateway personal password, the individual will have to obtain a new one.

After passing through the migration gateway, the individual must then use a BDN password, also issued by the Regional Office Security Officer, to access the BDN. The BDN password obtains access to records concerning individuals in one of five geographical sections of the country. One individual will be given access to more than one geographical region when clients are located in different areas of the United States.

Each IDCU user identification code and personal password, migration gateway "login" identification code and personal password, and BDN passwords will be unique for each individual.

To ensure the security of the various systems, Benefits Delivery Centers in Hines, Illinois, and Philadelphia, Pennsylvania, will monitor daily the use of BDN passwords, and will issue a daily report in hard copy to each Regional Office of any apparent security violations associated with any BDN password issued for whom it has oversight responsibility. The BDCs will retain this daily security log in automated form for thirty days; only VBA personnel located at the Hines and Philadelphia BDC's who are cleared for access to the daily security violation logs may access this automated information.

The daily security violation log will list the identifying assignment code for the individual (not the individual's BDN password), and the particular violation code(s) associated with that person's password for that day. Each Regional Office is to retain the daily logs for six months. Only the Regional Office Security Officer will have access to the daily security violation logs until such time as it is determined that further investigation may be needed. At that point, the appropriate VA employees may receive the logs as necessary to conduct any oversight or investigation.

VA will maintain security profiles on each individual granted remote access privileges. The data bases for the security profiles will be maintained in Hines, Illinois, and Philadelphia, Pennsylvania. The security profile on each individual will contain the following information in automated form: the individual's name, the individual's BDN passwords; the individual's assignment code, the code identifying their status, such as whether they are operating under a power of attorney or as a service organization representative; whether they have been granted the ability to read a veteran client's diagnostic codes, their level of access to sensitive records, if a veteran, their claims file number, and a listing of the read-only access commands they may utilize. The security profile on an individual may be retrieved only by the security personnel at Hines and Philadelphia, the VBA Central Office Security Officer and the Regional Office Security Officer for the Regional Office of jurisdiction for the first claim for which the individual was granted remote access to the veteran's automated benefits records.

If VA determines that an individual's access privileges should be suspended or revoked generally, records, including possibly copies of the records mentioned above, will be gathered in an evidence file which will be retained in the Regional Office and in the Office of General Counsel, both in the field and in Central Office.

As a result of the above actions, we are changing the System name to reflect that records in the altered system will be kept on attorneys also because of the need to retain records concerning their exercise of remote access privileges.

We are adding to the System Location paragraph of 01VA022 the locations at which new records in the system will be maintained. Records concerning the authorization of individuals to access automated veterans claim records from remote locations will be maintained in the locations discussed above.

We are adding two new categories of individuals to the paragraph concerning individuals covered by the system. The first category is attorneys who have applied for, currently hold, or previously have held the privilege of remote access to VBA automated claim records. We are also expanding the existing category of accredited representatives to include county veterans' service officers recommended by a recognized state organization because VA recently recognized the national organization of these officials under 14 CFR § 14.628 for purposes of representation of individuals on claims for title 38 benefits.

We are adding a new category of records to be maintained in the system to the paragraph concerning the categories of records in the system. This information will include information and correspondence relating to the application for, evaluation of and grant or denial of a request for remote access privileges, as well as information concerning the individual's use of remote access privileges and information concerning any determination whether to suspend or revoke an individual's remote access privileges.

Because Congress enacted legislation renumbering the sections of title 38, United States Code, we are revising the paragraph containing the authority for maintenance of the system to reflect the renumbering.

We propose to add two new routine uses to the paragraph of 01VA022 which sets forth the routine uses for records maintained in the system. The regulations governing the remote access activity provide that VA will release information about individuals who have access privileges in two circumstances for which routine uses do not currently exist. Consequently, VA is adding the following two new routine uses as part of the implementation of the remote access regulations.

First, if VA is considering whether to deny or suspend or revoke an individual's access privileges generally, VA may then notify the representative's employer or any recognized service organization with which such a representative is affiliated. Second, if the representative is licensed by a governmental entity, such as a state bar association, VA will report the conduct of the representative to that entity after revocation of access privileges if VA concludes that the conduct which was the basis for revocation of access privileges merits reporting.

Both routine uses satisfy the compatibility requirement of subsection (a)(7) of the Privacy Act. VA will gather this information for the purposes of determining whether it should grant, deny, suspend or revoke an individual's remote access privileges to claimants' automated claim records generally, as well as ensuring the individual's continued compliance with the agency's requirements for exercise of the remote access privileges. This information concerns the qualifications and conduct of the individual, that is, the appropriateness of the individual to have remote access privileges to represent beneficiaries and claimants.

State licensing entities, such as bar associations, routinely monitor and enforce the individual member's compliance with rules of conduct which are intended, at least in part, to protect the public. Additionally, under the rules of these organizations, these persons normally have a responsibility to protect and preserve the confidentiality of information concerning their clients.

VA's proposed routine use authorizing disclosures to state licensing entities would allow VA to provide those state licensing entities with information which is relevant to their enforcement activities concerning compliance with those rules. VA gathered the information, at least in part, to help ensure the confidentiality of the VA's information on people who are, in essence, the clients of the individuals who are licensed by the state governmental entities. The purposes are sufficiently similar that the disclosure satisfies the compatibility requirement of subsection (a)(7) of the Privacy Act.

Veterans service organizations and other entities represent veterans on claims matters. To do so effectively, they must have access to the confidential claims records of those veterans. Part of their acceptance within the community they serve is a confidence on the public's part that they and their accredited representatives and employees will zealously protect the privacy of their clients. If veterans perceive that the confidentiality of their records will not be honored, it will limit the effectiveness of these organizations in representing their clients. Thus, in order to effectively represent veterans, they are concerned about ensuring that individuals whom they use to conduct their representational activities act in a manner consistent with the organization's goal of preserving the confidentiality of their clients' claim records.

As we stated in regard to the routine use authorizing disclosure of records to state licensing entities, VA gathered the information about remote access users, at least in part, to help ensure the confidentiality of the VA's information on it claimants who are, in essence, the clients of the organization which uses the individual representatives and claims agents to prosecute the veterans claims. The purposes are sufficiently similar that the disclosure satisfies the compatibility requirement of subsection (a)(7) of the Privacy Act.

VA has determined that release of information under the circumstances described above is a necessary and proper use of information in this system of records and that the specific routine uses proposed for the transfer of this information is appropriate.

An altered system of records report and a copy of the revised system notice have been sent to the House of Representatives Committee on Government Operations, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) and guidelines issued by OMB (59 FR 37906, 37916–18 (7–25–94)).

Interested persons are invited to submit written comments, suggestions, or objections regarding the new routine use in this system of records to the Secretary, Department of Veterans Affairs (271A), 810 Vermont Avenue NW., Washington, DC 20420. All relevant material received before [date thirty days after date of publication] will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, until October 25, 1994.

If no public comment is received during the 30 day review period allowed for public comment or unless otherwise published in the **Federal Register** by VA, the routine uses included herein are effective October 17, 1994 or 40 days after the notice was approved, whichever is latest. Other changes to the system of records notice contained herein are effective upon publication.

Approved: September 1, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

Notice of Amendment to System of Records

The system of records identifies as 01VA022, "Current and Former Accredited Representative, Claims Agent, and Representative and Claims Agent Applicant and Rejected Applicant Records—VA," as set forth in **Federal Register** publication, "Privacy Act Issuances," 1991 Compilation, Volume II, pages 919–20, is amended by adding the information and revising the entries as shown below:

01VA022

System Name

Current and Former Accredited Representative, Claims Agent, Representative and Claims Agent Applicant and Rejected Applicant and Attorney Records—VA.

System Location

Records are maintained in the Office of General Counsel (022), and in the Veterans Benefits Administration (213C), Department of Veterans Affairs Central Office, Washington, DC 20420. Records will also be maintained in the District Counsel Offices, and the security offices of the following components of the Veterans Benefits Administration: Regional Offices, and the Hines, Illinois and Philadelphia, Pennsylvania automated benefits records centers. Records also will be maintained in the Computer security office for the Integrated Data Communications Utility at the Department of Veterans Affairs Medical Center in Martinsburg, West Virginia. Address locations are listed in VA Appendix I as set forth in the **Federal Register** publication, "Privacy Act Issuances," 1991 Compilation, Volume II, pp. 989–994.

Categories of Individuals Covered by the System

* * * (1) Individuals recommended by a recognized organization and accredited or previously accredited by VA to represent claimants for benefits; (2) claims agents (not attorneys) independent of a service organization who have applied for, and/or accredited or previously accredited by VA to represent claimants for benefits; (3) individuals whose names have been submitted to VA by service organizations for accreditation or who have applied to VA to become claims agents; and (4) attorneys who have applied for, currently hold, or previously held the privilege of remote access to Veterans Benefits Administration automated claims records.

Categories of Records in the System

* * * (8) investigative reports, correspondence and other information concerning the fitness of a prospective, present, or former claims agent, accredited representative or attorney; (9) documents, decisions, correspondence and other information relating to or including the granting, denial,

suspension or termination of accreditation of representatives or claims agents; (10) information concerning an individuals' exercise of remote access privileges to the Veterans Benefits Administration automated claim records, including identification codes and codes used to access various VA automated communications systems and records systems, as well as security profiles and possible security violations; and (11) information, documents, correspondence, and decisions relating to the application for, and the grant, denial, suspension, or revocation of an individual's privilege of remote access to Veterans Benefits Administration automated claim records.

Authority for Maintenance of the System

Title 38, United States Code, Sections 501(a), 5902 and 5904.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purpose of Such Uses

* * * * *

10. The name and address of an accredited representative, claims agent or attorney and any information concerning such individual relating to a suspension, revocation, or potential suspension or revocation of that individual's privilege of remote access to Veterans Benefits Administration automated claim records, may be disclosed to any recognized service organization with which the accredited representative is affiliated, and to any entity employing the individual to represent veterans on claims for veterans benefits.

11. The name and address of a former accredited representative, claims agent or attorney, and any information concerning such individual, except a veteran's name and home address, which is relevant to a revocation of remote access privileges to Veterans Benefits Administration automated claim records may be disclosed to an appropriate governmental licensing organization where VA determines that the individual's conduct which resulted in revocation merits reporting.

* * * * *

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System

Storage

* * * Identification codes and codes used to access various VA automated communications systems and records systems, as well as security profiles and possible security violations, are maintained on magnetic media in a secure environment within VA workspaces. Hard copies are maintained in locked containers.

* * * * *

Retrievability

* * * Information concerning possible security violations associated with exercise or remote access privileges is retrieved by individual assignment numbers. Information concerning individual security profiles and codes assigned to an individual for that person to obtain access to various computer systems is retrieved by the individual's assignment number.

* * * * *

Safeguards

3. Access to automated records concerning identification codes and codes used to access various VA automated communications systems and records systems, as well as security profiles and possible security violations is limited to designated automated systems security personnel who need to know the information in order to maintain and monitor the security of the VA's automated communications and veterans' claim records systems. Access to these records in automated form is controlled by individually unique passwords/codes. Agency personnel may have access to the information on a need to know basis when necessary to advise agency security personnel or for use to suspend or revoke access privileges or to make disclosures authorized by a routine use.

4. Access to VA facilities where identification codes, passwords, security profiles and possible security violations are maintained is controlled at all hours by the Federal Protective Service, VA or other security personnel and security access control devices.

* * * * *

[FR Doc. 94–22797 Filed 9–14–94; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 178
Thursday, September 15, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94–22377.

PREVIOUSLY ANNOUNCED DATE AND TIME: Wednesday, September 14, 1994 at 10:00 a.m. meeting open to the public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: NVRA Mail Voter Registration Application and General Instructions.

DATE AND TIME: Tuesday, September 20, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. §437g.
Audits conducted pursuant to 2 U.S.C. §437g, §438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 22, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinions:
AOR 1994–26
Scott Douglas Cunningham, House Candidate, 22nd C.D. of Texas
AOR 1994–27
Karen A. McCarthy, Chairman, on behalf of Consumers Power Company Employees for Better Government PAC
Regulations—Public Financing of Presidential Primary & General Election Candidates: Notice of Proposed Rulemaking (Continued from September 14, 1994)
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,
Administrative Assistant.

[FR Doc. 94–23026 Filed 9–13–94; 2:51 pm]

BILLING CODE 6715–01–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 12–19

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and time	Subject matter
Thurs., Sept. 22, 1994 at:	Oral Hearings on objections to Proposed Decisions issued on claims against Iran:
9:30 a.m.	IR–0334—Richard C. Wilson, Jr.
10:00 a.m.	IR–2658—Walter A. Youri.
10:30 a.m.	IR–2683—Dara Zargar, Lina Zargar Samimy.
11:00 a.m.	IR–2123—ODSIRAN Meteorological Systems, Inc.
11:30 a.m.	IR–0386—Int'l School Services.
2:00	IR–0365—Estate of Townsend Khatchi.
2:30 p.m.	IR–2235—Sidney A. McCard.
3:00 p.m.	IR–0888—Alexander Lavian.
3:30 p.m.	IR–1230—Hardill Int'l, Inc.
4:00 p.m.	IR–0682—Lillian J. Casey, et al.
4:30 p.m.	IR–2526—Judson C. Watkins.
5:00 p.m.	IR–3146—Bahman Maalizadeh.
Fri., Sept. 23, 1994 at:	Oral Hearings continued:
9:30 a.m.	IR–2367—Lewis F. Clark.
10:30 a.m.	Consideration of Proposed Decisions on claims against Iran, a claim for prisoner-of-war compensation under the War Claims Act of 1948, and hearings on the record on objections to Proposed Decisions in the following claims against Iran:
Claim No.	Claimant
IR–2660	ABS Worldwide Technical Services.
IR–0988	AFIA Finance Corporation.
IR–1327	Helen E. Aram.
IR–3184	Carol A. Bamdad.
IR–0798	Yvette Boone.
IR–1147	Homer Charlton, Jr.
IR–1630	Patricia W. Clark.
IR–0902	Charles R. Crawford.
IR–0545	Lucille Y. Criswell.
IR–0776	David N. Crowell.
IR–1029	Sharon Fritts Drew.
IR–0290	Helen B. Ebert.
IR–0906	J.T. Evans.
IR–2842	Lowell G. Felitz.
IR–2798	Estate of James R. Gohagan, Dec'd.
IR–1317	Clifford F. Gurney.
IR–0782	Hathaway Systems Corporation.
IR–1094	Amir Houshang Hemmat.
IR–1127	J.D. Smith Inter-Ocean, Inc.
IR–2692	Jules Keller.
IR–0894	Kings Point Challenge, Inc.
IR–1143	Estate of Beunus Kinney, Dec'd.
IR–0449	James Konyha.
IR–1197	William H. Matthews.
IR–2472	James R. Mondi.
IR–0088	Estate of Carl F. Morris, Dec'd.
IR–1773	Charles Paravella.
IR–1179	Philco International Co.
IR–2544	Port Authority of NY and NJ.
IR–2754	Rockwell International Corporation.
IR–0215	Mary Ellen Schneider.
IR–2706	Asad U. Sharza.
IR–0205	William R. Spencer.
IR–2131	Frank E. Stergar, Jr.
IR–0585	Dean D. Taleghany.
IR–0586	Jeffrey J. Taleghany.
IR–0552	Paul C. Tourtellot.
IR–2473	University of Chicago.
IR–1466	University of Minnesota Hospitals.
IR–0890	University of Pennsylvania.
IR–3029	Theodore Warda.
IR–2801	John Weidenbach.
IR–2659	Johanna O. Hirsch Yeganeh.
IR–1917	R.H. Yopp.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of

intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC on September 13, 1994.

Jeanette Matthews,

Administrative Assistant.

[FR Doc. 94–23043 Filed 9–13; 3:26 pm]

BILLING CODE 4410–01–P–M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b of the Government in the Sunshine Act, (P.L. 94–409).

DATES: November 1–3, 1994, 9:00 a.m. to 5:00 p.m.

LOCATION: JW Marriott Hotel, 1331 Pennsylvania Avenue, Washington, DC 20004, (202) 393–2000.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street, NW, Suite 1050, Washington, DC 20004–1107, Telephone: (202) 272–2004, (202) 272–2074 (TT).

The National Council on Disability is an independent federal agency led by 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of the National Council is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability by October 14, 1994.

The quarterly meeting of the National Council shall be open to the public and conducted in a smoke-free atmosphere. In addition, those attending should be mindful that the use of aromatic fragrances might affect people with environmental and chemical sensitivities.

AGENDA: The proposed agenda includes:

Report from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
Unfinished Business
New Business
Announcements
Adjournment

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on September 12, 1994.

Edward P. Burke,

Acting Executive Director.

[FR Doc. 94–22966 Filed 9–13–94; 8:45 am]

BILLING CODE 6820–BS–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Board of Directors Meeting

TIME AND DATE: Tuesday, September 27, 1994, 1:00 P.M. (OPEN Portion), 1:30 P.M. (CLOSED Portion)

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting OPEN to the Public from 1:00 P.M. to 1:30 P.M. Closed portion will commence at 1:30 P.M. (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report
2. Approval of 6/21/94 Minutes (Open Portion)
3. Meeting schedule through March 1995

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 P.M.)

1. Proposed FY 1996 Budget Request
2. Insurance and Finance Project in Turkey
3. Insurance Project in Malaysia
4. Finance Project in Philippines
5. Insurance and Finance Project in Kuwait
6. Finance Project in Brazil
7. Finance Project in Argentina
8. Insurance Project in Venezuela
9. Finance Project in Africa
10. Pending Major Projects
11. Approval of the 6/21/94 Minutes (Closed Portion)

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Jane Chalmers at (202) 336–8421.

Dated: September 13, 1994.

Jane H. Chalmers,

Deputy General Counsel.

[FR Doc. 94–22998 Filed 9–13–94; 8:45 am]

BILLING CODE 3210–01–M

STATE JUSTICE INSTITUTE

TIME AND DATE:

12:00 to 5:00 p.m., September 22, 1994
9:00 a.m. to 5:00 p.m., September 23, 1994
9:00 a.m. to 12:00 p.m., September 24, 1994

PLACE: Sheraton Portsmouth, 250 Market Street, Portsmouth, New Hampshire 03801.

MATTERS TO BE CONSIDERED: Orientation of Board nominees, consideration of grant proposals, and internal Institute business.

PORTIONS OPEN TO THE PUBLIC: Consideration of grant proposals.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters (including the orientation program) and Board committee meetings.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 94–22924 Filed 9–13–94; 8:48 am]

BILLING CODE 6820–SC–M

federal register

Thursday
September 15, 1994

Part II

Environmental Protection Agency

40 CFR Parts 9 and 300
National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 300

[FRL–5028–6]

National Oil and Hazardous Substances Pollution Contingency Plan

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this rulemaking, the U.S. Environmental Protection Agency (EPA or "the Agency") is promulgating revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The Oil Pollution Act of 1990 (OPA) amends existing provisions of the Clean Water Act (CWA) and creates major new authorities addressing oil and, to a lesser extent, hazardous substance spill response. The amended CWA required the President to revise the NCP to reflect these changes. The OPA specifies a number of revisions to the NCP that enhance and expand upon the current framework, standards, and procedures for response. The last revisions to the NCP were promulgated on March 8, 1990 (55 FR 8666). The proposed revisions upon which this rulemaking is based were published on October 22, 1993 (58 FR 54702). Today's revisions affect all NCP subparts except F (State Involvement in Hazardous Substance Response) and I (Administrative Record for Selection of Response Action).

EFFECTIVE DATE: October 17, 1994.

ADDRESSES: Copies of materials relevant to the rulemaking are contained in the Superfund Docket, Room M2615, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. (Docket Number NCP–R2/A) This docket is available for inspection between the hours of 9:00 am and 4:00 pm, Monday through Friday, excluding federal holidays. Appointments to review the docket may be made by calling 202–260–3046. The public may copy a maximum 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, a charge of $0.15 will be incurred for each additional page, plus a $25.00 administrative fee. The docket will mail copies of materials to requestors who are outside the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: Richard Norris, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or call 703–603–9053.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction.
II. Discussion of Selected Comments and Other Changes by Subpart.
III. Summary of Supporting Analyses.

I. Introduction

A. Statutory Authority

Under section 311(d) of the Clean Water Act (CWA), as amended by section 4201 of the Oil Pollution Act of 1990 (OPA), Pub. L. 101–380, and pursuant to authority delegated by the President in Executive Order (E.O.) No. 12777, the U.S. Environmental Protection Agency (EPA), in consultation with the member agencies of the National Response Team (NRT), is today promulgating revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. Some of the major goals of the OPA that affect the NCP include expanding prevention and preparedness activities and enhancing response capability of the federal government.

One of the primary purposes of the NCP is to provide for efficient, coordinated, and effective action to minimize adverse impact from oil discharges and hazardous substance releases.[1] Today's revisions incorporate changes made by the OPA that have expanded federal removal authority, added responsibilities for federal On-Scene Coordinators (OSCs), and broadened coordination and preparedness planning requirements.

The OPA was enacted to strengthen the national response system. The OPA provides for better coordination of spill contingency planning among federal, state, and local authorities. The addition of the National Strike Force Coordination Center (NSFCC), for example, is expected to relieve equipment and personnel shortages that have interfered with response to oil spills posing particularly significant environmental or human health threats. Today's rule revises the NCP to implement a strongly coordinated, multi-level national response strategy. The national response strategy, contained primarily in Subparts B and D of the NCP, provides the framework for notification, communication, logistics, and responsibility for response to discharges of oil, including worst case discharges and discharges that pose a substantial threat to the public health or welfare of the United States. The amended NCP further strengthens the OSC's ability to coordinate the response on-scene and also incorporates a new OPA-mandated level of contingency planning—Area Committees and Area Contingency Plans (ACPs). These committees and plans are designed to improve coordination among the national, regional, and local planning levels and to enhance the availability of trained personnel, necessary equipment, and scientific support that may be needed to adequately address all discharges.

The major revisions to the NCP being promulgated today reflect OPA revisions to CWA section 311. These changes increase Presidential authority to direct cleanup of oil spills and hazardous substance releases and augment preparedness and planning activities on the part of the federal government, as well as vessel and facility owners and operators. For example, revised CWA section 311(c) requires the President to direct removal actions for discharges and substantial threats of discharges posing a substantial threat to the public health or welfare of the United States. Revised section 311(d) requires a number of specific changes to the NCP, including the establishment of "criteria and procedures to ensure immediate and effective Federal identification of, and response to, a discharge, or the threat of a discharge, that results in a substantial threat to the public health or welfare of the United States."

Section 311(d) also mandates the establishment of procedures and standards for removing a worst case discharge of oil and for mitigating or preventing a substantial threat of such a discharge. Furthermore, this section requires the NCP to establish a fish and wildlife response plan "for the immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife resources and their habitat that are harmed or that may be jeopardized by a discharge." Section 311(d)(2)(G) authorizes consideration of "other spill mitigating devices and substances" for inclusion on the NCP Product Schedule, and section 311(d)(2)(L) requires the establishment of procedures for the coordination of activities of OSCs, Area Committees, U.S. Coast Guard (USCG) strike teams, and District Response Groups (DRGs).

Section 311(j)(2) of the CWA requires that a national response unit, included in today's revisions as the NSFCC, be established in Elizabeth City, No.th Carolina. The NSFCC "shall compile and maintain a comprehensive

[1] Throughout the NCP, "discharge" also includes "substantial threat of discharge," and "release" also means "threat of release."

computer list of spill removal resources, personnel, and equipment" and "shall provide technical assistance" to OSCs. Section 311(j)(2) provides that the NSFCC will also coordinate efforts to remove worst case discharges. Pursuant to section 311(j)(3), the USCG must establish DRGs in each of the 10 USCG districts to provide "technical assistance, equipment, and other resources" to OSCs to assist their response activities. Pursuant to CWA section 311(d)(2)(K), OSCs must be designated for each area for which an ACP is required to be prepared.

Section 311(j)(4) addresses the development of an expanded national oil spill response planning system. Under this section, Area Committees, which are composed of qualified federal, state, and local agency personnel, are directed to develop ACPs that will address planning and response-related issues and concerns, including removal of worst case discharges, responsibilities of owners and operators and government agencies in removing discharges, and procedures for obtaining an expedited decision regarding the use of dispersants.

CWA section 311(j)(5) requires that the President issue regulations within two years of enactment of the OPA for owners or operators of certain vessels and facilities to prepare response plans to address, among other matters, response to a worst case discharge to the maximum extent practicable. These facility response plans are required to be consistent with the NCP and with ACPs. For onshore facilities that can cause "significant and substantial harm" in the event of a worst case spill, these plans must be approved by the federal government. Pursuant to E.O. 12777, EPA developed regulations that include the criteria for determining which onshore, non-transportation-related facilities are to submit response plans and which of these plans are to be reviewed and approved by EPA, requirements for the preparation of those plans, and criteria for EPA's review and approval of the submitted plans. The Agency promulgated these regulations on July 1, 1994 (59 FR 34070). EPA has developed a data base to track facility response plans. The Department of Transportation (DOT) and the Department of the Interior (DOI) developed similar regulations, for offshore and transportation-related facilities, pipelines, and vessels.

B. Background of This Rulemaking

The President signed the OPA on August 18, 1990, after both houses of Congress passed the Act unanimously. After several similar proposals had been unsuccessful over the past 15 years, Congress enacted this legislation partly in response to the *Exxon Valdez* spill and several other incidents, including the *Mega Borg* and the *American Trader* spills.

In a Notice of Proposed Rulemaking (NPRM) published on October 22, 1993 (58 FR 54702), EPA proposed the OPA-required revisions to the NCP. A public meeting on the proposal was held in Seattle, Washington on January 14, 1994. EPA received 41 comment letters during the public comment period. A detailed Response to Comments document, providing the Agency's response to all comments received, is included in the Docket.

II. Discussion of Selected Comments and Other Changes by Subpart

This section of the preamble provides a subpart-by-subpart and section-by-section summary of all changes that have been made to the proposed rule published on October 22, 1993. Some of these changes have resulted from comments received; others have resulted from inter-agency federal workgroup deliberations, during which it was determined that additional clarification was needed.

This section also contains responses to selected comments received on the proposed revisions. In addition to responses to those comments that resulted in rule language changes, EPA has included responses to other comments that addressed "major" issues and those on which the Agency thought it was particularly important to clarify its position for the entire regulated community. Every comment received was reviewed and a response to all comments can be found in a comprehensive Response to Comments document which is included in the Docket. For a complete discussion of the proposed revisions, the majority of which are being promulgated as final regulations by this action, the reader is referred to the detailed preamble discussion in the October 22, 1993 NPRM (58 FR 54702).

Subpart A—Introduction

Section 300.3—Scope

One commenter suggested that, rather than stating in § 300.3(b)(6) that the NCP provides for "designation" of federal trustees, it would be more appropriate to indicate that such designation occurs through E.O. 12580. EPA agrees with the commenter's point, but will substitute "listing of" for "designation" rather than modify the text to discuss designation occurring through the Executive Order, as the commenter suggests.

One commenter asked EPA to define consistency with the NCP as those actions that are not prohibited by the NCP itself or by the express instructions/directions of the federal OSC.

Consistency with the NCP is a phrase that is used in and key to liability under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Pub. L. 96–510, 42 U.S.C. 9601 et seq. EPA is concerned that defining consistency in the NCP itself could artificially and unnecessarily constrain Agency response and enforcement actions. No definition could ever be sufficiently precise to cover all situations; each response under the NCP is unique in some way and every response scenario is unlikely to be captured by a single definition. Therefore, the recommendation has not been adopted.

Section 300.4—Abbreviations

In response to the addition of the U.S. Navy Supervisor of Salvage (SUPSALV) elsewhere in today's final rule, "SUPSALV" is being added to the list of abbreviations.

Section 300.5—Definitions

Many of the commenters raised definitional issues related to concerns in other subparts of the proposed rule. These issues are addressed in the context of those subparts. However, several commenters raised concerns independent of other issues, including the following:

- One commenter noted that the Federal Response Plan is identified as being signed by 27 federal departments in the preamble, and as having been signed by 25 departments in the definition of Federal Response Plan. This discrepancy was due to the fact that the Federal Response Plan was recently signed by two additional federal departments. Thus, the correct number of signatories is 27 and § 300.5 has been modified accordingly.
- Three commenters asked if each village/community affiliated with an Indian or Eskimo tribe would qualify as an "Indian tribe," and therefore have Regional Response Team (RRT) representation, although different villages may be of the same tribal ancestry. "Indian tribe," as defined by the OPA and the NCP, excludes "any Alaska Native regional or village corporation."
- One commenter asked that the definition of "Lead administrative trustee" be made consistent with the

definition in the National Oceanic and Atmospheric Administration (NOAA) damage assessment regulation to clarify between two concepts that will be used in related NOAA and USCG regulations—the lead administrative trustee and a federal lead administrative trustee. EPA agrees with the commenter; the NOAA damage assessment regulation definition for lead administrative trustee will be used in the NCP.

• One commenter recommended that the "National response system" be defined as being composed of two distinct entities: a planning body and a response body. Furthermore, the commenter suggested that the incident command system be the basic response structure/organization and members of the planning body would function as an integral part of the incident command system as opposed to a separate advisory group. EPA disagrees that the definition of the national response system should be revised as recommended to reflect "a planning body and a response body." Some of the organizations referred to by the commenter—such as the NRT and the RRTs—have responsibilities related to both planning and response. The NRT, for example, has responsibilities for planning and preparedness, but also may be activated for response to oil discharges or hazardous substance releases (see § 300.110). EPA has, however, clarified Figure 1 by dividing it into two figures (Figures 1a and 1b) to better illustrate the response and planning processes. In addition, EPA would like to clarify that, although the national response system meets the requirements of 29 CFR 1910.120 concerning the use of an incident command system, it is not the same as many of the typical incident command systems used by states, industry, and local responders. EPA has eliminated references to an incident command system in the definition of national response system to avoid any confusion on this point. The Agency also has eliminated an erroneous reference to "IRPM" resulting from a typographical error.

• One commenter noted that the definition of "navigable waters" does not conform to the recently revised definition in 40 CFR 110.1. EPA agrees that the language should be revised to be consistent with the current definition of the same term at 40 CFR 110.1. Specifically, subparagraph (f) of the 40 CFR part 110 regulations concerning wetlands provides that "[n]avigable waters do not include prior converted cropland" (58 FR 45035, August 25, 1993). In this final rule, EPA has added the appropriate language to § 300.5.

• One commenter outlined a decision-tree process (using a series of yes/no questions) to clarify what is and is not "oil." The process was suggested to be used instead of the proposed NCP definition. This decision-tree analysis would distinguish oil from CERCLA hazardous substances and other man-made chemicals. EPA believes that reliance on the OPA definition of oil provides the most reliable determination of what is and is not oil. The commenter's approach, therefore, has not been adopted.

• Related to the definition of oil, one commenter asked EPA to provide additional guidance regarding the classification of a spill as "oil" or "hazardous substances" and the appropriate use of the Oil Spill Liability Trust Fund (OSLTF) or CERCLA for response. Specifically, the commenter suggested addressing two issues: (1) appropriate response and funding for spills of statutorily defined "oil" which may exhibit, if tested, characteristics of a CERCLA "hazardous substance" in either its initial or weathered state; and (2) response and funding where both "oil" and CERCLA "hazardous substances" may be involved in a discharge or substantial threat of a discharge. The commenter's concerns touch on interagency policy issues that will be decided on a case-by-case basis between EPA and the USCG. The Agency does not wish to limit its flexibility in such matters by implementing the commenter's suggestions for revising the NCP.

• Also related to the definition of oil, one commenter argued that the treatment of animal fats and vegetable oils in the NCP is inconsistent with established regulatory principles and with available scientific data. The commenter stated that animal fats and vegetable oils are substantially less harmful to the environment than petroleum-based oils and suggested that the rulemaking be amended to differentiate between types of oils and provide for a different approach to response and removal methodologies for animal fats and vegetable oils than that required for petroleum oil. EPA disagrees that the treatment of animal fats and vegetable oils is inconsistent with established regulatory principles. The Agency notes that the definition of "oil" in the CWA includes oil of any kind, and that EPA uses this broad definition in 40 CFR part 110, the Discharge of Oil rule. The applicability of CWA section 311 regulations to non-petroleum oils, including potentially harmful effects of animal and vegetable oil spills, has already been discussed in the 1987 rulemaking to revise 40 CFR part 110. EPA considers certain harmful effects of non-petroleum oil discharges to be similar to those of petroleum oils, including the drowning of waterfowl, fishkills due to increased biological oxygen demand, asphyxiation of benthic life, and adverse aesthetic effects (52 FR 10718).

• Three commenters asked that the definition of "On-Scene Coordinator (OSC)" be changed to "Federal On-Scene Coordinator (FOSC)" to distinguish it from state and local OSCs. As defined, OSC means a federal official; therefore, there is no need to modify the terms as suggested or to refer to the OSC as the FOSC. Also, EPA has revised the definition of OSC to delete the second mention of the term "federal," for clarification. Finally, the word "government" has been added to modify the phrase "official designated by the lead agency" to clarify that the functions of the OSC cannot be delegated to non-government personnel.

• Two commenters stated that the definition of "Removal costs" needs to be expanded to include cost recovery for hazardous substance response incidents. The definition, taken from the statute, clearly indicates that it is limited to "removal costs" as defined in the OPA. Thus, it correctly relates only to oil spill response efforts.

• Noting that the OPA imposes a number of requirements on "Tank vessels" and "Facilities," one commenter asked that these definitions be modified to exclude dedicated oil spill response vessels and temporary storage tanks. The commenter also requested that the definition of "tank vessel" not include temporary storage bladders (TSBs), indicating that the Customs Service recently clarified that TSBs used for oil cleanups are not "vessels" for purposes of the "Jones Act." EPA does not believe there is a compelling reason to use a definition of "tank vessel" or "facility" in the NCP that differs from the definition in the statute. Furthermore, the Agency believes the commenter is raising what are fundamentally vessel and facility response plan issues more appropriately addressed in the various response plan rules.

• One commenter asked that the definition of the term "Trustee" be expanded to include not only foreign government officials who may pursue claims for damages, but anyone who may have a claim for damages. Section 1006 of the OPA designates trustees and describes the functions to be carried out by these trustees. That section does not envision "anyone who may have a claim

for damages" within the range of individuals who would be designated as trustees for purposes of pursuing claims for damages to natural resources. This does not, however, preclude any individual from pursuing a claim for damages other than natural resource damages.

• One commenter recommended that EPA clarify the definition of "Worst case discharge" to indicate more clearly that the terms and requirements for worst case discharges apply only to discharges of oil and not to releases of hazardous substances. The CWA definition of worst case discharge (section 311(a)(24)) does not specify whether it applies to only oil or to both oil and hazardous substances regulated under the CWA. CWA section 311(d) requires the NCP to include "procedures and standards for removing a worst case discharge of oil * * *." CWA section 311(j)(5) requires tank vessel and facility response plans addressing worst cases discharges "of oil or a hazardous substance." EPA does not want to further confuse matters by deviating from the statutory definition. The Agency believes it is sufficiently clear that NCP § 300.324, "Response to Worst Case Discharges," is limited to oil as it is contained within subpart D, "Operational Response Phases for Oil Removal."

• One commenter argued that the definition of "Worst case discharge" or "largest foreseeable discharge" should be based on site-specific conditions or an optional default amount based on the type of non-transportation-related facility. The commenter believes that using options will encourage installation of additional containment structures and ultimately reduce the frequency and size of facility spills. EPA has chosen to rely on the definition from the OPA, which is amenable to site-specific applications. Regarding the role of an optional default amount, the Agency believes that this is more appropriately addressed in vessel and facility response plan regulations.

Subpart B—Responsibility and Organization for Response

Section 300.105—General Organization Concepts

One commenter recommended that a paragraph be added describing the basic "incident command system" used by the federal government. The commenter suggested that this would add credibility to the NCP, because such a system has been implemented by "the majority of progressive states and responsible parties" and "the more advanced districts and regions of the Coast Guard and EPA" as the national standard for organizing spill response. Another commenter agreed and stated that this discussion should include a description of the five response functions and the federal agencies that are likely to take the lead in filling each function. Still another commenter stated that the "unified command system" structure: (1) Clarifies that one individual, the OSC, retains ultimate decisionmaking authority; and (2) reflects appropriate response roles for other participants such as state OSCs, responsible parties, and private contractors.[2]

The commenters' recommendations emphasize the importance of clarifying the basic framework for the response management structure in the NCP. EPA agrees that the NCP should be revised to address this topic more explicitly. New subparagraphs (d) and (c) have been added to §§ 300.105 and 300.305, respectively, and a new sentence has been added to the end of subparagraph (d) of § 300.135 describing the response management structure as a system (e.g., a unified command system) that brings together the functions of the federal government, the state government, and the responsible party to achieve an effective and efficient response, where the OSC maintains authority. (The state government, at its discretion, may solicit local government involvement in this structure.) EPA would like to restate that although the goal of this structure is to reach consensus whenever possible, the OSC always retains the authority to take all actions that he or she deems appropriate. Area Committees will be responsible for developing detailed response management structures for their areas based on the broad guidelines provided in the NCP.

EPA would also like to clarify that although the national response system meets the requirements of 29 CFR 1910.120 as an incident command system, it is not one of the several systems currently in use by local fire fighters around the country and separately referred to as "the" traditional incident command system. Most of these other response management systems are patterned after systems developed by such organizations as the National Fire Academy and the National Interagency Fire Center. These systems were developed for operations where control of resources and personnel is placed on a single incident commander.

The emphasis during oil spill response is on coordination and cooperation, rather than on a more rigid system of command and control. The OSC, the state/local government representatives, and the responsible party all are involved with varying degrees of responsibility, regardless of the size or severity of the incident. The OSC in every case retains the authority to direct the spill response, and must direct responses to spills that pose a substantial threat to the public health or welfare of the United States. In many situations, however, the OSC will choose to monitor the actions of the responsible party and/or state/local governments and provide support and advice where appropriate. The response management structure does not attempt to prescribe a specific item-by-item functional description of where particular organizations or individuals fit within a single response structure for a given response. Developing, adopting, and implementing a response management system, such as a unified command system, is the responsibility of the OSC and the Area Committee, through the ACP.

The response organization in an ACP must be designed to recognize two basic facts: (1) All key players in the response management structure may have job responsibilities in addition to response and preparedness, and (2) some of these responsibilities fall outside the scope of the NCP and thus would not be subject to the response structure described in the ACP.

Based on these facts, an area's response management system should recognize that key players will maintain a separate internal response management infrastructure during a response. The goal of the area's response management system is to identify how those participating in the response management structure can best communicate and coordinate with each other for planning, logistics, finance, operations, and communications to ensure effective response coordination. Because the key players differ from area to area, Area Committees must have the flexibility to tailor systems to their *basic* organization for the specific area. It is beyond the scope of the NCP to prescribe or endorse a particular version of incident command; to do so would be counterproductive to the very purpose of Area Committees and ACPs.

Four commenters recommended various changes to Figure 1, "National

[2] Several comments on sections of Subpart B other than § 300.105 also addressed the incident command system and the unified command. Because the response presented here encompasses the concerns raised by those comments, such comments are not presented separately in the preamble. All individual comments and responses on all sections of Subpart B, as well as other subparts, appear in their entirety in the Response to Comments document.

Response System Concepts." Each of these commenters stated that the responsible party should be included in Figure 1 because the responsible party, along with the federal OSC and state OSC, will operate in a triad structure in the unified command. One of the commenters stated that Figure 1 should reflect the participation of local governments and tribes on the RRT. This commenter stated that the current Figure 1 ultimately will hamper the efficiency of incident response, because it does not accurately reflect the roles of these entities. Three commenters recommended that the unified command be incorporated to more accurately illustrate the command structure. Two commenters stated specifically that the figure should be revised to show that state and local responders are accountable to the federal OSC. One commenter suggested that two new figures be added, one showing the organization for planning and preparedness, and the other showing the organization for response. The same commenter also recommended that, to minimize the complexity of the national response system, separate figures should be created for hazardous substance (CERCLA) and oil (CWA) responses. In addition, the commenter suggested consideration of separate figures for EPA's inland zone and USCG's coastal zone.

In response to concerns raised by the commenters, EPA has clarified Figure 1 depicting the national response system by dividing it into two separate figures—one for response (Figure 1a) and the other for planning (Figure 1b). These new figures illustrate a response management system (e.g., a unified command system) that brings together the functions of the Federal Government, the state government, and the responsible party to achieve an effective and efficient response, where the OSC maintains authority. EPA believes that Figure 1a illustrates clearly that the OSC always retains the authority to take all actions that he or she deems appropriate.

Footnote 2 to Figure 1b references coordination with other existing response plans prepared under the OPA and other statutes. Information from such industry plans should be considered by Area Committees in developing and improving ACPs. This includes information that becomes available from risk management plans prepared under section 112(r) of the Clean Air Act, as well as from other federally mandated plans. EPA believes that this information not only will be useful in developing contingency plans, but that consideration of such information also will help avoid unnecessary overlap and duplication of planning requirements.

Local governments are not shown on the RRT in Figure 1b because they participate only at the discretion of the state. Indian tribes are not shown separately because they are included in the definition of the term "State" as used in the NCP (§ 300.5).

With regard to the recommendations to develop separate figures for hazardous substances and oil responses as well as for coastal zone and inland zone responses, EPA believes that the new response and preparedness figures present a useful summary of the national response system that accurately reflects all of these categories of responses. The four additional figures, therefore, are unnecessary and have not been included.

One commenter suggested including a statement regarding the Federal Government's oversight role in situations where the responsible party is responding adequately. The commenter explained that the government's response role includes oversight as well as cleanup, but that oversight appears to have been overlooked throughout the preamble and proposed rule.

Section 300.305(d) (formerly (c)) of the NCP provides that, except in a case when the OSC is required to direct the response to a discharge that may pose a substantial threat to the public health or welfare of the United States, the OSC may allow the responsible party to voluntarily and promptly perform removal actions, provided the OSC determines such actions will ensure an effective and immediate removal of the discharge or mitigation or prevention of a substantial threat of a discharge. If the responsible party does conduct the removal, the OSC shall ensure adequate surveillance over whatever actions are initiated. The Agency believes that this provision provides adequate guidance regarding the OSC's oversight role during responsible party removal actions. Additional detail on this topic in the NCP would unnecessarily limit the flexibility of the OSC in choosing and implementing appropriate oversight activities.

Section 300.110—National Response Team

Seven commenters expressed concern regarding the membership and responsibilities of the NRT. These commenters suggested that states, responsible parties, and cleanup contractors either be represented on the NRT or have input into response decisions.

One commenter reasoned that state representation on the NRT would increase recognition of the state role in federal response action. Other commenters noted that the decisions of the NRT affect the planning, preparedness, and, ultimately, response actions of responsible parties and that such parties have technical expertise that could be valuable in NRT meetings. One commenter believed that the proposed rule did not encourage the NRT to solicit input from stakeholders. The commenter also suggested that all workgroup meetings conducted in conjunction with NRT meetings be open to the public to encourage improved communication on planning and response issues. Another commenter recommended that cleanup contractors be included in the decisionmaking committees and scientific support described in the NCP. This commenter reasoned that federal and state government personnel do not physically clean up spills; instead, it is the private contractors who are hired by the responsible party or government agency and who consequently have hands-on knowledge of and experience with state-of-the-art cleanup techniques. Two commenters suggested that, in contrast to the Area Committees, many of the RRT subcommittees are completely closed to private parties.

EPA agrees that input from states and private parties helps the NRT to function more effectively and that private party involvement with the RRTs can have the same result. States and private parties are encouraged to attend NRT meetings and in the case of private parties, RRT meetings. Those who wish to attend should contact the NRT Secretary or RRT co-chairs so that appropriate logistical arrangements can be made. In some instances, however, attendance by states or private parties may not be feasible or appropriate. For example, although the meetings of the standing RRT are open, the meetings of the RRT in executive session or as an incident-specific team are not open to private parties because this would interfere with inherently governmental functions. Specifically, attendance and participation by private parties could slow certain time-critical decisions, such as which particular federal, state or local government, or private party resources the RRT should request to respond to a discharge or release.

Section 300.115—Regional Response Teams

Three commenters believed that local governments should not be represented on the RRT because the RRT should not become overwhelmed by local

representatives if it is to be effective in addressing regional issues during emergency responses. One of these commenters explained that state representatives could coordinate with local governments and communicate their issues to the RRT. Under § 300.115, local governments are represented directly on the RRT by the state, and local input is coordinated through the state's representative. EPA believes this is an efficient means of local government representation on the RRT that does not impair the effectiveness of the RRT to address regional issues.

Three commenters argued that RRTs should not duplicate the planning role of the Area Committees because RRTs are not mentioned and have no statutory basis in the OPA. One of these commenters recommended that RRT members participate in Area Committees directly, rather than through the RRT. One commenter suggested that the NCP "find a real place for the RRT within the [incident command system] structure or consider eliminating this body." This commenter's major concern appears to be that the RRT structure assumes one state agency can represent all state and local entities, but the federal government must be represented by 16 agencies. According to the commenter, this seriously undermines RRT credibility at the state and local level.

EPA believes there are several significant distinctions between the geographic responsibilities of RRTs and Area Committees that impart unique and essential functions to the two entities. Regions are envisioned to have multiple areas; in its planning and coordination role, the RRT provides oversight and consistency review for areas within a given region. This includes facilitating the process of ensuring that Area Committees within a region are mutually supportive and that links to extra-regional response concerns, considerations, and capabilities are maintained. This regional/area approach allows local area personnel to focus on specific issues such as risks, sensitive area prioritization, and response strategies that need to be tailored to a smaller, more manageable geographic scale.

With regard to state representation on the RRT, the purpose of having a single representative is to make it possible for the state, rather than the RRT itself, to resolve intra-state disagreements. States may designate at least one alternate member to attend RRT meetings as a way to better ensure intra-state coordination, for example, between the state agency handling emergency response and the environmental agency, health agency, and the State Emergency Response Commission (SERC).

Two commenters stated that the role of the RRT during response should be limited to providing support to the OSC, upon request, as part of the unified command structure. The commenters argued that at no time should a specific RRT be given an operational role in response without placing that role in the unifying context of the incident command system.

EPA believes that the commenters' recommendation for the RRT members to provide response support to the OSC is already consistent with the current national response system, when implemented during spill cleanup operations. Although the RRT is a separate and distinct entity with clearly defined roles, this does not bar individual RRT members from being part of the OSC's support staff during a response. In fact, the very structure of the RRT indicates that it may be activated to supply individual members in support of response actions. The two principal components of the RRT are a standing team and an incident-specific team. The latter is formed from the standing team to support the OSC/Remedial Project Manager (RPM) when the RRT is activated for response to a specific discharge or release (see § 300.115(b)).

One commenter noted that §§ 300.115(i)(6), 300.205(c)(3), and 300.210(c)(3)(iv) reference advance planning and expedited decisionmaking for use of dispersants, surface washing agents, surface collecting agents, burning agents, bioremediation agents, or other chemical agents. The commenter suggested adding the following language, consistent with § 300.310(c): "* * * and in accordance with any applicable laws, regulations, or requirements * * *." The recommended clarification has been made in § 300.115(i)(6) of the final rule. The language in §§ 300.205(c)(3) and 300.210(c)(3)(iv) is taken directly from the OPA and has, therefore, not been changed.

Section 300.120—On-Scene Coordinators and Remedial Project Managers: General Responsibilities

Two commenters stated that the NCP should specify minimum qualifications (education and experience) and training requirements for Federal OSCs and other response personnel. The commenters reasoned that the OSC has ultimate responsibility for the spill response effort and therefore must have sufficient knowledge, training, and skill to perform effectively and gain the confidence of the public and the response community.

EPA agrees that appropriate training enables OSCs to effectively carry out their responsibilities. In addition, the relevant Federal agencies (EPA and USCG for oil discharges) are aware of their responsibilities under the NCP and will put the best qualified OSC on the job. EPA does not agree, however, that the NCP should require lead agencies to identify minimum qualifications and training requirements for OSCs and other response personnel. The lead agency instead should have adequate flexibility to decide on appropriate operating procedures that, for the particular agency, will best ensure adequately trained OSCs and other response personnel.

One commenter recommended that § 300.120(a) explicitly state that the Federal OSC's authority is sufficient to override any otherwise applicable Federal, State, and local requirements. The commenter reasoned that compliance with all requirements may not be practicable, particularly if the requirement was established without considering the special circumstances of emergency response.

EPA does not believe that the provision suggested by the commenter—essentially preempting all Federal and State law when the OSC directs response to a discharge—is authorized by the OPA. Furthermore, adding such a provision to the NCP appears to be unnecessary. Section 311(c)(1) of the CWA, as amended by the OPA, gives the OSC authority to "direct or monitor all Federal, State, and private actions to remove a discharge." The same provision also authorizes the OSC to remove or arrange for the removal of a discharge and to remove and, if necessary, destroy a vessel that is discharging. In addition, if a discharge poses a substantial threat to the public health or welfare of the United States, CWA section 311(c)(2), as amended, requires the OSC to direct all Federal, State, and private actions to remove the discharge and gives the OSC authority to carry out the other actions mentioned in section 311(c)(1) "without regard to any other provision of law governing contracting procedures or employment of personnel by the Federal Government."

Congress explicitly provided for limited preemption only for contracting and employment laws and this limited preemption applies only when a discharge poses a substantial threat to the public health or welfare of the United States. There is no express indication that Congress intended to preempt all Federal and State

requirements with respect to other discharges.

Several commenters stated that although the Federal OSC may have authority over the responsible party, the OSC does not have authority to direct State or local agency actions. As mentioned above, CWA section 311(c), as amended by the OPA, provides that the OSC "may direct or monitor all Federal, State, and private actions to remove a discharge," and, in the case of a substantial threat to the public health or welfare of the United States, must direct such actions. Thus, it is clear that the OSC has the authority to direct State or private actions.

With regard to local actions, the legislative history of the OPA indicates that there was no intent to exclude these from the President's authority to direct. The Conference Report states that section 201(b) of the Senate bill amended CWA section 311(d) "to require the President to coordinate and direct *all public* and private cleanup efforts whenever there is a substantial threat of a pollution hazard to the public health or welfare * * *" (emphasis added). Section 4201 of the House bill amends CWA section 311(c)(1) to authorize the President to "direct the actions of *all on-scene personnel*, and monitor all removal actions" (emphasis added). Furthermore, in discussing the new requirements to direct responses to spills that pose a substantial threat to the public health or welfare of the United States, the Conference Report states "[t]his subsection is designed to eliminate the confusion evident in recent spills where the lack of clear delineation of command and management responsibility impeded prompt and effective response." (H.R. Report No. 101–653, 101st Congress, 2d Sess., at pp. 144–46.) In light of these statements from the Conference Report, Congress could not have intended that local response actions be treated any differently from Federal, State, and private response actions with regard to the President's authority to direct.

One commenter stated that § 300.120(e) should indicate that the OSC coordinates, directs, and reviews the work of other agencies in contingency planning and removal. The commenter asserted that proposed § 300.120 could be read to give the OSC broader responsibilities in coordination, direction, and reviewing the work of other agencies. EPA agrees that the OSC should not review the work of other agencies in activities other than contingency planning and removal. Section 300.120(e) has been revised to clarify this point.

Section 300.135—Response Operations

One commenter recommended that the federal OSC's responsibilities in a response coordinated by a state or local OSC be clarified. The commenter stated that this should help ensure that spill response actions are consistent with the NCP, regardless of whether there is a federal, state, or local OSC. The commenter indicated that it has had experience with several spills for which the federal OSC did not go on-scene and did not access the OSLTF for removal actions. The commenter suggested that this has interfered with removal activities that it deemed necessary to ensure appropriate treatment of resources for which it had trust responsibilities.

For any issues concerning a spill response, the OSC should be contacted first, whether or not the OSC is on-scene. However, it is important to note that the OSC is required to coordinate with the natural resource trustees on any removal action to be taken. If problems arise in the way these relationships are being implemented, such problems should be resolved at the area level during the Area Committee/area contingency planning process.

Another commenter objected to the requirement that the federal OSC consult with the affected trustees on the appropriate removal action to be taken if this could result in cleanup contractors missing the "window of opportunity" for using dispersants, burning, and containment and removal techniques to effectively address a spill.

Section 1011 of the OPA states that "The President shall consult with the affected trustees designated under section 1006 on the appropriate removal action to be taken in connection with any discharge of oil." Although this responsibility has been delegated from the President to the OSC, the language to which the commenter objects is statutorily required by the OPA. In addition, the potential for delay with which the commenter is concerned will be alleviated through the preplanning that is required for the use of dispersants, burning agents, surface washing agents, surface collecting agents, bioremediation agents, and miscellaneous oil spill control agents (see § 300.910). Finally, it is important to note that consultation with the trustees does not mean that the OSC must obtain the concurrence of the trustees, although such concurrence is highly desirable. Ultimately the OSC, consistent with §§ 300.120 and 300.125, has the authority to direct response efforts and coordinate all other efforts at the scene of a discharge.

Section 300.145—Special Teams and Other Assistance Available to OSCs/RPMs

One commenter recommended that the NOAA Scientific Support Coordinator (SSC) be the primary technical advisor to the federal OSC during a spill response and be the focal point for decisions regarding "how clean is clean." The commenter explained that NOAA is the federal agency with the greatest expertise on the fate, behavior, and effects of oil and the effectiveness of countermeasures, including ecological considerations. The commenter concluded that with so many competing interests coming into play in a spill response, this type of decision should be based on science, and NOAA is the appropriate player to present recommendations to the federal OSC.

The NOAA SSCs and EPA's Environmental Response Team support the OSC on technical/scientific matters, as described in § 300.145. The OSC, however, remains the ultimate decisionmaking authority for spill response. While the SSCs have considerable scientific specialization and, therefore, may be the appropriate resource to provide recommendations to the OSC on issues regarding "how clean is clean" during a response action, the OSC must be the focal point for making such decisions.

One commenter stated that proposed §§ 300.5, 300.305, and 300.615, Appendix E Sections 1.5 and 5.5.2, and the preamble language accompanying § 300.145 convey the inaccurate impression that trustees obtain funding to initiate a natural resource damage assessment (NRDA) and reimbursement for injuries to natural resources from the OSC. The commenter clarified that funding for initiation of NRDAs may be obtained from the OPA Emergency Fund upon application by the Federal lead administrative trustee directly to the National Pollution Funds Center (NPFC) of the Coast Guard. The OSLTF may also be used to pay for injury to natural resources. The commenter recommended that the following language be added throughout the preamble, rule, and Appendix E: "The Federal lead administrative trustee facilitates effective and efficient communication between the OSC and the other Federal trustees during response operations and is responsible for applying to the OSC for non-monetary Federal response resources on behalf of all trustees. The Federal lead administrative trustee is also responsible for applying to the NPFC for funding for initiation of damage

assessment and claims for injuries to natural resources."

EPA agrees with the recommended revision, except for the phrase "and claims," which is an inaccurate statement of lead administrative trustee responsibilities. Thus, the requested revision, as modified, has been incorporated into the preamble, §§ 300.305 and 300.615 of the final rule, and Section 5.5.2 of Appendix E. Language with the same intent that varies slightly from this wording has been used in § 300.5 and Appendix E Section 1.5 so that the definition of lead administrative trustee conforms to the proposed NOAA damage assessment regulation (59 FR 1062, January 7, 1994) (see preamble discussion of § 300.5).

One commenter recommended that specific language describing SUPSALV as a Special Team be added to § 300.145. The language proposed by the commenter to be added to § 300.145 as new subparagraph (d)(1) is already included in the description of the U.S. Navy in § 300.175. The remaining subparagraphs, however, provide a useful description of SUPSALV as a Special Team and therefore have been added to § 300.145.

Section 300.150—Worker Health and Safety

One commenter recommended that the NCP clarify the applicable Federal, State, and local roles in determining and enforcing worker training and safety requirements, particularly in the maritime environment where there is the greatest potential for overlapping jurisdiction. The commenter asserted that two agencies, USCG and the Occupational Safety and Health Administration (OSHA), potentially are charged with enforcing worker safety requirements during spill response. The commenter explained that it is essential that safety training requirements be established and clearly understood so that appropriate training can be conducted prior to an actual spill. The commenter further stated that it is critical at the time of the spill for one individual to assume responsibility for making decisions if there is confusion or disagreement regarding worker safety, health, or training.

The OSC already is the senior official in charge of worker safety, health, and training requirements during a spill response under the NCP. The OSC is encouraged to undertake early coordination on all worker health and safety issues. Furthermore, the OSC in this capacity is required to comply with all applicable OSHA regulations. The details involved in implementing these requirements will be addressed during the Area Committee/area contingency planning process. Thus, EPA does not believe that the recommended additional language is necessary.

Section 300.155—Public Information and Community Relations

One commenter suggested that prompt, accurate information dissemination to the public should be coordinated through a Joint Information Center, an entity with functions similar to the current on-scene news office authorized by § 300.155(b). The commenter explained that the current proposal addresses only federal government public relations and should be expanded to include public relations efforts of state, local, and private entities.

EPA has revised § 300.155(a) to state that the OSC/RPM should coordinate with available public affairs/community relations resources to ensure that all appropriate interests are considered by establishing, as appropriate, an on-scene Joint Information Center bringing together resources from federal and state agencies and the responsible party. Experience shows that there are some situations when a Joint Information Center is essential to provide adequate coordination of information to the public from federal and state authorities during an event. In other response actions, a less formal mechanism may be adequate. In the final analysis, it is within the OSC's discretion to determine whether to establish a Joint Information Center during an event. This issue should be addressed during the area contingency planning process.

Section 300.165—OSC Reports

Two commenters questioned the appropriateness of eliminating the requirement to prepare OSC reports. One of these commenters suggested that if the requirement is eliminated, the pollution reports and log books from a major spill must be transmitted to a central repository. The commenter reasoned that records of how effectively mechanical equipment and other spill mitigating measures performed during an actual spill is precisely the type of information that should be transmitted to RRTs and Area Committees for their consideration. The other commenter stated that the final rule should clarify the purpose of this change and how EPA intends to address after action reporting and cost recovery.

The original purpose of the OSC report was to summarize activities at the site and to communicate lessons learned, discuss any problems encountered in the response, and recommend improvements that need to be shared throughout the response community. Under the NCP, even without a requirement to prepare an OSC report in every instance, the NRT or an RRT can request that an OSC/RPM submit a complete report on the removal actions taken, including the resources committed and the problems encountered. EPA has reassessed the desirability of requiring an OSC report for all responses to major discharges or releases and determined that such a report will not be required automatically. The already considerable time demands placed on the OSC have increased dramatically with the enactment of the OPA. Preparing OSC reports is an additional paperwork burden that is not statutorily mandated. Furthermore, most important information contained in the OSC report—including lessons learned in specific responses and documentation needed for after action reporting and cost recovery—will be available from other materials prepared by the OSC, including the pollution report and the OSC log book. The pollution reports are kept in a central repository and are available to the public. Additional incentive to make this information available comes from the need to keep ACPs current and an increased need to share lessons learned. For example, the National Preparedness for Response Exercise Program (PREP) provides exercise guidelines applicable to OSCs as well as industry. Many of these guidelines can be met by aggressive evaluation of the response and lessons learned (the essence of the OSC report). Also, PREP currently is developing a proposal to establish a national data base for documenting lessons learned. Both government and industry will have access to this data base for entering data and the public will have access for retrieving data.

Section 300.170—Federal Agency Participation

Three commenters asked that § 300.170(d) be changed to require federal agencies to report releases, rather than simply encouraging them to do so. Section 300.170(c) states that all federal agencies are responsible for reporting releases of hazardous substances from facilities or vessels under their jurisdiction or control in accordance with section 103 of CERCLA. Section 300.170(d) refers to pollutants or contaminants; it is not a requirement of federal agencies or any other organization or person to report releases of pollutants or contaminants that are not defined by CERCLA as hazardous substances. EPA agrees, however, that if a federal agency

discharges oil in an amount above the threshold quantity as defined by 40 CFR part 110, the agency is required to report that discharge. Therefore, the language of § 300.170(d) has been revised in the final rule to indicate that federal agencies must report discharges of oil, as required in 40 CFR part 110.

Section 300.175—Federal Agencies: Additional Responsibilities and Assistance

One commenter recommended that the NCP specify the oil discharge contingency planning responsibilities of the Department of Transportation's (DOT's) Office of Pipeline Safety, DOT's Research and Special Programs Administration, and the DOI's Minerals Management Service (MMS). The commenter explained that each of these entities has issued proposed or final regulations on response planning requirements for vessels, pipelines, and other means of transport. The commenter further recommended that the NCP incorporate a provision that the requirements of these federal agencies must be consistent.

The commenter's recommendations provide a more complete description of the contingency planning responsibilities of federal agencies under the OPA by specifying the responsibilities of DOT and MMS. Therefore, EPA has revised § 300.175, as appropriate. Regarding a "consistency requirement," CWA section 311(j), as amended, requires facility response plans to be consistent with ACPs. EPA does not believe, however, that this type of consistency requirement needs to be included in the NCP, because the NCP is not the appropriate forum for harmonizing the response planning requirements of various federal agencies.

One commenter suggested that proposed § 300.175(b)(11)(ii) could result in resource problems, as well as potential legal and enforcement difficulties, for OSHA. The commenter believed that the proposed provision could be interpreted as requiring OSHA to develop and maintain site safety plans. The commenter was especially concerned that development and maintenance of these plans could be interpreted as approval of the plans and that such an interpretation would make it more difficult for OSHA to exercise its enforcement responsibilities. EPA has revised § 300.175(b)(11)(ii) to indicate that OSHA has flexibility to provide advice and consultation on occupational safety and health issues, as appropriate for a particular response. For purposes of clarification, EPA would like to note that assistance provided by OSHA may include, to the extent practicable, reviewing and proposing improvements to site safety plans, exposure monitoring protocols, work practices, and helping with other compliance questions. These activities should be accomplished as a cooperative effort between the OSC and the OSHA representative.

One commenter suggested that the description of the National Response Center in § 300.175(b)(16) be deleted because much of this information is covered in § 300.125. The commenter also noted that the requirement in § 300.175(b)(16) for notices of discharges to be made telephonically should apply to discharges *and releases*. EPA agrees and has deleted subparagraph (b)(16) of § 300.175 and has revised the relevant portion of § 300.125 to read "Notice of discharges and releases must be made telephonically * * *."

Several commenters recommended various editorial changes to the responsibilities of federal agencies in § 300.175. For example, one commenter requested that the term "Radiological Assistance Coordinating Office" be replaced with the term "Radiological Assistance Program Regional Office" in § 300.175(b)(5). Another commenter recommended that § 300.175(b)(9)(i) be revised to add the phrase "and other bureaus" at the end of the description of the Fish and Wildlife Service's responsibilities. The reason for this change is that several bureaus of DOI have expertise in determining the effects of oil and hazardous substances on natural resources. EPA has incorporated these and several other editorial changes. In addition to the changes recommended by the commenters, EPA has clarified the description of its own scientific expertise by adding references to human health and ecological risk assessment and by providing information on how to access this expertise.

Section 300.180—State and Local Participation in Response

One commenter suggested that the response role of Indian tribes be included in its own section. The commenter reasoned that although many sections of the NCP treat Indian tribes as states, in reality, they are trustees for natural resources belonging to or controlled by the tribes.

Section 300.180(b) explains that Indian tribes have the opportunity to participate as part of the response structure, as provided in the ACP. State and Indian tribe representatives also may participate fully in all activities of the appropriate RRT.

Furthermore, § 300.305 specifically defines "states" to include Indian tribes for purposes of the NCP, unless otherwise noted. Thus, the provisions referred to by the commenter, by definition, reflect the appropriate role of Indian tribes.

One commenter stated that the NCP should not alter the state's role and/or title for federal or state-lead response operations. The commenter recommended that § 300.180(a) be revised to read: "This agency is responsible for designating the (State On-Scene Coordinator) SOSC/RPM for federal and/or state-lead response actions, and coordinating/communicating with any other state agencies, as appropriate." The commenter reasoned that the NCP should provide more flexibility to honor the many ACPs that are being developed and to recognize the importance of the state in response to spills of oil or hazardous materials.

EPA generally agrees with the sentiment expressed by the commenter. The Agency has modified the language suggested by the commenter for inclusion in § 300.180 to read as follows: "This agency is responsible for designating the lead state response official for federal and/or state-lead response actions * * *." The reason for these modifications to the commenter's language is to provide the state with maximum flexibility in establishing a title for its lead response official, while still recognizing the important role states play in incident response.

Another commenter recommended that the NCP encourage states to enter into Memoranda of Understanding with the federal government to coordinate response-related procedures and resources. Although EPA recognizes that Memoranda of Understanding between states and the federal government to coordinate response procedures and resources may be beneficial, these arrangements can occur without being stipulated in the NCP and therefore the recommended language is unnecessary.

Section 300.185—Nongovernmental Participation

One commenter stated that the NCP should require the appropriate response role for volunteers to be mandated in ACPs. In particular, the commenter suggested that ACPs mandate that volunteers, if used, be directed by the federal OSC and that ACPs specify training requirements for each response function that volunteers are permitted to perform (e.g., clerical support, beach surveillance, logistical support, wildlife treatment). The commenter also recommended language in the NCP

prohibiting the use of volunteers in circumstances that expose them to contaminants above "permissible exposure limits."

EPA agrees with the sentiment expressed by the commenter, in particular, the concept of using volunteers for clerical support. However, these are implementation issues that are most appropriately addressed at the area level, rather than in the NCP.

A different commenter requested that the NCP language place fewer restrictions on the use of volunteers. The commenter explained that use of volunteers should be determined by Federal and State OSCs and responsible parties through the unified command.

EPA believes that the use of volunteers should be determined by the OSC/RPM within the response management system that includes state government, local government, and the responsible party. The relevant language in § 300.185 will be retained in the final rule because this allows the OSC/RPM to consider potential legal and logistical issues that may restrict the use of volunteers under certain circumstances.

Two commenters objected to the statement in proposed § 300.185(a) that entities required to develop tank vessel and facility response plans should commit sufficient resources to implement the non-Worst Case Discharge aspects of those plans. One of the commenters suggested that this statement be deleted and the other commenter recommended that the term "should" be replaced with "shall".

OPA section 4202(a)(6) describes the requirement for owners and operators of tank vessels and facilities to prepare response plans. The OPA states that these response plans must be sufficient to respond to a Worst Case Discharge, to the maximum extent practicable. However, facility and vessel response plans are also required to contain certain other provisions and information. For example, under the OPA, response plans must: (1) be consistent with the NCP and ACPs; (2) identify a qualified individual having full authority to implement removal actions; and (3) describe the training, equipment testing, periodic unannounced drills, and response actions on the vessel or at the facility.

A regulation recently promulgated by EPA at 40 CFR part 112 implements the broad OPA requirements for onshore, non-transportation-related facilities that, because of their location, "could reasonably be expected to cause substantial harm to the environment" as a result of discharges (59 FR 34070, July 1, 1994). Under that final rule, owners and operators of "substantial harm facilities" must prepare plans to respond to a Worst Case Discharge, and to small and medium discharges, as appropriate. In the preamble to the facility response plan final rule, EPA explained that the requirement to plan for several different spill sizes (not just for Worst Case Discharges) is consistent with the implementation of OPA response planning requirements by other agencies, including the USCG (see 58 FR 2358, February 5, 1993).

EPA believes that it adopted a reasonable approach in the proposed NCP revisions by indicating that commitment of resources needed to implement the non-worst case discharge provisions is discretionary, rather than mandatory, because the facility response plan rulemaking had not yet been finalized. EPA has revised the language in § 300.185 of the NCP in today's rule to reflect the fact that the new requirements for facility response plans have now been finalized in 40 CFR part 112. The most significant change is that the term "should" has been changed to "shall", as recommended by one of the commenters.

Subpart C—Planning and Preparedness—Overall Comments

Three commenters recommended taking greater measures to involve the private sector, including industry, in the planning and preparedness process and the national response system, especially in the development of the Regional Contingency Plans (RCPs) and ACPs. One of these commenters noted that existing law and regulations require facility and tank vessel owners to carry out preparedness and response activities, yet current proposed language discourages private sector input and efforts into the national response system.

EPA believes the NCP recognizes the important contribution private parties can and do make in the planning and response processes. For example, with regard to planning, private parties play an essential role in the development of local emergency response plans through their participation on Local Emergency Planning Committees (LEPCs). Nongovernmental participation in a response is encouraged in § 300.185 of the NCP. Furthermore, EPA encourages private entities to participate throughout the planning process, wherever possible and appropriate.

With regard to area contingency planning, the OPA specifies that Area Committees are to be made up of personnel from federal, state, and local agencies. However, EPA strongly encourages Area Committees to solicit advice, guidance, and expertise from all appropriate sources, including facility owners and operators, cleanup contractors, and other qualified private entities. This position is consistent with the views expressed in both the EPA and USCG **Federal Register** notices on area and Area Committee designations.

Two commenters believed there are instances in the proposed rule where implied responsibilities of Area Committees are not consistent with those stated in §§ 300.205 and 300.210. The commenters stated that while Subpart C clearly establishes a planning role for Area Committees, other parts of the proposal give them a more expansive role, including training and evaluation of preparedness. The commenters argued that these roles are outside the scope of the law and not appropriate for Area Committees. EPA notes that response preparedness is an ongoing process, which requires that existing systems be tested and improved upon. The Agency, therefore, believes that the duties granted to the Area Committees in the NCP, such as training and evaluation of preparedness, are consistent with the OPA mandate concerning the Area Committees' responsibilities for response planning and preparedness.

In response to a number of comments that, in some way seek clarification regarding the various plans described in this subpart and their relationship to one another, EPA has prepared an additional figure (Figure 4) for inclusion in this subpart of the NCP following § 300.205.

Section 300.200—General

One commenter suggested that an obvious omission from this section is any reference to the tank vessel or facility plan preparer and responsible party, and recommended that it be added to this section and throughout the NCP. EPA agrees that discussion of these plans in Subpart C would be helpful and has added new §§ 300.205(f) and 300.211 in response to this comment.

Section 300.205—Planning and Coordination Structure

One commenter strongly urged the NCP to focus on the Area Committee as the sole regional planning body because such organizations have been functioning in an open and cooperative manner since the passage of the OPA. The commenter also argued that planning at this level (as opposed to the regional level) is much more efficient for very site-specific activities, including the identification of environmentally sensitive areas. In

addition, the commenter stated, planning at this level would make it easier for states to participate, since they would not have to use limited travel funds to attend meetings at the regional level.

While the Agency agrees that area-level planning is critical to the effectiveness of the national response system, EPA does not believe that the area contingency planning structure precludes or supplants regional planning activities. While some local issues, such as development of certain portions of Fish and Wildlife and Sensitive Environments Plan (FWSEP) Annexes, are best handled at the area level, other planning issues, such as cross-area planning and preparedness coordination, are more appropriate for the regional level. In addition, RRTs have important response coordination responsibilities at the regional level.

One commenter believed that state participation should be expressly encouraged in the planning and coordination structure (i.e., Area Committees) of the national response system and that states should be described as full partners in the planning process. That commenter also added that the federal government's ability to enter into Memoranda of Understanding with states should be noted in the NCP. Memoranda of Understanding are a useful mechanism for clarifying response resources and minimizing potential misunderstandings or conflicts during an incident.

EPA recognizes that states and local governments are integral parts of the area-level planning process and are strongly encouraged to participate in their respective Area Committees. The Agency believes that this concept, grounded in the strong commitment to state and local involvement found in the OPA, is clearly reflected in the NCP preamble and rule language promulgated today. In addition, because the ACP is a product of federal, state, and local response planning coordination, the Agency believes that Memoranda of Understanding between the federal government and states to accomplish this coordination are unnecessary.

One commenter asked for a better explanation for determining who is qualified to sit on an Area Committee and the process for selecting and, as necessary, funding the participation of committee members. Several commenters believed that Area Committees should include the private sector or seek input and advice from private sector entities during the planning process. One commenter strongly recommended that Regional Citizens' Advisory Councils (RCACs), as well as representatives of municipal government, LEPCs, villages, and other locally elected bodies should be specifically listed as participants on Area Committees.

The OPA directs the President to appoint qualified personnel of federal, state, and local agencies to the Area Committees. Thus, the OPA does not permit private membership on Area Committees. This does not mean, however, that EPA seeks to exclude others from participating in the area contingency planning process. It is left to the discretion of the Area Committees to decide how they will integrate into this process response experts and other persons and groups with interest in and/or responsibilities for the environmental integrity of the area. Area Committees may establish subcommittees or workgroups as the forum for obtaining advice and guidance from such parties.

The OPA does not specify the criteria for determining who is "qualified" to be on Area committees. This determination is, therefore, left to the discretion of the Secretary of Transportation and the EPA Administrator. Interested parties may contact the OSC for their area, or refer to the April 24, 1992, EPA/USCG **Federal Register** notice (57 FR 15198) for further information concerning Area Committees and membership selection.

One commenter urged that the requirement for preauthorization planning contained in § 300.210(c)(4)(ii)(D) be added to the Area Committees' responsibilities under § 300.205(a)(3) and that the requirements applicable to such plans should appear in the Area Committee discussion. The commenter believed it is critical that the Area Committees conduct preauthorization planning prior to an emergency event to resolve issues of limited field data and inaccurate or uninformed opinions by interested participants.

Another commenter stated that the proposed revisions (i.e., requiring both Area Committees and RRTs to approve dispersant use) would likely discourage and impede decisions on the use of dispersants and other spill mitigating chemical agents and devices. The commenter recommended that the Area Committees take the lead on making the decision, while the RRTs serve in an advisory role.

EPA proposed revisions to §§ 300.910 and 300.210 to require that Area Committees be actively involved in the preauthorization process and that, as part of their planning activities, they develop preauthorization plans that address the desirability of using appropriate products on the Product Schedule. The Agency believes that the language in § 300.210(c)(4)(ii)(D) sufficiently addresses the Area Committees' responsibilities to provide for preapproval plans as part of the FWSEP Annex to the ACP. The commenter's suggested rule language is, therefore, unnecessary.

With regard to the requirement that both the Area Committee and RRT approve dispersant use, the Agency agrees that preauthorization of dispersants and other spill mitigating chemical agents and devices is critical to effective spill response planning. However, the OPA does not grant the Area Committee the responsibility to approve a dispersant use plan. Under the approval scheme presented in the NCP, the Area Committee serves as an advocate for the dispersant use plan, while the RRT decides if the plan is adequate and may address region-wide or cross-regional issues, thereby providing a necessary forum for dispersant use review. The Agency believes the two-step preapproval plan process set forth in the NCP best ensures consistent dispersant use planning while fulfilling the mandate of the OPA. It should also be noted that, for spill situations that are not addressed by the preauthorization plans, the OSC (with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable) may authorize the use of dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents on the oil discharge, provided that the products are listed on the NCP Product Schedule.

New § 300.205(f) relates to the addition of § 300.211 and, along with § 300.211, is discussed in response to a comment on § 300.200.

New § 300.205(g) was added to reference the new figure that is discussed under the earlier section "Subpart C Overall Comments."

Section 300.210—Federal Contingency Plans

One commenter suggested that the NCP should recognize developments that have occurred since the passage of the OPA and phase in or eliminate new requirements at variance with those developments. For example, the commenter stated, both format and substantive requirements included in the proposed rule for ACPs may not be

consistent with what has been done to date, and compliance with these new requirements cannot occur overnight.

Implementation of the OPA is an ongoing process involving multiple regulations being prepared over an extended period of time. It is virtually impossible to create a current and complete "snapshot" of implementation efforts for these NCP revisions because implementation efforts are a dynamic process. Generally, there will be a period of time following publication in the **Federal Register** before new requirements take effect. Such an approach gives the regulated community time to come into compliance and should ameliorate much of the commenter's concern.

Two commenters urged that the NCP require ACPs to follow the format of the NCP and be coordinated with RCPs, indicating that close coordination and consistency would lead to more effective emergency response. While EPA agrees that cross-plan consistency is critical for effective emergency response, the Agency has chosen not to discuss in the NCP formatting issues that go beyond the substantive requirements mandated by the OPA, in order to retain for the Area Committees the maximum flexibility to tailor ACPs to reflect their priorities and local conditions. It should be noted, however, that § 300.210(c)(2) of the NCP does refer to the importance of integrating plans, stating, "[t]he ACP shall provide for a well coordinated response that is integrated and compatible, to the greatest extent possible, with all appropriate response plans of state, local, and non-federal entities, and especially with Title III local emergency response plans." Plan consistency is an implementation responsibility of the OSC for the particular area. The RRT should be used as a vehicle to achieve consistency in implementation, as provided in § 300.115(a)(2).

EPA and the USCG have chosen to build upon different features of the pre-OPA oil spill planning and response structure in preparing ACPs for the inland and the coastal zone, respectively. EPA has generally relied upon the RCPs to be used for response operations, while the USCG has relied upon local contingency plans which had been prepared for each Captain of the Port zone. Because the RCPs already include some operational elements, the initial ACPs for the inland zone have relied to some extent on augmentation of the RCP with OPA provisions, or on adaptation of RCP language into a separate ACP document. Nevertheless, some elements of the RCP, such as guidance for the development of preauthorization plans, a description of RRT activation procedures, or other regional/district-specific policies (including guidance for Area Committees within their RRT zone), are better suited for inclusion in the RCP. Other elements of the RCP, most notably, the response operations portions, are better suited to be included in ACPs.

The relationship of the various plans prepared for emergency response is illustrated in Figure 4, "Relationship of Plans," following § 300.205 of today's rule. In this figure, the operations portions of the RCP are best represented by the "Federal Agencies Internal Plans" box.

One commenter stated that ACPs should mirror the national standards developed out of the USCG regulatory negotiation process (i.e., the process whereby the federal government and the regulated community formed a committee, discussed issues, and developed a report for use in drafting a proposed rule), because the facility response plans and vessel response plans, which are mandated under the OPA and must be consistent with the ACPs, are already being developed under the national standards. EPA notes that the national standards were developed in coordination with the vessel and facility response plan regulations and these standards are appropriate for the regulation of vessels and facilities. However, it would be inappropriate to include the national standards, which address the limited universe of regulated vessels and facilities, in the NCP, which details the broader federal response structure. The NCP must be flexible enough to encompass the implementation approaches not only of USCG, but also of EPA, MMS, and the Research and Special Programs Administration of the U.S. Department of Transportation (DOT).

Two commenters strongly urged consistency across the ACPs, noting that such consistency is particularly important for pipelines or vessels that cross states and regions and thus are subject to the requirements of numerous ACPs along the route. The commenters also believed that the existing language merely restates the law and does not provide enough information to assure such consistency, nor does the language reflect efforts underway since the passage of the OPA. One of the commenters provided three recommendations: (1) the NCP should explicitly require uniformity and consistency and provide a mechanism for resolving any inconsistencies; (2) the NRT should be responsible for ensuring consistency among the regions; and (3) procedures should be developed by which owners and operators of vessels and facilities subject to a number of ACPs may petition for resolution of any conflicts.

EPA believes that § 300.115(a)(2), which gives the RRTs responsibility for providing "guidance to Area Committees, as appropriate, to ensure interarea consistency and consistency of individual ACPs with [the] Regional Contingency Plan and [the] NCP," is an adequate framework for providing coordination and consistency. RRTs have been designated as the bodies responsible for interagency and intergovernmental planning and coordination of preparedness and response actions at the regional level. The RRTs should review ACPs in carrying out this responsibility and, through their comments, encourage consistency among individual plans. In addition, the NRT should encourage consistency among regions through the issuance of guidance.

EPA disagrees that the NCP should require uniformity among ACPs. Each ACP throughout the country will have key common elements, such as the FWSEP Annexes, that will provide a consistent basis nationwide for identifying resources needing to be protected during a response. However, because the purpose of ACPs is to prepare for spill response at the area level, Area Committees must retain maximum flexibility to tailor ACPs to reflect their priorities and local conditions, concerns, and capabilities.

EPA and USCG have promulgated facility and vessel response plan rulemakings which detail the requirements placed on owners and operators for preparing those plans. These plans are required to be consistent with relevant ACPs. Finally, it should be noted that the statutory requirement for plan integration is met when the Regional Administrator (EPA) or District Commander (USCG) signs the ACP.

One commenter recommended that the USCG develop guidance to provide better standardization of requirements for ACPs. Some specific areas the commenter recommends as needing to be addressed in ACPs are detailed training requirements to cover all facets of the response (including training of volunteers) and a requirement to address the issue of site visitors and passengers on vessels used in a response.

EPA believes that the commenter's concern is better addressed as an implementation issue. OSHA already provides training requirements for spill

response. Area Committees can, if they choose, determine training requirements associated with spill response activities and address any such requirements in ACPs. The NCP is not an appropriate vehicle for implementing these requirements.

To assure a timely decision on dispersant use, one commenter wanted to require it "as soon as practically possible, but in no case more than 8 hours" (§ 300.210(c)(3)(iv)). The Agency believes that incorporating into the NCP the suggested 8-hour timeframe for decisions on dispersant use may unnecessarily constrain flexibility for dispersant use at the area level. EPA has instead chosen to meet the OPA section 4202(a) requirement for the ACPs to "describe the procedures to be followed for obtaining an expedited decision regarding the use of dispersants" through preplanning. Individual Area Committees may describe additional procedures for expedited dispersant use. The commenter's concern, therefore, is best addressed at the area level.

One commenter argued that response could be expedited if ACPs expressly identified in advance those resources that will be needed in responding to large-scale spills. Specifically, the commenter stated, elements of the "detailed description" referenced in § 300.210(c)(3)(v) should be listed in the regulatory text and include unified command requirements, health/safety/training requirements, forward command post sites, public information resources, and interim and final waste disposal procedures.

Although EPA agrees that ACPs should provide for effective emergency response structures, the Area Committees will determine the specific details of that structure. The commenter's suggested changes are too prescriptive and therefore have not been incorporated into the final NCP. The Agency expects that all ACPs will be updated over time to reflect changing emergency response structures. It should also be noted that nothing in the NCP precludes the development of any response management system, including a unified command structure, at the area level.

One commenter argued that the NCP should, at a minimum, contain a detailed description of the boundaries of the ACPs, as well as their effective dates and procedures for obtaining a copy of each ACP. The commenter suggested that ACPs be incorporated by reference in the NCP and filed with the **Federal Register**.

Both area boundaries and ACPs are expected to change as the national response system evolves over time. The April 24, 1992 **Federal Register** notice that designates the initial areas does include area boundaries and states that any changes to these boundaries will be published in the **Federal Register**. ACPs are available for public inspection through the EPA regions and USCG districts. These regions and districts may be contacted by telephone for more information on area boundaries and ACPs. Most ACPs are also available through the National Technical Information Service (NTIS) for the cost of reproduction. For further information, NTIS may be contacted at: 5285 Port Royal Road, Springfield, VA 22161 or by telephone at 703–487–4655.

Finally, in § 300.210(c)(3), the word "may" has been added to qualify the statement that equipment lists are included in "other relevant emergency plans." This change has been made to more accurately reflect the content of those plans.

Fish and Wildlife and Sensitive Environments Plan (FWSEP) Comments

Two commenters recommended that NOAA develop a comprehensive set of national standards for Area Committees to use in developing the FWSEP Annexes. The Agency believes that national standards are inappropriate for meeting the intent of the OPA. The OPA specifically requires involvement of state and local officials in the development of area plans, in part to incorporate local conditions, concerns, and capabilities. National standards could restrain Area Committees from tailoring the FWSEPs to reflect their priorities and local conditions. As a consequence, general guidance, rather than standards, is more appropriate and useful to the Area Committees in carrying out their responsibilities.

One commenter was concerned about the potential for duplicative monitoring activities carried out under multiple plans such as the NCP, the NRDA plan, and the FWSEP, and wanted assurances that any monitoring under the FWSEP is closely coordinated with the other plans. The commenter also requested guidance covering the extent, frequency, and duration of monitoring.

EPA notes that any response monitoring, including that detailed in FWSEP Annexes to ACPs, will be developed as part of the ACP process under the supervision of the OSC. NRDA activities are primarily focused on data collection and injury assessment, not monitoring. However, any monitoring conducted as part of the NRDA process should be coordinated with the response activities to prevent duplication of effort and effective use of resources, as stated more generally in § 300.305(e) (formerly (d)). It should also be noted that the NCP does not address NRDA monitoring or assessment concerns. Further guidance is being prepared by trustee agencies on an ongoing basis to assist the Area Committees in identifying effective measures and procedures for monitoring the efficacy of removal activities and related environmental benefits. This guidance is focused on operational questions, not research and NRDA requirements.

One commenter was concerned about data for the FWSEPs and suggested that Area Committees should be required to analyze and review all existing data and not be permitted to generate requests for duplicative information and requirements for new fate and effects research. The commenter also called for guidance on collecting, interpreting, and applying data to ensure consistency in use of data and to avoid the kind of problems that occur when data collected for one purpose may be inappropriately used for other purposes.

The Agency expects that FWSEP development will initially consist of collecting existing information about natural and human-use resources in the area from local specialists. Based upon existing information, FWSEP development would proceed from identifying to prioritizing protection for sensitive environments, and then selecting appropriate cleanup strategies. There is no expectation that any research necessarily will be performed; this process is based upon analyzing *existing* information.

One commenter was concerned that the proposed language could be interpreted as allowing Area Committees to require companies to acquire equipment for protection, rescue, and rehabilitation of fish, wildlife, and habitat.

The intent of § 300.210(c)(4)(ii)(F) is to ensure that the ACP will identify what response capabilities will be needed to protect, rescue, and rehabilitate fish and wildlife resources and habitat and include a process for obtaining and using such resources in the event of a spill. To clarify that this is a planning function, the term "provide" in this section has been changed to "plan." Area Committees do not have the authority to require private companies to acquire specific response resources. The OSC, however, needs to know what resources will be needed to protect, rescue, and rehabilitate fish and wildlife resources and habitat in spill response and how such resources are to be obtained and used. He or she may require use of such resources by the responsible party during spill response.

This may include contracting with a federally permitted wildlife rescue and rehabilitation organization, for example. Such "additional resources" are called for in 40 CFR part 112, Oil Pollution Prevention. In Appendix F to part 112, for example, Section 1.7.1 requires non-transportation-related facility response plans to address, as part of the identification and description of response resources for small, medium, and worst case spills, additional contracted help and access to additional response equipment and experts.

Another commenter recommended that ACPs cover only discharges of oil and not releases of hazardous substances and that existing language should be revised to clarify this distinction. EPA does not, at this time, require ACPs to address hazardous substance releases. Therefore, the revisions recommended by the commenter are not necessary.

Nevertheless, planning for hazardous substance releases is already addressed in the area contingency planning process, because individual Area Committees will consider planning for such releases, as appropriate. Additionally, EPA has provided for LEPCs and SERCs to have input into the area contingency planning process.

The LEPC's primary responsibility is to develop an emergency response plan for potential chemical accidents. This plan must describe: (1) Emergency response procedures; (2) methods for determining the occurrence of a release and the probable affected area and population; and (3) community and industry emergency response equipment and facilities. SERCs are responsible for supervising and coordinating the activities of the LEPCs and for reviewing local emergency response plans for chemical accidents. Thus, the LEPCs' and SERCs' expertise in planning for response to chemical releases (including releases of hazardous substances) allows the Area Committees to effectively address hazardous substance planning issues, as necessary.

One commenter expressed concern about the burden on federal agency participants in developing ACPs, specifically the collection of fish and wildlife and sensitive environments information. The commenter requested clarification and specification of timeframes and expected level of effort. EPA notes that Area Committees, not facility owners, are responsible for identifying fish and wildlife resources and sensitive environments for inclusion in the ACP. However, until the geographic-specific annexes of the ACPs have been completed, the facility owners and operators remain responsible for ensuring protection of sensitive environments in their proximity for inclusion in their facility response plans. The guidance for determining and planning for these responsibilities on an interim basis is provided in a **Federal Register** notice published on March 29, 1994 (59 FR 14713) by the Department of Commerce (DOC)/NOAA. Ultimately, the Area Committee deliberations and their ACPs will provide the specific information on fish and wildlife and sensitive environments with which the facility plans must be consistent. Because the planning process should be kept as flexible as possible to allow for differences between areas, and because the area contingency planning process is iterative, it would not be appropriate for the NCP to dictate how the Area Committees should identify fish and wildlife resources and sensitive environments.

There were a number of comments regarding sensitive areas or environments. Two commenters suggested that such areas should be determined on the basis of ecological risk, noting that some areas identified as "sensitive" may not be ecologically sensitive, yet other areas which do not have a "sensitive" designation may be at risk ecologically. The commenters wanted Area Committees to consider ecological value, sensitivity to oil impact, and risk of exposure when designating sensitive areas.

The FWSEP section in the NCP was intended to provide broad, general guidance on fish and wildlife and sensitive areas. Area Committees will incorporate local conditions, concerns, and priorities into their designation and prioritization of sensitive areas. Additional guidance in the form of technical documents, such as NOAA's Shoreline Countermeasures Manual for Temperate and Tropical Coastal Environments and Guidelines for Developing Digital Environmental Sensitivity Indexes, have been distributed to many Area Committees. Further guidance is being prepared by trustee agencies on an ongoing basis.

Another commenter recommended including areas designated as sensitive under the Coastal Zone Management Act (CZMA) or state coastal management programs. EPA notes that CZMA-designated and/or state coastal management program areas are expected to be identified by the state representatives as part of development of the FWSEP Annex to the ACP.

One commenter believed that the current definition of sensitive areas was too vague and recommended that Area Committees be required to identify and delineate these areas on a map. This commenter also called for more specific guidance on defining "sensitive areas," giving as examples the need for a clear explanation of such terms as "wetland," "various state lands," and "biological resource area."

The definition of sensitive areas, as described in the NCP and in NOAA's **Federal Register** notice (59 FR 14713, March 29, 1994), are only broad in the sense that they are not prohibitive. The documents that are referenced for further information in that notice are cited only to the extent that they are considered for identification of sensitive areas and are not cited to limit response action selection, but rather to focus the deliberations on sensitive areas. National guidance has identified key components that should be considered when determining environments sensitive to oil impacts which should facilitate consistency in Area Committee approach.

However, it is important that the Area Committees determine what is important for their area, incorporating local factors and priorities. It is the Area Committees' responsibility to determine and rank sensitive environments within their jurisdiction for the purposes of protection priorities and cleanup measure selection *as related to spills.* This may or may not include areas specifically identified by other statutes as "sensitive" for other purposes. Although some Area Committees are making use of maps to delineate fish and wildlife and sensitive environments, it is not specified by statute. This implementation issue is left up to the Area Committees.

Yet another commenter urged that determinations of sensitive areas be extremely specific and have a clear scientific basis, and that each Area Committee develop a single prioritization list. The Agency restates that the guidance offered to the Area Committees is intentionally broad to allow the committees to incorporate local values and priorities (as per § 300.210(c)(4) (ii)(A)). "Wetlands" are referenced in the EPA final rule at 40 CFR part 112 as areas that may be "fish and wildlife and sensitive environments." Thus, Area Committees may identify in the ACP particular wetlands in their area as and wildlife and sensitive environments. Identification of sensitive areas, however, is only the first step; ranking areas to be protected is the second step, which will force discussion of those areas which can be reasonably expected to be protected in comparison to other areas of "special economic or

environmental importance that might be damaged by a discharge."

One commenter provided language and recommendations regarding preapproval for specific countermeasures or removal actions as provided in proposed § 300.210(c)(4)(ii)(D), stating that plans should: (1) require concurrence by EPA, state(s), and natural resource trustees; (2) address specific contexts in which the countermeasures should and should not be used; and (3) discuss certain factors such as potential sources and types of oil, sensitive areas, available product and storage locations, available equipment and trained operators, and means for monitoring application and effectiveness. The commenter also recommended expanding the characterization of "sensitive areas" to include areas of special economic or environmental importance—not just fish and wildlife resources or habitat.

The requirements for obtaining preapproval for use of specific dispersants and other chemical countermeasures is covered in Subpart J of the NCP. Repeating the state and EPA role in preapproval plans in the FWSEP is unnecessary. Language regarding trustee concurrence in preapproval plans for chemical countermeasures is included in § 300.210(c)(4)(ii)(D) to meet the intent of section 1011 of the OPA, that there shall be consultation with "the affected trustees * * * on the appropriate removal action to be taken in connection with any discharge of oil." Trustee concurrence is more appropriate than consultation during the contingency planning phase, when there is sufficient time to identify and resolve natural resource concerns. The requirement for concurrence during the advance planning phase will ensure trustee involvement in decisionmaking. This, in turn, should ensure that operations during a removal action can be carried out quickly and effectively because concerns that might otherwise slow the action will have been addressed in advance. Conditioning the consultation requirement by adding the term "appropriate," as requested by the commenter, would not meet this legal requirement.

Regarding the specific factors relating to the use of countermeasures that the commenter requested be addressed in the FWSEP, nearly all of the recommended language already appears in Subpart J, § 300.910(a); the rest is already in other parts of Subpart C and agency guidance. Again, it is not the intent of the FWSEP to repeat other sections of the NCP, in this case, Subpart J, although § 300.210(c)(4)(ii)(D) specifically references these Subpart J requirements. The FWSEP is a tool to focus the Area Committee on specific issues and offers flexible guidelines that will help protect fish and wildlife, their habitat, and sensitive environments during discharges and releases.

The clarification this commenter also requested regarding the characterization of "sensitive areas" is not necessary because § 300.210(c)(3)(i) already states that the ACP shall include these areas. Language in the preamble to the proposed rule offered several examples of economic and environmental areas that might be included in the annex to the ACP. The Area Committee has the information required to evaluate properly any areas considered for designation in the ACP. The NCP provides broad guidelines, so the Area Committee has the flexibility to evaluate and identify these potential areas of importance in the development of the ACP. This flexibility permits the Area Committee to create an area-specific plan that provides for "immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife resources and their habitat," in addition to any other areas of special economic or environmental importance which they have identified for inclusion in the annex to the ACP.

Two other commenters argued that state trustees, not just federal natural resource trustees, should be asked for concurrence on countermeasure approval. EPA notes that the state representative to the RRT, the body which has the responsibility for pre-approval for specific countermeasures, represents all the interests of the state and is the conduit for state concurrence.

One commenter suggested that proposed § 300.210(c)(4)(ii)(G) be amended to include the provision of "other related fish and wildlife permits or emergency permits to facilitate response related activities" as well as procedures regarding "all response and response training-related activities that could be construed to be a taking, or involving" the capture, transport, rehabilitation, or release of wildlife.

EPA notes that, as written, the referenced section covers the fish and wildlife permits necessary for response-related activities, as identified by the agencies responsible for overseeing possession and handling of fish and wildlife. This section calls for the ACP to "provide guidance on the implementation of law enforcement requirements included under current federal and state laws and corresponding regulations." Permits other than those covered in subparagraph (G) must be addressed on a case-by-case basis. Permits are issued for the purpose of handling and rehabilitating wildlife threatened or injured during a response, not to give preauthorization for the potential "taking" of wildlife during response activities or response-related training. Usually, natural resource law enforcement agents are on-scene or readily accessible for requests for other permits in the event of unusual response activities that might require authorization.

Finally, in § 300.210(c)(4)(ii)(F), EPA has indicated that planning for protection, rescue, and rehabilitation of fish and wildlife resources and habitat does not interfere with *other* OSC removal operations. The reason for adding the word "other" is to clarify that fish and wildlife planning activities are part of the OSC's removal operations.

Section 300.211—OPA Facility and Vessel Response Plans

See discussion under § 300.200.

Section 300.212—Area Response Drills

Seven commenters believed that the NCP should acknowledge and reference the proposed "National Preparedness for Response Exercise Program (NPREP or PREP)" and make sure that NCP language is consistent with these proposed guidelines. Two commenters stated it was imperative that the NCP not create any additional requirements with regard to exercises beyond those contained in PREP.

The Agency notes that the development of the PREP proposal creates a method for facility owners and operators and Area Committees to satisfy all OPA drill/exercise requirements. At the same time, the language in the NCP is merely attempting to reflect a new CWA requirement for periodic area response drills. EPA recognizes that PREP represents a comprehensive approach to response exercises and that compliance with the PREP guidelines to conduct drills will be considered adequate to meet the NCP requirements. However, although PREP represents one method for meeting the drill/exercise requirements in the OPA, it cannot replace the relevant NCP provisions because PREP is voluntary rather than mandatory.

One commenter believed that the cost of area exercises should be borne by the OSLTF. Currently, OSLTF funds are not available to pay for area exercises. When Congress established the OPA, it *authorized* the various agencies with responsibility for pollution

preparedness and response to spend funds to support participation in the national response system. Congress did not, however, *appropriate* the funds to do so. For the OSLTF to be used for exercises, Congress would have had to appropriate money for this specific use. In the absence of this appropriation, the various agencies are responsible for providing the funds from within their organizations.

Section 300.215—Title III Local Emergency Response Plans

Two commenters believed that this section should require consistency of Title III plans with the NCP, RCPs, ACPs, and state plans, indicating that it is critical for functions to be consistent at all levels of planning. EPA recognizes the importance of coordinating local emergency response plans developed by LEPCs and other contingency planning efforts. The current NCP requires that OSCs preparing plans coordinate with LEPCs. In addition, RRTs are responsible for providing regional consistency (§ 300.115(a)(2)).

OPA has added specified requirements for facilities to prepare contingency plans as well as for Area Committees, under the direction of an OSC, to prepare ACPs. The coordination requirements pursuant to the Superfund Amendments and Reauthorization Act Title III and those already in the NCP are now augmented by the need to include coordination with the many new plans being developed under OPA. RRTs are now responsible—through RCPs—to coordinate area planning (for example, to ensure that pipelines crossing through several areas are not subject to disparate requirements). Finally, the NRT—through the NCP—coordinates the entire national response system.

ACPs should be coordinated with and, to the extent possible, be consistent with LEPC plans and facility response plans under OPA. Of course, LEPC plans and ACPs should recognize the role of the federal government during emergency response, as described in the NCP.

Subpart D—Operational Response Phases for Oil Removal

Section 300.305—Phase II—Preliminary Assessment and Initiation of Action

Several commenters sought clarification of the role/responsibility of the responsible party to undertake a response action in the first instance. Some commenters thought the language in § 300.305(c) was misleading when it says the OSC *may allow* the responsible party to perform removal actions. Rather, these commenters suggest the responsible party *must* be required/given the opportunity to immediately undertake containment, control, and cleanup. One commenter noted that most responsible parties already have contingency plans in place and have the training and expertise necessary to respond immediately and effectively. The commenter also suggested that the final rule should be clear that if the OSC delegates to the responsible party the duty to respond to the discharge in accordance with the NCP, then the responsible party, as the agent of the OSC, should have the same authority as the OSC to access the spill site to conduct the removal without interference from other authorities.

As stated in the preamble to the proposed rule, the NCP had provided that the OSC must make reasonable efforts to have the responsible party take proper response actions. The proposed revision retained as an *option* the possibility of allowing the responsible party to take the lead where the OSC determines this approach will result in immediate and effective response action. The reason for this change is that under the amended CWA, it is clear that the OSC, rather than the responsible party, determines the appropriate course of action for response. Even with this change, however, the responsible party is not absolved from responsibility for taking whatever actions are necessary immediately upon discovery of a spill until such time as the OSC is notified and able to determine the appropriate course of action.

As to the commenter's concerns regarding the scope of authority of the responsible party when undertaking a response, the OSC does not "delegate" response authority to the responsible party. Rather, the OSC determines whether the responsible party is capable of carrying out fully effective response measures. If the OSC determines that such capability exists, he or she can permit responsible party cleanup to occur and simply provide surveillance over whatever actions are initiated. The responsible party is not the "agent" of the OSC, and EPA does not provide to the responsible party the authority granted to the OSC to access the site for response purposes.

One commenter suggested that the NCP needs to recognize that direction of responsible party contractors will occur through the responsible party. The commenter stated that those contractors are at financial risk if they take direction directly from the OSC, and filing a claim against the OSLTF is not an adequate remedy because of delays and uncertainty in recovering those costs.

EPA notes that OPA section 4201 clearly states that the President (delegated to the OSC) is given the authority to "direct or monitor all Federal, State, and private action to remove a discharge." It is the obligation of the responsible parties and their cleanup contractors to establish a contractual relationship that provides for appropriate rights and protection for both parties, including a cleanup scenario where the OSC directs all private party action. Also, ACPs and facility response plans may address aspects of this relationship and how it will work when the OSC directs the response; the NCP is not the appropriate place to address such relations.

Two commenters suggested that, contrary to proposed language in § 300.305(c), the OSC lacks authority to direct state and local agency actions, but rather should/must *coordinate* with these parties through the unified command system. However, the language to which the commenters objected, that the OSC "may direct or monitor all Federal, State, and private actions to remove a discharge" is taken directly from CWA section 311(c), as amended by the OPA. Thus, EPA disagrees that the OSC does not have the authority to direct state, local, or private actions.

Two commenters stated that when there is an immediate threat to the public health and safety, the local on-scene coordinator (fire chief, emergency manager) should serve as the incident commander. This is consistent with EPA's view of how the response management system should work. As noted in the preamble to the proposed rule, "the individual in charge of an incident command system is the senior official responding to the incident; for the national response system, this individual is the OSC." At some incidents there may be a period of time before which the OSC is in place to take charge of the response. In such cases, it is appropriate for the senior individual who is on site, such as the fire chief, to take charge (temporarily) as the incident commander. Of course, the OSC always retains the authority to choose to direct any portion of the spill response.

Another commenter suggested that inclusion of the unified command concept would clarify that a state is not at liberty to impose more stringent measures when a federal OSC is directing the response. EPA disagrees with the commenter's view that a state could initiate more stringent measures than the OSC when the latter is directing the response. When directing a response, the OSC is more than managing the response. He or she has

specific legal authority to guide the activities of all parties responding to a discharge, and all actions would have to be authorized or approved by the OSC.

In addition, under OPA section 1011, in all cases it is the President (delegated to the OSC) in consultation with governors of affected states who determines when removal shall be considered complete. At the same time, however, section 1011 states that a determination that federal removal action is complete "shall not preclude additional removal actions under applicable State law."

Numerous commenters thought the term "direct" needed greater explanation or definition. It was suggested that doing so would clarify the flexibility (range of authority) of the OSC in directing a response and the differences between "directing" actions in the case of substantial threats and other cleanup scenarios. One commenter suggested that discussion of the OSC's choice to monitor a response needed expansion, specifically to indicate that states or persons other than the responsible party could be permitted to undertake a removal action (provided it would be immediate and effective).

The emphasis during oil spill response is on coordination and cooperation, rather than on a more rigid system of command and control. The OSC, the state/local government representatives, and the responsible party all are involved with varying degrees of responsibility, regardless of the size or severity of the incident. The OSC in every case retains the authority to direct the spill response, and must direct responses to spills that pose a substantial threat to the public health or welfare of the United States. In many situations, however, the OSC will choose to monitor the actions of the responsible party and/or state/local governments and provide support and advice where appropriate. The response management structure does not and cannot attempt to prescribe a specific item-by-item functional description of where particular organizations or individuals fit within a single response structure for a given response. Developing, adopting, and implementing a response management system, such as a unified command system, is the responsibility of the OSC and the Area Committee, through the ACP.

One commenter suggested that the OSC should expeditiously declare the government's *elective* decision to direct a response, not only declare it in those cases where the OSC is required to direct (as provided in proposed § 300.305(c)(2)). The commenter argued that participants in a response need to clearly understand the nature of the federal role and that this change would help minimize confusion over who is the ultimate decisionmaker, avoid ambiguity in planning and implementation of response strategies, and foster consistency in decisionmaking.

EPA does not agree with this commenter's proposal because it could unnecessarily constrain the flexibility of the OSC. In those cases where OSC direction is discretionary, there may be expectations that by not declaring expeditiously that he or she will direct the response, the OSC has foregone any opportunity to ever do so. EPA believes that it would be counterproductive to put pressures on OSCs to make decisions prematurely or to create expectations among other parties that a situation is not subject to change, regardless of future events.

One commenter suggested that trustees and others are increasingly involved in the response process, including decisionmaking, and suggested that this involvement decreases the timeliness and effectiveness of response efforts. Related to this, the commenter cites legal concerns that often polarize government and responsible party responders during major spills, and suggests that separating the damage assessment phase in both time and agency would promote cooperation and free exchange of information.

With regard to the commenter's concern over an increase in the number of entities with actual or perceived roles in decisionmaking, the Agency notes that section 1011 of the OPA requires consultation with affected trustees on the appropriate removal action to be taken in connection with any discharge of oil. EPA's intention is that this consultation will take place in large part during the area contingency planning process. In terms of information exchange among parties involved in a response, EPA wholeheartedly supports the notion that there should be nothing to impede cooperation and free exchange of information to expedite the response activities. Information should, to the maximum extent possible, flow freely between those agencies involved in the response and those involved in the damage assessment. In addition, it is important that the activities of the two groups be closely coordinated, as intended by §§ 300.305(e) (formerly (d)) and 300.615(c)(3)(ii). In today's final rule, language is added to these two sections to reinforce the point that information collected for damage assessment which is supportive of the response phase should be made immediately available to the OSC to support his or her decisions. This information flow will most likely occur through the SSC who serves on the OSC's staff as the interface with the trustees.

Two commenters suggested that although proposed § 300.305(d) (now (e)) indicates the lead administrative trustee will act on behalf of all trustees, this is not necessarily the case nor is it acceptable to the states under all conditions. Related to this, one commenter stated that the preamble language concerning the USCG's future regulations that will detail the lead administrative trustee's authority to access federal response resources on behalf of all trustees is confusing. The commenter suggested that, as written, it is unclear whether this statement refers to funding for initiation of damage assessments or trustee access to OSC airplanes, vessels, etc. The commenter believed the intent was to cover the former and recommends that language be added to the NCP to that effect. EPA believes the commenter is correct. The regulations in question will address trustee access to the OSLTF. It should be noted, however, that there may be situations where the OSC provides non-financial resources to trustees to carry out their NRDA and related responsibilities. The language of § 300.305(e) (formerly (d)) is being revised to clarify that the "response resources" referred to are non-monetary resources, i.e. personnel and equipment. This is the only action taken by the lead administrative trustee on behalf of all trustees that is called for in this section of the rule. Providing a single point of contact between the trustees involved in initiation and the OSC should facilitate trustee access to response equipment and personnel by ensuring that all trustee needs are communicated to the OSC in a coordinated manner.

One commenter stated that the proposed NCP is structured in a way that does not ensure integration with facility response plans. EPA believes that the commenter's concern about integrating facility planning efforts are misdirected towards the NCP. It is the area contingency planning process where preparedness planning on the part of specific facilities within the area should be accounted for. The ACPs can then be implemented in such a way as to take advantage of all available resources.

Section 300.310—Phase III—Containment, Countermeasures, Cleanup, and Disposal

One commenter urged that the NCP expressly recognize OSC authority to permit the return of oil or oily water incidental to mechanical recovery operations back into the response area. EPA believes this practice is currently recognized as a routine and necessary part of response operations under certain circumstances. The appropriate role of such action should be addressed as part of the area contingency planning process. It would be inappropriate for the NCP to address this in any sort of across-the-board manner.

The same commenter believed that the NCP should clearly identify the requirements that apply to waste management in an oil spill response. EPA believes this issue should be left to RRT and ACP guidelines and other statutes and regulations. These requirements may change over time and are not appropriate for inclusion in the NCP. Section 300.310(c) has been expanded from the 1990 NCP to provide guidance on how RRT and ACP guidelines might address disposal plans for oil spill response and certain rule language changes are being made in today's final rule to clarify some of the specific issues RRTs and Area Committees may wish to address.

Section 300.317—National Response Priorities

Two commenters strongly supported the adoption of the following as national response priorities: (1) protect human life and safety; (2) minimize environmental impacts; and (3) minimize social and economic impacts. Three advantages are cited for these proposed priorities: first, area planners would necessarily consider the ecological, social, and economic consequences of their recommendations in their plans; second, these priorities would provide a framework for the OSC to prioritize limited resources during an emergency; and finally, spill response decisionmaking would be streamlined because many decisions could be made during the contingency planning process. These commenters argued that existing priorities do not give involved parties adequate guidance regarding the protection of environmental resources. The commenters did not find fault with the first two priorities proposed in the NCP, but argued that the third one (coordinated use of containment and removal efforts) does not help responders allocate resources when there are conflicts between aesthetic and ecological goals. They emphasized that setting priorities that put ecologically sensitive and important areas first is essential. One commenter suggested supplementing the priorities proposed in the NCP with those normally followed by response contractors: (1) provide for health and safety of your workers and the public; (2) stay in compliance with state and federal regulations, including minimizing exposure to liability; and (3) protect the environment and clean up or remediate spills and releases.

As noted in § 300.317(e), "[t]he priorities set forth in this section are broad in nature, and should not be interpreted to preclude the consideration of other priorities that may arise on a site-specific basis." The preamble to the proposed revisions notes that the response priorities "are not intended to restrict the discretion of the OSC in directing or monitoring responses to oil discharges." The response priorities noted by the first two commenters reflect important concerns that should be considered under the appropriate circumstances. EPA believes it is in the area contingency planning process that additional priorities should be established for subsequent application on a site-specific basis. Also, EPA believes the specific priorities cited by the last commenter are actually more appropriate for facility and vessel response plans than for the NCP or even ACPs.

Two commenters argued for inclusion in the NCP of language comparable to language in the International Convention for the Prevention of Pollution from Ships (MARPOL) and USCG MARPOL regulations. Specifically, the suggested language indicates that jettisoning oil or hazardous substances is a viable option for ship masters and salvagers, if doing so may decrease the risk of loss of life or serious injuries, prevent the discharge of greater amounts of oil or hazardous substances, or prevent more serious environmental consequences than the jettison itself. Related to this, one commenter suggested that the NCP needs to be clarified to indicate that salvagers are "persons" under the CWA and not liable for removal costs or damages that result from certain actions taken.

EPA does not believe there is any reason that the term "person" would be interpreted to exclude salvagers. It would be superfluous to include such language and would encourage requests from others engaged in spill response that the regulation afford them protection as well.

The OSC currently has authority to permit jettisoning to save the vessel or its crew or to prevent more serious environmental damage. Moreover, the discharge of oil or oily mixture into the navigable waters for purposes of securing the safety of a ship or saving life at sea is already authorized under Regulation 11 of the MARPOL protocol, current U.S. law, and USCG regulations (33 CFR part 151).

Section 300.320—General Pattern of Response

One commenter suggested that § 300.320(a)(2)(i) appears to require notification of trustees only in the event of an actual or potential major discharge, which is contrary to the requirements of § 300.305(d). EPA notes that, although § 300.320(a)(2)(i) does not say that the OSC needs to notify the trustees only of major discharges, the language may be misleading. It has been revised to reflect the commenter's concern.

Several commenters expressed concern with § 300.320(a)(3)(i), which provides the standard that the OSC will use to determine whether the responsible party is conducting removal actions "properly." First, they argue that it describes a standard that is unrealistic and overly broad; responsible parties should only be responsible for applying available resources in a manner designed to effectively and immediately remove or mitigate the spill to the maximum extent practicable. Second, the commenters believe that a decision to use Federal resources should not cause a responsible party's efforts to be necessarily deemed "improper." They argue that the OPA intended private and government resources to work together and the government may have some resources simply not available to private parties. The commenters therefore concluded that the provision in question creates a disincentive to the use of these (government) resources.

Section 311(c)(1) of the revised CWA requires the President to "ensure effective and immediate removal of a discharge" in accordance with the NCP. This authority has since been delegated to the OSC. Because the OSC is required to ensure effective and immediate removal of a discharge, he or she must use this test as the standard for determining whether the responsible party removal action is being done properly.

In addition, the authority given by the OPA to the OSC for setting the course of response action has repercussions for the determination of whether a private party spill response is "proper." Under § 300.320(a)(3)(i) of the 1990 NCP, private party removal efforts were deemed improper "to the extent that

Federal efforts were necessary to minimize further or mitigate threats to public health and welfare and the environment." However, the Agency understands that this section of the NCP may unnecessarily restrict the OSC's ability to determine whether a private party response is "proper," given the more flexible response approach detailed in the OPA. In certain instances, the Federal Government may have response resources that are not available or promptly available from other sources—the USCG's special equipment for removal and salvage operations, for example—that could aid in spill response. The Agency agrees that the use of these resources should not *necessarily* determine that a responsible party response is "improper." EPA has therefore modified the language of § 300.320(a)(3)(i). Section 300.320(a)(3)(ii) also has been modified to indicate that, if the OSC supplements responsible party resources with government or other private resources, the responsible party response will not be deemed improper unless specifically declared so by the OSC. The OSC may declare that a private party response is "improper" if he or she determines that the cleanup is not fully sufficient to effectively and immediately remove threats to the public health and welfare and the environment.

One commenter suggested that the NCP (in conjunction with other regulations, see, for example, 58 FR 7425, 33 CFR 155.1020 that discusses worst case, maximum most probable, and average most probable discharges) contains a multitude of discharge classifications with attendant consequences for each category that is overly complex, confusing, and unnecessary. With regard to the NCP, the commenter cites discharges classified by size (major, medium, and minor), by category (worst case discharge and spills of national significance (SONS)), and by nature of the threat (those discharges posing a "substantial" threat). The commenter goes on to suggest that it is more important at the time of a spill to characterize the spill by the level of desired *response* rather than the actual amount of oil that is in the water, and that rapidly determining the amount of oil spilled may not be possible in many cases. The commenter recommends deletion of most discharge classifications that do not have a statutory basis. In particular, the commenter suggests that the major-medium-minor distinction for classifying spills has outlived its usefulness, and that operational demands of the response should dictate what level of coordination occurs and what resources are requested by the OSC.

The Agency notes that the proposed revisions to the NCP built upon the spill classification system in place prior to passage of the OPA. New statutory requirements, as well as SONS were added. EPA believes each of the different elements of this revised system are important to different parties and for different purposes. Taken as a whole, the revised system provides a combination of approaches to developing the appropriate spill response. It retains approaches that are known and understood in the response community, permits existing tracking and recordkeeping mechanisms to remain in effect, and effectively implements new OPA mandates. In large part, this system supports planning and other non-response activities. The classification system itself does not pre-determine the full range of actions that could be taken in response to a spill. No further revisions are being made at this time.

One commenter stated that the OSC should be required to designate the response area as soon as possible after an oil spill event to clearly define the limits of the response area because the vessel response plan requirements state that the OSC will designate as the response area that area in which spill response activities are occurring. EPA believes that implementation of this commenter's recommendation would unnecessarily constrain decisionmaking by the OSC during the full course of an incident. As conditions change, the response area may change. In addition, the commenter's concerns presumably revolve around implementation of vessel and facility response plans and carrying out activities in "the response area" versus outside the area. This issue should be discussed with the OSC on a case-by-case basis and is not appropriate for inclusion in the NCP.

One commenter stated that § 300.320, which suggests that notification of states is a function of the size of a spill, is inconsistent with § 300.300(d) which requires that the OSC ensure that the appropriate agency of a state affected by a spill be notified. EPA has revised this section to make it clearly consistent with § 300.300(d).

Section 300.322—Response to Substantial Threats to Public Health or Welfare of the United States

In order to clarify the latitude given to OSCs to determine which spills pose "substantial threats," several commenters recommended that the sentence found in the preamble, "most discharges are not expected to be identified by the OSCs as substantial threats to public health or welfare of the United States," be added to the rule language of this section. EPA believes that the language provided on substantial threat discharges in the preamble to the proposed rule represents adequate guidance concerning the likely frequency of such discharges. The Agency does not believe that it would be appropriate to limit, through a change in the rule language, the discretionary authority of the OSC to determine whether a discharge would result in a substantial threat to the public health or welfare of the United States.

Section 300.323—Spills of National Significance

One commenter suggested that the intent of the preamble (that SONS will be extremely infrequent), should be added to the rule language. EPA believes that the language provided on SONS in the preamble to the proposed rule represents adequate guidance concerning the frequency of such spills. The Agency does not believe that it would be appropriate to limit, through a change in the rule language, the discretionary authority of the Administrator of EPA and the Commandant of the USCG to determine whether a discharge would result in a SONS.

One commenter stated that the SONS classification is not needed at all, arguing that a properly implemented incident command system is able to provide response to any size spill. The commenter was concerned that the designation of spills as SONS may be influenced by the media or politics.

EPA believes that, during certain response situations involving spills of extreme severity or size that have the potential to greatly affect the public health or welfare of the United States, extraordinary coordination of federal, state, local, and responsible party resources may be required for containment and cleanup. In situations such as these, coordinating resources at the national level and managing relations among various government officials and the public requires significant time and effort. This may divert attention away from the actions necessary to respond to the spill itself, which, in the case of a SONS, would likely be complicated. Furthermore, while OSCs are thoroughly familiar with their regions or districts, they may be less knowledgeable about areas outside their regions or districts. The OSC in

charge of responding to a spill that affects several regions, districts, or countries may benefit from communication assistance to identify and coordinate resources, evaluate site-specific conditions, and assess threats to the environment.

For these reasons, EPA developed a "strategic management" framework designed to assist the OSC in dealing with resource administration, government coordination, public relations, and communication for SONS, codified in § 300.323. As an important part of the national response system, the SONS response strategies ensure that the government will be able to respond to spills of any size or severity. The designation of a SONS will, therefore, depend on the presence of exigent circumstances.

With regard to § 300.323(b), two commenters requested clarification to indicate that the person named to assist the OSC is not limited to the few roles specified and that this individual's duties will be directed by (and not supersede the authority of) the OSC. One commenter also suggested that the coordination at the national level discussed in this section would best be accomplished through the incident command system, which will serve to maintain the integrity of the local command structure as the incident escalates.

EPA reiterates that the "assistance" provided by a designated senior EPA official in support of the OSC within the SONS response framework is intended to relieve the OSC of certain communication and coordination burdens associated with directing response efforts. If a spill is designated as a SONS, issues of communication and coordination quickly take on importance at the national level. However, this designated senior agency official is not subordinate to the OSC. This official will simply fill the role of the OSC for specific, limited activities related to communications and coordination, as detailed in § 300.323(b). EPA believes this approach reflects historical practices.

Section 300.324—Response to Worst Case Discharges

Several commenters strongly suggested that this section needs to recognize there can be many "worst case" discharges from small facilities or vessels where implementation of the requirements of this provision would not be justified or otherwise appropriate. Two commenters suggested that paragraph (a) also include a requirement that the discharge pose a substantial threat to public health or welfare of the United States before the measures for responding to a worst case discharge would be triggered. They believe this would provide the OSC with additional latitude to activate only those measures most appropriate to the circumstances. Alternatively, one commenter suggested that full implementation of the ACP worst case provisions would not be necessary for all worst case spills; another suggest deleting the requirement to notify and use the NSFCC.

EPA notes that CWA section 311(d), as amended by the OPA, requires the NCP to include "procedures and standards for removing a worst case discharge of oil and for mitigating or preventing a substantial threat of such a discharge." CWA section 311(j), as amended by the OPA, requires Area Committees to prepare an ACP for their area that, when implemented in conjunction with the NCP, will be adequate to remove a worst case discharge and to mitigate or prevent a substantial threat of such a discharge. CWA section 311(j) also requires that the National Response Unit (i.e., the NSFCC) shall coordinate use of private and public personnel and equipment to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge. Once the OSC has determined that an oil spill is a "worst case discharge" the OPA mandate concerning such discharges must be followed. Because §§ 300.324(a)(1) and (3) and 300.324(b) reflect the requirement of the OPA worst case discharge-related provisions, they must be included in the NCP.

However, EPA recognizes that proposed § 300.324 has created some confusion regarding the implementation of the worst case discharge provisions of the ACP. These provisions are activated only when the OSC has determined that a discharge is a worst case discharge, as specified in the ACP. Oil spills that meet the definition of worst case discharge specified in vessel and facility response plans, but not the ACP, would not require activation of the worst case discharge provisions of the ACP. In addition, the OSC is required to notify the NSFCC only of ACP-defined worst case discharges. The rule language in § 300.324 of the NCP has been revised to reflect these clarifications.

Two commenters suggested deletion of paragraph (a)(2); they asserted that the OSC should not have to require the responsible party to implement their response plan, because it would be automatically initiated by the responsible party without direction from the OSC. EPA agrees that the responsible party is required to automatically initiate its response plan without direction from the OSC. However, EPA is restating this requirement in § 300.324(a)(2) for clarification purposes.

Section 300.335—Funding

One commenter noted that the preamble to the proposed rule states that the provisions of § 300.320(b)(3)(iii) are addressed in § 300.335. However, the commenter noted that former § 300.320(b)(3)(iii) addresses the actions an OSC is to take if there is a minor discharge and that provision is not addressed in the proposed § 300.335, which deals with OSLTF funding. The Agency recognizes that the commenter is correct; the reference to § 300.335 in the preamble to the proposed rule was erroneous. The correct reference is § 300.305.

One commenter noted that section 1004 of the OPA provides limitations to liability for discharges of oil and stated that although § 300.335 of the proposed NCP addresses funding of removal actions, it does not reference the liability limitations described in the OPA. The commenter recommended that a reference to these liability limitations be included in the revised NCP. EPA does not consider the details of OPA liability limitations to be relevant to the funding discussion in § 300.335. The purpose of § 300.335 is to discuss various scenarios for federal funding of oil spill response activities. Therefore, the recommended change is inappropriate.

One commenter stated that the preamble notes that the NCP provides that "funding of a response to a discharge from a federally owned, operated, or supervised vessel is the responsibility of the owning, operating, or supervising agency." The commenter believed it would be helpful to define or explain "supervised," or add a reference to where such explanation may be found. The commenter also noted that the NCP incorporates the OPA definition of "responsible party," which excludes federal agencies, states, municipalities, commissions, or political subdivisions of a state "that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit." The commenter suggested that if "supervised" refers to facilities excluded in the OPA definition, it should be deleted from the NCP.

The commenter points out an apparent contradiction between §§ 300.5 and 300.335(e), wherein an owner appears to be liable for funding, but may not be a "responsible party" under some circumstances. To harmonize these two

provisions, EPA is revising § 300.335(e) by adding to the end thereof "if it is a responsible party." Thus, an owner will be liable if that owner also falls within the definition of "responsible party." This revision clarifies that if a vessel or facility is "supervised" by an agency that is excluded from the definition of responsible party, the vessel or facility would not be liable for funding.

In addition, EPA has deleted subparagraph (f)(1) which contained an inaccurate statement that EPA may provide funds to begin timely discharge removal actions. In fact, EPA has no funding to initiate oil removal.

Subpart E—Hazardous Substance Response

Section 300.410—Removal Site Evaluation

One commenter noted that proposed § 300.410(e)(1) states that "as part of the evaluation under this section, the OSC shall determine whether a release governed by CWA section 311(c)(2) has occurred." The commenter suggested that this provision be revised to read "CWA section 311(c)(1), as amended by OPA section 4201(a)." EPA agrees and has made this change in the final rule.

Section 300.415—Removal Action

One commenter stated that the citation to CWA section 311(c)(1)(A) in § 300.415(c)(1) is incorrect and should be changed to CWA section 311(c)(1), as amended by OPA section 4201(a). EPA agrees and has made this change in the final rule.

Subpart G—Trustees for Natural Resources

Section 300.600—Designation of Federal Trustees

Two commenters asked that the reference in the proposed rule preamble to the trustees' responsibilities for "mitigation and assessment of damage" be changed to read "mitigation of injuries and assessment of damage." One of these commenters argued that the suggested text would be more accurate because "damages" is a term of art that refers to the monetary value of injury or lost use. Two commenters also argued that the word "preplanning" should be removed from that same discussion that reads "preplanning and coordination for both response and damage assessment activities are specifically required * * *" because there is no statutory requirement for preplanning for damage assessment activities.

EPA agrees that the cited language is not completely accurate and suggests the following as a better statement of trustee responsibilities: Each trustee has responsibilities for protection of resources; assessment of damage; and restoration, rehabilitation, replacement, or acquisition of resources equivalent to those affected. In these roles, trustees provide advice to the OSC on environmental issues, including appropriate removal countermeasures, that should be considered in the ACP; provide timely recommendations to the OSC during an incident for the application of various removal countermeasures; may initiate a preliminary survey of the area affected by a discharge to determine if trust resources are, or potentially may be, affected; and carry out a damage assessment of the area in order to recover monies to restore, rehabilitate, replace, or acquire equivalent natural resources. Preplanning and coordination for damage assessment activities are strongly encouraged at the regional and area levels, both during the area and regional plan preparation and during specific incidents when coordination must be with the predesignated OSC.

One commenter, noting the phrase "managed or controlled" in § 300.600(a), suggested that the word "protection" in the second sentence of § 300.600(b)(1) should be changed to "control." EPA agrees and has made the change in today's final rule.

The same commenter claimed the use of "most" to modify "anadromous fish" in § 300.600(b)(1) is misleading and inaccurate. EPA agrees and has made this change as well as a conforming change in § 300.600(b)(2) to delete "certain" before "anadromous fish" in the second sentence to more accurately reflect the trusteeship of anadromous fish.

In addition to these changes made in response to public comments, § 300.600 has been further revised to clarify that trusteeship extends to the ecosystems supporting specific natural resources, and that habitat is included as part of the ecosystem. This was recognized to a degree by the current language of § 300.600(b)(1), referring to particular "examples" of ecosystems and habitats. The revised language clarifies that the supporting ecosystem concept applies generally, and was not intended to refer solely to the specific example of marine fishery resources. In addition, the revised language reflects that trusteeship over natural resources also extends over migratory species and their supporting ecosystems throughout their range within the sovereign jurisdiction of the United States, states, or tribes.

Section 300.605—State Trustees

One commenter requested that the word "may" in the provision reading "The EPA Administrator or USCG Commandant or their designee may appoint the state lead trustee as a member of the Area Committee," be replaced by the word "shall." The commenter stated that this change would clarify that the lead trustee designated by the governors shall automatically be appointed to the Area Committee.

Membership on the Area Committee is an issue within the discretion of EPA and the USCG. EPA and USCG wish to retain this discretion and not commit to a membership decision, in advance, in all cases. The Agency expects, however, that the decision regarding membership of the state lead trustee will be made by EPA or the USCG in consultation with state representatives on the Area Committee.

For consistency with revised § 300.600, the phrase "including their supporting ecosystems" has been added to modify the term "natural resources."

Section 300.610—Indian Tribes

One commenter asked for an explanation of the conditional language regarding "trust restrictions on alienation" of natural resources. The commenter also asked EPA to clarify whether Indian tribes are voting members of the RRT. In addition, the commenter asked whether Indian tribes are considered "participating agencies" under § 300.155 to determine if Indian tribes must clear their public statements through the federal OSC's news office.

With regard to the language regarding "trust restrictions," this term refers to land owned by an individual Indian, which has a restricted title. That is, the land cannot be sold without the permission of the government, generally the DOI.

Regarding the commenter's other questions about Indian tribes, § 300.305 specifically defines "states" to include Indian tribes for purposes of the NCP, unless otherwise noted. Section 300.180(b) explains that Indian tribes have the opportunity to participate as part of the response structure, as provided in the ACP. Indian tribe representatives also may participate fully in all activities of the appropriate RRT.

For consistency with revised § 300.600, the phrase "including their supporting ecosystems" has been added to modify the term "natural resources."

Section 300.615—Responsibilities of Trustees

Several comments concerned the procedures governing NRDAs. One commenter argued that response management/direction and damage assessment should be considered separate functions, performed by separate agencies, because of potential conflicts of interest within agencies and among individuals in those agencies. The commenter suggested reinforcing this division by separating, in time, spill response from NRDA activities, just as remediation and restoration activities are separated from removal action under CERCLA. The commenter also stated that agencies or individuals responsible for damage assessments should not be able to benefit from damage awards, either through a monetary or job security incentive. The commenter argued that such benefits were incurred by certain agencies during the Exxon Valdez spill. The commenter suggested that the incentive for such benefits should be removed by clearly defining the mission of government agencies responding to spills (i.e., to minimize the ecological impact of the spill) and by ensuring that agencies with responsibilities for spill response share information and cooperate fully with all parties responding to a spill. Finally, the commenter argued that monies designated for implementing the restoration plan should not be used for purposes unrelated to restoration, such as funding a research institute or purchasing land.

Spill response and damage assessments are separate functions, performed by separate agencies. At the federal level, only the USCG and EPA are tasked with response management and direction, while only the natural resource agencies (DOI, DOC/NOAA, U.S. Department of Agriculture, Department of Energy, and Department of Defense) are responsible for NRDAs. Natural resource trustees also assist the OSC in determining response priorities and strategies. This role was reinforced in OPA section 1011, which requires the President to consult with the trustees on removal actions. The trustees advise the OSC, who retains final decisionmaking authority on response actions. Both the trustees and the OSC agencies have the same basic mission—protection of the environment. By advising the OSC on response, trustees may be able to avoid or reduce the level of injury to natural resources from a spill.

Entirely separating these activities in time is not possible. The preamble to the DOC proposed rule on NRDAs (59 FR 1062, January 7, 1994) explains that the first phase of NRDA activities, called preassessment activities, is likely to be conducted simultaneously with the OSC-coordinated response activities. Some information needed for NRDA is ephemeral and/or perishable and must be gathered quickly, before it disappears. Also, conducting these activities simultaneously is generally more cost-effective than conducting them separately. Both activities may involve gathering the same or similar information. If, for example, an OSC or responsible party is collecting samples, those samples may be shared with the trustee(s), if all parties agree. Trustees may need to collect some data themselves to accomplish their NRDA responsibilities.

Information should, to the maximum extent possible, flow freely between those agencies involved in the response and those involved in the damage assessment. In addition, it is important that the activities of the two groups be closely coordinated, as is the intent of § 300.615(c)(3)(ii). However, EPA has added language to this section to reinforce that information supportive of the response phase, although collected for damage assessment, should be made available immediately to the OSC to support his or her decisions. This information flow will most likely be through the SSC who, as part of the OSC's staff, serves as the interface with the lead administrative trustee for the OSC.

With regard to the use of damage awards, for spills occurring after August 1990, the use of sums recovered as a result of a damage assessment conducted under the NOAA NRDA rule is governed by section 1006(f) of OPA and includes NRDA and development and implementation of a restoration plan. Such monies cannot be used for ongoing funding of base program costs or for activities other than assessment and "the restoration, rehabilitation, replacement, or acquisition of the equivalent, of natural resources." The budgets of natural resource trustee agencies do not include funding from natural resource damage settlements or awards as part of their program operations.

The same commenter said that trustee agencies should define their NRDA data needs in advance of a spill so that data required by the trustees could be collected during the spill response without directly involving the trustees. The commenter also argued that information gathered about a spill should be shared among the government agencies, responsible party, and contractors, so that response efforts may be launched, coordinated, and made more effective based on that information.

This point is addressed in the proposed NRDA rule (59 FR 1062, January 7, 1994). The NCP is not the appropriate rule to address this issue. The proposed NRDA rule strongly encourages federal, state, tribal, and foreign trustees to develop prespill plans at the local area or regional level. Suggested prespill activities include identifying sources of information for background data, designing a general approach and protocols for data collection and analysis, and establishing a centralized data management system for NRDA data. The proposed rule also encourages information gathering in the most effective and efficient way possible. General information needs can be worked out in advance, but each spill is different and thus has specific information needs.

Another commenter noted that the proposed NCP does not make clear the role of the responsible party in assessing natural resource damages and does not describe the duties of the trustees with respect to the responsible party. The commenter suggested that the final rule explicitly authorize trustees, under certain circumstances, to delegate the authority to conduct the NRDA to the responsible party. Under such circumstances the natural resource trustee would retain final decisionmaking and approval authority. The commenter noted that while the proposed revisions to the NCP provide that natural resource trustees may follow the procedures outlined in the DOI regulations governing NRDAs, which support this approach, the NCP should explicitly authorize the trustees to delegate the authority to carry out the assessment to the responsible party.

The role of the responsible party in NRDA for oil spills is addressed in the proposed NRDA rule. The NCP covers spill preparedness and response, not damage assessment and these comments are, therefore, beyond the scope of this rulemaking. However, it should be noted that the NCP does not impose any of its own restrictions on the relationship between the trustees and the responsible parties.

One commenter stated that the NCP does not include requirements concerning the coordination of damage assessment or restoration activities, presentation of claims, or settlement negotiations between the state representative and the OSC or RRT. The commenter argued that the lack of such requirements does not support the OPA section 1006 provision which states that liability for natural resource damages "shall be (1) to the United States

Government * * * (2) to any State * * *." The commenter further argued that without a single lead trustee for the state to prepare and pursue its natural resource damage claim, settlement negotiations would be cumbersome and several agencies within the state may duplicate the damage assessment process. To avoid these difficulties, the commenter suggested that § 300.615 be amended by adding a new subparagraph (c)(iv) which would read, "Liability for natural resource damage shall be to the United States government, any State, any Indian tribe, and to the government of a foreign country and claims asserting such liability shall be presented and filed by the United States government, any State, and Indian tribe, or the government of a foreign country."

The commenter has primarily raised NRDA issues, which are being addressed by the proposed NRDA rule. The NCP covers spill preparedness and response, not damage assessment, and these issues are, therefore, beyond the scope of this rulemaking.

However, EPA would like to clarify the roles of the state during the response phase. The state may serve in three roles: (1) as a natural resource trustee performing damage assessment during response operations; (2) as a natural resource manager for spill response activities (such as wildlife rehabilitation) undertaken under the OSC's response structure; and (3) as a responder as part of the response management structure. The designation of a single lead state trustee for damage assessment is outside the scope of these NCP revisions since this rule does not address NRDA issues. A lead administrative trustee is designated on an incident-by-incident basis to serve as the interface with the OSC on damage assessment activities and to coordinate natural resource trustee activities, state, federal, and tribal. This may be a state trustee. For spill response, the state participates as part of the response management structure, along with a representative of the responsible party and the OSC.

Concerns expressed by the commenter regarding the potential for multiple entities within a state asserting control over the same resources, double recovery, and other potential conflicts within the state in implementing its damage assessment responsibilities are most appropriately addressed in the ongoing NRDA rulemaking.

One commenter suggested the reference to the OPA in § 300.615(c)(2)(i) should be to section 1006(c) rather than 1006(e). EPA agrees and has made this change.

Finally, one commenter suggested corrections in the language to § 300.615(c)(3)(i) and (iii) to eliminate the reference to a lead administrative trustee role in the former and to conform to a USCG proposed rule relating to access to the OSLTF in the latter. EPA agrees and has made these changes.

Subpart H—Participation by Other Persons

Section 300.700—Activities by Other Persons

Two comments were received on this subpart. One commenter suggested the NCP should address procedures for response resources to switch from private to government funding, and how government funding may supplement private resources.

Federal procurement laws address the requirements for contracting for goods and services, even under the conditions described by the commenter. The OSC has contracting services available as part of the federal response organization and no further discussion of this issue is necessary in the NCP. The OSC has full access to funding to supplement private response resources, however, the federal procurement laws must still be followed if federal funding is to be used. These requirements are adequately addressed in the federal procurement regulations and directives and no further discussion of funding details in the NCP is considered necessary.

The other commenter recommended that any contractor responding to a spill at the request of an OSC be guaranteed payment out of the OSLTF, and further, if a spiller defaults on payment to a cleanup contractor it hired, the contractor should be guaranteed payment out of the OSLTF.

Contractors responding to a spill at the request of the OSC do so under the provisions of federal laws that address the procurement of goods and services. Anyone can submit a claim for uncompensated removal costs; however, no one can guarantee full payment from the OSLTF. While a contractor could expect reasonable reimbursement for uncompensated costs, no assurances can be provided that the full benefits of a contract negotiated between two private entities would be fully reimbursable. No change to the NCP is necessary or appropriate.

Subpart J—Use of Dispersants and Other Chemicals

Section 300.900—General

One commenter recommended that EPA defer promulgating revisions to Subpart J until the results of a number of studies that are being conducted on alternative response techniques to mechanical recovery, including dispersants and in-situ burning, can be evaluated.

In enacting the OPA, Congress required the President (delegated to EPA) to revise the NCP to reflect the new provisions and authorities of the statute. In promulgating the proposed and final revisions to Subpart J of the NCP, EPA has attempted to take into account all readily available information and studies concerning oil spill response measures, including alternative response measures. EPA believes that it must promulgate the final NCP at this time in order to avoid any further delays in codifying the provisions and authorities established by the OPA. If new information or studies become available that impact the Agency's regulation of oil spill response measures under Subpart J, EPA will review this information and make regulatory changes if and as appropriate.

Three commenters stated that proposed Subpart J fails to present a balanced approach to oil spill response techniques, placing an undue emphasis on chemical countermeasures and failing to adequately address mechanical recovery strategies. One commenter noted that Subpart J's emphasis on chemical countermeasures is inconsistent with the OPA and contrary to current USCG regulations, which provide that mechanical containment and recovery is the response of first choice.

EPA does not agree with the commenters that Subpart J fails to present a balanced approach to oil spill response techniques. Subpart J does not state or imply that chemical countermeasures are preferred over mechanical recovery devices. EPA believes that the circumstances surrounding oil spills and the factors influencing the choice of a response method or methods are many, and the NCP does not and should not indicate a preference for one response method over another. OSCs, RRTs, and Area Committees must be afforded flexibility in authorizing or preauthorizing the use of a specific response method to protect the public health and welfare and the environment.

EPA does recognize, however, that Subpart J focuses on the regulation of chemical and bioremediation spill mitigating devices and substances. As stated in the preamble to the proposed NCP, EPA believes that Congress' primary intent in regulating products under the NCP Product Schedule is to protect the environment from possible deleterious effects caused by the

application or use of these products. In looking at the long- and short-term effects on the environment of all spill mitigating devices and substances, EPA has concluded that chemical and bioremediation countermeasures pose the greatest threat for causing deleterious effects on the environment. As a result, the Agency is focusing its regulatory efforts on these substances and is listing them on the Product Schedule, and is not listing mechanical recovery devices.

EPA is also not regulating the use of mechanical recovery devices under Subpart J because USCG has traditionally overseen the regulation of these devices. USCG and the American Society for Testing and Materials (ASTM) are currently working together to develop equipment standards for mechanical recovery devices. The MMS also has been attempting to develop equipment standards and facilitate research and development on mechanical devices. EPA believes it would be unnecessarily duplicative for it to focus its efforts in these areas at the same time other federal agencies are addressing these issues.

EPA would like to emphasize that it is not discouraging the use of mechanical recovery devices to respond to oil spills by not regulating these devices under Subpart J or listing them on the Product Schedule. The listing of a product on the Product Schedule does not mean that EPA approves, authorizes, or encourages the use of that product on an oil spill; rather, the listing of a product means only that data have been submitted to EPA as required by Subpart J of the NCP. The fact that mechanical devices will not be listed on the Product Schedule does not mean that these devices cannot be used by OSCs in response to discharges of oil or included in preauthorization plans by Area Committees and RRTs. On the contrary, the fact that these devices are not listed on the Product Schedule means that OSCs can use mechanical recovery devices without being subject to the provisions in § 300.910 governing the authorization of use of products listed on the Product Schedule.

Three commenters disagreed with EPA's interpretation of the phrase "other spill mitigating devices and substances," stating that this phrase should be interpreted to include mechanical recovery devices such as pumps, booms, or skimmers. One commenter stated that the legislative history of the OPA, as detailed in the Conference Report for the OPA, demonstrates that Congress intended this phrase to be interpreted broadly and to include mechanical, surveillance, and chemical and biological response techniques.

As discussed above and in the preamble to the proposed NCP, EPA believes that Congress' primary intent in regulating products under the Product Schedule is to protect the environment from possible deleterious effects caused by the application or use of these products. EPA is not interpreting the phrase "other spill mitigating devices and substances" to include mechanical recovery devices, and is not regulating these devices under Subpart J, because the Agency does not believe that the use of these devices to respond to oil spills presents a significant environmental danger. EPA has reviewed the Conference Report for the OPA [Conf. Rep. 101–653, 101st Cong. 2nd Sess. (1990)] and believes that it does not clearly indicate whether the term "other spill mitigating devices and substances" was intended to include mechanical recovery devices for the purposes of the NCP Product Schedule. There is certainly no indication in the Conference Report that the inclusion of mechanical recovery devices on the Product Schedule be mandatory. EPA believes that its interpretation is reasonable.

Section 300.910—Authorization of Use

One commenter expressed opposition to the mandatory requirement in new § 300.910(a) that RRTs and Area Committees address the preauthorization of chemical and bioremediation product use. The commenter argued that EPA has not demonstrated that the current system is ineffective or untimely and that this mandatory requirement will take time away from the evaluation of mechanical and other response techniques.

As discussed in the preamble to the proposed NCP, the preauthorization option under existing § 300.910(e) has been used infrequently in the past. Although some RRTs have developed preauthorization plans for the use of products in response to oil spills, the overall election to make use of this option has been less comprehensive than EPA envisioned when the provision was developed. Consequently, EPA proposed to make, and is today making, the existing preauthorization option mandatory. EPA believes that a more comprehensive use of preauthorization by the RRTs and Area Committees will create a more effective and timely oil spill response system because many decisions on product use will be made prior to the occurrence of oil spills. The Agency does not agree with the commenter that the mandatory preauthorization provision will de-emphasize or take time away from the consideration of the use of mechanical and other response techniques. RRTs and Area Committees should address the use of mechanical and other response techniques, as well as spill mitigating devices and substances regulated under Subpart J, in their preauthorization plans. Also, EPA would like to stress that preauthorization decisions may result in not preauthorizing the use of a specific chemical countermeasure; for example, areas may be designated in which the use of certain dispersants or other spill mitigating devices and substances is prohibited.

Another commenter suggested that preauthorization plans be required to address the use of sorbents. The commenter argued that such planning would promote the use of the most effective and appropriate sorbent for any given spill. The commenter also noted that the misuse of a sorbent product or the use of the wrong sorbent product can result in a totally ineffectual cleanup, increased and unnecessary environmental damages from oil pollution, and additional cleanup expenses.

As discussed in the preamble to the proposed NCP, EPA does not interpret the phrase "other spill mitigating devices and substances" to include sorbents and does not regulate sorbents under Subpart J or list them on the Product Schedule. EPA believes that the use of sorbents, by themselves, will not create deleterious effects on the environment because sorbent materials are essentially inert and insoluble in water and because the basic components of sorbents are non-toxic. Consequently, RRTs and Area Committees are not being *required* to address the use of sorbents as part of their planning activities or when they are developing preauthorization plans under Subpart J. This does not mean, however, that RRTs and Area Committees cannot or should not address the use of sorbents in their preauthorization plans. EPA encourages RRTs and Area Committees to address the use of all types of spill mitigating devices and substances, including those not listed on the Product Schedule, when developing preauthorization plans. Also, as suggested by the commenter, the Agency encourages RRTs and Area Committees to consult the USCG comprehensive sorbent data base and the research being conducted by Environment Canada and ASTM when making preauthorization decisions on the use of sorbents.

Two commenters expressed concern that, although new § 300.910(a) encourages preauthorization, it allows

the RRTs and Area Committees too much latitude for the disapproval of products without adequately defining the conditions under which such disapprovals would be appropriate. These commenters recommended that the NCP should clearly specify, as guidance for the RRTs and Area Committees, the conditions under which the use of a product is appropriate and require pre-spill approval for those conditions. The commenters suggested that new § 300.910(a) establish a preauthorization process that requires the approval of products, except in those limited circumstances where there are adequate scientific data clearly indicating that such use would be harmful. An additional commenter recommended that guidance be provided to the RRTs and Area Committees on the applicability of data from the required effectiveness and toxicity tests.

EPA believes that the RRTs and Area Committees must be afforded flexibility in considering relevant factors for making preauthorization decisions and developing preauthorization plans. EPA does not believe that it is appropriate or feasible to include all of the information necessary to provide adequate guidance for the RRTs and Area Committees on the appropriateness of preauthorization approvals or disapprovals or the applicability of test data in the NCP. This information should be provided through separately developed guidance materials.

Four commenters stated that the RRTs do not have the legal authority to approve or disapprove of preauthorization plans developed by Area Committees. These commenters argued that the approval process proposed in new § 300.910(a) is inconsistent with the OPA, which provides that Area Committees alone are responsible for expediting authorization of the use of dispersants and other spill mitigating substances. These commenters also argued that the RRT review and approval authority is counterproductive and will result in unnecessary delays. One commenter suggested that this section should provide procedures for the coordination of Area Committee activities and that the RRTs should assist the Area Committees in this regard.

The OPA amends section 311(j) of the CWA to require Area Committees to "work with state and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices" and to "describe the procedures to be followed for obtaining an expedited decision regarding the use of dispersants." To meet these requirements, EPA proposed to revise new § 300.910(a) (in addition to changes to Subpart C) to require that Area Committees be actively involved in the preauthorization process and that, as part of their planning activities, they develop preauthorization plans that address the desirability of using appropriate products on the Product Schedule.

EPA does not agree with the commenters that requiring RRT review and approval of preauthorization plans developed by Area Committees is inconsistent with the OPA. The OPA does not stipulate that Area Committees *alone* have responsibility for oil spill contingency planning. The standing RRTs also have responsibilities for oil spill contingency planning, specifically on a regional basis. In order to create the best possible response system, it is important that the regional-level and area-level contingency planning efforts of the RRTs and Area Committees, respectively, are closely coordinated with each other and are consistent. EPA believes that the RRTs should serve in an advisory and approval role regarding preauthorization plans developed by Area Committees to ensure this consistency and because the RRTs' expertise in oil spill response will be a valuable asset in the development of these preauthorization plans. RRTs and Area Committees should work together to develop mutually-acceptable preauthorization decisions and plans. The Agency would like to clarify that the RRT review and approval authority applies only to preauthorization decisions or plans, and not to the entire content of ACPs. Also, the EPA Administrator and the Commandant of the USCG possess the ultimate authority for approving or disapproving an entire ACP, including the preauthorization plan. This authority is not delegated in any way to the RRTs.

EPA does not believe that the RRT review and approval authority is counterproductive or will result in significant delays to the preauthorization process. As discussed in the preamble to the proposed NCP, in a number of instances (e.g., in the inland waters) RRTs may fulfill the role of the Area Committees. In these instances, coordination between the two separate entities will be facilitated to the extent the RRT addresses both regional- and area-level contingency planning. In instances where the RRT and Area Committees may exist as separate entities, a number of RRT representatives will most likely also serve on the Area Committees for that region. This should facilitate the coordination between these two bodies and expedite the review and approval of preauthorization plans by the RRT.

EPA would like to clarify the RRT review and approval authority. All members of the RRT will be afforded an opportunity to review and provide input to the Area Committee on a draft preauthorization plan. However, only the RRT representatives from EPA and the state(s) with jurisdiction over the waters of the area to which the plan applies and the DOC and DOI natural resource trustees will have the authority to approve, disapprove, or approve with modification the draft preauthorization plan. This approval process is consistent with the authorization procedures contained in existing § 300.910 and should minimize the time necessary for RRT approval of preauthorization plans developed by the Area Committees. New § 300.910(a) is being revised to state that "The RRT representatives from EPA and the states with jurisdiction over the waters of the area to which a preauthorization plan applies and the DOC and DOI natural resource trustees shall review and either approve, disapprove, or approve with modification the preauthorization plans developed by Area Committees, as appropriate."

One commenter suggested that the NCP establish time limits for the review and approval of preauthorization applications. Specifically, the commenter recommended that EPA establish a 60-day review period during which Area Committees must determine whether a preauthorization application is complete and approve or deny the application. The commenter also suggested that if an Area Committee fails to act within the specified period of time, the application should be considered approved.

EPA does not believe that it is appropriate for the NCP to establish specific deadlines for the review and approval of preauthorization applications at this time because both the Area Committee and the preauthorization process are still in the initial stages of implementation. Area Committees should develop preauthorization plans and review applications as expeditiously as possible, but they also must be afforded flexibility in accomplishing this.

One commenter recommended that new § 300.910(a) and Section 4.3(a) of Appendix E mention the need for preauthorization plans to cover compliance with section 7 of the Endangered Species Act. This commenter also recommended that, under new §§ 300.910 (b) and (c), consultation with the DOI and DOC natural resource trustees should be

required for obtaining product approvals in all cases, not just "when practicable." The commenter noted that the natural resource trustees have a strong interest, in all instances, in ensuring that trust resources are not inadvertently damaged by the application of chemical countermeasures.

EPA agrees that the RRTs and Area Committees should be aware of the need for preauthorization plans to comply with the Endangered Species Act. Development of these plans must include compliance with section 7 of the Endangered Species Act. The Agency believes that the natural resource trustee representatives to both the RRTs and Area Committees can assist in this matter by facilitating consultation to ensure this compliance during the planning process. Also, EPA and the USCG plan to work with the Fish and Wildlife Service and NOAA to develop guidance on this issue. EPA believes that these steps will be more effective in addressing this issue than adding new language to this section of the NCP.

EPA does not agree with the commenter that, under new §§ 300.910 (b) and (c), consultation with the DOC and DOI RRT representatives should be mandatory in all instances. EPA believes that the case-by-case decisionmaking process for OSCs must be flexible and must allow them to minimize the burden of any consultations due to the time-critical nature of this process. In most instances, OSCs will consult with the DOC and DOI representatives, but there may be instances where this consultation would create critical delays in the decisionmaking process.

Another commenter stated that new § 300.910(f) should be revised to compel the RRTs to require the performance of supplementary toxicity and effectiveness testing when developing preauthorization plans. This commenter argued that in order for an RRT to do a responsible job of preauthorizing the use of a product for a specific region, it must posses regionally specific effectiveness and toxicity testing data.

EPA does not agree with the change suggested by this commenter. EPA believes that the RRTs should have the authority to require additional testing if they decide it is necessary, but should not be compelled to require this additional testing in all instances. Situations may exist where requiring this additional testing would place an unnecessary regulatory burden on both the RRTs and the product manufacturers/vendors.

Two commenters stated that the RRT supplementary testing authority contained in new § 300.910(f) should be deleted from the final rule. These commenters expressed opposition to this authority because, in the commenter's view, it is intended to make the preauthorization of dispersants and other chemicals more difficult, erodes the statutory authority of the Area Committees, and could add significant delays to the preauthorization process. One of these commenters also argued that if EPA anticipates using tests other than those specified in Appendix C for this supplementary testing, these tests should be included in the NCP and be subject to review as part of the rulemaking process.

EPA would like to clarify the provisions of the supplementary testing authority contained in new § 300.910(f). Under this authority, RRTs are authorized to require product manufacturers to conduct supplementary effectiveness or toxicity testing due to site- or area-specific concerns when developing preauthorization plans. Any supplementary testing that may be conducted will follow the effectiveness and toxicity testing protocols specified in Appendix C of the NCP. The RRTs are authorized to require these tests to be conducted, due to site- or area-specific concerns, using parameters other than those specified in Appendix C. For example, an RRT might require the performance of the dispersant effectiveness test (the Swirling Flask Dispersant Effectiveness Test) using a type of oil other than that specified in Appendix C; or an RRT might require the performance of the dispersant toxicity test using an invertebrate species other than that specified in Appendix C.

EPA's purpose in adding new § 300.910(f) is to clarify the authority of the RRTs concerning product testing requirements and to provide more relevant information to the RRTs and Area Committees for their contingency planning efforts. This authority is not intended to make the preauthorization of certain products more difficult and does not authorize the RRTs to establish more stringent effectiveness and toxicity criteria. EPA does not believe that the addition of this new paragraph in any way erodes the authority of the Area Committees, but will enable them to make more informed preauthorization decisions by providing them with additional site- or area-specific data, if appropriate. In addition, EPA believes that the authority contained in this new paragraph will not create substantial delays in the preauthorization process, and that any minor delays that may occur are necessary to provide the RRTs and Area Committees the information they need to make informed preauthorization decisions.

Section 300.915—Data Requirements

Dispersant Effectiveness Testing Protocol

Four commenters expressed opposition to EPA's adoption of the Swirling Flask Dispersant Effectiveness Test as the standard test for measuring dispersant effectiveness. These commenters stated that this change was based on a limited study and that there are more appropriate dispersant effectiveness tests available internationally. One commenter suggested that EPA should have considered the Warren Springs Laboratory (WSL) Test, which has been in use in the United Kingdom for several years, and the Exxon Dispersant Effectiveness Test (EXDET). Another commenter recommended that EPA defer implementing the Swirling Flask test until an international intercalibration work group that is conducting research on dispersant effectiveness testing can complete its work and make recommendations.

EPA believes that sufficient testing was performed to qualify the Swirling Flask test as an appropriate replacement for the Revised Standard Dispersant Effectiveness Test (RSDET). In April 1991, EPA convened a conference of world experts to advise it on the state-of-the-art methods available for dispersant effectiveness testing. As a result of that meeting, EPA decided to pursue the three laboratory effectiveness tests it studied: RSDET, Swirling Flask test, and IFP Test. The determination was made at that time that these three tests offer the best combination of features for study and, although each may have some drawbacks, that they were the best three of the nearly 25 tests then available. No new information has been discovered during the last three years to modify the initial decision to select these three tests for further study.

In its laboratory study,[3] EPA examined six different oils and three separate dispersants; ran over 150 screening tests to determine the best combinations of oil and dispersant; and evaluated those combinations using the

[3] See: Clayton, John R. Jr., Siu-Fai Tsang, Victoria Frank, Paul Marsden, and John Harrington, Chemical Oil Spill Dispersants: Evaluation of Three Laboratory Procedures for Estimating Performance, Final Report prepared by Science Applications International Corporation for U.S. Environmental Protection Agency, 1992; available in the Docket for this rulemaking.

three test methods selected by the panel of experts. EPA believes that this provides a sufficient collection of data upon which to base the change to the Swirling Flask test.

The change to the Swirling Flask test is based primarily on the fact that this test is easier to perform, is less expensive, and requires less laboratory skill, and not on the basis of improved precision of the test itself. The statistical review of the data shows that both the Swirling Flask test and the RSDET have essentially the same precision. EPA believes that of the six or seven tests used throughout the world today, there is no test available that has greater precision than the Swirling Flask test.

The WSL Test is certainly one of the prominent laboratory dispersant effectiveness tests used in the world today. The decision not to evaluate this test in the EPA study should not be viewed as a criticism of this procedure. EPA considered this test, but the Swirling Flask test was judged to avoid some of the problems associated with the WSL Test.

The EXDET was not available for evaluation until EPA had already completed its evaluation, and has only recently (March 1993) been published in the literature. There are certainly no historical data associated with this test, in contrast to the Swirling Flask test. Further, in a brief internal review, EPA determined that the EXDET procedure offers no significant advantages over the Swirling Flask test.

The international intercalibration work group, of which EPA is a member, has reviewed the four or five laboratory effectiveness tests currently in use throughout the world today with an eye towards determining if the results of one test can be correlated to the results of another. That initial review resulted in the conclusion that there was no good way for the test results to be compared. EPA does not expect that this work group will develop a new test in the near future that will offer significant advantages over the Swirling Flask test. If such a test is developed in the future, EPA would be willing to review the method as a possible replacement for the Swirling Flask test.

Three commenters stated that the Swirling Flask test method described in Appendix C does not simulate real world conditions. Two of these commenters expressed concern that this may give some agencies and public interest groups the unrealistic expectation that dispersants may be as effective in field applications as they are in the laboratory tests. These commenters suggested that EPA explicitly state that dispersant effectiveness tests are designed and conducted only to screen products, and that the test results should be used only for that purpose.

As stated in the preamble to the proposed NCP, the test methods described in Appendix C are intended to provide a basic set of test procedures that will provide baseline data for comparison of products on a national basis. The testing protocols were not developed with the intent of replicating possible real-world situations. In using the data currently available on the Product Schedule, OSCs and RRTs are well aware that these data are intended for use for relative comparisons and rankings of products. Future EPA guidance on the development of preauthorization plans and decisions will also address this issue.

One commenter objected to the dispersant-to-oil treat ratio (DOR) used in the Swirling Flask test method, arguing that a 1:10 ratio is at least twice as high as would normally be used in actual spill situations. The commenter noted that DORs of 1:20 or 1:25 are typical, and that the higher dispersant treat rate used in this test method would allow weaker dispersants to perform better than would be expected relative to other dispersants. This same commenter stated that the Swirling Flask test was inconsistent with the RSDET, historical standards, and currently accepted standards because the Swirling Flask test did not produce results ranking dispersants in the same order as the RSDET or other field-corroborated laboratory tests. The commenter also noted that no other government in the world—including Canada—has officially accepted the Swirling Flask test.

Under ideal conditions, a laboratory test would be representative of real-world conditions. However, thus far this is not achievable, and EPA believes it is misleading to represent laboratory data as such. The use of any test to measure a product will only give a relative ranking of that product against other products tested with the same procedure. There is no attempt on the part of EPA to represent the laboratory effectiveness test results as levels that can be achieved in the field. In fact, field performance will most likely be less effective than that achieved under ideal laboratory conditions.

The DOR of 1:10 is specified for the Swirling Flask test method and was used in the EPA study to ensure that sufficient dispersant was available for complete dispersion of the test oil and because this is a practical estimate of the maximum level DOR that would be expected in the field in a real situation. This would favor better performance of the product than a lesser DOR. Furthermore, the 1:10 ratio was used in the RSDET procedure as well as the IFP method; the same ratio was needed for all three tests to allow for proper comparison.

EPA does not believe that there should be concern about the fact that different laboratory tests will rank dispersant products differently, nor with the supposition that the Swirling Flask test ranks products differently than the existing RSDET. There has never been a strong correlation in ranking order from test to test; i.e., 10 dispersant products will be ranked differently when tested by the various laboratory effectiveness tests available. EPA has never claimed that the detailed ranking order produced by the RSDET is meaningful or necessarily proper. As noted in the proposed NCP, the existing RSDET has problems associated with it (e.g., complex and expensive to perform, results in a large volume of wastewater) that will be resolved by changing to the Swirling Flask test.

EPA knows of no laboratory effectiveness test that correlates well with field experience. There are numerous factors that come into play and strongly affect whether a dispersant works well under field conditions. One of the most critical factors affecting field effectiveness is probably whether the dispersant is properly applied.

It is correct that the Swirling Flask test has not been adopted by any other government, including Canada. However, it was developed and is used extensively by Environment Canada and adoption by the Canadian government is expected. The decision to adopt the test in the United States, however, is based on the method's attributes and not on whether it has been officially adopted by any other government.

One commenter stated that calculating the percent effectiveness value for a dispersant by averaging the percent effectiveness values for Prudhoe Bay crude and South Louisiana crude oils may not be very useful to OSCs in making decisions about the effectiveness of a particular dispersant on a single type of oil. The commenter suggested that if EPA maintains this averaging in the final rule, the Agency should at least identify the dispersant effectiveness values for each type of test oil separately on the Product Schedule, in addition to the average percent effectiveness value. The commenter also suggested that the Product Schedule include the results of spills-of-opportunity testing.

EPA believes that calculating the percent effectiveness value for a

dispersant by averaging the values for these two test oils is the best approach because this allows the effectiveness data to reflect two types of oil that will most likely be encountered in real-world spill situations in U.S. coastal waters, yet maintains the simplicity of the testing method. The Agency also selected this approach because it allows a dispersant to meet the 50 percent effectiveness acceptability criterion and be listed on the Product Schedule, despite poor performance of the dispersant on one of the two test oils. EPA does agree, however, that presenting the dispersant effectiveness data separately for each type of oil, as well as for the final effectiveness value (average of the two), will enable OSCs to make a more informed evaluation of the effectiveness of specific dispersants. Consequently, EPA will provide dispersant effectiveness values for Prudhoe Bay crude, South Louisiana crude, and an average of the two for each dispersant listed on the Product Schedule. EPA notes that the dispersant effectiveness acceptability criterion will still be based upon the average percent effectiveness value of these two types of oil. Also, EPA does not believe it is appropriate to include spills-of-opportunity data on the Product Schedule because the Schedule is intended to provide baseline data for comparison of products on a national basis. Both USCG and NOAA maintain data bases that contain information on chemical countermeasures used on some significant U.S. and international oil spills.

Dispersant Toxicity Testing Protocol

One commenter objected to the proposal of the Revised Standard Dispersant Toxicity Test (RSDTT) protocol because a toxicity threshold or acceptability criterion is not established. The commenter expressed concern that the establishment of an effectiveness threshold without the establishment of a toxicity threshold encourages the use of the most effective dispersants, rather than the use of the least harmful (i.e., least toxic) dispersants, which is inconsistent with the intent of the OPA.

EPA does not agree that the approach established in the NCP does not encourage the use of the least harmful dispersants. EPA believes that the best approach to regulating dispersants is to not set a threshold or acceptability criterion for toxicity, but to provide OSCs, RRTs, and Area Committees the toxicity data and allow them to make decisions on dispersant use by weighing the toxicity data against other variables and the effectiveness data for those dispersants that meet or exceed the effectiveness threshold. In its experience in oil spill response and contingency planning, the Agency has found that the factors impacting dispersant use decisions based on toxicity are more variable than those for effectiveness (e.g., what are the toxicological effects of the dispersant on the wide variety of species indigenous to the area?). The toxicity of any substance is relative to the test agent, target organisms, and the environment in which the exposure occurs. EPA believes that OSCs, RRTs, and Area Committees must be afforded a greater degree of flexibility when making dispersant use decisions based on these toxicity factors. Consequently, EPA is not establishing a toxicity threshold for dispersants. EPA does agree, however, that when making decisions on the use of dispersants, OSCs, RRTs, and Area Committees should use the least harmful dispersants that have been proven to be effective under the standardized laboratory conditions. When making these decisions, OSCs, RRTs, and Area Committees will possess toxicity data that will allow them to rank the various dispersants available based on acute toxicity.

One commenter stated that the test species specified in the dispersant toxicity testing protocol are not suitable for determining freshwater toxicity. The commenter suggested that additional or alternate toxicity tests be performed on all products intended for freshwater use.

EPA agrees with the commenter that the development and use of an alternate dispersant toxicity test for freshwater environments is a valid consideration. However, most RRTs in concert with state regulatory agencies have put in place procedures and/or guidance that restrict the use of dispersants in freshwater ecosystems due to the potential impact of the dispersants on potable water. Consequently, EPA has placed a higher priority on the development of dispersant effectiveness and toxicity testing protocols for marine environments. The Agency is currently considering the development of a complementary dispersant toxicity test for freshwater environments.

Another commenter objected to the use of only an acute toxicity testing protocol. This commenter argued that acute toxicity tests provide little insight into the effects of lower concentrations of pollutants and do not contribute to the understanding of the accumulative impacts of pollutants over long periods of time. The commenter suggested that there should be testing for chronic or sublethal concentrations as well as an evaluation of the effects of products on the reproduction, larval development, and growth and maturation of juvenile organisms.

EPA believes that providing the acute toxicity data specified by Appendix C to OSCs, RRTs, and Area Committees is sufficient to allow for environmentally protective authorization and preauthorization decisions on product use. The Agency has conducted toxicity tests of a longer duration (i.e., 7-day chronic estimator tests) that provide additional information on sublethal effects on survival, growth, and fecundity. These data,[4] presented at the annual meeting of the Society of Environmental Toxicology and Chemistry (October 1992), demonstrated agreement (generally within one order of magnitude) between LC_{50}s derived from the 7-day test and the acute (48- to 96-hour) test. In cases where growth and reproductive effects were noted, contaminant levels tended to fall just below the concentration range at which survival was affected. Also, EPA believes that the acute toxicity data will be useful to OSCs, RRTs, and Area Committees with respect to risk estimation. A recently developed model[5] allows for the risk estimation of chronic effects from acute toxicity data and allows for the integration of application data into the framework for risk estimation. In addition, OSCs, RRTs, and Area Committees are not precluded from considering any available chronic toxicity data when making authorization or preauthorization decisions on product use.

One commenter recommended that when conducting the RSDTT, EPA should test dispersants only, rather than testing dispersants and dispersed oil. The commenter argued that testing dispersed oil not only assesses the effects of the chemical uptake of the dispersant by the organisms, but also physical effects due to contact with dispersed oil droplets.

EPA does not agree with the recommendation suggested by the commenter. Chemical dispersants are intended to increase the rate at which an oil slick is dispersed into the water column. This dispersed oil is, by definition, a mixture of the dispersant and the spilled oil. As a result of this

[4] See: Whiting, D., J. Clark, J. Briceno, and C. Daniels, A Comparison of Seven-Day Chronic Toxicity Test Endpoints Using Mysids (*Mysidopsis bahia*), Silversides (*Menidia beryllina*), No. 2 Fuel Oil, and Oil Dispersant Products; available for inspection in the public docket for this rulemaking.

[5] See: Mayer, Foster, G. Krause, D. Buckler, M. Ellersieck, and G. Lee, Predicting Chronic Lethality of Chemicals to Fishes from Acute Toxicity Test Data: Concepts and Linear Regression Analysis, February 1993; available for inspection in the public docket for this rulemaking.

dispersion of oil, the possibility exists for organisms dwelling in the water column to come in physical contact with the dispersed oil. The Agency believes that it should not make any difference whether an organism is killed by the effects of a chemical dispersant in the water or due to physical contact with the dispersed oil (e.g., dispersed oil covering the gills of a fish, thereby inhibiting respiration). EPA believes that the fact that dispersants cause oil to enter the water column is sufficient reason to test for the toxicological effects of dispersed oil.

The Agency also believes that testing the oil alone, as well as the oil and dispersant mixture, will provide useful data on the relative toxicity of the oil and the potential hazards associated with dispersant use (i.e., data derived from the oil and dispersant mixture test) relative to the hazards associated with non-treatment of the oil (i.e., data derived from the oil only test). EPA believes that the comparative nature of the data will benefit the OSCs, RRTs, and Area Committees in their decisionmaking and planning activities.

The same commenter expressed concern that the dispersant toxicity testing protocol uses a series of test concentrations and durations that are significantly greater than what a marine organism would be exposed to in the real world. The commenter stated that this would result in test data that show dispersants and other products to be much more toxic than what would be expected in the field. The commenter argued that these biased data may create a negative impression among regulators, leading to decisions to prohibit the use of a product that actually could be used safely.

As discussed above, the test methods described in Appendix C are intended to provide a basic set of test procedures that will provide baseline data for comparison of products on a national basis. The testing protocols were not developed with the intent of replicating possible real-world situations. The dispersant toxicity testing protocol was developed using conservative estimates. In using the data currently available on the Product Schedule, OSCs and RRTs are well aware that these data are intended for use for relative comparisons and rankings of products.

Three commenters questioned the use of No. 2 fuel oil by the RSDTT when the dispersant effectiveness testing protocol specifies the use of Prudhoe Bay and South Louisiana crude oils. These commenters suggested that the RSDTT be revised to use the same oils as used by the Swirling Flask test protocol. One commenter noted that the proceedings of the workshop upon which the RSDTT is partially based recommend the use of both crude oils over No. 2 fuel oil.

EPA believes that No. 2 fuel oil is the most appropriate type of oil for use in the RSDTT. The proceedings of the workshop[6] referred to by the commenter based its test oil recommendations on the potential use of dispersants in the Gulf of Mexico. In developing the RSDTT, the Agency had to consider the evaluation of dispersant toxicity on a national basis. Also, one of the objectives of this workshop was to identify data needs. South Louisiana and Prudhoe Bay crude oils were ranked as the first two preferences in the workshop proceedings because there is relatively little toxicity data for these oils as compared to No. 2 fuel oil.

EPA selected No. 2 fuel oil as the dispersant toxicity test oil for several reasons. The workshop recommended the use of a test oil that is available in large quantities and is well characterized in the scientific literature; No. 2 fuel oil satisfies both of these recommendations. There is also a larger historical record of toxicity data on marine organisms for No. 2 fuel oil than for other types of oils, including South Louisiana and Prudhoe Bay crudes.

EPA agrees with the commenters, however, that eventually the effectiveness and toxicity tests for dispersants should specify the same test oils. As a result, EPA will conduct research and collect data on the RSDTT using Prudhoe Bay and South Louisiana crudes; these data will be made available to the public. If this research indicates that regulatory revisions are appropriate, the Agency will make these changes to the RSDTT. In addition, new § 300.910(f) provides that RRTs may require supplementary toxicity testing to obtain data that will be more specific and relevant due to area- and site-specific concerns. For example, the RRT responsible for Hawaii might require toxicity testing for specific dispersants using a crude oil in addition to No. 2 fuel oil.

One commenter objected to EPA conducting the effectiveness and toxicity testing required for dispersants under Subpart J. The commenter stated that not accepting industry-generated data implies that industry is not a credible source of information. The commenter also stated that industry will be concerned that a government laboratory would interpret toxicity data too conservatively. Another commenter recommended that both EPA and commercial laboratories should be allowed to conduct dispersant toxicity testing.

EPA wishes to emphasize that it believes industry is a trustworthy source of testing data. As discussed in the preamble to the proposed NCP, EPA believes that, given the establishment of an effectiveness acceptability criterion for dispersants, it is necessary to maintain as much consistency and reproducibility in the dispersant effectiveness testing results as possible. Upon further review of this issue, EPA believes that the necessary consistency and reproducibility in effectiveness testing results will be maintained if dispersant manufacturers are responsible for conducting the required dispersant effectiveness test and submitting the data to EPA. The Agency also believes that requiring dispersant manufacturers to conduct the specified effectiveness and toxicity tests is the most efficient way to ensure that OSCs, RRTs, and Area Committees have the information necessary to make informed decisions on dispersant use.

As a result, EPA is revising Subpart J and Appendix C to the NCP to require that dispersant manufacturers (or the commercial laboratories they select) conduct the effectiveness and toxicity tests specified for dispersants. Also, to guarantee Agency control over the consistency and reproducibility in effectiveness test results, EPA explicitly reserves in the rule the right to request additional documentation regarding both tests and conduct verification testing of the dispersant effectiveness test results submitted by manufacturers.

Although the Agency has decided not to finalize the proposed requirement that only EPA conduct the dispersant tests, this aspect of the final rule is consistent with the system that has been used by the regulated community to this point. Prior versions of the NCP required dispersant manufacturers to conduct the specified effectiveness and toxicity tests and submit the test results to EPA. However, dispersant manufacturers will now be responsible for conducting the new Swirling Flask Dispersant Effectiveness Test specified in Appendix C.

Only those dispersants that meet or exceed the dispersant effectiveness acceptability criterion of 45 percent must be tested for toxicity, using the RSDTT included in Appendix C. Because of this, and because the new effectiveness test is simpler, easily replicable, and less expensive than the previous test, the new requirements for dispersant testing will offer significant

[6] See: Duke, Thomas and Gary Petrazzolo, eds., Oil and Dispersant Toxicity Testing, Proceedings of a Workshop on Technical Specifications, U.S. Department of the Interior, New Orleans, January 1989; available for inspection in the public docket for this rulemaking.

cost savings to those wishing to list new products on the Schedule.

EPA is revising paragraphs (7) and (8) of § 300.915(a) and Section 1.1 of Appendix C to state that dispersant manufacturers are responsible for conducting the specified dispersant effectiveness and toxicity tests. Manufacturers must submit test results and supporting data, along with a certification signed by responsible corporate officials of the manufacturer and laboratory stating that (1) the test was conducted on a representative product sample, (2) the testing was conducted using generally accepted laboratory practices, and (3) they believe the results to be accurate. EPA is also revising paragraph (12) of § 300.915(a) to add that laboratories performing toxicity tests for dispersants must demonstrate previous toxicity test experience in order for their test results to be accepted. Section 2.3.2 of Appendix C is being revised to state that the standard test oils for the Swirling Flask test can be obtained from the Resource Technology Corporation (2931 Soldier Springs Rd., P.O. Box 1346, Laramie, WY, 82070, (307) 742–5452).

Section 300.920(a) is also being revised to reflect that dispersant manufacturers are responsible for conducting the required effectiveness and toxicity tests. Paragraph (2) of this section explains that EPA reserves the right to request further documentation of the test results submitted by dispersant manufacturers. This paragraph also states that EPA reserves the right to verify test results and consider the results of its verification testing in determining whether a dispersant meets the listing criteria. Within 60 days of receiving a complete application for listing a dispersant on the Product Schedule, EPA will notify the manufacturer of its decision to list the product on the Schedule or request additional information and/or a sample of the product. Within 60 days of receiving the additional product data and/or sample, EPA will notify the manufacturer in writing of its decision to list or not list the product. As was specified in the proposed NCP, a dispersant manufacturer whose product was determined not to be eligible for listing on the Product Schedule may request the EPA Administrator to review the determination.

Surface Washing Agents

Two commenters stated that EPA's intended methodology for determining the effectiveness of surface washing agents was unclear in the proposed NCP.

EPA would like to clarify that it is not specifying an effectiveness testing protocol for surface washing agents at this time. EPA is currently conducting research on developing a test method and may specify a protocol at a later date. The Agency is creating a separate category for surface washing agents on the Product Schedule because a number of products currently listed under the "dispersant" category on the Schedule are actually surface washing agents. Separating these very different kinds of products will provide a more accurate and comprehensive list of products available to OSCs, RRTs, and Area Committees during a spill and for preauthorization.

Bioremediation Agent Testing Protocols

Two commenters stated that the Bioremediation Agent Effectiveness Test proposed by EPA in Appendix C may be appropriate as a research protocol, but it is too complex and expensive for use as a standard product screening test. These commenters recommended that EPA develop a reliable, more routine, and less expensive test method for quantifying hydrocarbon degradation.

EPA agrees that the establishment of a less expensive, less complex, and better analytical procedure to determine bioremediation agent effectiveness is desirable. However, due to the complexity of crude oil and the general lack of understanding of how bioremediation agents perform, no such analytical procedure exists at this time. In developing the effectiveness testing procedure specified in Appendix C, EPA and the National Environmental Technology Applications Center (NETAC) did consider cost and complexity. (NETAC is a non-profit corporation created in 1988 under a cooperative agreement between EPA's Office of Research and Development and the University of Pittsburgh Trust to assist in the commercialization of innovative environmental technologies.) The resulting procedure is the least expensive and least complex, but still reliable, procedure that could be developed at this time. If a less expensive and/or less complex test is developed in the future, EPA would be willing to review the method as a possible replacement for the Bioremediation Agent Effectiveness Test contained in Appendix C.

One commenter suggested that EPA eliminate the use of a standard test oil (i.e., Alaska North Slope (ANS) 521) in the bioremediation agent effectiveness testing protocol because the use of internal markers in this test makes the use of a standard oil unnecessary. This commenter also inquired about the availability of the specified test oil.

EPA does not agree that the requirement for the use of a standard oil should be eliminated. EPA believes that because microorganisms respond differently to different types of oil, the use of a standard oil is necessary until a data base has been developed that can demonstrate that any type of oil will be adequate for testing purposes. For example, the light-end oils can have a potential adverse effect on the microorganisms tested and, consequently, should not be used for this test. The standard test oil can be obtained from NETAC's Bioremediation Products Evaluation Center (BPEC) (telephone number and address provided in Section 4.3 of Appendix C).

The same commenter stated that hopane may not be the best internal marker and suggested that EPA revise the Bioremediation Agent Effectiveness Test to allow for the use of different markers.

EPA agrees with the commenter that allowing for the use of more than one internal marker in the test procedure would be helpful. As a result, EPA is revising the bioremediation agent effectiveness testing protocol contained in Section 4.0 of Appendix C to allow for the use of C_2- or C_3-phenanthrene or C_2-chrysene, as well as hopane, as the internal marker. EPA recommends, however, that hopane be used because the test method was developed using this marker.

Three commenters objected to the required use of unfiltered Gulf Breeze coast seawater in the proposed bioremediation agent effectiveness testing protocol. These commenters argued that the required use of this seawater is too restrictive for a test meant to provide data on a national basis. Two of these commenters suggested that EPA develop bioremediation effectiveness test methods for freshwater applications.

EPA agrees that requiring the use of unfiltered Gulf Breeze coast seawater in a test that is meant to be used on a national basis may be inappropriate. As a result, EPA is revising Section 4.3 of Appendix C to specify the use of "clean natural seawater" in the Bioremediation Agent Effectiveness Test. "Clean natural seawater" means that the source of this seawater must not be heavily contaminated with industrial or other types of effluent. For example, seawater should not be obtained from a source near shipping channels or discharges of industrial or municipal wastewater, or with high turbidity. EPA is currently conducting research on the issue of a bioremediation agent effectiveness

esting protocol for freshwater applications and may propose such a protocol at a later date.

EPA is also making several other revisions to the bioremediation agent effectiveness testing protocol contained in Section 4.0 and the summary technical product test data format contained in Section 6.0 of Appendix C. Since the development of the proposed NCP, NETAC has finalized and published [7] its laboratory-scale testing protocol for bioremediation agent effectiveness. EPA is making these revisions to Sections 4.0 and 6.0 of Appendix C so that the Bioremediation Agent Effectiveness Test is consistent with the final protocol published by NETAC. Revisions include the addition of a section on statistical analysis, the addition of an alternative gas chromatograph/mass spectrometer (GC/MS) sample cleanup procedure, and a reduction in the number of sampling events to save costs in conducting the test. These revisions will make the performance of the test more straightforward and do not affect the basic procedures for conducting this test.

EPA received several comments objecting to specific provisions of the Bioremediation Agent Toxicity Test that was proposed in Appendix C. EPA acknowledges that there are a number of technical problems with this testing protocol. Due to these problems and the short period of time available to address them, EPA is not including the Bioremediation Agent Toxicity Test in the final NCP in this rulemaking. Section 300.915(d)(8) and Appendix C are being revised to reflect this change. The Agency will continue its research in this area and may propose a revised bioremediation agent toxicity testing protocol at a later date.

Section 300.920—Addition of Products to Schedule

Several commenters expressed support for the establishment of the effectiveness acceptability criterion or threshold (50 percent, plus or minus 5 percent) for listing dispersants on the Product Schedule. A different commenter objected to this threshold, suggesting that EPA adopt a threshold of 55 percent plus or minus 5 percent, which would be more in agreement with the Canadian standard. Three other commenters stated that the 50 percent threshold is too high, which could exclude some potentially useful dispersants. One of these commenters argued that the 50 percent criterion is unrealistically high for the low energy, long settling time (10 minutes) Swirling Flask test protocol, noting that the 50 to 60 percent criteria used by other countries are based on more energetic testing conditions. This commenter suggested that EPA adopt a 20 percent dispersant effectiveness threshold given its use of the Swirling Flask test.

EPA believes that establishing the 50 percent (plus or minus 5 percent) effectiveness acceptability criterion is the best approach for listing dispersants on the Product Schedule. EPA examined a number of issues when developing this criterion for dispersants. The 1988 U.S.-Canada Free Trade Agreement supports EPA in adopting a dispersant effectiveness standard that is similar to the Canadian standard (50 percent). The Agency believes that the 50 percent threshold strikes an effective balance between restrictiveness and leniency in listing dispersants on the Product Schedule, is *generally* consistent with the effectiveness thresholds established by other countries, and allows for the use of a broad range of dispersants at various levels of technical development.

The 50 percent criterion was selected by EPA as a median level with the expectation that it would eliminate from the Product Schedule those dispersant products that perform poorly. On the current Product Schedule, more than half of the dispersants do not even attain a 10 percent effectiveness level. EPA believes that part of the reluctance of OSCs to use dispersants is their major concern that these chemical agents will not work, even if properly applied. EPA believes that to select an effectiveness criterion below 50 percent, even with the low energy regime associated with the Swirling Flask test, would undermine the intent to eliminate those products that cannot be expected to perform in the sea.

Two commenters asked whether products currently listed on the Product Schedule would be required to be retested given the revisions to Subpart J and, if so, when these tests would be conducted and a new Product Schedule published.

EPA would like to clarify that products currently listed on the Product Schedule will be required to be retested according to the new testing protocols specified in Appendix C. These products will be retested as expeditiously as possible, but EPA has not yet established a schedule for this retesting.

Appendix E to Part 300—Oil Spill Response

Four commenters expressed concern regarding the effectiveness of Appendix E, as proposed, to separate oil spill response requirements of the NCP from hazardous substance release requirements.

One of these commenters stated that Appendix E, although well written and helpful, is a guidance document that should not be converted into a regulation by this rulemaking. The commenter suggested that if the NCP were better organized, a separate appendix would be unnecessary. EPA disagrees that the information contained in Appendix E should be issued as guidance rather than promulgated as a regulation. As stated in the introduction to Appendix E, the purpose of creating a separate oil spill response appendix was to compile general oil discharge response requirements into one document to aid participants and responders under the national response system. In EPA's view, this goal would not be achieved if the oil discharge response requirements were available only in a guidance document format.

Three commenters believed that there are inconsistencies between the provisions in Appendix E and those in the body of the NCP. One of these commenters stated that the proposed approach for separating CERCLA and oil response-related requirements merely exacerbates the confusion created by the format of the existing NCP. The commenter explained that EPA's proposal effectively makes responses to oil discharges subject to two sets of potentially conflicting requirements. All three commenters recommended that EPA carefully review all relevant sections of the NCP and Appendix E to ensure absolute consistency in policy, instructions, guidance, and requirements between these two parts of the final rule.

As noted in the introduction to Appendix E in the proposed rule, the oil spill response appendix was created to compile general oil discharge response requirements into a single document to aid participants and responders under the national response system. As a result, the appendix does not alter in any way the meaning or policy stated in other sections or subparts of the NCP. As noted in the preamble to the proposed rule, some minor variations between Appendix E provisions and analogous provisions of the NCP rule language were necessary to ensure that the appendix address oil discharges only (and not hazardous substance releases as well, which continue to be

[7] See: Evaluation Methods Manual: Oil Spill Response Bioremediation Agents, National Environmental Technology Applications Center, Pittsburgh, PA, July 1993; available for inspection in the public docket for this rulemaking.

addressed in the NCP rule). As suggested by the commenters, EPA has conducted a careful review of Appendix E and the relevant sections of the NCP to ensure consistency in policy, instructions, guidance, and requirements between the two documents, allowing, of course, for the intentional minor variations mentioned above. As part of this review, the Agency has revised Appendix E, where appropriate, to be consistent with the changes made in various subparts of the NCP in response to public comments. These NCP changes are identified elsewhere in this preamble and are discussed in greater detail in the Response to Comments document. EPA has not enumerated the corresponding revisions to Appendix E here because this would be redundant. In light of the substantive consistency between Appendix E provisions and those provisions of the NCP that relate to oil discharges, EPA believes that the comment that the proposal effectively made oil spill response subject to two sets of potentially conflicting requirements has been addressed adequately in today's final rulemaking.

In addition to the revisions required by comments on other subparts of the NCP, several commenters recommended editorial changes to various sections of Appendix E. EPA has incorporated these changes, as appropriate.

III. Summary of Supporting Analyses

A. Executive Order 12866

Under E.O. 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the E.O. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Pursuant to the terms of E.O. 12866, OMB has notified EPA that it considers this rule a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

An economic analysis performed by the Agency, available for inspection in Room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, shows that this rule would result in estimated costs to affected facilities of $33 million during the first year that the rule is in effect and approximately $11.3 million in each subsequent year. At a 7 percent interest rate over 10 years, the annualized costs are approximately $14.1 million. Virtually all costs are incurred by the federal government and, in particular, by the USCG and EPA.

The economic analysis prepared in support of this final rule also includes a qualitative assessment of the environmental benefits associated with the revisions. The NCP revisions are expected to lead to quicker, more efficient, and more appropriate responses to discharges of oil and releases of hazardous substances. The benefits that would result from such improvements (i.e., preventing oil spills from occurring or mitigating the severity of the spills that do occur) are assumed to be substantial. Benefits include avoided clean-up costs and natural resource damages as well as reductions in other damages caused by oil spills, such as damage to private property, lost profit by business, public health risks, and foregone existence/option values.

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." To determine whether a Regulatory Flexibility Analysis was necessary for this rule, a preliminary analysis was conducted (see the "Economic Impact Analysis of the Revisions to the National Oil and Hazardous Substances Pollution Contingency Plan," Chapter 5, available for inspection in Room M2615 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460). The results of the preliminary analysis indicate that this rule will not have significant adverse impacts on small businesses because such entities are unlikely to be affected by revisions to the federal planning and response mechanism for pollution incidents. Revisions to Subpart J would impose certain additional requirements on small manufacturers of dispersants and bioremediation agents seeking to list products on the NCP Product Schedule. However, the analysis revealed that the revisions would not significantly impact the economic viability of such concerns as the market is currently structured. Under the final rule, certain local government agencies (e.g., LEPCs) would be required to play a supporting role in developing ACPs. The analysis revealed that fulfilling this role would not place a significant burden on a substantial number of such entities. Therefore, EPA certifies that this rule is not expected to have a significant impact on small entities, and therefore no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned control number 2050–0141.

The collection of information required to prepare and submit materials for listing a product on the NCP Product Schedule is estimated to have a public reporting burden varying from 14 to 40 hours per response in the first year and subsequent years, with an average of 26 hours per response. This includes time to review instructions and guidance, search existing data sources, gather and maintain the data needed, and complete and review 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; EPA; 401 M Street, SW. (Mail Code 2136); 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."

D. Display of OMB Control Numbers

EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Incorporation by reference, Intergovernmental relations, Natural resources, Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: August 15, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR parts 9 and 300 are amended as follows:

PART 9—OMB APPROVAL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
• • • •	
National Oil and Hazardous Substances Pollution Contingency Plan	
• • • •	
300.920	2050–0141
• • • •	

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

3. The authority citation for part 300 is revised to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(d); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923; E.O. 12777, 56 FR 54757.

4. Subparts A, B, C, and D are revised to read as follows:

PART 300—[AMENDED]

Subpart A—Introduction

Sec.

300.1 Purpose and objectives.
300.2 Authority and applicability.
300.3 Scope.
300.4 Abbreviations.
300.5 Definitions.
300.6 Use of number and gender.
300.7 Computation of time.

Subpart B—Responsibility and Organization for Response

300.100 Duties of President delegated to federal agencies.
300.105 General organization concepts.
300.110 National Response Team.
300.115 Regional Response Teams.
300.120 On-scene coordinators and remedial project managers: general responsibilities.
300.125 Notification and communications.
300.130 Determinations to initiate response and special conditions.
300.135 Response operations.
300.140 Multi-regional responses.
300.145 Special teams and other assistance available to OSCs/RPMs.
300.150 Worker health and safety.
300.155 Public information and community relations.
300.160 Documentation and cost recovery.
300.165 OSC reports.
300.170 Federal agency participation.
300.175 Federal agencies: additional responsibilities and assistance.
300.180 State and local participation in response.
300.185 Nongovernmental participation.

Subpart C—Planning and Preparedness

300.200 General.
300.205 Planning and coordination structure.
300.210 Federal contingency plans.
300.211 OPA facility and vessel response plans.
300.212 Area response drills.
300.215 Title III local emergency response plans.
300.220 Related Title III issues.

Subpart D—Operational Response Phases for Oil Removal

300.300 Phase I—Discovery or notification.
300.305 Phase II—Preliminary assessment and initiation of action.
300.310 Phase III—Containment, countermeasures, cleanup, and disposal.
300.315 Phase IV—Documentation and cost recovery.
300.317 National response priorities.
300.320 General pattern of response.
300.322 Response to substantial threats to public health or welfare of the United States.
300.323 Spills of national significance.
300.324 Response to worst case discharges.
300.335 Funding.

Subpart A—Introduction

§ 300.1 Purpose and objectives.

The purpose of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) is to provide the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants.

§ 300.2 Authority and applicability.

The NCP is required by section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9605, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99–499, (hereinafter CERCLA), and by section 311(d) of the Clean Water Act (CWA), 33 U.S.C. 1321(d), as amended by the Oil Pollution Act of 1990 (OPA), Pub. L. 101–380. In Executive Order (E.O.) 12777 (56 FR 54757, October 22, 1991), the President delegated to the Environmental Protection Agency (EPA) the responsibility for the amendment of the NCP. Amendments to the NCP are coordinated with members of the National Response Team (NRT) prior to publication for notice and comment. This includes coordination with the Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies. The NCP is applicable to response actions taken pursuant to the authorities under CERCLA and section 311 of the CWA, as amended.

§ 300.3 Scope.

(a) The NCP applies to and is in effect for:

(1) Discharges of oil into or on the navigable waters of the United States, on the adjoining shorelines, the waters of the contiguous zone, into waters of the exclusive economic zone, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (See sections 311(c)(1) and 502(7) of the CWA).

(2) Releases into the environment of hazardous substances, and pollutants or contaminants which may present an imminent and substantial danger to

public health or welfare of the United States.

(b) The NCP provides for efficient, coordinated, and effective response to discharges of oil and releases of hazardous substances, pollutants, and contaminants in accordance with the authorities of CERCLA and the CWA. It provides for:

(1) The national response organization that may be activated in response actions. It specifies responsibilities among the federal, state, and local governments and describes resources that are available for response.

(2) The establishment of requirements for federal, regional, and area contingency plans. It also summarizes state and local emergency planning requirements under SARA Title III.

(3) Procedures for undertaking removal actions pursuant to section 311 of the CWA.

(4) Procedures for undertaking response actions pursuant to CERCLA.

(5) Procedures for involving state governments in the initiation, development, selection, and implementation of response actions, pursuant to CERCLA.

(6) Listing of federal trustees for natural resources for purposes of CERCLA and the CWA.

(7) Procedures for the participation of other persons in response actions.

(8) Procedures for compiling and making available an administrative record for response actions.

(9) National procedures for the use of dispersants and other chemicals in removals under the CWA and response actions under CERCLA.

(c) In implementing the NCP, consideration shall be given to international assistance plans and agreements, security regulations and responsibilities based on international agreements, federal statutes, and executive orders. Actions taken pursuant to the provisions of any applicable international joint contingency plans shall be consistent with the NCP, to the greatest extent possible. The Department of State shall be consulted, as appropriate, prior to taking any action which may affect its activities.

(d) Additionally, the NCP applies to and is in effect when the Federal Response Plan and some or all its Emergency Support Functions (ESFs) are activated.

§ 300.4 Abbreviations.

(a) *Department and Agency Title Abbreviations:*

ATSDR—Agency for Toxic Substances and Disease Registry
CDC—Centers for Disease Control
DOC—Department of Commerce
DOD—Department of Defense
DOE—Department of Energy
DOI—Department of the Interior
DOJ—Department of Justice
DOL—Department of Labor
DOS—Department of State
DOT—Department of Transportation
EPA—Environmental Protection Agency
FEMA—Federal Emergency Management Agency
GSA—General Services Administration
HHS—Department of Health and Human Services
NIOSH—National Institute for Occupational Safety and Health
NOAA—National Oceanic and Atmospheric Administration
OSHA—Occupational Health and Safety Administration
RSPA—Research and Special Programs Administration
USCG—United States Coast Guard
USDA—United States Department of Agriculture

Note: Reference is made in the NCP to both the Nuclear Regulatory Commission and the National Response Center. In order to avoid confusion, the NCP will spell out Nuclear Regulatory Commission and use the abbreviation "NRC" only with respect to the National Response Center.

(b) *Operational Abbreviations:*

ACP—Area Contingency Plan
ARARs—Applicable or Relevant and Appropriate Requirements
CERCLIS—CERCLA Information System
CRC—Community Relations Coordinator
CRP—Community Relations Plan
DRAT—District Response Advisory Team
DRG—District Response Group
ERT—Environmental Response Team
ESF—Emergency Support Function
FCO—Federal Coordinating Officer
FRERP—Federal Radiological Emergency Response Plan
FRP—Federal Response Plan
FS—Feasibility Study
HRS—Hazard Ranking System
LEPC—Local Emergency Planning Committee
NCP—National Contingency Plan
NPFC—National Pollution Funds Center
NPL—National Priorities List
NRC—National Response Center
NRS—National Response System
NRT—National Response Team
NSF—National Strike Force
NSFCC—National Strike Force Coordination Center
O&M—Operation and Maintenance
OSC—On-Scene Coordinator
OSLTF—Oil Spill Liability Trust Fund
PA—Preliminary Assessment
PIAT—Public Information Assist Team
RA—Remedial Action
RCP—Regional Contingency Plan
RD—Remedial Design
RERT—Radiological Emergency Response Team
RI—Remedial Investigation
ROD—Record of Decision
RPM—Remedial Project Manager
RRC—Regional Response Center
RRT—Regional Response Team
SAC—Support Agency Coordinator
SERC—State Emergency Response Commission
SI—Site Inspection
SMOA—Superfund Memorandum of Agreement
SONS—Spill of National Significance
SSC—Scientific Support Coordinator
SUPSALV—United States Navy Supervisor of Salvage
USFWS—United States Fish and Wildlife Service

§ 300.5 Definitions.

Terms not defined in this section have the meaning given by CERCLA, the OPA, or the CWA.

Activation means notification by telephone or other expeditious manner or, when required, the assembly of some or all appropriate members of the RRT or NRT.

Alternative water supplies as defined by section 101(34) of CERCLA, includes, but is not limited to, drinking water and household water supplies.

Applicable requirements means those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance found at a CERCLA site. Only those state standards that are identified by a state in a timely manner and that are more stringent than federal requirements may be applicable.

Area Committee (AC) as provided for by CWA sections 311(a)(18) and (j)(4), means the entity appointed by the President consisting of members from qualified personnel of federal, state, and local agencies with responsibilities that include preparing an area contingency plan for an area designated by the President.

Area contingency plan (ACP) as provided for by CWA sections 311(a)(19) and (j)(4), means the plan prepared by an Area Committee that is developed to be implemented in conjunction with the NCP and RCP, in part to address removal of a worst case discharge and to mitigate or prevent a substantial threat of such a discharge from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President.

Bioremediation agents means microbiological cultures, enzyme additives, or nutrient additives that are deliberately introduced into an oil discharge and that will significantly increase the rate of biodegradation to mitigate the effects of the discharge.

Burning agents means those additives that, through physical or chemical

means, improve the combustibility of the materials to which they are applied.

CERCLA is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

CERCLIS is the abbreviation of the CERCLA Information System, EPA's comprehensive data base and management system that inventories and tracks releases addressed or needing to be addressed by the Superfund program. CERCLIS contains the official inventory of CERCLA sites and supports EPA's site planning and tracking functions. Sites that EPA decides do not warrant moving further in the site evaluation process are given a "No Further Response Action Planned" (NFRAP) designation in CERCLIS. This means that no additional federal steps under CERCLA will be taken at the site unless future information so warrants. Sites are not removed from the data base after completion of evaluations in order to document that these evaluations took place and to preclude the possibility that they be needlessly repeated. Inclusion of a specific site or area in the CERCLIS data base does not represent a determination of any party's liability, nor does it represent a finding that any response action is necessary. Sites that are deleted from the NPL are not designated NFRAP sites. Deleted sites are listed in a separate category in the CERCLIS data base.

Chemical agents means those elements, compounds, or mixtures that coagulate, disperse, dissolve, emulsify, foam, neutralize, precipitate, reduce, solubilize, oxidize, concentrate, congeal, entrap, fix, make the pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects or the removal of the pollutant from the water. Chemical agents include biological additives, dispersants, sinking agents, miscellaneous oil spill control agents, and burning agents, but do not include sorbents.

Claim for purposes of a release under CERCLA, means a demand in writing for a sum certain; for purposes of a discharge under CWA, it means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from an incident.

Claimant as defined by section 1001 of the OPA means any person or government who presents a claim for compensation under Title I of the OPA.

Coastal waters for the purposes of classifying the size of discharges, means the waters of the coastal zone except for the Great Lakes and specified ports and harbors on inland rivers.

Coastal zone as defined for the purpose of the NCP, means all United States waters subject to the tide, United States waters of the Great Lakes, specified ports and harbors on inland rivers, waters of the contiguous zone, other waters of the high seas subject to the NCP, and the land surface or land substrata, ground waters, and ambient air proximal to those waters. The term coastal zone delineates an area of federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in federal regional contingency plans.

Coast Guard District Response Group (DRG) as provided for by CWA sections 311(a)(20) and (j)(3), means the entity established by the Secretary of the department in which the USCG is operating, within each USCG district, and shall consist of: the combined USCG personnel and equipment, including marine firefighting equipment, of each port in the district; additional prepositioned response equipment; and a district response advisory team.

Community relations means EPA's program to inform and encourage public participation in the Superfund process and to respond to community concerns. The term "public" includes citizens directly affected by the site, other interested citizens or parties, organized groups, elected officials, and potentially responsible parties (PRPs).

Community relations coordinator means lead agency staff who work with the OSC/RPM to involve and inform the public about the Superfund process and response actions in accordance with the interactive community relations requirements set forth in the NCP.

Contiguous zone means the zone of the high seas, established by the United States under Article 24 of the Convention on the Territorial Sea and Contiguous Zone, which is contiguous to the territorial sea and which extends nine miles seaward from the outer limit of the territorial sea.

Cooperative agreement is a legal instrument EPA uses to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose in which substantial EPA involvement is anticipated during the performance of the project.

Damages as defined by section 1001 of the OPA means damages specified in section 1002(b) of the Act, and includes the cost of assessing these damages.

Discharge as defined by section 311(a)(2) of the CWA, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil, but excludes discharges in compliance with a permit under section 402 of the CWA, discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the CWA, and subject to a condition in such permit, or continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems. For purposes of the NCP, discharge also means substantial threat of discharge.

Dispersants means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

Drinking water supply as defined by section 101(7) of CERCLA, means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act (42 U.S.C. 300 et seq.) or as drinking water by one or more individuals.

Environment as defined by section 101(8) of CERCLA, means the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); and any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

Exclusive economic zone, as defined by OPA section 1001, means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983, including the ocean waters of the areas referred to as "eastern special areas" in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990.

Facility as defined by section 101(9) of CERCLA, means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area, where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located;

but does not include any consumer product in consumer use or any vessel. As defined by section 1001 of the OPA, it means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: Exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.

Feasibility study (FS) means a study undertaken by the lead agency to develop and evaluate options for remedial action. The FS emphasizes data analysis and is generally performed concurrently and in an interactive fashion with the remedial investigation (RI), using data gathered during the RI. The RI data are used to define the objectives of the response action, to develop remedial action alternatives, and to undertake an initial screening and detailed analysis of the alternatives. The term also refers to a report that describes the results of the study.

Federal Radiological Emergency Response Plan (FRERP) means the inter-agency agreement for coordinating the response of various agencies, under a variety of statutes, to a large radiological accident. The Lead Federal Agency (LFA), defined by the FRERP, activates the FRERP for any peacetime radiological emergency which, based upon its professional judgment, is expected to have a significant radiological effect within the United States, its territories, possessions, or territorial waters and that could require a response by several federal agencies.

Federal Response Plan (FRP) means the agreement signed by 27 federal departments and agencies in April 1987 and developed under the authorities of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.) and the Disaster Relief Act of 1974 (42 U.S.C. 3231 et seq.), as amended by the Stafford Disaster Relief Act of 1988.

First federal official means the first federal representative of a participating agency of the National Response Team to arrive at the scene of a discharge or a release. This official coordinates activities under the NCP and may initiate, in consultation with the OSC, any necessary actions until the arrival of the predesignated OSC. A state with primary jurisdiction over a site covered by a cooperative agreement will act in the stead of the first federal official for any incident at the site.

Fund or *Trust Fund* means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

Ground water as defined by section 101(12) of CERCLA, means water in a saturated zone or stratum beneath the surface of land or water.

Hazard Ranking System (HRS) means the method used by EPA to evaluate the relative potential of hazardous substance releases to cause health or safety problems, or ecological or environmental damage.

Hazardous substance as defined by section 101(14) of CERCLA, means: Any substance designated pursuant to section 311(b)(2)(A) of the CWA; any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) has been suspended by Act of Congress); any toxic pollutant listed under section 307(a) of the CWA; any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. 7521 et seq.); and any imminently hazardous chemical substance or mixture with respect to which the EPA Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act (15 U.S.C. 2601 et seq.). The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in the first sentence of this paragraph, and the term does not include natural gas, natural gas liquids, liquified natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

Indian tribe as defined by section 101(36) of CERCLA, means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. "Indian tribe," as defined by OPA section 1001, means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the tribe.

Inland waters, for the purposes of classifying the size of discharges, means those waters of the United States in the inland zone, waters of the Great Lakes, and specified ports and harbors on inland rivers.

Inland zone means the environment inland of the coastal zone excluding the Great Lakes and specified ports and harbors on inland rivers. The term inland zone delineates an area of federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in federal regional contingency plans.

Lead administrative trustee means a natural resource trustee who is designated on an incident-by-incident basis for the purpose of preassessment and damage assessment and chosen by the other trustees whose natural resources are affected by the incident. The lead administrative trustee facilitates effective and efficient communication during response operations between the OSC and the other natural resource trustees conducting activities associated with damage assessment, and is responsible for applying to the OSC for access to response operations resources on behalf of all trustees for initiation of a damage assessment.

Lead agency means the agency that provides the OSC/RPM to plan and implement response actions under the NCP. EPA, the USCG, another federal agency, or a state (or political subdivision of a state) operating pursuant to a contract or cooperative agreement executed pursuant to section 104(d)(1) of CERCLA, or designated pursuant to a Superfund Memorandum of Agreement (SMOA) entered into pursuant to subpart F of the NCP or other agreements may be the lead agency for a response action. In the case of a release of a hazardous substance, pollutant, or contaminant, where the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of Department of Defense (DOD) or Department of Energy (DOE), then DOD or DOE will be the lead agency. Where the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of a federal agency other than EPA, the USCG, DOD, or DOE, then that agency will be the lead agency for remedial actions and removal actions other than emergencies. The federal agency maintains its lead agency responsibilities whether the remedy is selected by the federal agency for non-NPL sites or by EPA and the federal agency or by EPA alone under CERCLA section 120. The lead agency will consult with the support agency, if one exists, throughout the response process.

Management of migration means actions that are taken to minimize and mitigate the migration of hazardous substances or pollutants or contaminants and the effects of such migration. Measures may include, but are not limited to, management of a plume of contamination, restoration of a drinking water aquifer, or surface water restoration.

Miscellaneous oil spill control agent is any product, other than a dispersant, sinking agent, surface washing agent, surface collecting agent, bioremediation agent, burning agent, or sorbent that can be used to enhance oil spill cleanup, removal, treatment, or mitigation.

National Pollution Funds Center (NPFC) means the entity established by the Secretary of Transportation whose function is the administration of the Oil Spill Liability Trust Fund (OSLTF). Among the NPFC's duties are: providing appropriate access to the OSLTF for federal agencies and states for removal actions and for federal trustees to initiate the assessment of natural resource damages; providing appropriate access to the OSLTF for claims; and coordinating cost recovery efforts.

National Priorities List (NPL) means the list, compiled by EPA pursuant to CERCLA section 105, of uncontrolled hazardous substance releases in the United States that are priorities for long-term remedial evaluation and response.

National response system (NRS) is the mechanism for coordinating response actions by all levels of government in support of the OSC/RPM. The NRS is composed of the NRT, RRTs, OSC/RPM, Area Committees, and Special Teams and related support entities. The NRS is capable of expanding or contracting to accommodate the response effort required by the size or complexity of the discharge or release.

National Strike Force (NSF) is a special team established by the USCG, including the three USCG Strike Teams, the Public Information Assist Team (PIAT), and the National Strike Force Coordination Center. The NSF is available to assist OSCs/RPMs in their preparedness and response duties.

National Strike Force Coordination Center (NSFCC), authorized as the National Response Unit by CWA sections 311(a)(23) and (j)(2), means the entity established by the Secretary of the department in which the USCG is operating at Elizabeth City, North Carolina with responsibilities that include administration of the USCG Strike Teams, maintenance of response equipment inventories and logistic networks, and conducting a national exercise program.

Natural resources means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone defined by the Magnuson Fishery Conservation and Management Act of 1976), any state or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

Navigable waters as defined by 40 CFR 110.1, means the waters of the United States, including the territorial seas. The term includes:

(1) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(2) Interstate waters, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters;

(i) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(iii) That are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as navigable waters under this section;

(5) Tributaries of waters identified in paragraphs (a) through (d) of this definition, including adjacent wetlands; and

(6) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this definition: Provided, that waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

(7) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Offshore facility as defined by section 101(17) of CERCLA and section 311(a)(11) of the CWA, means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

Oil as defined by section 311(a)(1) of the CWA, means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil, as defined by section 1001 of the OPA means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act.

Oil Spill Liability Trust Fund (OSLTF) means the fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509).

On-scene coordinator (OSC) means the federal official predesignated by EPA or the USCG to coordinate and direct responses under subpart D, or the government official designated by the lead agency to coordinate and direct removal actions under subpart E of the NCP.

Onshore facility as defined by section 101(18) of CERCLA, means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land or non-navigable waters within the United States; and, as defined by section 311(a)(10) of the CWA, means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

On-site means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.

Operable unit means a discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of a release, or pathway of exposure. The cleanup of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site

Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site.

Operation and maintenance (O&M) means measures required to maintain the effectiveness of response actions.

Person as defined by section 101(21) of CERCLA, means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States government, state, municipality, commission, political subdivision of a state, or any interstate body. As defined by section 1001 of the OPA, "person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

Pollutant or contaminant as defined by section 101(33) of CERCLA, shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under section 101(14) (A) through (F) of CERCLA, nor does it include natural gas, liquified natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas). For purposes of the NCP, the term pollutant or contaminant means any pollutant or contaminant that may present an imminent and substantial danger to public health or welfare of the United States.

Post-removal site control means those activities that are necessary to sustain the integrity of a Fund-financed removal action following its conclusion. Post-removal site control may be a removal or remedial action under CERCLA. The term includes, without being limited to, activities such as relighting gas flares, replacing filters, and collecting leachate.

Preliminary assessment (PA) under CERCLA means review of existing information and an off-site reconnaissance, if appropriate, to determine if a release may require additional investigation or action. A PA may include an on-site reconnaissance, if appropriate.

Public participation, see the definition for community relations.

Public vessel as defined by section 311(a)(4) of the CWA, means a vessel owned or bareboat-chartered and operated by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

Quality assurance project plan (QAPP) is a written document, associated with all remedial site sampling activities, which presents in specific terms the organization (where applicable), objectives, functional activities, and specific quality assurance (QA) and quality control (QC) activities designed to achieve the data quality objectives of a specific project(s) or continuing operation(s). The QAPP is prepared for each specific project or continuing operation (or group of similar projects or continuing operations). The QAPP will be prepared by the responsible program office, regional office, laboratory, contractor, recipient of an assistance agreement, or other organization. For an enforcement action, potentially responsible parties may prepare a QAPP subject to lead agency approval.

Release as defined by section 101(22) of CERCLA, means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes: Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of CERCLA or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 et seq.); and the normal application of fertilizer. For purposes of the NCP, release also means threat of release.

Relevant and appropriate requirements means those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws that, while not "applicable" to a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to the particular site. Only those state standards that are identified in a timely manner and are more stringent than federal requirements may be relevant and appropriate.

Remedial design (RD) means the technical analysis and procedures which follow the selection of remedy for a site and result in a detailed set of plans and specifications for implementation of the remedial action.

Remedial investigation (RI) is a process undertaken by the lead agency to determine the nature and extent of the problem presented by the release. The RI emphasizes data collection and site characterization, and is generally performed concurrently and in an interactive fashion with the feasibility study. The RI includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for remedial action and to support the evaluation of remedial alternatives.

Remedial project manager (RPM) means the official designated by the lead agency to coordinate, monitor, or direct remedial or other response actions under subpart E of the NCP.

Remedy or remedial action (RA) means those actions consistent with permanent remedy taken instead of, or in addition to, removal action in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of

leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment and, where appropriate, post-removal site control activities. The term includes the costs of permanent relocation of residents and businesses and community facilities (including the cost of providing "alternative land of equivalent value" to an Indian tribe pursuant to CERCLA section 126(b)) where EPA determines that, alone or in combination with other measures, such relocation is more cost-effective than, and environmentally preferable to, the transportation, storage, treatment, destruction, or secure disposition off-site of such hazardous substances, or may otherwise be necessary to protect the public health or welfare; the term includes off-site transport and off-site storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials. For the purpose of the NCP, the term also includes enforcement activities related thereto.

Remove or removal as defined by section 311(a)(8) of the CWA, refers to containment and removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare of the United States (including, but not limited to, fish, shellfish, wildlife, public and private property, and shorelines and beaches) or to the environment. For the purpose of the NCP, the term also includes monitoring of action to remove a discharge. As defined by section 101(23) of CERCLA, remove or removal means the cleanup or removal of released hazardous substances from the environment; such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare of the United States or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of CERCLA, post-removal site control, where appropriate, and any emergency assistance which may be provided under the Disaster Relief Act of 1974. For the purpose of the NCP, the term also includes enforcement activities related thereto.

Removal costs as defined by section 1001 of the OPA means the costs of removal that are incurred after a discharge of oil has occurred, or in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

Respond or response as defined by section 101(25) of CERCLA, means remove, removal, remedy, or remedial action, including enforcement activities related thereto.

Responsible party as defined by section 1001 of the OPA, means the following:

(1) Vessels—In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(2) Onshore Facilities—In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(3) Offshore Facilities—In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301–1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(4) Deepwater Ports—In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524), the licensee.

(5) Pipelines—In the case of a pipeline, any person owning or operating the pipeline.

(6) Abandonment—In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the person who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

SARA is the Superfund Amendments and Reauthorization Act of 1986. In addition to certain free-standing provisions of law, it includes amendments to CERCLA, the Solid Waste Disposal Act, and the Internal Revenue Code. Among the free-standing provisions of law is Title III of SARA, also known as the "Emergency Planning and Community Right-to-Know Act of 1986" and Title IV of SARA, also known as the "Radon Gas and Indoor Air Quality Research Act of 1986." Title V of SARA amending the Internal Revenue Code is also known as the "Superfund Revenue Act of 1986."

Sinking agents means those additives applied to oil discharges to sink floating pollutants below the water surface.

Site inspection (SI) means an on-site investigation to determine whether there is a release or potential release and the nature of the associated threats. The purpose is to augment the data collected in the preliminary assessment and to generate, if necessary, sampling and other field data to determine if further action or investigation is appropriate.

Size classes of discharges refers to the following size classes of oil discharges which are provided as guidance to the OSC and serve as the criteria for the actions delineated in subpart D. They are not meant to imply associated degrees of hazard to public health or welfare of the United States, nor are they a measure of environmental injury Any oil discharge that poses a substantial threat to public health or welfare of the United States or the environment or results in significant public concern shall be classified as a major discharge regardless of the following quantitative measures:

(1) Minor discharge means a discharge to the inland waters of less than 1,000 gallons of oil or a discharge to the coastal waters of less than 10,000 gallons of oil.

(2) Medium discharge means a discharge of 1,000 to 10,000 gallons of oil to the inland waters or a discharge of 10,000 to 100,000 gallons of oil to the coastal waters.

(3) Major discharge means a discharge of more than 10,000 gallons of oil to the inland waters or more than 100,000 gallons of oil to the coastal waters.

Size classes of releases refers to the following size classifications which are provided as guidance to the OSC for meeting pollution reporting requirements in subpart B. The final determination of the appropriate classification of a release will be made by the OSC based on consideration of

the particular release (e.g., size, location, impact, etc.):

(1) Minor release means a release of a quantity of hazardous substance(s), pollutant(s), or contaminant(s) that poses minimal threat to public health or welfare of the United States or the environment.

(2) Medium release means a release not meeting the criteria for classification as a minor or major release.

(3) Major release means a release of any quantity of hazardous substance(s), pollutant(s), or contaminant(s) that poses a substantial threat to public health or welfare of the United States or the environment or results in significant public concern.

Sorbents means essentially inert and insoluble materials that are used to remove oil and hazardous substances from water through adsorption, in which the oil or hazardous substance is attracted to the sorbent surface and then adheres to it; absorption, in which the oil or hazardous substance penetrates the pores of the sorbent material; or a combination of the two. Sorbents are generally manufactured in particulate form for spreading over an oil slick or as sheets, rolls, pillows, or booms. The sorbent material may consist of, but is not limited to, the following materials:

(1) Organic products—

(i) Peat moss or straw;

(ii) Cellulose fibers or cork;

(iii) Corn cobs;

(iv) Chicken, duck, or other bird feathers.

(2) Mineral compounds—

(i) Volcanic ash or perlite;

(ii) Vermiculite or zeolite.

(3) Synthetic products—

(i) Polypropylene;

(ii) Polyethylene;

(iii) Polyurethane;

(iv) Polyester.

Source control action is the construction or installation and start-up of those actions necessary to prevent the continued release of hazardous substances or pollutants or contaminants (primarily from a source on top of or within the ground, or in buildings or other structures) into the environment.

Source control maintenance measures are those measures intended to maintain the effectiveness of source control actions once such actions are operating and functioning properly, such as the maintenance of landfill caps and leachate collection systems.

Specified ports and harbors means those ports and harbor areas on inland rivers, and land areas immediately adjacent to those waters, where the USCG acts as predesignated on-scene coordinator. Precise locations are determined by EPA/USCG regional agreements and identified in federal Regional Contingency Plans and Area Contingency Plans.

Spill of national significance (SONS) means a spill that due to its severity, size, location, actual or potential impact on the public health and welfare or the environment, or the necessary response effort, is so complex that it requires extraordinary coordination of federal, state, local, and responsible party resources to contain and clean up the discharge.

State means the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction. For purposes of the NCP, the term includes Indian tribes as defined in the NCP except where specifically noted. Section 126 of CERCLA provides that the governing body of an Indian tribe shall be afforded substantially the same treatment as a state with respect to certain provisions of CERCLA. Section 300.515(b) of the NCP describes the requirements pertaining to Indian tribes that wish to be treated as states under CERCLA.

Superfund Memorandum of Agreement (SMOA) means a nonbinding, written document executed by an EPA Regional Administrator and the head of a state agency that may establish the nature and extent of EPA and state interaction during the removal, pre-remedial, remedial, and/or enforcement response process. The SMOA is not a site-specific document although attachments may address specific sites. The SMOA generally defines the role and responsibilities of both the lead and the support agencies.

Superfund state contract is a joint, legally binding agreement between EPA and a state to obtain the necessary assurances before a federal-lead remedial action can begin at a site. In the case of a political subdivision-lead remedial response, a three-party Superfund state contract among EPA, the state, and political subdivision thereof, is required before a political subdivision takes the lead for any phase of remedial response to ensure state involvement pursuant to section 121(f)(1) of CERCLA. The Superfund state contract may be amended to provide the state's CERCLA section 104 assurances before a political subdivision can take the lead for remedial action.

Support agency means the agency or agencies that provide the support agency coordinator to furnish necessary data to the lead agency, review response data and documents, and provide other assistance as requested by the OSC or RPM. EPA, the USCG, another federal agency, or a state may be support agencies for a response action if operating pursuant to a contract executed under section 104(d)(1) of CERCLA or designated pursuant to a Superfund Memorandum of Agreement entered into pursuant to subpart F of the NCP or other agreement. The support agency may also concur on decision documents.

Support agency coordinator (SAC) means the official designated by the support agency, as appropriate, to interact and coordinate with the lead agency in response actions under subpart E of this part.

Surface collecting agents means those chemical agents that form a surface film to control the layer thickness of oil.

Surface washing agent is any product that removes oil from solid surfaces, such as beaches and rocks, through a detergency mechanism and does not involve dispersing or solubilizing the oil into the water column.

Tank vessel as defined by section 1001 of the OPA means a vessel that is constructed or adapted to carry, or that carries oil or hazardous material in bulk as cargo or cargo residue, and that:

(1) is a vessel of the United States;

(2) operates on the navigable waters; or

(3) transfers oil or hazardous material in a place subject to the jurisdiction of the United States.

Threat of discharge or release, see definitions for discharge and release.

Threat of release, see definition for release.

Treatment technology means any unit operation or series of unit operations that alters the composition of a hazardous substance or pollutant or contaminant through chemical, biological, or physical means so as to reduce toxicity, mobility, or volume of the contaminated materials being treated. Treatment technologies are an alternative to land disposal of hazardous wastes without treatment.

Trustee means an official of a federal natural resources management agency designated in subpart G of the NCP or a designated state official or Indian tribe or, in the case of discharges covered by the OPA, a foreign government official, who may pursue claims for damages under section 107(f) of CERCLA or section 1006 of the OPA.

United States when used in relation to section 311(a)(5) of the CWA, means the states, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam,

American Samoa, the United States Virgin Islands, and the Pacific Island Governments. United States, when used in relation to section 101(27) of CERCLA and section 1001(36) of the OPA, includes the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

Vessel as defined by section 101(28) of CERCLA, means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water; and, as defined by section 311(a)(3) of the CWA, means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

Volunteer means any individual accepted to perform services by the lead agency which has authority to accept volunteer services (examples: See 16 U.S.C. 742f(c)). A volunteer is subject to the provisions of the authorizing statute and the NCP.

Worst case discharge as defined by section 311(a)(24) of the CWA, means, in the case of a vessel, a discharge in adverse weather conditions of its entire cargo, and, in the case of an offshore facility or onshore facility, the largest foreseeable discharge in adverse weather conditions.

§ 300.6 Use of number and gender.

As used in this regulation, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 300.7 Computation of time.

In computing any period of time prescribed or allowed in these rules of practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday, or legal holiday, the stated time period shall be extended to include the next business day.

Subpart B—Responsibility and Organization for Response

§ 300.100 Duties of President delegated to federal agencies.

In Executive Orders 12580 and 12777, the President delegated certain functions and responsibilities vested in him by the CWA, CERCLA, and the OPA.

§ 300.105 General organization concepts.

(a) Federal agencies should:

(1) Plan for emergencies and develop procedures for addressing oil discharges and releases of hazardous substances, pollutants, or contaminants;

(2) Coordinate their planning, preparedness, and response activities with one another;

(3) Coordinate their planning, preparedness, and response activities with affected states, local governments, and private entities; and

(4) Make available those facilities or resources that may be useful in a response situation, consistent with agency authorities and capabilities.

(b) Three fundamental kinds of activities are performed pursuant to the NCP:

(1) Preparedness planning and coordination for response to a discharge of oil or release of a hazardous substance, pollutant, or contaminant;

(2) Notification and communications; and

(3) Response operations at the scene of a discharge or release.

(c) The organizational elements created to perform these activities are:

(1) The NRT, responsible for national response and preparedness planning, for coordinating regional planning, and for providing policy guidance and support to the Regional Response Teams (RRTs). NRT membership consists of representatives from the agencies specified in § 300.175(b).

(2) RRTs, responsible for regional planning and preparedness activities before response actions, and for providing advice and support to the OSC or RPM when activated during a response. RRT membership consists of designated representatives from each federal agency participating in the NRT together with state and (as agreed upon by the states) local government representatives.

(3) The OSC and the RPM, primarily responsible for directing response efforts and coordinating all other efforts at the scene of a discharge or release. The other responsibilities of OSCs and RPMs are described in § 300.135.

(4) Area Committees, responsible for developing, under direction of the OSC, ACPs for each area designated by the President. Responsibilities of Area Committees are described in § 300.205(c).

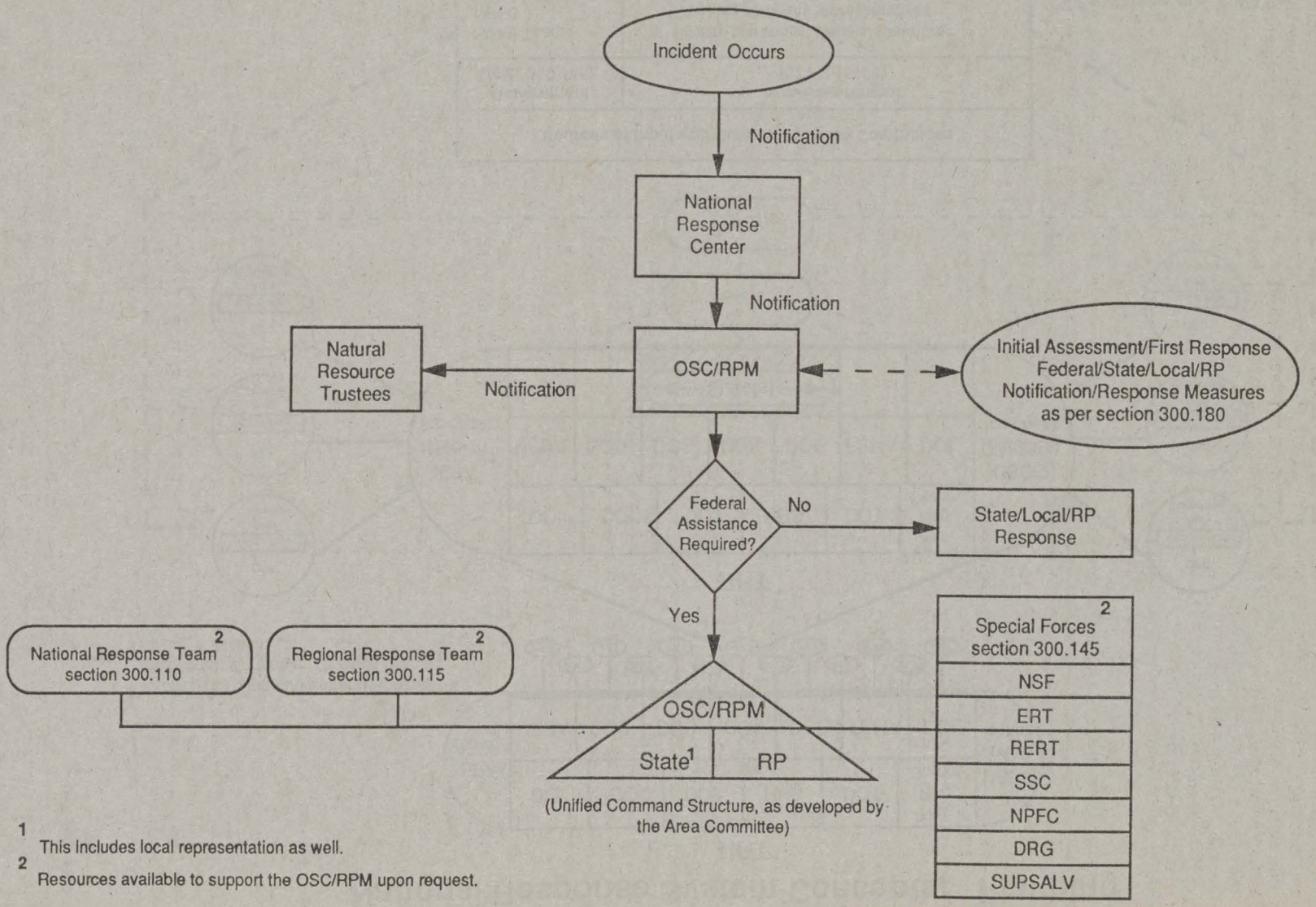
(d) The basic framework for the response management structure is a system (e.g., a unified command system) that brings together the functions of the Federal Government, the state government, and the responsible party to achieve an effective and efficient response, where the OSC maintains authority.

(e)(1) The organizational concepts of the national response system are depicted in the following Figures 1a and 1b:

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Figure 1a

National Response System Concepts: Response



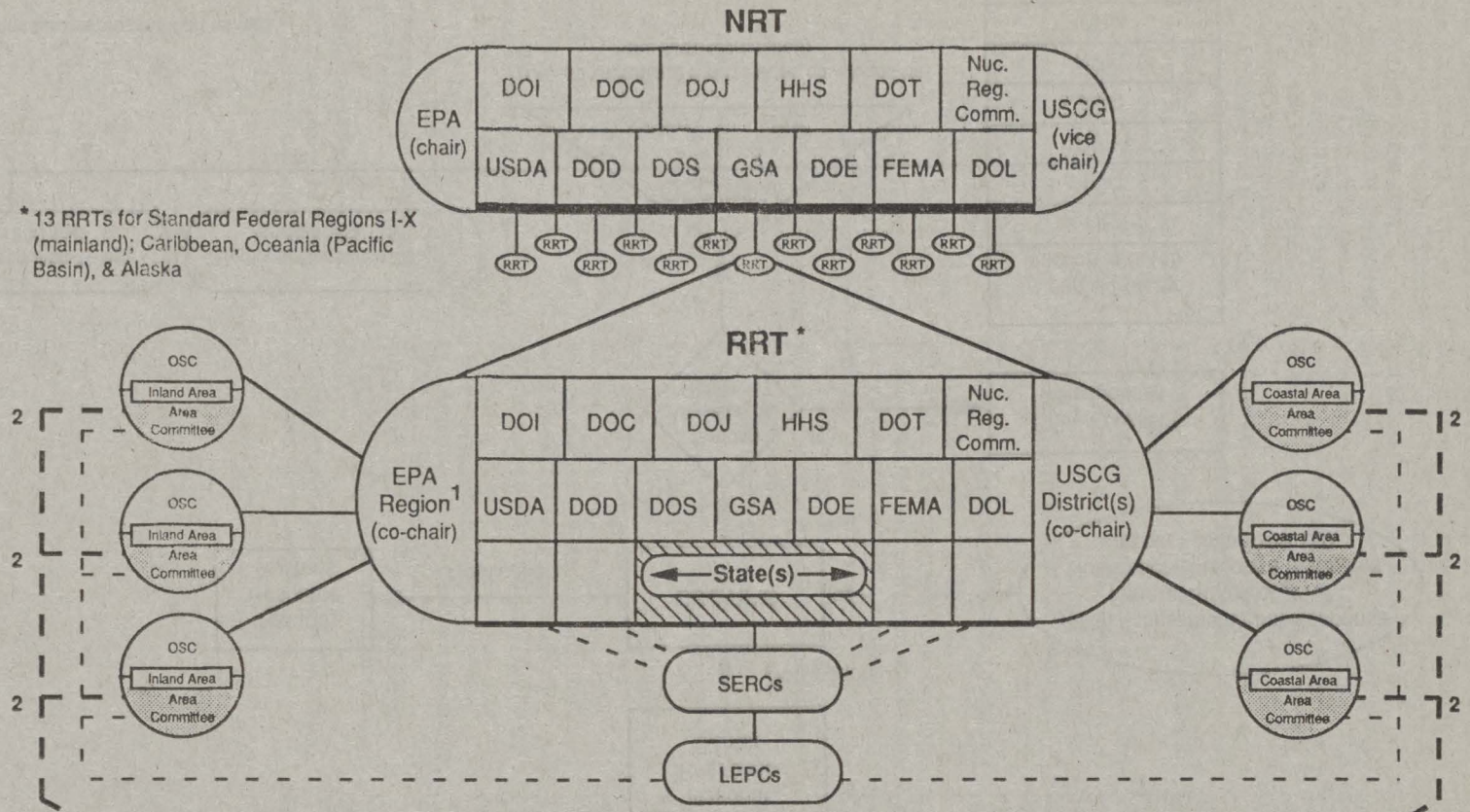
1 This includes local representation as well.

2 Resources available to support the OSC/RPM upon request.

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Figure 1b

National Response System Concepts: Planning



Sources of Input and Guidance to Area Committees	
Government (sec. 300.145)	**Non-Government** (57 FR 15198)
Strike Teams	Facility and vessel owners/operators[2]
NPFC	Shipping company representatives
ERT	Cleanup contractors
RERT	Emergency planning and response officials
DRG	Marine pilot associations
DRAT	Members of academia
SSC	Environmental advocacy groups
PIAT	Response organizations/officers.
SUPSALV	Citizens

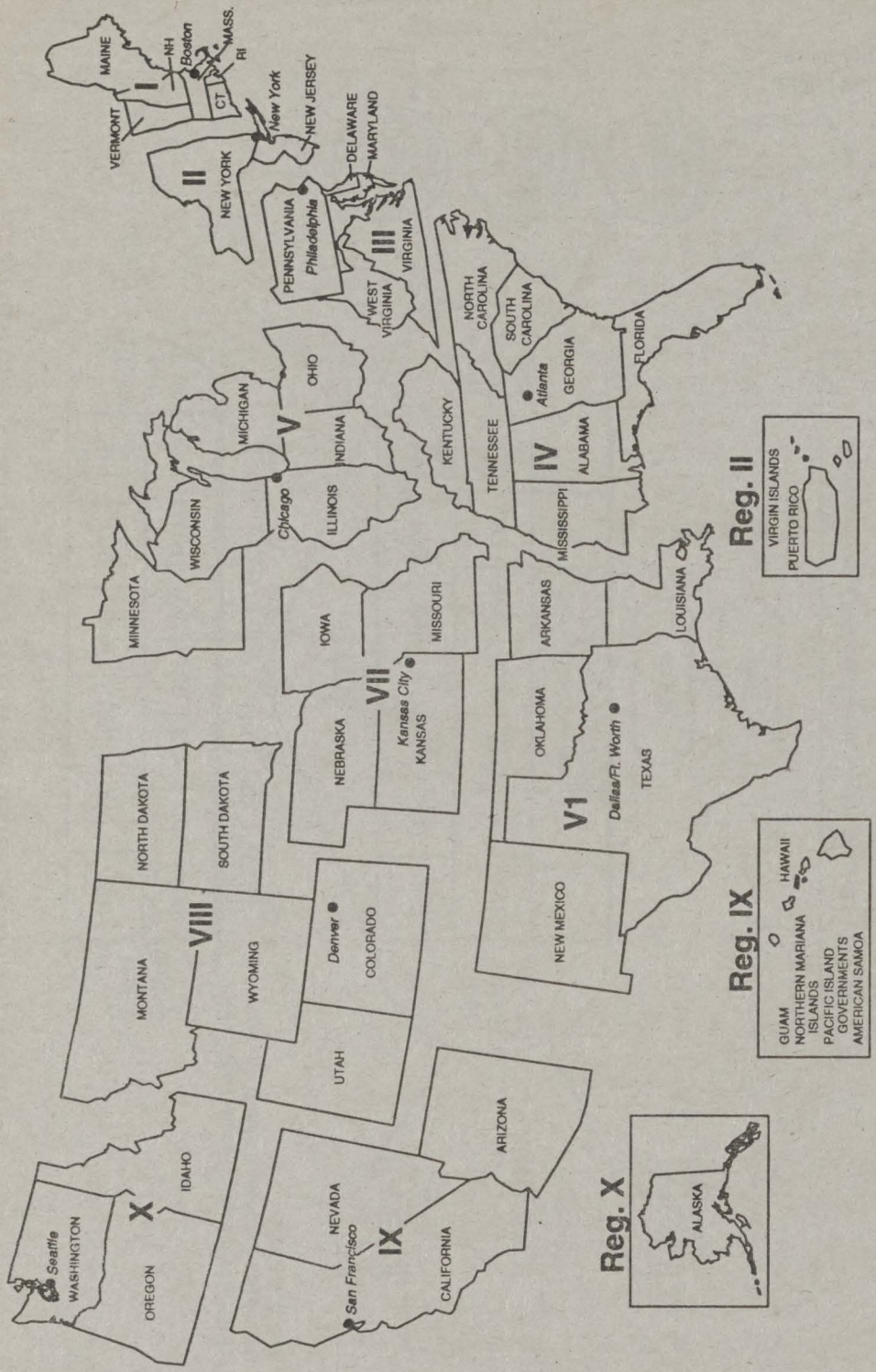
[1] RRT serves as the Area Committee for inland areas not covered by a separate Area Committee, unless a separate Area Committee is designated by the Regional Administrator (57 FR 15198).

[2] Federal laws (e.g., CWA Sec. 311(j)(5), Clean Air Act Sec. 112(r), OSHA (Process safety regulations) require facility owner/operators to prepare a response plan. Additional description is found in Section 300.211.

(2) The standard federal regional boundaries (which are also the geographic areas of responsibility for the RRTs) are shown in the following Figure 2:

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Figure 2

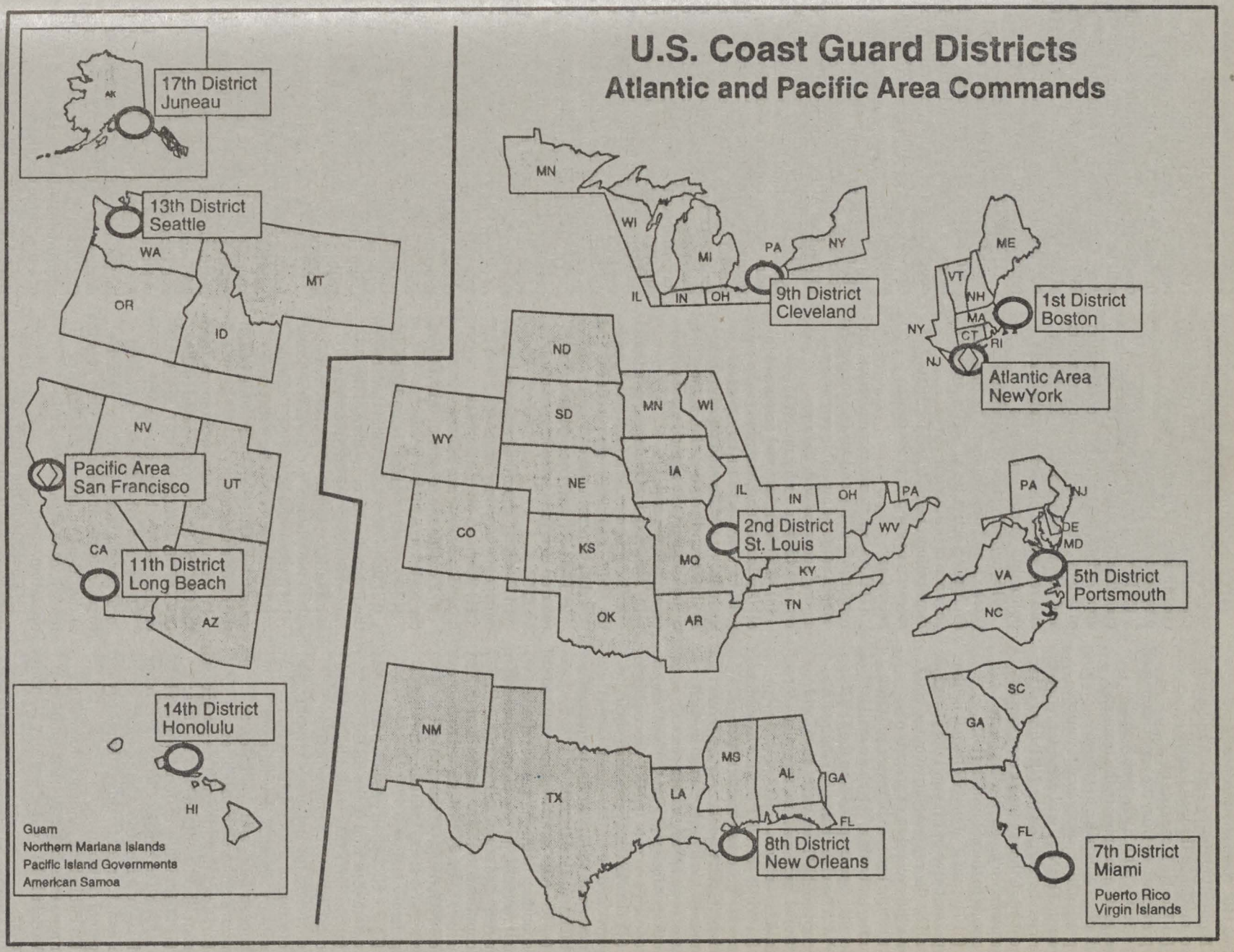


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(3) The USCG District boundaries are shown in the following Figure 3:

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Figure 3



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§ 300.110 National Response Team.

National planning and coordination is accomplished through the NRT

(a) The NRT consists of representatives from the agencies named in § 300.175(b). Each agency shall designate a member to the team and sufficient alternates to ensure representation, as agency resources permit. The NRT will consider requests for membership on the NRT from other agencies. Other agencies may request membership by forwarding such requests to the chair of the NRT.

(b) The chair of the NRT shall be the representative of EPA and the vice chair shall be the representative of the USCG, with the exception of periods of activation because of response action. During activation, the chair shall be the member agency providing the OSC/RPM. The vice chair shall maintain records of NRT activities along with national, regional, and area plans for response actions.

(c) While the NRT desires to achieve a consensus on all matters brought before it, certain matters may prove unresolvable by this means. In such cases, each agency serving as a participating agency on the NRT may be accorded one vote in NRT proceedings.

(d) The NRT may establish such bylaws and committees as it deems appropriate to further the purposes for which it is established.

(e) The NRT shall evaluate methods of responding to discharges or releases; shall recommend any changes needed in the response organization; and shall recommend to the Administrator of EPA changes to the NCP designed to improve the effectiveness of the national response system, including drafting of regulatory language.

(f) The NRT shall provide policy and program direction to the RRTs.

(g) The NRT may consider and make recommendations to appropriate agencies on the training, equipping, and protection of response teams and necessary research, development, demonstration, and evaluation to improve response capabilities.

(h) Direct planning and preparedness responsibilities of the NRT include:

(1) Maintaining national preparedness to respond to a major discharge of oil or release of a hazardous substance, pollutant, or contaminant that is beyond regional capabilities;

(2) Publishing guidance documents for preparation and implementation of SARA Title III local emergency response plans;

(3) Monitoring incoming reports from all RRTs and activating for a response action, when necessary;

(4) Coordinating a national program to assist member agencies in preparedness planning and response, and enhancing coordination of member agency preparedness programs;

(5) Developing procedures, in coordination with the NSFCC, as appropriate, to ensure the coordination of federal, state, and local governments, and private response to oil discharges and releases of hazardous substances, pollutants, or contaminants;

(6) Monitoring response-related research and development, testing, and evaluation activities of NRT agencies to enhance coordination, avoid duplication of effort, and facilitate research in support of response activities;

(7) Developing recommendations for response training and for enhancing the coordination of available resources among agencies with training responsibilities under the NCP;

(8) Reviewing regional responses to oil discharges and hazardous substance, pollutant, or contaminant releases, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations; and

(9) Assisting in developing a national exercise program, in coordination with the NSFCC, to ensure preparedness and coordination nationwide.

(i) The NRT will consider matters referred to it for advice or resolution by an RRT.

(j) The NRT should be activated as an emergency response team:

(1) When an oil discharge or hazardous substance release:

(i) Exceeds the response capability of the region in which it occurs;

(ii) Transects regional boundaries; or

(iii) Involves a substantial threat to the public health or welfare of the United States or the environment, substantial amounts of property, or substantial threats to natural resources;

(2) If requested by any NRT member.

(k) When activated for a response action, the NRT shall meet at the call of the chair and may:

(1) Monitor and evaluate reports from the OSC/RPM and recommend to the OSC/RPM, through the RRT, actions to combat the discharge or release;

(2) Request other federal, state, and local governments, or private agencies, to provide resources under their existing authorities to combat a discharge or release, or to monitor response operations; and

(3) Coordinate the supply of equipment, personnel, or technical advice to the affected region from other regions or districts.

§ 300.115 Regional Response Teams.

(a) Regional planning and coordination of preparedness and response actions is accomplished through the RRT. In the case of a discharge of oil, preparedness activities will be carried out in conjunction with Area Committees, as appropriate. The RRT agency membership parallels that of the NRT, as described in § 300.110, but also includes state and local representation. The RRT provides:

(1) The appropriate regional mechanism for development and coordination of preparedness activities before a response action is taken and for coordination of assistance and advice to the OSC/RPM during such response actions; and

(2) Guidance to Area Committees, as appropriate, to ensure inter-area consistency and consistency of individual ACPs with the RCP and NCP.

(b) The two principal components of the RRT mechanism are a standing team, which consists of designated representatives from each participating federal agency, state governments, and local governments (as agreed upon by the states); and incident-specific teams formed from the standing team when the RRT is activated for a response. On incident-specific teams, participation by the RRT member agencies will relate to the technical nature of the incident and its geographic location.

(1) The standing team's jurisdiction corresponds to the standard federal regions, except for Alaska, Oceania in the Pacific, and the Caribbean area, each of which has a separate standing RRT. The role of the standing RRT includes communications systems and procedures, planning, coordination, training, evaluation, preparedness, and related matters on a regionwide basis. It also includes coordination of Area Committees for these functions in areas within their respective regions, as appropriate.

(2) The role of the incident-specific team is determined by the operational requirements of the response to a specific discharge or release. Appropriate levels of activation and/or notification of the incident-specific RRT, including participation by state and local governments, shall be determined by the designated RRT chair for the incident, based on the RCP. The incident-specific RRT supports the designated OSC/RPM. The designated OSC/RPM directs response efforts and coordinates all other efforts at the scene of a discharge or release.

(c) The representatives of EPA and the USCG shall act as co-chairs of RRTs except when the RRT is activated. When the RRT is activated for response

actions, the chair shall be the member agency providing the OSC/RPM.

(d) Each participating agency should designate one member and at least one alternate member to the RRT. Agencies whose regional subdivisions do not correspond to the standard federal regions may designate additional representatives to the standing RRT to ensure appropriate coverage of the standard federal region. Participating states may also designate one member and at least one alternate member to the RRT. Indian tribal governments may arrange for representation with the RRT appropriate to their geographical location. All agencies and states may also provide additional representatives as observers to meetings of the RRT.

(e) RRT members should designate representatives and alternates from their agencies as resource personnel for RRT activities, including RRT work planning, and membership on incident-specific teams in support of the OSCs/RPMs.

(f) Federal RRT members or their representatives should provide OSCs/RPMs with assistance from their respective federal agencies commensurate with agency responsibilities, resources, and capabilities within the region. During a response action, the members of the RRT should seek to make available the resources of their agencies to the OSC/RPM as specified in the RCP and ACP.

(g) RRT members should nominate appropriately qualified representatives from their agencies to work with OSCs in developing and maintaining ACPs.

(h) Affected states are encouraged to participate actively in all RRT activities. Each state governor is requested to assign an office or agency to represent the state on the appropriate RRT; to designate representatives to work with the RRT in developing RCPs; to plan for, make available, and coordinate state resources; and to serve as the contact point for coordination of response with local government agencies, whether or not represented on the RRT. The state's RRT representative should keep the State Emergency Response Commission (SERC), described in § 300.205(d), apprised of RRT activities and coordinate RRT activities with the SERC. Local governments are invited to participate in activities on the appropriate RRT as provided by state law or as arranged by the state's representative. Indian tribes are also invited to participate in such activities.

(i) The standing RRT shall recommend changes in the regional response organization as needed, revise the RCP as needed, evaluate the preparedness of the participating agencies and the effectiveness of ACPs for the federal response to discharges and releases, and provide technical assistance for preparedness to the response community. The RRT should:

(1) Review and comment, to the extent practicable, on local emergency response plans or other issues related to the preparation, implementation, or exercise of such plans upon request of a local emergency planning committee;

(2) Evaluate regional and local responses to discharges or releases on a continuing basis, considering available legal remedies, equipment readiness, and coordination among responsible public agencies and private organizations, and recommend improvements;

(3) Recommend revisions of the NCP to the NRT, based on observations of response operations;

(4) Review OSC actions to ensure that RCPs and ACPs are effective;

(5) Encourage the state and local response community to improve its preparedness for response;

(6) In coordination with Area Committees and in accordance with any applicable laws, regulations, or requirements, conduct advance planning for use of dispersants, surface washing agents, surface collecting agents, burning agents, bioremediation agents, or other chemical agents in accordance with subpart J of this part;

(7) Be prepared to provide response resources to major discharges or releases outside the region;

(8) Conduct or participate in training and exercises as necessary to encourage preparedness activities of the response community within the region;

(9) Meet at least semiannually to review response actions carried out during the preceding period, consider changes in RCPs, and recommend changes in ACPs;

(10) Provide letter reports on RRT activities to the NRT twice a year, no later than January 31 and July 31. At a minimum, reports should summarize recent activities, organizational changes, operational concerns, and efforts to improve state and local coordination; and

(11) Ensure maximum participation in the national exercise program for announced and unannounced exercises.

(j)(1) The RRT may be activated by the chair as an incident-specific response team when a discharge or release:

(i) Exceeds the response capability available to the OSC/RPM in the place where it occurs;

(ii) Transects state boundaries;

(iii) May pose a substantial threat to the public health or welfare of the United States or the environment, or to regionally significant amounts of property; or

(iv) Is a worst case discharge, as described in § 300.324. RCPs shall specify detailed criteria for activation of RRTs.

(2) The RRT will be activated during any discharge or release upon a request from the OSC/RPM, or from any RRT representative, to the chair of the RRT. Requests for RRT activation shall later be confirmed in writing. Each representative, or an appropriate alternate, should be notified immediately when the RRT is activated.

(3) During prolonged removal or remedial action, the RRT may not need to be activated or may need to be activated only in a limited sense, or may need to have available only those member agencies of the RRT who are directly affected or who can provide direct response assistance.

(4) When the RRT is activated for a discharge or release, agency representatives shall meet at the call of the chair and may:

(i) Monitor and evaluate reports from the OSC/RPM, advise the OSC/RPM on the duration and extent of response, and recommend to the OSC/RPM specific actions to respond to the discharge or release;

(ii) Request other federal, state, or local governments, or private agencies, to provide resources under their existing authorities to respond to a discharge or release or to monitor response operations;

(iii) Help the OSC/RPM prepare information releases for the public and for communication with the NRT;

(iv) If the circumstances warrant, make recommendations to the regional or district head of the agency providing the OSC/RPM that a different OSC/RPM should be designated; and

(v) Submit pollution reports to the NRC as significant developments occur.

(5) At the regional level, a Regional Response Center (RRC) may provide facilities and personnel for communications, information storage, and other requirements for coordinating response. The location of each RRC should be provided in the RCP.

(6) When the RRT is activated, affected states may participate in all RRT deliberations. State government representatives participating in the RRT have the same status as any federal member of the RRT.

(7) The RRT can be deactivated when the incident-specific RRT chair determines that the OSC/RPM no longer requires RRT assistance.

(8) Notification of the RRT may be appropriate when full activation is not necessary, with systematic

communication of pollution reports or other means to keep RRT members informed as to actions of potential concern to a particular agency, or to assist in later RRT evaluation of regionwide response effectiveness.

(k) Whenever there is insufficient national policy guidance on a matter before the RRT, a technical matter requiring solution, a question concerning interpretation of the NCP, or a disagreement on discretionary actions among RRT members that cannot be resolved at the regional level, it may be referred to the NRT, described in § 300.110, for advice.

§ 300.120 On-scene coordinators and remedial project managers: general responsibilities.

(a) The OSC/RPM directs response efforts and coordinates all other efforts at the scene of a discharge or release. As part of the planning and preparedness for response, OSCs shall be predesignated by the regional or district head of the lead agency. EPA and the USCG shall predesignate OSCs for all areas in each region, except as provided in paragraphs (c) and (d) of this section. RPMs shall be assigned by the lead agency to manage remedial or other response actions at NPL sites, except as provided in paragraphs (c) and (d) of this section.

(1) The USCG shall provide OSCs for oil discharges, including discharges from facilities and vessels under the jurisdiction of another federal agency, within or threatening the coastal zone. The USCG shall also provide OSCs for the removal of releases of hazardous substances, pollutants, or contaminants into or threatening the coastal zone, except as provided in paragraph (b) of this section. The USCG shall not provide predesignated OSCs for discharges or releases from hazardous waste management facilities or in similarly chronic incidents. The USCG shall provide an initial response to discharges or releases from hazardous waste management facilities within the coastal zone in accordance with Department of Transportation (DOT)/EPA Instrument of Redelegation (May 27, 1988) except as provided by paragraph (b) of this section. The USCG OSC shall contact the cognizant RPM as soon as it is evident that a removal may require a follow-up remedial action, to ensure that the required planning can be initiated and an orderly transition to an EPA or state lead can occur.

(2) EPA shall provide OSCs for discharges or releases into or threatening the inland zone and shall provide RPMs for federally funded remedial actions, except in the case of state-lead federally funded response and as provided in paragraph (b) of this section. EPA will also assume all remedial actions at NPL sites in the coastal zone, even where removals are initiated by the USCG, except as provided in paragraph (b) of this section.

(b) In general, USCG Captains of the Port (COTP) shall serve as the designated OSCs for areas in the coastal zone for which an ACP is required under CWA section 311(j) and EPA Regional Administrators shall designate OSCs for areas in the inland zone for which an ACP is required under CWA section 311(j).

(c) For releases of hazardous substances, pollutants, or contaminants, when the release is on, or the sole source of the release is from, any facility or vessel, including vessels bareboat-chartered and operated, under the jurisdiction, custody, or control of DOD, DOE, or other federal agency:

(1) In the case of DOD or DOE, DOD or DOE shall provide OSCs/RPMs responsible for taking all response actions; and

(2) In the case of a federal agency other than EPA, DOD, or DOE, such agency shall provide OSCs for all removal actions that are not emergencies and shall provide RPMs for all remedial actions.

(d) DOD will be the removal response authority with respect to incidents involving DOD military weapons and munitions or weapons and munitions under the jurisdiction, custody, or control of DOD.

(e) The OSC is responsible for overseeing development of the ACP in the area of the OSC's responsibility. ACPs shall, as appropriate, be accomplished in cooperation with the RRT, and designated state and local representatives. In contingency planning and removal, the OSC coordinates, directs, and reviews the work of other agencies, Area Committees, responsible parties, and contractors to assure compliance with the NCP, decision document, consent decree, administrative order, and lead agency-approved plans applicable to the response.

(f) The RPM is the prime contact for remedial or other response actions being taken (or needed) at sites on the proposed or promulgated NPL, and for sites not on the NPL but under the jurisdiction, custody, or control of a federal agency. The RPM's responsibilities include:

(1) Fund-financed response: The RPM coordinates, directs, and reviews the work of EPA, states and local governments, the U.S. Army Corps of Engineers, and all other agencies and contractors to assure compliance with the NCP. Based upon the reports of these parties, the RPM recommends action for decisions by lead agency officials. The RPM's period of responsibility begins prior to initiation of the remedial investigation/feasibility study (RI/FS), described in § 300.430, and continues through design, remedial action, deletion of the site from the NPL, and the CERCLA cost recovery activity. When a removal and remedial action occur at the same site, the OSC and RPM should coordinate to ensure an orderly transition of responsibility.

(2) Federal-lead non-Fund-financed response: The RPM coordinates, directs, and reviews the work of other agencies, responsible parties, and contractors to assure compliance with the NCP, Record of Decision (ROD), consent decree, administrative order, and lead agency-approved plans applicable to the response. Based upon the reports of these parties, the RPM shall recommend action for decisions by lead agency officials. The RPM's period of responsibility begins prior to initiation of the RI/FS, described in § 300.430, and continues through design and remedial action and the CERCLA cost recovery activity. The OSC and RPM shall ensure orderly transition of responsibilities from one to the other.

(3) The RPM shall participate in all decision-making processes necessary to ensure compliance with the NCP, including, as appropriate, agreements between EPA or other federal agencies and the state. The RPM may also review responses where EPA has preauthorized a person to file a claim for reimbursement to determine that the response was consistent with the terms of such preauthorization in cases where claims are filed for reimbursement.

(g)(1) Where a support agency has been identified through a cooperative agreement, Superfund Memorandum of Agreement (SMOA), or other agreement, that agency may designate a support agency coordinator (SAC) to provide assistance, as requested, by the OSC/RPM. The SAC is the prime representative of the support agency for response actions.

(2) The SAC's responsibilities may include:

(i) Providing and reviewing data and documents as requested by the OSC/RPM during the planning, design, and cleanup activities of the response action; and

(ii) Providing other assistance as requested.

(h)(1) The lead agency should provide appropriate training for its OSCs, RPMs,

and other response personnel to carry out their responsibilities under the NCP

(2) OSCs/RPMs should ensure that persons designated to act as their on-scene representatives are adequately trained and prepared to carry out actions under the NCP, to the extent practicable.

§ 300.125 Notification and communications.

(a) The National Response Center (NRC), located at USCG Headquarters, is the national communications center, continuously manned for handling activities related to response actions. The NRC acts as the single point of contact for all pollution incident reporting, and as the NRT communications center. Notice of discharges and releases must be made telephonically through a toll free number or a special local number (Telecommunication Device for the Deaf (TDD) and collect calls accepted). (Notification details appear in §§ 300.300 and 300.405.) The NRC receives and immediately relays telephone notices of discharges or releases to the appropriate predesignated federal OSC. The telephone report is distributed to any interested NRT member agency or federal entity that has established a written agreement or understanding with the NRC. The NRC evaluates incoming information and immediately advises FEMA of a potential major disaster situation.

(b) The Commandant, USCG, in conjunction with other NRT agencies, shall provide the necessary personnel, communications, plotting facilities, and equipment for the NRC.

(c) Notice of an oil discharge or release of a hazardous substance in an amoun. equal to or greater than the reportable quantity must be made immediately in accordance with 33 CFR part 153, subpart B, and 40 CFR part 302, respectively. Notification shall be made to the NRC Duty Officer, HQ USCG, Washington, DC, telephone (800) 424–8802 or (202) 267–2675. All notices of discharges or releases received at the NRC will be relayed immediately by telephone to the OSC.

§ 300.130 Determinations to initiate response and special conditions.

(a) In accordance with CWA and CERCLA, the Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to act for the United States to take response measures deemed necessary to protect the public health or welfare or environment from discharges of oil or releases of hazardous substances, pollutants, or contaminants except with respect to such releases on or from vessels or facilities under the jurisdiction, custody, or control of other federal agencies.

(b) The Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to initiate and, in the case of a discharge posing a substantial threat to public health or welfare of the United States is required to initiate and direct, appropriate response activities when the Administrator or Secretary determines that any oil or CWA hazardous substance is discharged or there is a substantial threat of such discharge from any vessel or offshore or onshore facility into or on the navigable waters of the United States, on the adjoining shorelines to the navigable waters, into or on the waters of the exclusive economic zone, or that may affect natural resources belonging to, appertaining to, or under exclusive management authority of the United States; or

(c) The Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to initiate appropriate response activities when the Administrator or Secretary determines that any hazardous substance is released or there is a threat of such a release into the environment, or there is a release or threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare of the United States.

(d) In addition to any actions taken by a state or local government, the Administrator of EPA or the Secretary of the department in which the USCG is operating may request the U.S. Attorney General to secure the relief from any person, including the owner or operator of the vessel or facility necessary to abate a threat or, after notice to the affected state, take any other action authorized by section 311 of the CWA or section 106 of CERCLA as appropriate, including issuing administrative orders, that may be necessary to protect the public health or welfare, if the Administrator or Secretary determines:

(1) That there may be an imminent and substantial threat to the public health or welfare of the United States or the environment of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitats, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil or a CWA hazardous substance from any vessel or offshore or onshore facility into or upon the navigable waters of the United States; or

(2) That there may be an imminent and substantial endangerment to the public health or welfare of the United States or the environment because of a release of a CERCLA hazardous substance from a facility.

(e) Response actions to remove discharges originating from operations conducted subject to the Outer Continental Shelf Lands Act shall be in accordance with the NCP.

(f) Where appropriate, when a discharge or release involves radioactive materials, the lead or support federal agency shall act consistent with the notification and assistance procedures described in the appropriate Federal Radiological Plan. For the purpose of the NCP, the FRERP (24 CFR part 2401) is the appropriate plan. Most radiological discharges and releases do not result in FRERP activation and should be handled in accordance with the NCP. However, releases from nuclear incidents subject to requirements for financial protection established by the Nuclear Regulatory Commission under the Price-Anderson amendments (section 170) of the Atomic Energy Act are specifically excluded from CERCLA and NCP requirements.

(g) Removal actions involving nuclear weapons should be conducted in accordance with the joint Department of Defense, Department of Energy, and FEMA Agreement for Response to Nuclear Incidents and Nuclear Weapons Significant Incidents (January 8, 1981).

(h) If the situation is beyond the capability of state and local governments and the statutory authority of federal agencies, the President may, under the Disaster Relief Act of 1974, act upon a request by the governor and declare a major disaster or emergency and appoint a Federal Coordinating Officer (FCO) to coordinate all federal disaster assistance activities. In such cases, the OSC/RPM would continue to carry out OSC/RPM responsibilities under the NCP, but would coordinate those activities with the FCO to ensure consistency with other federal disaster assistance activities.

(i) In the event of a declaration of a major disaster by the President, the FEMA may activate the Federal Response Plan (FRP). A FCO, designated by the President, may implement the FRP and coordinate and direct emergency assistance and disaster relief of impacted individuals, business, and public services under the Robert T. Stafford Disaster Relief Act. Delivery of

federal assistance is facilitated through twelve functional annexes to the FRP known as Emergency Support Functions (ESFs). EPA coordinates activities under ESF #10—Hazardous Materials, which addresses preparedness and response to hazardous materials and oil incidents caused by a natural disaster or other catastrophic event. In such cases, the OSC/RPM should coordinate response activities with the FCO, through the incident-specific ESF #10 Chair, to ensure consistency with federal disaster assistance activities.

§ 300.135 Response operations.

(a) The OSC/RPM, consistent with §§ 300.120 and 300.125, shall direct response efforts and coordinate all other efforts at the scene of a discharge or release. As part of the planning and preparation for response, the OSCs/RPMs shall be predesignated by the regional or district head of the lead agency.

(b) The first federal official affiliated with an NRT member agency to arrive at the scene of a discharge or release should coordinate activities under the NCP and is authorized to initiate, in consultation with the OSC, any necessary actions normally carried out by the OSC until the arrival of the predesignated OSC. This official may initiate federal fund-financed actions only as authorized by the OSC or, if the OSC is unavailable, the authorized representative of the lead agency.

(c) The OSC/RPM shall, to the extent practicable, collect pertinent facts about the discharge or release, such as its source and cause; the identification of potentially responsible parties; the nature, amount, and location of discharged or released materials; the probable direction and time of travel of discharged or released materials; whether the discharge is a worst case discharge as discussed in § 300.324; the pathways to human and environmental exposure; the potential impact on human health, welfare, and safety and the environment; whether the discharge or release poses a substantial threat to the public health or welfare of the United States as discussed in § 300.322; the potential impact on natural resources and property which may be affected; priorities for protecting human health and welfare and the environment; and appropriate cost documentation.

(d) The OSC's/RPM's efforts shall be coordinated with other appropriate federal, state, local, and private response agencies. OSCs/RPMs may designate capable persons from federal, state, or local agencies to act as their on-scene representatives. State and local governments, however, are not authorized to take actions under subparts D and E of the NCP that involve expenditures of the Oil Spill Liability Trust Fund or CERCLA funds unless an appropriate contract or cooperative agreement has been established. The basic framework for the response management structure is a system (e.g., a unified command system), that brings together the functions of the federal government, the state government, and the responsible party to achieve an effective and efficient response, where the OSC maintains authority.

(e) The OSC/RPM should consult regularly with the RRT and NSFCC, as appropriate, in carrying out the NCP and keep the RRT and NSFCC, as appropriate, informed of activities under the NCP.

(f) The OSC/RPM shall advise the support agency as promptly as possible of reported releases.

(g) The OSC/RPM should evaluate incoming information and immediately advise FEMA of potential major disaster situations.

(h) In those instances where a possible public health emergency exists, the OSC/RPM should notify the Department of Health and Human Services (HHS) representative to the RRT. Throughout response actions, the OSC/RPM may call upon the HHS representative for assistance in determining public health threats and call upon the Occupational Safety and Health Administration (OSHA) and HHS for assistance on worker health and safety issues.

(i) All federal agencies should plan for emergencies and develop procedures for dealing with oil discharges and releases of hazardous substances, pollutants, or contaminants from vessels and facilities under their jurisdiction. All federal agencies, therefore, are responsible for designating the office that coordinates response to such incidents in accordance with the NCP and applicable federal regulations and guidelines.

(j)(1) The OSC/RPM shall ensure that the trustees for natural resources are promptly notified of discharges or releases.

(2) The OSC or RPM shall coordinate all response activities with the affected natural resource trustees and, for discharges of oil, the OSC shall consult with the affected trustees on the appropriate removal action to be taken.

(k) Where the OSC/RPM becomes aware that a discharge or release may affect any endangered or threatened species or their habitat, the OSC/RPM shall consult with the Department of Interior (DOI), or the Department of Commerce (DOC) (NOAA) and, if appropriate, the cognizant federal land managing agency.

(l) The OSC/RPM is responsible for addressing worker health and safety concerns at a response scene, in accordance with § 300.150.

(m) The OSC shall submit pollution reports to the RRT and other appropriate agencies as significant developments occur during response actions, through communications networks or procedures agreed to by the RRT and covered in the RCP.

(n) OSCs/RPMs should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response, to the extent practicable, consistent with the requirements of § 300.155 of this part.

§ 300.140 Multi-regional responses.

(a) If a discharge or release moves from the area covered by one ACP or RCP into another area, the authority for response actions should likewise shift. If a discharge or release affects areas covered by two or more ACPs or RCPs, the response mechanisms of each applicable plan may be activated. In this case, response actions of all regions concerned shall be fully coordinated as detailed in the RCPs and ACPs.

(b) There shall be only one OSC and/or RPM at any time during the course of a response operation. Should a discharge or release affect two or more areas, EPA, the USCG, DOD, DOE, or other lead agency, as appropriate, shall give prime consideration to the area vulnerable to the greatest threat, in determining which agency should provide the OSC and/or RPM. The RRT shall designate the OSC and/or RPM if the RRT member agencies who have response authority within the affected areas are unable to agree on the designation. The NRT shall designate the OSC and/or RPM if members of one RRT or two adjacent RRTs are unable to agree on the designation.

(c) Where the USCG has initially provided the OSC for response to a release from hazardous waste management facilities located in the coastal zone, responsibility for response action shall shift to EPA or another federal agency, as appropriate.

§ 300.145 Special teams and other assistance available to OSCs/RPMs.

(a) The NSF is a special team established by the USCG, including the three USCG Strike Teams, the Public Information Assist Team (PIAT), and the NSFCC. The NSF is available to assist OSCs/RPMs in their preparedness and response duties.

(1) The three Strike Teams (Atlantic, Gulf, and Pacific) provide trained personnel and specialized equipment to assist the OSC in training for spill response, stabilizing and containing the spill, and in monitoring or directing the response actions of the responsible parties and/or contractors. The OSC has a specific team designated for initial contact and may contact that team directly for any assistance.

(2) The NSFCC can provide the following support to the OSC:

(i) Technical assistance, equipment and other resources to augment the OSC staff during spill response.

(ii) Assistance in coordinating the use of private and public resources in support of the OSC during a response to or a threat of a worst case discharge of oil.

(iii) Review of the area contingency plan, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations.

(iv) Assistance in locating spill response resources for both response and planning, using the NSFCC's national and international computerized inventory of spill response resources.

(v) Coordination and evaluation of pollution response exercises.

(vi) Inspection of district prepositioned pollution response equipment.

(3) PIAT is an element of the NSFCC staff which is available to assist OSCs to meet the demands for public information during a response or exercise. Its use is encouraged any time the OSC requires outside public affairs support. Requests for PIAT assistance may be made through the NSFCC or NRC.

(b)(1) The Environmental Response Team (ERT) is established by EPA in accordance with its disaster and emergency responsibilities. The ERT has expertise in treatment technology, biology, chemistry, hydrology, geology, and engineering.

(2) The ERT can provide access to special decontamination equipment for chemical releases and advice to the OSC/RPM in hazard evaluation; risk assessment; multimedia sampling and analysis program; on-site safety, including development and implementation plans; cleanup techniques and priorities; water supply decontamination and protection; application of dispersants; environmental assessment; degree of cleanup required; and disposal of contaminated material.

(3) The ERT also provides both introductory and intermediate level training courses to prepare response personnel.

(4) OSC/RPM or RRT requests for ERT support should be made to the EPA representative on the RRT; EPA Headquarters, Director, Emergency Response Division; or the appropriate EPA regional emergency coordinator.

(c) Scientific Support Coordinators (SSCs) may be designated by the OSC (and RPM in the case of EPA SSCs) as the principal advisors for scientific issues, communication with the scientific community, and coordination of requests for assistance from state and federal agencies regarding scientific studies. The SSC strives for a consensus on scientific issues affecting the response, but ensures that differing opinions within the community are communicated to the OSC/RPM.

(1) Generally, SSCs are provided by NOAA in the coastal zones, and by EPA in the inland zone. OSC/RPM requests for SSC support can be made directly to the SSC assigned to the area or to the agency member of the RRT. NOAA SSCs can also be requested through NOAA's SSC program office in Seattle, WA. NOAA SSCs are assigned to USCG Districts and are supported by a scientific support team that includes expertise in environmental chemistry, oil slick tracking, pollutant transport modeling, natural resources at risk, environmental tradeoffs of countermeasures and cleanup, and information management.

(2) During a response, the SSC serves on the federal OSC's/RPM's staff and may, at the request of the OSC/RPM, lead the scientific team and be responsible for providing scientific support for operational decisions and for coordinating on-scene scientific activity. Depending on the nature and location of the incident, the SSC integrates expertise from governmental agencies, universities, community representatives, and industry to assist the OSC/RPM in evaluating the hazards and potential effects of releases and in developing response strategies.

(3) At the request of the OSC, the SSC may facilitate the OSC's work with the lead administrative trustee for natural resources to ensure coordination between damage assessment data collection efforts and data collected in support of response operations.

(4) SSCs support the Regional Response Teams and the Area Committees in preparing regional and area contingency plans and in conducting spill training and exercises. For area plans, the SSC provides leadership for the synthesis and integration of environmental information required for spill response decisions in support of the OSC.

(d)(1) SUPSALV has an extensive salvage/search and recovery equipment inventory with the requisite knowledge and expertise to support these operations, including specialized salvage, firefighting, and petroleum, oil and lubricants offloading capability.

(2) When possible, SUPSALV will provide equipment for training exercises in support of national and regional contingency planning objectives.

(3) The OSC/RPM may request assistance directly from SUPSALV. Formal requests are routed through the Chief of Naval Operations (N312).

(e) For marine salvage operations, OSCs/RPMs with responsibility for monitoring, evaluating, or supervising these activities should request technical assistance from DOD, the Strike Teams, or commercial salvors as necessary to ensure that proper actions are taken. Marine salvage operations generally fall into five categories: afloat salvage; offshore salvage; river and harbor clearance; cargo salvage; and rescue towing. Each category requires different knowledge and specialized types of equipment. The complexity of such operations may be further compounded by local environmental and geographic conditions. The nature of marine salvage and the conditions under which it occurs combine to make such operations imprecise, difficult, hazardous, and expensive. Thus, responsible parties or other persons attempting to perform such operations without adequate knowledge, equipment, and experience could aggravate, rather than relieve, the situation.

(f) Radiological Emergency Response Teams (RERTs) have been established by EPA's Office of Radiation Programs (ORP) to provide response and support for incidents or sites containing radiological hazards. Expertise is available in radiation monitoring, radionuclide analysis, radiation health physics, and risk assessment. RERTs can provide on-site support including mobile monitoring laboratories for field analyses of samples and fixed laboratories for radiochemical sampling and analyses. Requests for support may be made 24 hours a day via the NRC or directly to the EPA Radiological Response Coordinator in the Office of Radiation Programs. Assistance is also available from DOE and other federal agencies.

(g)(1) DRGs assist the OSC by providing technical assistance, personnel, and equipment, including pre-positioned equipment. Each DRG consists of all Coast Guard personnel

and equipment, including marine firefighting equipment, in its district, additional pre-positioned equipment, and a District Response Advisory Team (DRAT) that is available to provide support to the OSC in the event that a spill exceeds local response capabilities. Each DRG:

(i) Shall provide technical assistance, equipment, and other resources, as available, when requested by an OSC through the USCG representative to the RRT;

(ii) Shall ensure maintenance of all USCG response equipment within its district;

(iii) May provide technical assistance in the preparation of the ACP; and

(iv) Shall review each of those plans that affect its area of geographic responsibility.

(2) In deciding where to locate personnel and pre-positioned equipment, the USCG shall give priority emphasis to:

(i) The availability of facilities for loading and unloading heavy or bulky equipment by barge;

(ii) The proximity to an airport capable of supporting large military transport aircraft;

(iii) The flight time to provide response to oil spills in all areas of the Coast Guard district with the potential for marine casualties;

(iv) The availability of trained local personnel capable of responding in an oil spill emergency; and

(v) Areas where large quantities of petroleum products are transported.

(h) The NPFC is responsible for implementing those portions of Title I of the OPA that have been delegated to the Secretary of the department in which the Coast Guard is operating. The NPFC is responsible for addressing funding issues arising from discharges and threats of discharges of oil. The NPFC:

(1) Issues Certificates of Financial Responsibility to owners and operators of vessels to pay for costs and damages that are incurred by their vessels as a result of oil discharges;

(2) Provides funding for various response organizations for timely abatement and removal actions related to oil discharges;

(3) Provides equitable compensation to claimants who sustain costs and damages from oil discharges when the responsible party fails to do so;

(4) Recovers monies from persons liable for costs and damages resulting from oil discharges to the full extent of liability under the law; and

(5) Provides funds to initiate natural resource damage assessments.

§ 300.150 Worker health and safety.

(a) Response actions under the NCP will comply with the provisions for response action worker safety and health in 29 CFR 1910.120. The NRS meets the requirements of 29 CFR 1910.120 concerning use of an incident command system.

(b) In a response action taken by a responsible party, the responsible party must assure that an occupational safety and health program consistent with 29 CFR 1910.120 is made available for the protection of workers at the response site.

(c) In a response taken under the NCP by a lead agency, an occupational safety and health program should be made available for the protection of workers at the response site, consistent with, and to the extent required by, 29 CFR 1910.120. Contracts relating to a response action under the NCP should contain assurances that the contractor at the response site will comply with this program and with any applicable provisions of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) (OSH Act) and state laws with plans approved under section 18 of the OSH Act.

(d) When a state, or political subdivision of a state, without an OSHA-approved state plan is the lead agency for response, the state or political subdivision must comply with standards in 40 CFR part 311, promulgated by EPA pursuant to section 126(f) of SARA.

(e) Requirements, standards, and regulations of the OSH Act and of state OSH laws not directly referenced in paragraphs (a) through (d) of this section, must be complied with where applicable. Federal OSH Act requirements include, among other things, Construction Standards (29 CFR part 1926), General Industry Standards (29 CFR part 1910), and the general duty requirement of section 5(a)(1) of the OSH Act (29 U.S.C. 654(a)(1)). No action by the lead agency with respect to response activities under the NCP constitutes an exercise of statutory authority within the meaning of section 4(b)(1) of the OSH Act. All governmental agencies and private employers are directly responsible for the health and safety of their own employees.

§ 300.155 Public information and community relations.

(a) When an incident occurs, it is imperative to give the public prompt, accurate information on the nature of the incident and the actions underway to mitigate the damage. OSCs/RPMs and community relations personnel should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response. They should coordinate with available public affairs/community relations resources to carry out this responsibility by establishing, as appropriate, a Joint Information Center bringing together resources from federal and state agencies and the responsible party.

(b) An on-scene news office may be established to coordinate media relations and to issue official federal information on an incident. Whenever possible, it will be headed by a representative of the lead agency. The OSC/RPM determines the location of the on-scene news office, but every effort should be made to locate it near the scene of the incident. If a participating agency believes public interest warrants the issuance of statements and an on-scene news office has not been established, the affected agency should recommend its establishment. All federal news releases or statements by participating agencies should be cleared through the OSC/RPM. Information dissemination relating to natural resource damage assessment activities shall be coordinated through the lead administrative trustee. The designated lead administrative trustee may assist the OSC/RPM by disseminating information on issues relating to damage assessment activities. Following termination of removal activity, information dissemination on damage assessment activities shall be through the lead administrative trustee.

(c) The community relations requirements specified in §§ 300.415, 300.430, and 300.435 apply to removal, remedial, and enforcement actions and are intended to promote active communication between communities affected by discharges or releases and the lead agency responsible for response actions. Community Relations Plans (CRPs) are required by EPA for certain response actions. The OSC/RPM should ensure coordination with such plans which may be in effect at the scene of a discharge or release or which may need to be developed during follow-up activities.

§ 300.160 Documentation and cost recovery.

(a) For releases of a hazardous substance, pollutant, or contaminant, the following provisions apply:

(1) During all phases of response, the lead agency shall complete and maintain documentation to support all actions taken under the NCP and to form the basis for cost recovery. In general, documentation shall be

sufficient to provide the source and circumstances of the release, the identity of responsible parties, the response action taken, accurate accounting of federal, state, or private party costs incurred for response actions, and impacts and potential impacts to the public health and welfare and the environment. Where applicable, documentation shall state when the NRC received notification of a release of a reportable quantity.

(2) The information and reports obtained by the lead agency for Fund-financed response actions shall, as appropriate, be transmitted to the chair of the RRT. Copies can then be forwarded to the NRT, members of the RRT, and others as appropriate.

(3) The lead agency shall make available to the trustees of affected natural resources information and documentation that can assist the trustees in the determination of actual or potential natural resource injuries.

(b) For discharges of oil, documentation and cost recovery provisions are described in § 300.315.

(c) Response actions undertaken by the participating agencies shall be carried out under existing programs and authorities when available. Federal agencies are to make resources available, expend funds, or participate in response to discharges and releases under their existing authority. Interagency agreements may be signed when necessary to ensure that the federal resources will be available for a timely response to a discharge or release. The ultimate decision as to the appropriateness of expending funds rests with the agency that is held accountable for such expenditures. Further funding provisions for discharges of oil are described in § 300.335.

(d) The Administrator of EPA and the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) shall assure that the costs of health assessment or health effect studies conducted under the authority of CERCLA section 104(i) are documented in accordance with standard EPA procedures for cost recovery. Documentation shall include information on the nature of the hazardous substances addressed by the research, information concerning the locations where these substances have been found, and any available information on response actions taken concerning these substances at the location.

§ 300.165 OSC reports.

(a) As requested by the NRT or RRT, the OSC/RPM shall submit to the NRT or RRT a complete report on the removal operation and the actions taken. The RRT shall review the OSC report and send to the NRT a copy of the OSC report with its comments or recommendations within 30 days after the RRT has received the OSC report.

(b) The OSC report shall record the situation as it developed, the actions taken, the resources committed, and the problems encountered.

§ 300.170 Federal agency participation.

Federal agencies listed in § 300.175 have duties established by statute, executive order, or Presidential directive which may apply to federal response actions following, or in prevention of, the discharge of oil or release of a hazardous substance, pollutant, or contaminant. Some of these agencies also have duties relating to the restoration, rehabilitation, replacement, or acquisition of equivalent natural resources injured or lost as a result of such discharge or release as described in subpart G of this part. The NRT, RRT, and Area Committee organizational structure, and the NCP, RCPs and ACPs, described in § 300.210, provide for agencies to coordinate with each other in carrying out these duties.

(a) Federal agencies may be called upon by an OSC/RPM during response planning and implementation to provide assistance in their respective areas of expertise, as described in § 300.175, consistent with the agencies' capabilities and authorities.

(b) In addition to their general responsibilities, federal agencies should:

(1) Make necessary information available to the Secretary of the NRT, RRTs, Area Committees, and OSCs/RPMs.

(2) Provide representatives to the NRT and RRTs and otherwise assist RRTs and OSCs, as necessary, in formulating RCPs and ACPs.

(3) Inform the NRT, RRTs, and Area Committees, consistent with national security considerations, of changes in the availability of resources that would affect the operations implemented under the NCP.

(c) All federal agencies are responsible for reporting releases of hazardous substances from facilities or vessels under their jurisdiction or control in accordance with section 103 of CERCLA.

(d) All federal agencies are encouraged to report releases of pollutants or contaminants and must report discharges of oil, as required in 40 CFR part 110, from facilities or vessels under their jurisdiction or control to the NRC.

§ 300.175 Federal agencies: additional responsibilities and assistance.

(a) During preparedness planning or in an actual response, various federal agencies may be called upon to provide assistance in their respective areas of expertise, as indicated in paragraph (b) of this section, consistent with agency legal authorities and capabilities.

(b) The federal agencies include:

(1) USCG, as provided in 14 U.S.C. 1–3, is an agency in DOT, except when operating as an agency in the United States Navy (USN) in time of war. The USCG provides the NRT vice chair, co-chairs for the standing RRTs, and predesignated OSCs for the coastal zone, as described in § 300.120(a)(1). The USCG maintains continuously manned facilities which can be used for command, control, and surveillance of oil discharges and hazardous substance releases occurring in the coastal zone. The USCG also offers expertise in domestic and international fields of port safety and security, maritime law enforcement, ship navigation and construction, and the manning, operation, and safety of vessels and marine facilities. The USCG may enter into a contract or cooperative agreement with the appropriate state in order to implement a response action.

(2) EPA chairs the NRT and co-chairs, with the USCG, the standing RRTs; provides predesignated OSCs for all inland areas for which an ACP is required under CWA section 311(j) and for discharges and releases occurring in the inland zone and RPMs for remedial actions except as otherwise provided; and generally provides the SSC for responses in the inland zone. EPA provides expertise on human health and ecological effects of oil discharges or releases of hazardous substances, pollutants, or contaminants; ecological and human health risk assessment methods; and environmental pollution control techniques. Access to EPA's scientific expertise can be facilitated through the EPA representative to the Research and Development Committee of the National Response Team; the EPA Office of Research and Development's Superfund Technical Liaisons or Regional Scientists located in EPA Regional offices; or through EPA's Office of Science Planning and Regulatory Evaluation. EPA also provides legal expertise on the interpretation of CERCLA and other environmental statutes. EPA may enter into a contract or cooperative agreement with the appropriate state in order to implement a response action.

(3) FEMA provides guidance, policy and program advice, and technical assistance in hazardous materials,

chemical, and radiological emergency preparedness activities (including planning, training, and exercising). FEMA's primary point of contact for administering financial and technical assistance to state and local governments to support their efforts to develop and maintain an effective emergency management and response capability is the Preparedness, Training, and Exercises Directorate.

(4) DOD has responsibility to take all action necessary with respect to releases where either the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of DOD. In addition to those capabilities provided by SUPSALV, DOD may also, consistent with its operational requirements and upon request of the OSC, provide locally deployed USN oil spill equipment and provide assistance to other federal agencies on request. The following two branches of DOD have particularly relevant expertise:

(i) The United States Army Corps of Engineers has specialized equipment and personnel for maintaining navigation channels, for removing navigation obstructions, for accomplishing structural repairs, and for performing maintenance to hydropower electric generating equipment. The Corps can also provide design services, perform construction, and provide contract writing and contract administrative services for other federal agencies.

(ii) The U.S. Navy Supervisor of Salvage (SUPSALV) is the branch of service within DOD most knowledgeable and experienced in ship salvage, shipboard damage control, and diving. The USN has an extensive array of specialized equipment and personnel available for use in these areas as well as specialized containment, collection, and removal equipment specifically designed for salvage-related and open-sea pollution incidents.

(5) DOE generally provides designated OSCs/RPMs that are responsible for taking all response actions with respect to releases where either the release is on, or the sole source of the release is from, any facility or vessel under its jurisdiction, custody, or control, including vessels bareboat-chartered and operated. In addition, under the FRERP, DOE provides advice and assistance to other OSCs/RPMs for emergency actions essential for the control of immediate radiological hazards. Incidents that qualify for DOE radiological advice and assistance are those believed to involve source, by-product, or special nuclear material or other ionizing radiation sources, including radium, and other naturally occurring radionuclides, as well as particle accelerators. Assistance is available through direct contact with the appropriate DOE Radiological Assistance Program Regional Office.

(6) The Department of Agriculture (USDA) has scientific and technical capability to measure, evaluate, and monitor, either on the ground or by use of aircraft, situations where natural resources including soil, water, wildlife, and vegetation have been impacted by fire, insects and diseases, floods, hazardous substances, and other natural or man-caused emergencies. The USDA may be contacted through Forest Service emergency staff officers who are the designated members of the RRT. Agencies within USDA have relevant capabilities and expertise as follows:

(i) The Forest Service has responsibility for protection and management of national forests and national grasslands. The Forest Service has personnel, laboratory, and field capability to measure, evaluate, monitor, and control as needed, releases of pesticides and other hazardous substances on lands under its jurisdiction.

(ii) The Agriculture Research Service (ARS) administers an applied and developmental research program in animal and plant protection and production; the use and improvement of soil, water, and air; the processing, storage, and distribution of farm products; and human nutrition. The ARS has the capabilities to provide regulation of, and evaluation and training for, employees exposed to biological, chemical, radiological, and industrial hazards. In emergency situations, the ARS can identify, control, and abate pollution in the areas of air, soil, wastes, pesticides, radiation, and toxic substances for ARS facilities.

(iii) The Soil Conservation Service (SCS) has personnel in nearly every county in the nation who are knowledgeable in soil, agronomy, engineering, and biology. These personnel can help to predict the effects of pollutants on soil and their movements over and through soils. Technical specialists can assist in identifying potential hazardous waste sites and provide review and advice on plans for remedial measures.

(iv) The Animal and Plant Health Inspection Service (APHIS) can respond in an emergency to regulate movement of diseased or infected organisms to prevent the spread and contamination of nonaffected areas.

(v) The Food Safety and Inspection Service (FSIS) has responsibility to prevent meat and poultry products contaminated with harmful substances from entering human food channels. In emergencies, the FSIS works with other federal and state agencies to establish acceptability for slaughter of exposed or potentially exposed animals and their products. In addition they are charged with managing the Federal Radiological Emergency Response Program for the USDA.

(7) DOC, through NOAA, provides scientific support for response and contingency planning in coastal and marine areas, including assessments of the hazards that may be involved, predictions of movement and dispersion of oil and hazardous substances through trajectory modeling, and information on the sensitivity of coastal environments to oil and hazardous substances and associated clean-up and mitigation methods; provides expertise on living marine resources and their habitats, including endangered species, marine mammals and National Marine Sanctuary ecosystems; provides information on actual and predicted meteorological, hydrological, ice, and oceanographic conditions for marine, coastal, and inland waters, and tide and circulation data for coastal and territorial waters and for the Great Lakes.

(8) HHS assists with the assessment, preservation, and protection of human health and helps ensure the availability of essential human services. HHS provides technical and nontechnical assistance in the form of advice, guidance, and resources to other federal agencies as well as state and local governments.

(i) The principal HHS response comes from the U.S. Public Health Service and is coordinated from the Office of the Assistant Secretary for Health, and various Public Health Service regional offices. Within the Public Health Service, the primary response to a hazardous materials emergency comes from Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control (CDC). Both ATSDR and CDC have a 24-hour emergency response capability wherein scientific and technical personnel are available to provide technical assistance to the lead federal agency and state and local response agencies on human health threat assessment and analysis, and exposure prevention and mitigation. Such assistance is used for situations requiring evacuation of affected areas, human exposure to hazardous materials, and technical advice on mitigation and prevention. CDC takes the lead during petroleum releases regulated under the CWA and OPA while ATSDR takes the lead during

chemical releases under CERCLA. Both agencies are mutually supportive.

(ii) Other Public Health Service agencies involved in support during hazardous materials incidents either directly or through ATSDR/CDC include the Food and Drug Administration, the Health Resources and Services Administration, the Indian Health Service, and the National Institutes of Health.

(iii) Statutory authority for HHS/National Institutes for Environmental Health Sciences (NIEHS) involvement in hazardous materials accident prevention is non-regulatory in nature and focused on two primary areas for preventing community and worker exposure to hazardous materials releases: Worker safety training and basic research activities. Under section 126 of SARA, NIEHS is given statutory authority for supporting development of curricula and model training programs for waste workers and chemical emergency responders.

Under section 118(b) of the Hazardous Materials Transportation and Uniform Safety Act (HMTUSA) (49 U.S.C. 1802 *et seq.*), NIEHS also administers the Hazmat Employee Training Program to prepare curricula and training for hazardous materials transportation workers. In the basic research arena, NIEHS is authorized under section 311 of SARA to conduct a hazardous substance basic research and training program to evaluate toxic effects and assess human health risks from accidental releases of hazardous materials. Under Title IX, section 901(h) of the Clean Air Act Amendments, NIEHS also is authorized to conduct basic research on air pollutants, as well as train physicians in environmental health. Federal research and training in hazardous materials release prevention represents an important non-regulatory activity and supplements ongoing private sector programs.

(9) DOI may be contacted through Regional Environmental Officers (REOs), who are the designated members of RRTs. Department land managers have jurisdiction over the national park system, national wildlife refuges and fish hatcheries, the public lands, and certain water projects in western states. In addition, bureaus and offices have relevant expertise as follows:

(i) United States Fish and Wildlife Service (USFWS) and other Bureaus: Anadromous and certain other fishes and wildlife, including endangered and threatened species, migratory birds, and certain marine mammals; waters and wetlands; and effects on natural resources.

(ii) The National Biological Survey performs research in support of biological resource management; inventories, monitors, and reports on the status and trends in the Nation's biotic resources; and transfers the information gained in research and monitoring to resource managers and others concerned with the care, use, and conservation of the Nation's natural resources. The National Biological Survey has laboratory/research facilities.

(iii) Geological Survey: Geology, hydrology (ground water and surface water), and natural hazards.

(iv) Bureau of Land Management: Minerals, soils, vegetation, wildlife, habitat, archaeology, and wilderness; and hazardous materials.

(v) Minerals Management Service: Oversight of offshore oil and gas exploration and production facilities and associated pipelines and pipeline facilities under the Outer Continental Shelf Lands Act and the CWA; oil spill response technology research; and establishing oil discharge contingency planning requirements for offshore facilities.

(vi) Bureau of Mines: Analysis and identification of inorganic hazardous substances and technical expertise in metals and metallurgy relevant to site cleanup.

(vii) Office of Surface Mining: Coal mine wastes and land reclamation.

(viii) National Park Service: General biological, natural, and cultural resource managers to evaluate, measure, monitor, and contain threats to park system lands and resources; archaeological and historical expertise in protection, preservation, evaluation, impact mitigation, and restoration of cultural resources; emergency personnel.

(ix) Bureau of Reclamation: Operation and maintenance of water projects in the West; engineering and hydrology; and reservoirs.

(x) Bureau of Indian Affairs: Coordination of activities affecting Indian lands; assistance in identifying Indian tribal government officials.

(xi) Office of Territorial Affairs: Assistance in implementing the NCP in American Samoa, Guam, the Pacific Island Governments, the Northern Mariana Islands, and the Virgin Islands.

(10) The Department of Justice (DOJ) can provide expert advice on complicated legal questions arising from discharges or releases, and federal agency responses. In addition, the DOJ represents the federal government, including its agencies, in litigation relating to such discharges or releases. Other legal issues or questions shall be directed to the federal agency counsel for the agency providing the OSC/RPM for the response.

(11) The Department of Labor (DOL), through OSHA and the states operating plans approved under section 18 of the OSH Act, has authority to conduct safety and health inspections of hazardous waste sites to assure that employees are being protected and to determine if the site is in compliance with:

(i) Safety and health standards and regulations promulgated by OSHA (or the states) in accordance with section 126 of SARA and all other applicable standards; and

(ii) Regulations promulgated under the OSH Act and its general duty clause. OSHA inspections may be self-generated, consistent with its program operations and objectives, or may be conducted in response to requests from EPA or another lead agency, or in response to accidents or employee complaints. OSHA may also conduct inspections at hazardous waste sites in those states with approved plans that choose not to exercise their jurisdiction to inspect such sites. On request, OSHA will provide advice and consultation to EPA and other NRT/RRT agencies as well as to the OSC/RPM regarding hazards to persons engaged in response activities. OSHA may also take any other action necessary to assure that employees are properly protected at such response activities. Any questions about occupational safety and health at these sites may be referred to the OSHA Regional Office.

(12) DOT provides response expertise pertaining to transportation of oil or hazardous substances by all modes of transportation. Through the Research and Special Programs Administration (RSPA), DOT offers expertise in the requirements for packaging, handling, and transporting regulated hazardous materials. DOT, through RSPA, establishes oil discharge contingency planning requirements for pipelines, transport by rail and containers or bulk transport of oil.

(13) The Department of State (DOS) will lead in the development of international joint contingency plans. It will also help to coordinate an international response when discharges or releases cross international boundaries or involve foreign flag vessels. Additionally, DOS will coordinate requests for assistance from foreign governments and U.S. proposals for conducting research at incidents that occur in waters of other countries.

(14) The Nuclear Regulatory Commission will respond, as appropriate, to releases of radioactive materials by its licensees, in accordance

with the NRC Incident Response Plan (NUREG–0728) to monitor the actions of those licensees and assure that the public health and environment are protected and adequate recovery operations are instituted. The Nuclear Regulatory Commission will keep EPA informed of any significant actual or potential releases in accordance with procedural agreements. In addition, the Nuclear Regulatory Commission will provide advice to the OSC/RPM when assistance is required in identifying the source and character of other hazardous substance releases where the Nuclear Regulatory Commission has licensing authority for activities utilizing radioactive materials.

(15) The General Services Administration (GSA) provides logistic and telecommunications support to federal agencies. During an emergency situation, GSA quickly responds to aid state and local governments as directed by other federal agencies. The type of support provided might include leasing and furnishing office space, setting up telecommunications and transportation services, and advisory assistance.

§ 300.180 State and local participation in response.

(a) Each state governor is requested to designate one state office/representative to represent the state on the appropriate RRT. The state's office/representative may participate fully in all activities of the appropriate RRT. Each state governor is also requested to designate a lead state agency that will direct state-lead response operations. This agency is responsible for designating the lead state response official for federal and/or state-lead response actions, and coordinating/communicating with any other state agencies, as appropriate. Local governments are invited to participate in activities on the appropriate RRT as may be provided by state law or arranged by the state's representative. Indian tribes wishing to participate should assign one person or office to represent the tribal government on the appropriate RRT.

(b) Appropriate local and state officials (including Indian tribes) will participate as part of the response structure as provided in the ACP.

(c) In addition to meeting the requirements for local emergency plans under SARA section 303, state and local government agencies are encouraged to include contingency planning for responses, consistent with the NCP, RCP, and ACP in all emergency and disaster planning.

(d) For facilities not addressed under CERCLA or the CWA, states are encouraged to undertake response actions themselves or to use their authorities to compel potentially responsible parties to undertake response actions.

(e) States are encouraged to enter into cooperative agreements pursuant to sections 104 (c)(3) and (d) of CERCLA to enable them to undertake actions authorized under subpart E of the NCP. Requirements for entering into these agreements are included in subpart F of the NCP. A state agency that acts pursuant to such agreements is referred to as the lead agency. In the event there is no cooperative agreement, the lead agency can be designated in a SMOA or other agreement.

(f) Because state and local public safety organizations would normally be the first government representatives at the scene of a discharge or release, they are expected to initiate public safety measures that are necessary to protect public health and welfare and that are consistent with containment and cleanup requirements in the NCP, and are responsible for directing evacuations pursuant to existing state or local procedures.

§ 300.185 Nongovernmental participation.

(a) Industry groups, academic organizations, and others are encouraged to commit resources for response operations. Specific commitments should be listed in the RCP and ACP. Those entities required to develop tank vessel and facility response plans under CWA section 311(j) must be able to respond to a worst case discharge to the maximum extent practicable, and shall commit sufficient resources to implement other aspects of those plans in accordance with the requirements of 30 CFR part 254, 33 CFR parts 150, 154, and 155; 40 CFR part 112; and 49 CFR parts 171 and 194.

(b) The technical and scientific information generated by the local community, along with information from federal, state, and local governments, should be used to assist the OSC/RPM in devising response strategies where effective standard techniques are unavailable. Such information and strategies will be incorporated into the ACP, as appropriate. The SSC may act as liaison between the OSC/RPM and such interested organizations.

(c) ACPs shall establish procedures to allow for well organized, worthwhile, and safe use of volunteers, including compliance with § 300.150 regarding worker health and safety. ACPs should provide for the direction of volunteers by the OSC/RPM or by other federal, state, or local officials knowledgeable in contingency operations and capable of providing leadership. ACPs also should identify specific areas in which volunteers can be used, such as beach surveillance, logistical support, and bird and wildlife treatment. Unless specifically requested by the OSC/RPM, volunteers generally should not be used for physical removal or remedial activities. If, in the judgment of the OSC/RPM, dangerous conditions exist, volunteers shall be restricted from on-scene operations.

(d) Nongovernmental participation must be in compliance with the requirements of subpart H of this part if any recovery of costs will be sought.

Subpart C—Planning and Preparedness

§ 300.200 General.

This subpart summarizes emergency preparedness activities relating to discharges of oil and releases of hazardous substances, pollutants, or contaminants; describes the three levels of contingency planning under the national response system; and cross-references state and local emergency preparedness activities under SARA Title III, also known as the "Emergency Planning and Community Right-to-Know Act of 1986" but referred to herein as "Title III." Regulations implementing Title III are codified at 40 CFR Subchapter J.

§ 300.205 Planning and coordination structure.

(a) *National.* As described in § 300.110, the NRT is responsible for national planning and coordination.

(b) *Regional.* As described in § 300.115, the RRTs are responsible for regional planning and coordination.

(c) *Area.* As required by section 311(j) of the CWA, under the direction of the federal OSC for its area, Area Committees comprising qualified personnel of federal, state, and local agencies shall be responsible for:

(1) Preparing an ACP for their areas (as described in § 300.210(c));

(2) Working with appropriate federal, state, and local officials to enhance the contingency planning of those officials and to assure pre-planning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife; and

(3) Working with appropriate federal, state, and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices

(d) *State.* As provided by sections 301 and 303 of Title III, the SERC of each

state, appointed by the Governor, is to designate emergency planning districts, appoint Local Emergency Planning Committees (LEPCs), supervise and coordinate their activities, and review local emergency response plans, which are described in § 300.215. The SERC also is to establish procedures for receiving and processing requests from the public for information generated by Title III reporting requirements and to designate an official to serve as coordinator for information.

(e) *Local.* As provided by sections 301 and 303 of Title III, emergency planning districts are designated by the SERC in order to facilitate the preparation and implementation of emergency plans. Each LEPC is to prepare a local emergency response plan for the emergency planning district and establish procedures for receiving and processing requests from the public for information generated by Title III reporting requirements. The LEPC is to appoint a chair and establish rules for the LEPC. The LEPC is to designate an official to serve as coordinator for information and designate in its plan a community emergency coordinator.

(f) As required by section 311(j)(5) of the CWA, a tank vessel, as defined under section 2101 of title 46, U.S. Code, an offshore facility, and an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or exclusive economic zone must prepare and submit a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.

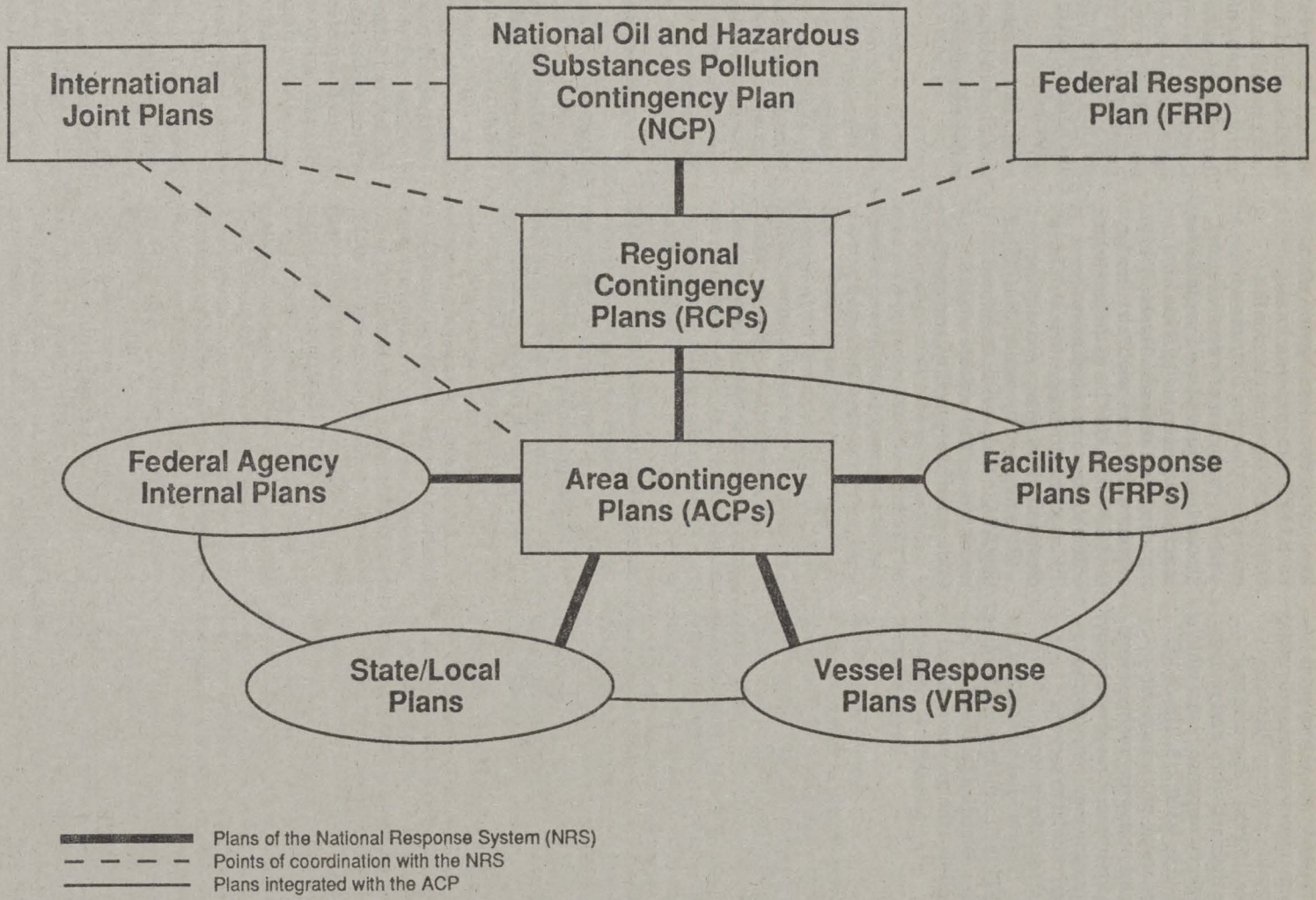
(g) The relationship of these plans is described in Figure 4.

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Figure 4

Relationship of Plans



§ 300.210 Federal contingency plans.

There are three levels of contingency plans under the national response system: The National Contingency Plan, RCPs, and ACPs. These plans are available for inspection at EPA regional offices or USCG district offices. Addresses and telephone numbers for these offices may be found in the United States Government Manual, issued annually, or in local telephone directories.

(a) *The National Contingency Plan.* The purpose and objectives, authority, and scope of the NCP are described in §§ 300.1 through 300.3.

(b) *Regional Contingency Plans.* The RRTs, working with the states, shall develop federal RCPs for each standard federal region, Alaska, Oceania in the Pacific, and the Caribbean to coordinate timely, effective response by various federal agencies and other organizations to discharges of oil or releases of hazardous substances, pollutants, or contaminants. RCPs shall, as appropriate, include information on all useful facilities and resources in the region, from government, commercial, academic, and other sources. To the greatest extent possible, RCPs shall follow the format of the NCP and be coordinated with state emergency response plans, ACPs, which are described in § 300.210(c), and Title III local emergency response plans, which are described in § 300.215. Such coordination should be accomplished by working with the SERCs in the region covered by the RCP. RCPs shall contain lines of demarcation between the inland and coastal zones, as mutually agreed upon by USCG and EPA.

(c) *Area Contingency Plans.* (1) Under the direction of an OSC and subject to approval by the lead agency, each Area Committee, in consultation with the appropriate RRTs, Coast Guard DRGs, the NSFCC, SSCs, LEPCs, and SERCs, shall develop an ACP for its designated area. This plan, when implemented in conjunction with other provisions of the NCP, shall be adequate to remove a worst case discharge under § 300.324, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area.

(2) The areas of responsibility may include several Title III local planning districts, or parts of such districts. In developing the ACP, the OSC shall coordinate with affected SERCs and LEPCs. The ACP shall provide for a well coordinated response that is integrated and compatible, to the greatest extent possible, with all appropriate response plans of state, local, and non-federal entities, and especially with Title III local emergency response plans.

(3) The ACP shall include the following:

(i) A description of the area covered by the plan, including the areas of special economic or environmental importance that might be damaged by a discharge;

(ii) A description in detail of the responsibilities of an owner or operator and of federal, state, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge;

(iii) A list of equipment (including firefighting equipment), dispersants, or other mitigating substances and devices, and personnel available to an owner or operator and federal, state, and local agencies, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge (this may be provided in an appendix or by reference to other relevant emergency plans (e.g., state or LEPC plans), which may include such equipment lists);

(iv) A description of procedures to be followed for obtaining an expedited decision regarding the use of dispersants; and

(v) A detailed description of how the plan is integrated into other ACPs and tank vessel, offshore facility, and onshore facility response plans approved by the President, and into operating procedures of the NSFCC.

(4)(i) In order to provide for coordinated, immediate and effective protection, rescue, and rehabilitation of, and minimization of risk of injury to, fish and wildlife resources and habitat, Area Committees shall incorporate into each ACP a detailed annex containing a Fish and Wildlife and Sensitive Environments Plan that is consistent with the RCP and NCP. The annex shall be prepared in consultation with the USFWS and NOAA and other interested natural resource management agencies and parties. It shall address fish and wildlife resources and their habitat, and shall include other areas considered sensitive environments in a separate section of the annex, based upon Area Committee recommendations. The annex will provide the necessary information and procedures to immediately and effectively respond to discharges that may adversely affect fish and wildlife and their habitat and sensitive environments, including provisions for a response to a worst case discharge. Such information shall include the identification of appropriate agencies and their responsibilities, procedures to notify these agencies following a discharge or threat of a discharge, protocols for obtaining required fish and wildlife permits and other necessary permits, and provisions to ensure compatibility of annex-related activities with removal operations.

(ii) The annex shall:

(A) Identify and establish priorities for fish and wildlife resources and their habitats and other important sensitive areas requiring protection from any direct or indirect effects from discharges that may occur. These effects include, but are not limited to, any seasonal or historical use, as well as all critical, special, significant, or otherwise designated protected areas.

(B) Provide a mechanism to be used during a spill response for timely identification of protection priorities of those fish and wildlife resources and habitats and sensitive environmental areas that may be threatened or injured by a discharge. These include as appropriate, not only marine and freshwater species, habitats, and their food sources, but also terrestrial wildlife and their habitats that may be affected directly by onshore oil or indirectly by oil-related factors, such as loss or contamination of forage. The mechanism shall also provide for expeditious evaluation and appropriate consultations on the effects to fish and wildlife, their habitat, and other sensitive environments from the application of chemical countermeasures or other countermeasures not addressed under paragraph (e)(4)(iii).

(C) Identify potential environmental effects on fish and wildlife, their habitat, and other sensitive environments resulting from removal actions or countermeasures, including the option of no removal. Based on this evaluation of potential environmental effects, the annex should establish priorities for application of countermeasure and removal actions to habitats within the geographic region of the ACP. The annex should establish methods to minimize the identified effects on fish and wildlife because of response activities, including, but not limited to: Disturbance of sensitive areas and habitats; illegal or inadvertent taking or disturbance of fish and wildlife or specimens by response personnel; and fish and wildlife, their habitat, and environmentally sensitive areas coming in contact with various cleaning or bioremediation agents. Furthermore, the annex should identify the areas where the movement of oiled debris may pose a risk to resident, transient, or migratory fish and wildlife, and other sensitive environments and should discuss measures to be considered for removing such oiled

debris in a timely fashion to reduce such risk.

(D) Provide for pre-approval of application of specific countermeasures or removal actions that, if expeditiously applied, will minimize adverse spill-induced impacts to fish and wildlife resources, their habitat, and other sensitive environments. Such pre-approval plans must be consistent with paragraphs (c)(4)(ii) (B) and (C) of this section and subpart J requirements, and must have the concurrence of the natural resource trustees.

(E) Provide monitoring plan(s) to evaluate the effectiveness of different countermeasures or removal actions in protecting the environment. Monitoring should include "set-aside" or "control" areas, where no mitigative actions are taken.

(F) Identify and plan for the acquisition and utilization of necessary response capabilities for protection, rescue, and rehabilitation of fish and wildlife resources and habitat. This may include appropriately permitted private organizations and individuals with appropriate expertise and experience. The suitable organizations should be identified in cooperation with natural resource law enforcement agencies. Such capabilities shall include, but not be limited to, identification of facilities and equipment necessary for deterring sensitive fish and wildlife from entering oiled areas, and for capturing, holding, cleaning, and releasing injured wildlife. Plans for the provision of such capabilities shall ensure that there is no interference with other OSC removal operations.

(G) Identify appropriate federal and state agency contacts and alternates responsible for coordination of fish and wildlife rescue and rehabilitation and protection of sensitive environments; identify and provide for required fish and wildlife handling and rehabilitation permits necessary under federal and state laws; and provide guidance on the implementation of law enforcement requirements included under current federal and state laws and corresponding regulations. Requirements include, but are not limited to procedures regarding the capture, transport, rehabilitation, and release of wildlife exposed to or threatened by oil, and disposal of contaminated carcasses of wildlife.

(H) Identify and secure the means for providing, if needed, the minimum required OSHA and EPA training for volunteers, including those who assist with injured wildlife.

(I) Define the requirements for evaluating the compatibility between this annex and non-federal response plans (including those of vessels, facilities, and pipelines) on issues affecting fish and wildlife, their habitat, and sensitive environments.

§ 300.211 OPA facility and vessel response plans.

This section describes and cross-references the regulations that implement section 311(j)(5) of the CWA. A tank vessel, as defined under section 2101 of title 46, U.S. Code, an offshore facility, and an onshore facility that, because of its location, could reasonably expect to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or exclusive economic zone must prepare and submit a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance. These response plans are required to be consistent with applicable Area Contingency Plans. These regulations are codified as follows:

(a) For tank vessels, these regulations are codified in 33 CFR part 155;

(b) For offshore facilities, these regulations are codified in 30 CFR part 254;

(c) For non-transportation related onshore facilities, these regulations are codified in 40 CFR 112.20;

(d) For transportation-related onshore facilities, these regulations are codified in 33 CFR part 154;

(e) For pipeline facilities, these regulations are codified in 49 CFR part 194; and

(f) For rolling stock, these regulations are codified in 49 CFR part 106 et al.

§ 300.212 Area response drills.

The OSC periodically shall conduct drills of removal capability (including fish and wildlife response capability), without prior notice, in areas for which ACPs are required by § 300.210(c) and under relevant tank vessel and facility response plans.

§ 300.215 Title III local emergency response plans.

This section describes and cross-references the regulations that implement Title III. These regulations are codified at 40 CFR part 355.

(a) Each LEPC is to prepare an emergency response plan in accordance with section 303 of Title III and review the plan once a year, or more frequently as changed circumstances in the community or at any facility may require. Such Title III local emergency response plans should be closely coordinated with applicable federal ACPs and state emergency response plans.

(b) [Reserved]

§ 300.220 Related Title III issues.

Other related Title III requirements are found in 40 CFR part 355.

Subpart D—Operational Response Phases for Oil Removal

§ 300.300 Phase I—Discovery or notification.

(a) A discharge of oil may be discovered through:

(1) A report submitted by the person in charge of a vessel or facility, in accordance with statutory requirements;

(2) Deliberate search by patrols;

(3) Random or incidental observation by government agencies or the public; or

(4) Other sources.

(b) Any person in charge of a vessel or a facility shall, as soon as he or she has knowledge of any discharge from such vessel or facility in violation of section 311(b)(3) of the CWA, immediately notify the NRC. If direct reporting to the NRC is not practicable, reports may be made to the USCG or EPA predesignated OSC for the geographic area where the discharge occurs. The EPA predesignated OSC may also be contacted through the regional 24-hour emergency response telephone number. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or predesignated OSC immediately, reports may be made immediately to the nearest Coast Guard unit. In any event such person in charge of the vessel or facility shall notify the NRC as soon as possible.

(c) Any other person shall, as appropriate, notify the NRC of a discharge of oil.

(d) Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The OSC shall ensure notification of the appropriate state agency of any state which is, or may reasonably be expected to be, affected by the discharge. The OSC shall then proceed with the following phases as outlined in the RCP and ACP.

§ 300.305 Phase II—Preliminary assessment and initiation of action.

(a) The OSC is responsible for promptly initiating a preliminary assessment.

(b) The preliminary assessment shall be conducted using available information, supplemented where necessary and possible by an on-scene inspection. The OSC shall undertake actions to:

(1) Evaluate the magnitude and severity of the discharge or threat to

public health or welfare of the United States or the environment;

(2) Assess the feasibility of removal; and

(3) To the extent practicable, identify potentially responsible parties.

(c) Where practicable, the framework for the response management structure is a system (e.g., a unified command system), that brings together the functions of the federal government, the state government, and the responsible party to achieve an effective and efficient response, where the OSC maintains authority.

(d) Except in a case when the OSC is required to direct the response to a discharge that may pose a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the OSC may allow the responsible party to voluntarily and promptly perform removal actions, provided the OSC determines such actions will ensure an effective and immediate removal of the discharge or mitigation or prevention of a substantial threat of a discharge. If the responsible party does conduct the removal, the OSC shall ensure adequate surveillance over whatever actions are initiated. If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC should, to the extent practicable under the circumstances, so advise the responsible party. If the responsible party does not respond properly the OSC shall take appropriate response actions and should notify the responsible party of the potential liability for federal response costs incurred by the OSC pursuant to the OPA and CWA. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(1) In carrying out a response under this section, the OSC may:

(i) Remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;

(ii) Direct or monitor all federal, state, and private actions to remove a discharge; and

(iii) Remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(2) If the discharge results in a substantial threat to the public health or welfare of the United States (including, but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the OSC must direct all response efforts, as provided in § 300.322(b) of this part. The OSC should declare as expeditiously as practicable to spill response participants that the federal government will direct the response. The OSC may act without regard to any other provision of the law governing contracting procedures or employment of personnel by the federal government in removing or arranging for the removal of such a discharge.

(e) The OSC shall ensure that the natural resource trustees are promptly notified in the event of any discharge of oil, to the maximum extent practicable as provided in the Fish and Wildlife and Sensitive Environments Plan annex to the ACP for the area in which the discharge occurs. The OSC and the trustees shall coordinate assessments, evaluations, investigations, and planning with respect to appropriate removal actions. The OSC shall consult with the affected trustees on the appropriate removal action to be taken. The trustees will provide timely advice concerning recommended actions with regard to trustee resources potentially affected. The trustees also will assure that the OSC is informed of their activities in natural resource damage assessment that may affect response operations. The trustees shall assure, through the lead administrative trustee, that all data from the natural resource damage assessment activities that may support more effective operational decisions are provided in a timely manner to the OSC. When circumstances permit, the OSC shall share the use of non-monetary response resources (i.e., personnel and equipment) with the trustees, provided trustee activities do not interfere with response actions. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other trustees during response operations and is responsible for applying to the OSC for non-monetary federal response resources on behalf of all trustees. The lead administrative trustee is also responsible for applying to the NPFC for funding for initiation of damage assessment for injuries to natural resources.

§ 300.310 Phase III—Containment, countermeasures, cleanup, and disposal.

(a) Defensive actions shall begin as soon as possible to prevent, minimize, or mitigate threat(s) to the public health or welfare of the United States or the environment. Actions may include but are not limited to: Analyzing water samples to determine the source and spread of the oil; controlling the source of discharge; measuring and sampling; source and spread control or salvage operations; placement of physical barriers to deter the spread of the oil and to protect natural resources and sensitive ecosystems; control of the water discharged from upstream impoundment; and the use of chemicals and other materials in accordance with subpart J of this part to restrain the spread of the oil and mitigate its effects. The ACP prepared under § 300.210(c) should be consulted for procedures to be followed for obtaining an expedited decision regarding the use of dispersants and other products listed on the NCP Product Schedule.

(b) As appropriate, actions shall be taken to recover the oil or mitigate its effects. Of the numerous chemical or physical methods that may be used, the chosen methods shall be the most consistent with protecting public health and welfare and the environment. Sinking agents shall not be used.

(c) Oil and contaminated materials recovered in cleanup operations shall be disposed of in accordance with the RCP, ACP, and any applicable laws, regulations, or requirements. RRT and Area Committee guidelines may identify the disposal options available during an oil spill response and may describe what disposal requirements are mandatory or may not be waived by the OSC. ACP guidelines should address: the sampling, testing, and classifying of recovered oil and oiled debris; the segregation, temporary storage, and stockpiling of recovered oil and oiled debris; prior state disposal approvals and permits; and the routes; methods (e.g. recycle/reuse, on-site burning, incineration, landfilling, etc.); and sites for the disposal of collected oil, oiled debris, and animal carcasses; and procedures for obtaining waivers, exemptions, or authorizations associated with handling or transporting waste materials. The ACPs may identify a hierarchy of preferences for disposal alternatives, with recycling (reprocessing) being the most preferred, and other alternatives preferred based on priorities for health or the environment.

§ 300.315 Phase IV—Documentation and cost recovery.

(a) All OSLTF users need to collect and maintain documentation to support all actions taken under the CWA. In general, documentation shall be sufficient to support full cost recovery for resources utilized and shall identify the source and circumstances of the incident, the responsible party or parties, and impacts and potential impacts to public health and welfare

and the environment. Documentation procedures are contained in 33 CFR part 136.

(b) When appropriate, documentation shall also be collected for scientific understanding of the environment and for research and development of improved response methods and technology. Funding for these actions is restricted by section 6002 of the OPA.

(c) OSCs shall submit OSC reports to the NRT or RRT, only if requested, as provided by § 300.165.

(d) OSCs shall ensure the necessary collection and safeguarding of information, samples, and reports. Samples and information shall be gathered expeditiously during the response to ensure an accurate record of the impacts incurred. Documentation materials shall be made available to the trustees of affected natural resources. The OSC shall make available to trustees of the affected natural resources information and documentation in the OSC's possession that can assist the trustees in the determination of actual or potential natural resource injuries.

(e) Information and reports obtained by the EPA or USCG OSC shall be transmitted to the appropriate offices responsible for follow-up actions.

§ 300.317 National response priorities.

(a) Safety of human life must be given the top priority during every response action. This includes any search and rescue efforts in the general proximity of the discharge and the insurance of safety of response personnel.

(b) Stabilizing the situation to preclude the event from worsening is the next priority. All efforts must be focused on saving a vessel that has been involved in a grounding, collision, fire, or explosion, so that it does not compound the problem. Comparable measures should be taken to stabilize a situation involving a facility, pipeline, or other source of pollution. Stabilizing the situation includes securing the source of the spill and/or removing the remaining oil from the container (vessel, tank, or pipeline) to prevent additional oil spillage, to reduce the need for follow-up response action, and to minimize adverse impact to the environment.

(c) The response must use all necessary containment and removal tactics in a coordinated manner to ensure a timely, effective response that minimizes adverse impact to the environment.

(d) All parts of this national response strategy should be addressed concurrently, but safety and stabilization are the highest priorities. The OSC should not delay containment and removal decisions unnecessarily and should take actions to minimize adverse impact to the environment that begins as soon as a discharge occurs, as well as actions to minimize further adverse environmental impact from additional discharges.

(e) The priorities set forth in this section are broad in nature, and should not be interpreted to preclude the consideration of other priorities that may arise on a site-specific basis.

§ 300.320 General pattern of response.

(a) When the OSC receives a report of a discharge, actions normally should be taken in the following sequence:

(1) Investigate the report to determine pertinent information such as the threat posed to public health or welfare of the United States or the environment, the type and quantity of polluting material, and the source of the discharge.

(2) Officially classify the size (i.e., minor, medium, major) and type (i.e., substantial threat to the public health or welfare of the United States, worst case discharge) of the discharge and determine the course of action to be followed to ensure effective and immediate removal, mitigation, or prevention of the discharge. Some discharges that are classified as a substantial threat to the public health or welfare of the United States may be further classified as a spill of national significance by the Administrator of EPA or the Commandant of the USCG. The appropriate course of action may be prescribed in §§ 300.322, 300.323, and 300.324.

(i) When the reported discharge is an actual or potential major discharge, the OSC shall immediately notify the RRT and the NRC.

(ii) When the investigation shows that an actual or potential medium discharge exists, the OSC shall recommend activation of the RRT, if appropriate.

(iii) When the investigation shows that an actual or potential minor discharge exists, the OSC shall monitor the situation to ensure that proper removal action is being taken.

(3) If the OSC determines that effective and immediate removal, mitigation, or prevention of a discharge can be achieved by private party efforts, and where the discharge does not pose a substantial threat to the public health or welfare of the United States, determine whether the responsible party or other person is properly carrying out removal. Removal is being done properly when:

(i) The responsible party is applying the resources called for in its response plan to effectively and immediately remove, minimize, or mitigate threat(s) to public health and welfare and the environment; and

(ii) The removal efforts are in accordance with applicable regulations, including the NCP. Even if the OSC supplements responsible party resources with government resources, the spill response will not be considered improper, unless specifically determined by the OSC.

(4) Where appropriate, determine whether a state or political subdivision thereof has the capability to carry out any or all removal actions. If so, the OSC may arrange funding to support these actions.

(5) Ensure prompt notification of the trustees of affected natural resources in accordance with the applicable RCP and ACP.

(b) Removal shall be considered complete when so determined by the OSC in consultation with the Governor or Governors of the affected states. When the OSC considers removal complete, OSLTF removal funding shall end. This determination shall not preclude additional removal actions under applicable state law.

§ 300.322 Response to substantial threats to public health or welfare of the United States.

(a) As part of the investigation described in § 300.320, the OSC shall determine whether a discharge results in a substantial threat to public health or welfare of the United States (including, but not limited to, fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States). Factors to be considered by the OSC in making this determination include, but are not limited to, the size of the discharge, the character of the discharge, and the nature of the threat to public health or welfare of the United States. Upon obtaining such information, the OSC shall conduct an evaluation of the threat posed, based on the OSC's experience in assessing other discharges, and consultation with senior lead agency officials and readily available authorities on issues outside the OSC's technical expertise.

(b) If the investigation by the OSC shows that the discharge poses or may present a substantial threat to public health or welfare of the United States, the OSC shall direct all federal, state, or private actions to remove the discharge or to mitigate or prevent the threat of such a discharge, as appropriate. In directing the response in such cases, the OSC may act without regard to any other provision of law governing contracting procedures or employment

of personnel by the federal government to:

(1) Remove or arrange for the removal of the discharge;

(2) Mitigate or prevent the substantial threat of the discharge; and

(3) Remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(c) In the case of a substantial threat to public health or welfare of the United States, the OSC shall:

(1) Assess opportunities for the use of various special teams and other assistance described in § 300.145, including the use of the services of the NSFCC, as appropriate;

(2) Request immediate activation of the RRT; and

(3) Take whatever additional response actions are deemed appropriate, including, but not limited to, implementation of the ACP as required by section 311(j)(4) of the CWA or relevant tank vessel or facility response plan required by section 311(j)(5) of the CWA. When requested by the OSC, the lead agency or RRT shall dispatch appropriate personnel to the scene of the discharge to assist the OSC. This assistance may include technical support in the agency's areas of expertise and disseminating information to the public. The lead agency shall ensure that a contracting officer is available on scene, at the request of the OSC.

§ 300.323 Spills of national significance

(a) A discharge may be classified as a spill of national significance (SONS) by the Administrator of EPA for discharges occurring in the inland zone and the Commandant of the USCG for discharges occurring in the coastal zone.

(b) For a SONS in the inland zone, the EPA Administrator may name a senior Agency official to assist the OSC in communicating with affected parties and the public and coordinating federal, state, local, and international resources at the national level. This strategic coordination will involve, as appropriate, the NRT, RRT(s), the Governor(s) of affected state(s), and the mayor(s) or other chief executive(s) of local government(s).

(c) For a SONS in the coastal zone, the USCG Commandant may name a National Incident Commander (NIC) who will assume the role of the OSC in communicating with affected parties and the public, and coordinating federal, state, local, and international resources at the national level. This strategic coordination will involve, as appropriate, the NRT, RRT(s), the Governor(s) of affected state(s), and the mayor(s) or other chief executive(s) of local government(s).

§ 300.324 Response to worst case discharges.

(a) If the investigation by the OSC shows that a discharge is a worst case discharge as defined in the ACP, or there is a substantial threat of such a discharge, the OSC shall:

(1) Notify the NSFCC;

(2) Require, where applicable, implementation of the worst case portion of an approved tank vessel or facility response plan required by section 311(j)(5) of the CWA;

(3) Implement the worst case portion of the ACP required by section 311(j)(4) of the CWA; and

(4) Take whatever additional response actions are deemed appropriate.

(b) Under the direction of the OSC, the NSFCC shall coordinate use of private and public personnel and equipment, including strike teams, to remove a worst case discharge and mitigate or prevent a substantial threat of such a discharge.

§ 300.335 Funding.

(a) The OSLTF is available under certain circumstances to fund removal of oil performed under section 311 of the CWA. Those circumstances and the procedures for accessing the OSLTF are described in 33 CFR part 136. The responsible party is liable for costs of federal removal and damages in accordance with section 311(f) of the CWA, section 1002 of the OPA, and other federal laws.

(b) Where the OSC requests assistance from a federal agency, that agency may be reimbursed in accordance with the provisions of 33 CFR part 136. Specific interagency reimbursement agreements may be used when necessary to ensure that the federal resources will be available for a timely response to a discharge of oil.

(c) Procedures for funding the initiation of natural resource damage assessment are covered in 33 CFR part 136.

(d) Response actions other than removal, such as scientific investigations not in support of removal actions or law enforcement, shall be provided by the agency with legal responsibility for those specific actions.

(e) The funding of a response to a discharge from a federally owned, operated, or supervised facility or vessel is the responsibility of the owning, operating, or supervising agency if it is a responsible party.

(f) The following agencies have funds available for certain discharge removal actions:

(1) DOD has two specific sources of funds that may be applicable to an oil discharge under appropriate circumstances. This does not consider military resources that might be made available under specific conditions.

(i) Funds required for removal of a sunken vessel or similar obstruction of navigation are available to the Corps of Engineers through Civil Works Appropriations, Operations and Maintenance, General.

(ii) USN may conduct salvage operations contingent on defense operational commitments, when funded by the requesting agency. Such funding may be requested on a direct cite basis.

(2) Pursuant to Title I of the OPA, the state or states affected by a discharge of oil may act where necessary to remove such discharge. Pursuant to 33 CFR part 136 states may be reimbursed from the OSLTF for the reasonable costs incurred in such a removal.

Subpart E—Hazardous Substance Response

5. Section 300.400 is amended by revising paragraph (a) to read as follows:

§ 300.400 General.

(a) This subpart establishes methods and criteria for determining the appropriate extent of response authorized by CERCLA and CWA section 311(c):

(1) When there is a release of a hazardous substance into the environment; or

(2) When there is a release into the environment of any pollutant or contaminant that may present an imminent and substantial danger to the public health or welfare of the United States.

* * * * *

6. Section 300.405 is amended by revising paragraphs (a) and (f)(3) to read as follows:

§ 300.405 Discovery or notification.

(a) A release may be discovered through:

(1) A report submitted in accordance with section 103(a) of CERCLA, i.e., reportable quantities codified at 40 CFR part 302;

(2) A report submitted to EPA in accordance with section 103(c) of CERCLA;

(3) Investigation by government authorities conducted in accordance with section 104(e) of CERCLA or other statutory authority;

(4) Notification of a release by a federal or state permit holder when required by its permit;

(5) Inventory or survey efforts or random or incidental observation

reported by government agencies or the public;

(6) Submission of a citizen petition to EPA or the appropriate federal facility requesting a preliminary assessment, in accordance with section 105(d) of CERCLA;

(7) A report submitted in accordance with section 311(b)(5) of the CWA; and

(8) Other sources.

* * * * *

(f) * * *

(3) If radioactive substances are present in a release, the EPA Radiological Response Coordinator should be notified for evaluation and assistance either directly or via the NRC, consistent with §§ 300.130(e) and 300.145(f).

* * * * *

7. Section 300.410 is revised to read as follows:

§ 300.410 Removal site evaluation.

(a) A removal site evaluation includes a removal preliminary assessment and, if warranted, a removal site inspection.

(b) A removal site evaluation of a release identified for possible CERCLA response pursuant to § 300.415 shall, as appropriate, be undertaken by the lead agency as promptly as possible. The lead agency may perform a removal preliminary assessment in response to petitions submitted by a person who is, or may be, affected by a release of a hazardous substance, pollutant, or contaminant pursuant to § 300.420(b)(5).

(c)(1) The lead agency shall, as appropriate, base the removal preliminary assessment on readily available information. A removal preliminary assessment may include, but is not limited to:

(i) Identification of the source and nature of the release or threat of release;

(ii) Evaluation by ATSDR or by other sources, for example, state public health agencies, of the threat to public health;

(iii) Evaluation of the magnitude of the threat;

(iv) Evaluation of factors necessary to make the determination of whether a removal is necessary; and

(v) Determination of whether a nonfederal party is undertaking proper response.

(2) A removal preliminary assessment of releases from hazardous waste management facilities may include collection or review of data such as site management practices, information from generators, photographs, analysis of historical photographs, literature searches, and personal interviews conducted, as appropriate.

(d) A removal site inspection may be performed if more information is needed. Such inspection may include a perimeter (i.e., off-site) or on-site inspection, taking into consideration whether such inspection can be performed safely.

(e)(1) As part of the evaluation under this section, the OSC shall determine whether a release governed by CWA section 311(c)(1), as amended by OPA section 4201(a), has occurred.

(2) If such a release of a CWA hazardous substance has occurred, the OSC shall determine whether the release results in a substantial threat to the public health or welfare of the United States. Factors to be considered by the OSC in making this determination include, but are not limited to, the size of the release, the character of the release, and the nature of the threat to public health or welfare of the United States. Upon obtaining relevant elements of such information, the OSC shall conduct an evaluation of the threat posed, based on the OSC's experience in assessing other releases, and consultation with senior lead agency officials and readily available authorities on issues outside the OSC's technical expertise.

(f) A removal site evaluation shall be terminated when the OSC or lead agency determines:

(1) There is no release;

(2) The source is neither a vessel nor a facility as defined in § 300.5 of the NCP;

(3) The release involves neither a hazardous substance, nor a pollutant or contaminant that may present an imminent and substantial danger to public health or welfare of the United States;

(4) The release consists of a situation specified in § 300.400(b) (1) through (3) subject to limitations on response;

(5) The amount, quantity, or concentration released does not warrant federal response;

(6) A party responsible for the release, or any other person, is providing appropriate response, and on-scene monitoring by the government is not required; or

(7) The removal site evaluation is completed.

(g) The results of the removal site evaluation shall be documented.

(h) The OSC or lead agency shall ensure that natural resource trustees are promptly notified in order that they may initiate appropriate actions, including those identified in Subpart G of this part. The OSC or lead agency shall coordinate all response activities with such affected trustees.

(i) If the removal site evaluation indicates that removal action under § 300.415 is not required, but that remedial action under § 300.430 may be necessary, the lead agency shall, as appropriate, initiate a remedial site evaluation pursuant to § 300.420.

8. Section 300.415 is revised to read as follows:

§ 300.415 Removal action.

(a)(1) In determining the appropriate extent of action to be taken in response to a given release, the lead agency shall first review the removal site evaluation, any information produced through a remedial site evaluation, if any has been done previously, and the current site conditions, to determine if removal action is appropriate.

(2) Where the responsible parties are known, an effort initially shall be made, to the extent practicable, to determine whether they can and will perform the necessary removal action promptly and properly.

(3) This section does not apply to removal actions taken pursuant to section 104(b) of CERCLA. The criteria for such actions are set forth in section 104(b) of CERCLA.

(b)(1) At any release, regardless of whether the site is included on the National Priorities List (NPL), where the lead agency makes the determination, based on the factors in paragraph (b)(2) of this section, that there is a threat to public health or welfare of the United States or the environment, the lead agency may take any appropriate removal action to abate, prevent, minimize, stabilize, mitigate, or eliminate the release or the threat of release.

(2) The following factors shall be considered in determining the appropriateness of a removal action pursuant to this section:

(i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;

(ii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iii) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;

(iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;

(v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

(vi) Threat of fire or explosion;

(vii) The availability of other appropriate federal or state response mechanisms to respond to the release; and

(viii) Other situations or factors that may pose threats to public health or welfare of the United States or the environment.

(3) If the lead agency determines that a removal action is appropriate, actions shall, as appropriate, begin as soon as possible to abate, prevent, minimize, stabilize, mitigate, or eliminate the threat to public health or welfare of the United States or the environment. The lead agency shall, at the earliest possible time, also make any necessary determinations pursuant to paragraph (b)(4) of this section.

(4) Whenever a planning period of at least six months exists before on-site activities must be initiated, and the lead agency determines, based on a site evaluation, that a removal action is appropriate:

(i) The lead agency shall conduct an engineering evaluation/cost analysis (EE/CA) or its equivalent. The EE/CA is an analysis of removal alternatives for a site.

(ii) If environmental samples are to be collected, the lead agency shall develop sampling and analysis plans that shall provide a process for obtaining data of sufficient quality and quantity to satisfy data needs. Sampling and analysis plans shall be reviewed and approved by EPA. The sampling and analysis plans shall consist of two parts:

(A) The field sampling plan, which describes the number, type, and location of samples and the type of analyses; and

(B) The quality assurance project plan, which describes policy, organization, and functional activities and the data quality objectives and measures necessary to achieve adequate data for use in planning and documenting the removal action.

(5) CERCLA fund-financed removal actions, other than those authorized under section 104(b) of CERCLA, shall be terminated after $2 million has been obligated for the action or 12 months have elapsed from the date that removal activities begin on-site, unless the lead agency determines that:

(i) There is an immediate risk to public health or welfare of the United States or the environment; continued response actions are immediately required to prevent, limit, or mitigate an emergency; and such assistance will not otherwise be provided on a timely basis; or

(ii) Continued response action is otherwise appropriate and consistent with the remedial action to be taken.

(c)(1) In carrying out a response to a release of a CWA hazardous substance, as described in CWA section 311(c)(1), as amended by OPA section 4201(a), the OSC may:

(i) Remove or arrange for the removal of a release, and mitigate or prevent a substantial threat of a release, at any time;

(ii) Direct or monitor all federal, state, and private actions to remove a release; and

(iii) Remove and, if necessary, destroy a vessel releasing or threatening to release CWA hazardous substances, by whatever means are available.

(2) If the investigation by the OSC under § 300.410 shows that the release of a CWA hazardous substance results in a substantial threat to public health or welfare of the United States, the OSC shall direct all federal, state, or private actions to remove the release or to mitigate or prevent the threat of such a release, as appropriate. In directing the response, the OSC may act without regard to any other provision of law governing contracting procedures or employment of personnel by the federal government to:

(i) Remove or arrange for the removal of the release;

(ii) Mitigate or prevent the substantial threat of the release; and

(iii) Remove and, if necessary, destroy a vessel releasing, or threatening to release, by whatever means are available.

(3) In the case of a release of a CWA hazardous substance posing a substantial threat to public health or welfare of the United States, the OSC shall:

(i) Assess opportunities for the use of various special teams and other assistance described in § 300.145, as appropriate;

(ii) Request immediate activation of the RRT; and

(iii) Take whatever additional response actions are deemed appropriate. When requested by the OSC, the lead agency or RRT shall dispatch appropriate personnel to the scene of the release to assist the OSC. This assistance may include technical support in the agency's areas of expertise and disseminating information to the public in accordance with § 300.155. The lead agency shall ensure that a contracting officer is available on-scene, at the request of the OSC.

(d) Removal actions shall, to the extent practicable, contribute to the efficient performance of any anticipated long-term remedial action with respect to the release concerned.

(e) The following removal actions are, as a general rule, appropriate in the types of situations shown; however, this list is not exhaustive and is not intended to prevent the lead agency from taking any other actions deemed necessary under CERCLA, CWA section 311, or other appropriate federal or state enforcement or response authorities, and the list does not create a duty on the lead agency to take action at any particular time:

(1) Fences, warning signs, or other security or site control precautions—where humans or animals have access to the release;

(2) Drainage controls, for example, run-off or run-on diversion—where needed to reduce migration of hazardous substances or pollutants or contaminants off-site or to prevent precipitation or run-off from other sources, for example, flooding, from entering the release area from other areas;

(3) Stabilization of berms, dikes, or impoundments or drainage or closing of lagoons—where needed to maintain the integrity of the structures;

(4) Capping of contaminated soils or sludges—where needed to reduce migration of hazardous substances or pollutants or contaminants into soil, ground or surface water, or air;

(5) Using chemicals and other materials to retard the spread of the release or to mitigate its effects—where the use of such chemicals will reduce the spread of the release;

(6) Excavation, consolidation, or removal of highly contaminated soils from drainage or other areas—where such actions will reduce the spread of, or direct contact with, the contamination;

(7) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances or pollutants or contaminants—where it will reduce the likelihood of spillage; leakage; exposure to humans, animals, or food chain; or fire or explosion;

(8) Containment, treatment, disposal, or incineration of hazardous materials—where needed to reduce the likelihood of human, animal, or food chain exposure; or

(9) Provision of alternative water supply—where necessary immediately to reduce exposure to contaminated household water and continuing until such time as local authorities can satisfy the need for a permanent remedy.

(f) Where necessary to protect public health or welfare, the lead agency shall request that FEMA conduct a temporary relocation or that state/local officials conduct an evacuation.

(g) If the lead agency determines that the removal action will not fully address the threat posed by the release and the release may require remedial action, the lead agency shall ensure an orderly transition from removal to remedial response activities.

(h) CERCLA removal actions conducted by states under cooperative agreements, described in subpart F of this part, shall comply with all requirements of this section.

(i) Facilities operated by a state or political subdivision at the time of disposal require a state cost share of at least 50 percent of Fund-financed response costs if a Fund-financed remedial action is conducted.

(j) Fund-financed removal actions under CERCLA section 104 and removal actions pursuant to CERCLA section 106 shall, to the extent practicable considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Waivers described in § 300.430(f)(1)(ii)(C) may be used for removal actions. Other federal and state advisories, criteria, or guidance may, as appropriate, be considered in formulating the removal action (see § 300.400(g)(3)). In determining whether compliance with ARARs is practicable, the lead agency may consider appropriate factors, including:

(1) The urgency of the situation; and

(2) The scope of the removal action to be conducted.

(k) Removal actions pursuant to section 106 or 122 of CERCLA are not subject to the following requirements of this section:

(1) Section 300.415(a)(2) requirement to locate responsible parties and have them undertake the response;

(2) Section 300.415(b)(2)(vii) requirement to consider the availability of other appropriate federal or state response and enforcement mechanisms to respond to the release;

(3) Section 300.415(b)(5) requirement to terminate response after $2 million has been obligated or 12 months have elapsed from the date of the initial response; and

(4) Section 300.415(g) requirement to assure an orderly transition from removal to remedial action.

(l) To the extent practicable, provision for post-removal site control following a CERCLA Fund-financed removal action at both NPL and non-NPL sites is encouraged to be made prior to the initiation of the removal action. Such post-removal site control includes actions necessary to ensure the effectiveness and integrity of the removal action after the completion of the on-site removal action or after the $2 million or 12-month statutory limits are reached for sites that do not meet the exemption criteria in paragraph (b)(5) of this section. Post-removal site control may be conducted by:

(1) The affected state or political subdivision thereof or local units of government for any removal;

(2) Potentially responsible parties; or

(3) EPA's remedial program for some federal-lead Fund-financed responses at NPL sites.

(m) OSCs/RPMs conducting removal actions shall submit OSC reports to the RRT as required by § 300.165.

(n) *Community relations in removal actions.* (1) In the case of all CERCLA removal actions taken pursuant to § 300.415 or CERCLA enforcement actions to compel removal response, a spokesperson shall be designated by the lead agency. The spokesperson shall inform the community of actions taken, respond to inquiries, and provide information concerning the release. All news releases or statements made by participating agencies shall be coordinated with the OSC/RPM. The spokesperson shall notify, at a minimum, immediately affected citizens, state and local officials, and, when appropriate, civil defense or emergency management agencies.

(2) For CERCLA actions where, based on the site evaluation, the lead agency determines that a removal is appropriate, and that less than six months exists before on-site removal activity must begin, the lead agency shall:

(i) Publish a notice of availability of the administrative record file established pursuant to § 300.820 in a major local newspaper of general circulation within 60 days of initiation of on-site removal activity;

(ii) Provide a public comment period, as appropriate, of not less than 30 days from the time the administrative record file is made available for public inspection, pursuant to § 300.820(b)(2); and

(iii) Prepare a written response to significant comments pursuant to § 300.820(b)(3).

(3) For CERCLA removal actions where on-site action is expected to extend beyond 120 days from the initiation of on-site removal activities, the lead agency shall by the end of the 120-day period:

(i) Conduct interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns, information needs, and how or when citizens would like to be involved in the Superfund process;

(ii) Prepare a formal community relations plan (CRP) based on the community interviews and other relevant information, specifying the community relations activities that the lead agency expects to undertake during the response; and

(iii) Establish at least one local information repository at or near the location of the response action. The information repository should contain items made available for public information. Further, an administrative record file established pursuant to subpart I for all removal actions shall be available for public inspection in at least one of the repositories. The lead agency shall inform the public of the establishment of the information repository and provide notice of availability of the administrative record file for public review. All items in the repository shall be available for public inspection and copying.

(4) Where, based on the site evaluation, the lead agency determines that a CERCLA removal action is appropriate and that a planning period of at least six months exists prior to initiation of the on-site removal activities, the lead agency shall at a minimum:

(i) Comply with the requirements set forth in paragraphs (n)(3) (i), (ii), and (iii) of this section, prior to the completion of the EE/CA, or its equivalent, except that the information repository and the administrative record file will be established no later than when the EE/CA approval memorandum is signed;

(ii) Publish a notice of availability and brief description of the EE/CA in a major local newspaper of general circulation pursuant to § 300.820;

(iii) Provide a reasonable opportunity, not less than 30 calendar days, for submission of written and oral comments after completion of the EE/CA pursuant to § 300.820(a). Upon timely request, the lead agency will extend the public comment period by a minimum of 15 days; and

(iv) Prepare a written response to significant comments pursuant to § 300.820(a).

9. Subpart G is revised to read as follows:

Subpart G—Trustees for Natural Resources

300.600 Designation of federal trustees.
300.605 State trustees.
300.610 Indian tribes.
300.612 Foreign trustees.
300.615 Responsibilities of trustees.

Subpart G—Trustees for Natural Resources

§ 300.600 Designation of federal trustees.

(a) The President is required to designate in the NCP those federal officials who are to act on behalf of the public as trustees for natural resources. Federal officials so designated will act

pursuant to section 107(f) of CERCLA, section 311(f)(5) of the CWA, and section 1006 of the OPA. Natural resources means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled (hereinafter referred to as "managed or controlled") by the United States (including the resources of the exclusive economic zone).

(b) The following individuals shall be the designated trustee(s) for general categories of natural resources, including their supporting ecosystems. They are authorized to act pursuant to section 107(f) of CERCLA, section 311(f)(5) of the CWA, or section 1006 of the OPA when there is injury to, destruction of, loss of, or threat to natural resources, including their supporting ecosystems, as a result of a release of a hazardous substance or a discharge of oil. Notwithstanding the other designations in this section, the Secretaries of Commerce and the Interior shall act as trustees of those resources subject to their respective management or control.

(1) *Secretary of Commerce.* The Secretary of Commerce shall act as trustee for natural resources managed or controlled by DOC and for natural resources managed or controlled by other federal agencies and that are found in, under, or using waters navigable by deep draft vessels, tidally influenced waters, or waters of the contiguous zone, the exclusive economic zone, and the outer continental shelf. However, before the Secretary takes an action with respect to an affected resource under the management or control of another federal agency, he shall, whenever practicable, seek to obtain the concurrence of that other federal agency. Examples of the Secretary's trusteeship include the following natural resources and their supporting ecosystems: marine fishery resources; anadromous fish; endangered species and marine mammals; and the resources of National Marine Sanctuaries and National Estuarine Research Reserves.

(2) *Secretary of the Interior.* The Secretary of the Interior shall act as trustee for natural resources managed or controlled by the DOI. Examples of the Secretary's trusteeship include the following natural resources and their supporting ecosystems: migratory birds; anadromous fish; endangered species and marine mammals; federally owned minerals; and certain federally managed water resources. The Secretary of the Interior shall also be trustee for those natural resources for which an Indian tribe would otherwise act as trustee in those cases where the United States acts on behalf of the Indian tribe.

(3) *Secretary for the land managing agency.* For natural resources located on, over, or under land administered by the United States, the trustee shall be the head of the department in which the land managing agency is found. The trustees for the principal federal land managing agencies are the Secretaries of DOI, USDA, DOD, and DOE.

(4) *Head of authorized agencies.* For natural resources located in the United States but not otherwise described in this section, the trustee shall be the head of the federal agency or agencies authorized to manage or control those resources.

§ 300.605 State trustees.

State trustees shall act on behalf of the public as trustees for natural resources, including their supporting ecosystems, within the boundary of a state or belonging to, managed by, controlled by, or appertaining to such state. For the purposes of subpart G of this part, the definition of the term "state" does not include Indian tribes. The governor of a state is encouraged to designate a state lead trustee to coordinate all state trustee responsibilities with other trustee agencies and with response activities of the RRT and OSC. The state's lead trustee would designate a representative to serve as contact with the OSC. This individual should have ready access to appropriate state officials with environmental protection, emergency response, and natural resource responsibilities. The EPA Administrator or USCG Commandant or their designees may appoint the state lead trustee as a member of the Area Committee. Response strategies should be coordinated between the state and other trustees and the OSC for specific natural resource locations in an inland or coastal zone and should be included in the Fish and Wildlife and Sensitive Environments Plan annex of the ACP.

§ 300.610 Indian tribes.

The tribal chairmen (or heads of the governing bodies) of Indian tribes, as defined in § 300.5, or a person designated by the tribal officials, shall act on behalf of the Indian tribes as trustees for the natural resources, including their supporting ecosystems, belonging to, managed by, controlled by, or appertaining to such Indian tribe, or held in trust for the benefit of such Indian tribe, or belonging to a member of such Indian tribe, if such resources are subject to a trust restriction on alienation. When the tribal chairman or head of the tribal governing body designates another person as trustee, the tribal chairman or head of the tribal governing body shall notify the President of such designation. Such officials are authorized to act when there is injury to, destruction of, loss of, or threat to natural resources, including their supporting ecosystems as a result of a release of a hazardous substance.

§ 300.612 Foreign trustees.

Pursuant to section 1006 of the OPA, foreign trustees shall act on behalf of the head of a foreign government as trustees for natural resources belonging to, managed by, controlled by, or appertaining to such foreign government.

§ 300.615 Responsibilities of trustees.

(a) Where there are multiple trustees, because of coexisting or contiguous natural resources or concurrent jurisdictions, they should coordinate and cooperate in carrying out these responsibilities.

(b) Trustees are responsible for designating to the RRTs and the Area Committees, for inclusion in the RCP and the ACP, appropriate contacts to receive notifications from the OSCs/RPMs of discharges or releases.

(c)(1) Upon notification or discovery of injury to, destruction of, loss of, or threat to natural resources, trustees may, pursuant to section 107(f) of CERCLA, or section 311(f)(5) of the CWA, take the following or other actions as appropriate:

(i) Conduct a preliminary survey of the area affected by the discharge or release to determine if trust resources under their jurisdiction are, or potentially may be, affected;

(ii) Cooperate with the OSC/RPM in coordinating assessments, investigations, and planning;

(iii) Carry out damage assessments; or

(iv) Devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources. In assessing damages to natural resources, the federal, state, and Indian tribe trustees have the option of following the procedures for natural resource damage assessments located at 43 CFR part 11.

(2) Upon notification or discovery of injury to, destruction of, loss of, or loss of use of, natural resources, or the potential for such, resulting from a discharge of oil occurring after August 18, 1990, the trustees, pursuant to section 1006 of the OPA, are to take the following actions:

(i) In accordance with OPA section 1006(c), determine the need for assessment of natural resource damages,

collect data necessary for a potential damage assessment, and, where appropriate, assess damages to natural resources under their trusteeship; and

(ii) As appropriate, and subject to the public participation requirements of OPA section 1006(c), develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship;

(3)(i) The trustees, consistent with procedures specified in the Fish and Wildlife and Sensitive Environments Plan Annex to the Area Contingency Plan, shall provide timely advice on recommended actions concerning trustee resources that are potentially affected by a discharge of oil. This may include providing assistance to the OSC in identifying/recommending pre-approved response techniques and in predesignating shoreline types and areas in ACPs.

(ii) The trustees shall assure, through the lead administrative trustee, that the OSC is informed of their activities regarding natural resource damage assessment that may affect response operations in order to assure coordination and minimize any interference with such operations. The trustees shall assure, through the lead administrative trustee, that all data from the natural resource damage assessment activities that may support more effective operational decisions are provided in a timely manner to the OSC.

(iii) When circumstances permit, the OSC shall share the use of federal response resources (including but not limited to aircraft, vessels, and booms to contain and remove discharged oil) with the trustees, providing trustee activities do not interfere with response actions. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other trustees during response operations and is responsible for applying to the OSC for non-monetary federal response resources on behalf of all trustees. The lead administrative trustee is also responsible for applying to the NPFC for funding for initiation of damage assessment for injuries to natural resources.

(d) The authority of federal trustees includes, but is not limited to the following actions:

(1) Requesting that the Attorney General seek compensation from the responsible parties for the damages assessed and for the costs of an assessment and of restoration planning; and

(2) Participating in negotiations between the United States and potentially responsible parties to obtain PRP-financed or PRP-conducted assessments and restorations for injured resources or protection for threatened resources and to agree to covenants not to sue, where appropriate.

(3) Requiring, in consultation with the lead agency, any person to comply with the requirements of CERCLA section 104(e) regarding information gathering and access.

(4) Initiating damage assessments, as provided in OPA section 6002.

(e) Actions which may be taken by any trustee pursuant to section 107(f) of CERCLA, section 311(f)(5) of the CWA, or section 1006 of the OPA include, but are not limited to, any of the following:

(1) Requesting that an authorized agency issue an administrative order or pursue injunctive relief against the parties responsible for the discharge or release; or

(2) Requesting that the lead agency remove, or arrange for the removal of, or provide for remedial action with respect to, any oil or hazardous substances from a contaminated medium pursuant to section 104 of CERCLA or section 311 of CWA.

10. Subpart H is revised to read as follows:

Subpart H—Participation by Other Persons

300.700 Activities by other persons.

Subpart H—Participation by Other Persons

§ 300.700 Activities by other persons.

(a) *General.* Except as provided (e.g., in CWA section 311(c)), any person may undertake a response action to reduce or eliminate a release of a hazardous substance, pollutant, or contaminant.

(b) *Summary of CERCLA authorities.* The mechanisms available to recover the costs of response actions under CERCLA are, in summary:

(1) Section 107(a), wherein any person may receive a court award of his or her response costs, plus interest, from the party or parties found to be liable;

(2) Section 111(a)(2), wherein a private party, a PRP pursuant to a settlement agreement, or certain foreign entities may file a claim against the Fund for reimbursement of response costs;

(3) Section 106(b), wherein any person who has complied with a section 106(a) order may petition the Fund for reimbursement of reasonable costs, plus interest; and

(4) Section 123, wherein a general purpose unit of local government may apply to the Fund under 40 CFR part 310 for reimbursement of the costs of temporary emergency measures that are necessary to prevent or mitigate injury to human health or the environment associated with a release.

(c) *Section 107(a) cost recovery actions.* (1) Responsible parties shall be liable for all response costs incurred by the United States government or a state or an Indian tribe not inconsistent with the NCP.

(2) Responsible parties shall be liable for necessary costs of response actions to releases of hazardous substances incurred by any other person consistent with the NCP.

(3) For the purpose of cost recovery under section 107(a)(4)(B) of CERCLA:

(i) A private party response action will be considered "consistent with the NCP" if the action, when evaluated as a whole, is in substantial compliance with the applicable requirements in paragraphs (5) and (6) of this section, and results in a CERCLA-quality cleanup; and

(ii) Any response action carried out in compliance with the terms of an order issued by EPA pursuant to section 106 of CERCLA, or a consent decree entered into pursuant to section 122 of CERCLA, will be considered "consistent with the NCP."

(4) Actions under § 300.700(c)(1) will not be considered "inconsistent with the NCP," and actions under § 300.700(c)(2) will not be considered not "consistent with the NCP," based on immaterial or insubstantial deviations from the provisions of 40 CFR part 300.

(5) The following provisions of this Part are potentially applicable to private party response actions:

(i) Section 300.150 (on worker health and safety);

(ii) Section 300.160 (on documentation and cost recovery);

(iii) Section 300.400(c)(1), (4), (5), and (7) (on determining the need for a Fund-financed action); (e) (on permit requirements) except that the permit waiver does not apply to private party response actions; and (g) (on identification of ARARs) except that applicable requirements of federal or state law may not be waived by a private party;

(iv) Section 300.405(b), (c), and (d) (on reports of releases to the NRC);

(v) Section 300.410 (on removal site evaluation) except paragraphs (f)(5) and (6);

(vi) Section 300.415 (on removal actions) except paragraphs (a)(2), (b)(2)(vii), (b)(5), and (g); and including § 300.415(j) with regard to meeting ARARs where practicable except that private party removal actions must always comply with the requirements of applicable law;

(vii) Section 300.420 (on remedial site evaluation);

(viii) Section 300.430 (on RI/FS and selection of remedy) except paragraph (f)(1)(ii)(C)(6) and that applicable requirements of federal or state law may not be waived by a private party; and

(ix) Section 300.435 (on RD/RA and operation and maintenance).

(6) Private parties undertaking response actions should provide an opportunity for public comment concerning the selection of the response action based on the provisions set out below, or based on substantially equivalent state and local requirements. The following provisions of this part regarding public participation are potentially applicable to private party response actions, with the exception of administrative record and information repository requirements stated therein:

(i) Section 300.155 (on public information and community relations);

(ii) Section 300.415(n) (on community relations during removal actions);

(iii) Section 300.430(c) (on community relations during RI/FS) except paragraph (c)(5);

(iv) Section 300.430(f)(2), (3), and (6) (on community relations during selection of remedy); and

(v) Section 300.435(c) (on community relations during RD/RA and operation and maintenance).

(7) When selecting the appropriate remedial action, the methods of remedying releases listed in Appendix D of this part may also be appropriate to a private party response action.

(8) Except for actions taken pursuant to CERCLA sections 104 or 106 or response actions for which reimbursement from the Fund will be sought, any action to be taken by the lead agency listed in paragraphs (c)(5) through (c)(7) may be taken by the person carrying out the response action.

(d) *Section 111(a)(2) claims.* (1) Persons, other than those listed in paragraphs (d)(1) (i) through (iii) of this section, may be able to receive reimbursement of response costs by means of a claim against the Fund. The categories of persons excluded from pursuing this claims authority are:

(i) Federal government;

(ii) State governments, and their political subdivisions, unless they are potentially responsible parties covered by an order or consent decree pursuant to section 122 of CERCLA; and

(iii) Persons operating under a procurement contract or an assistance agreement with the United States with respect to matters covered by that contract or assistance agreement, unless specifically provided therein.

(2) In order to be reimbursed by the Fund, an eligible person must notify the Administrator of EPA or designee prior to taking a response action and receive prior approval, i.e., "preauthorization," for such action.

(3) Preauthorization is EPA's prior approval to submit a claim against the Fund for necessary response costs incurred as a result of carrying out the NCP. All applications for preauthorization will be reviewed to determine whether the request should receive priority for funding. EPA, in its discretion, may grant preauthorization of a claim. Preauthorization will be considered only for:

(i) Removal actions pursuant to § 300.415;

(ii) CERCLA section 104(b) activities; and

(iii) Remedial actions at National Priorities List sites pursuant to § 300.435.

(4) To receive EPA's prior approval, the eligible person must:

(i) Demonstrate technical and other capabilities to respond safely and effectively to releases of hazardous substances, pollutants, or contaminants; and

(ii) Establish that the action will be consistent with the NCP in accordance with the elements set forth in paragraphs (c) (5) through (8) of this section.

(5) EPA will grant preauthorization to a claim by a party it determines to be potentially liable under section 107 of CERCLA only in accordance with an order issued pursuant to section 106 of CERCLA, or a settlement with the federal government in accordance with section 122 of CERCLA.

(6) Preauthorization does not establish an enforceable contractual relationship between EPA and the claimant.

(7) Preauthorization represents EPA's commitment that if funds are appropriated for response actions, the response action is conducted in accordance with the preauthorization decision document, and costs are reasonable and necessary, reimbursement will be made from the Superfund, up to the maximum amount provided in the preauthorization decision document.

(8) For a claim to be awarded under section 111 of CERCLA, EPA must certify that the costs were necessary and consistent with the preauthorization decision document.

(e) *Section 106(b) petition.* Subject to conditions specified in CERCLA section 106(b), any person who has complied with an order issued after October 16, 1986 pursuant to section 106(a) of CERCLA, may seek reimbursement for response costs incurred in complying with that order unless the person has waived that right.

(f) *Section 123 reimbursement to local governments.* Any general purpose unit of local government for a political subdivision that is affected by a release may receive reimbursement for the costs of temporary emergency measures necessary to prevent or mitigate injury to human health or the environment subject to the conditions set forth in 40 CFR part 310. Such reimbursement may not exceed $25,000 for a single response.

(g) *Release From Liability.* Implementation of response measures by potentially responsible parties or by any other person does not release those parties from liability under section 107(a) of CERCLA, except as provided in a settlement under section 122 of CERCLA or a federal court judgment.

(h) *Oil Pollution Act Claims.* Claims are authorized to be presented to the OSLTF under section 1013 of the OPA, for certain uncompensated removal costs or uncompensated damages resulting from the discharge, or substantial threat of discharge, of oil from a vessel or facility into or upon the navigable waters, adjoining shorelines, or exclusive economic zone of the United States. Anyone desiring to file a claim against the OSLTF may obtain general information on the procedure for filing a claim from the Director, National Pollution Funds Center, Suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203–1804, (703) 235–4756.

11. Subpart J is revised to read as follows:

Subpart J—Use of Dispersants and Other Chemicals

300.900 General.
300.905 NCP Product Schedule.
300.910 Authorization of use.
300.915 Data requirements.
300.920 Addition of products to schedule.

Subpart J—Use of Dispersants and Other Chemicals

§ 300.900 General.

(a) Section 311(d)(2)(G) of the CWA requires that EPA prepare a schedule of dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the NCP. This subpart makes provisions for such a schedule.

(b) This subpart applies to the navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, and the high seas beyond the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act,

activities under the Deepwater Port Act of 1974, or activities that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, including resources under the Magnuson Fishery Conservation and Management Act of 1976.

(c) This subpart applies to the use of any chemical agents or other additives as defined in subpart A of this part that may be used to remove or control oil discharges.

§ 300.905 NCP Product Schedule.

(a) *Oil Discharges.* (1) EPA shall maintain a schedule of dispersants and other chemical or bioremediation products that may be authorized for use on oil discharges in accordance with the procedures set forth in § 300.910. This schedule, called the NCP Product Schedule, may be obtained from the Emergency Response Division (5202–G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The telephone number is 1–202–260–2342.

(2) Products may be added to the NCP Product Schedule by the process specified in § 300.920.

(b) *Hazardous Substance Releases.* [Reserved]

§ 300.910 Authorization of use.

(a) RRTs and Area Committees shall address, as part of their planning activities, the desirability of using appropriate dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents listed on the NCP Product Schedule, and the desirability of using appropriate burning agents. RCPs and ACPs shall, as appropriate, include applicable preauthorization plans and address the specific contexts in which such products should and should not be used. In meeting the provisions of this paragraph, preauthorization plans may address factors such as the potential sources and types of oil that might be spilled, the existence and location of environmentally sensitive resources that might be impacted by spilled oil, available product and storage locations, available equipment and adequately trained operators, and the available means to monitor product application and effectiveness. The RRT representatives from EPA and the states with jurisdiction over the waters of the area to which a preauthorization plan applies and the DOC and DOI natural resource trustees shall review and either approve, disapprove, or approve with modification the preauthorization plans developed by Area Committees, as appropriate. Approved preauthorization plans shall be included in the appropriate RCPs and ACPs. If the RRT representatives from EPA and the states with jurisdiction over the waters of the area to which a preauthorization plan applies and the DOC and DOI natural resource trustees approve in advance the use of certain products under specified circumstances as described in the preauthorization plan, the OSC may authorize the use of the products without obtaining the specific concurrences described in paragraphs (b) and (c) of this section.

(b) For spill situations that are not addressed by the preauthorization plans developed pursuant to paragraph (a) of this section, the OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents on the oil discharge, provided that the products are listed on the NCP Product Schedule.

(c) The OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of burning agents on a case-by-case basis.

(d) The OSC may authorize the use of any dispersant, surface washing agent, surface collecting agent, other chemical agent, burning agent, bioremediation agent, or miscellaneous oil spill control agent, including products not listed on the NCP Product Schedule, without obtaining the concurrence of the EPA representative to the RRT and, as appropriate, the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, when, in the judgment of the OSC, the use of the product is necessary to prevent or substantially reduce a hazard to human life. Whenever the OSC authorizes the use of a product pursuant to this paragraph, the OSC is to inform the EPA RRT representative and, as appropriate, the RRT representatives from the affected states and, when practicable, the DOC/DOI natural resources trustees of the use of a product, including products not on the Schedule, as soon as possible. Once the threat to human life has subsided, the continued use of a product shall be in accordance with paragraphs (a), (b), and (c) of this section.

(e) Sinking agents shall not be authorized for application to oil discharges.

(f) When developing preauthorization plans, RRTs may require the performance of supplementary toxicity and effectiveness testing of products, in addition to the test methods specified in § 300.915 and described in Appendix C to part 300, due to existing site-specific or area-specific concerns.

§ 300.915 Data requirements.

(a) *Dispersants.* (1) Name, brand, or trademark, if any, under which the dispersant is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alterations to the effectiveness of the product.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Effectiveness. Use the Swirling Flask effectiveness test methods described in Appendix C to part 300. Manufacturers shall submit test results and supporting data, along with a certification signed by responsible corporate officials of the manufacturer and laboratory stating that the test was conducted on a representative product sample, the testing was conducted using generally accepted laboratory practices, and they believe the results to be accurate. A dispersant must attain an effectiveness value of 45 percent or greater to be added to the NCP Product Schedule. Manufacturers are encouraged to provide data on product performance under conditions other than those captured by these tests.

(8) *Dispersant Toxicity.* For those dispersants that meet the effectiveness threshold described in paragraph (a)(7) above, use the standard toxicity test methods described in Appendix C to part 300. Manufacturers shall submit test results and supporting data, along with a certification signed by

responsible corporate officials of the manufacturer and laboratory stating that the test was conducted on a representative product sample, the testing was conducted using generally accepted laboratory practices, and they believe the results to be accurate.

(9) The following data requirements incorporate by reference standards from the 1991 or 1992 Annual Books of ASTM Standards. American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.[1]

(i) Flash Point—Select appropriate method from the following:

(A) ASTM—D 56–87, "Standard Test Method for Flash Point by Tag Closed Tester;"

(B) ASTM—D 92–90, "Standard Test Method for Flash and Fire Points by Cleveland Open Cup;"

(C) ASTM—D 93–90, "Standard Test Methods for Flash Point by Pensky-Martens Closed Tester;"

(D) ASTM—D 1310–86, "Standard Test Method for Flash Point and Fire Point of Liquids by Tag Open-Cup Apparatus;" or

(E) ASTM—D 3278–89, "Standard Test Methods for Flash Point of Liquids by Setaflash Closed-Cup Apparatus."

(ii) Pour Point—Use ASTM—D 97–87, "Standard Test Method for Pour Point of Petroleum Oils."

(iii) Viscosity—Use ASTM—D 445–88, "Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity)."

(iv) Specific Gravity—Use ASTM—D 1298–85(90), "Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method."

(v) pH—Use ASTM—D 1293–84(90), "Standard Test Methods for pH of Water."

(10) Dispersing Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages will include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface active agents, solvents, and additives.

(11) Heavy Metals, Cyanide, and Chlorinated Hydrocarbons. Using standard test procedures, state the concentrations or upper limits of the following materials:

(i) Arsenic, cadmium, chromium, copper, lead, mercury, nickel, zinc, plus any other metals that may be reasonably expected to be in the sample. Atomic absorption methods should be used and the detailed analytical methods and sample preparation shall be fully described.

(ii) Cyanide. Standard calorimetric procedures should be used.

(iii) Chlorinated hydrocarbons. Gas chromatography should be used and the detailed analytical methods and sample preparation shall be fully described. At a minimum, the following test methods shall be used for chlorinated hydrocarbon analyses: EPA Method 601—Purgeable halocarbons (Standard Method 6230 B) and EPA Method 608—Organochlorine pesticides and PCBs (Standard Method 6630 C).[2]

(12) The technical product data submission shall include the identity of the laboratory that performed the required tests, the qualifications of the laboratory staff, including professional biographical information for individuals responsible for any tests, and laboratory experience with similar tests. Laboratories performing toxicity tests for dispersant toxicity must demonstrate previous toxicity test experience in order for their results to be accepted. It is the responsibility of the submitter to select competent analytical laboratories based on the guidelines contained herein. EPA reserves the right to refuse to accept a submission of technical product data because of lack of qualification of the analytical laboratory, significant variance between submitted data and any laboratory confirmation performed by EPA, or other circumstances that would result in inadequate or inaccurate information on the dispersing agent.

(b) *Surface washing agents.* (1) Name, brand, or trademark, if any, under which the surface washing agent is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alterations to the effectiveness of the product.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Toxicity. Use standard toxicity test methods described in Appendix C to part 300.

(8) Follow the data requirement specifications in paragraph (a)(9) of this section.

(9) Surface Washing Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages will include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface active agents, solvents, and additives.

(10) *Heavy Metals, Cyanide, and Chlorinated Hydrocarbons.* Follow specifications in paragraph (a)(11) of this section.

(11) Analytical Laboratory Requirements for Technical Product Data. Follow specifications in paragraph (a)(12) of this section.

(c) *Surface collecting agents.* (1) Name, brand, or trademark, if any, under which the product is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alterations to the effectiveness of the product.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

[1] Copies of these standards may be obtained from the publisher. Copies may be inspected at the U.S. Environmental Protection Agency, 401 M St., SW., Room LG, Washington, DC, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20408.

[2] These test methods may be obtained from: Standard Methods for the Examination of Water and Wastewater, 17th Edition, American Public Health Association, 1989; or Method 601—Purgeable halocarbons, 40 CFR part 136 and Method 608—Organochlorine pesticide and PCBs, 40 CFR part 136. Copies may be inspected at the U.S. Environmental Protection Agency, 401 M St., SW., Room LG, Washington, DC, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20408.

(7) *Toxicity.* Use standard toxicity test methods described in Appendix C to part 300.

(8) Follow the data requirement specifications in paragraph (a)(9) of this section.

(9) Test to Distinguish Between Surface Collecting Agents and Other Chemical Agents.

(i) Method Summary—Five milliliters of the chemical under test are mixed with 95 milliliters of distilled water and allowed to stand undisturbed for one hour. Then the volume of the upper phase is determined to the nearest one milliliter.

(ii) Apparatus.

(A) Mixing Cylinder: 100 milliliter subdivisions and fitted with a glass stopper.

(B) Pipettes: Volumetric pipette, 5.0 milliliter.

(C) Timers.

(iii) Procedure—Add 95 milliliters of distilled water at 22° C, plus or minus 3° C, to a 100 milliliter mixing cylinder. To the surface of the water in the mixing cylinder, add 5.0 milliliters of the chemical under test. Insert the stopper and invert the cylinder five times in ten seconds. Set upright for one hour at 22° C, plus or minus 3° C, and then measure the chemical layer at the surface of the water. If the major portion of the chemical added (75 percent) is at the water surface as a separate and easily distinguished layer, the product is a surface collecting agent.

(10) Surface Collecting Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages should include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface action agents, solvents, and additives.

(11) Heavy Metals, Cyanide, and Chlorinated Hydrocarbons. Follow specifications in paragraph (a)(11) of this section.

(12) Analytical Laboratory Requirements for Technical Product Data. Follow specifications in paragraph (a)(12) of this section.

(d) *Bioremediation Agents.* (1) Name, brand, or trademark, if any, under which the agent is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Bioremediation Agent Effectiveness. Use bioremediation agent effectiveness test methods described in Appendix C to part 300.

(8) Bioremediation Agent Toxicity [Reserved].

(9) Biological additives.

(i) For microbiological cultures, furnish the following information:

(A) Listing of each component of the total formulation, other than microorganisms, by chemical name and percentage by weight.

(B) Listing of all microorganisms by species.

(C) Percentage of each species in the composition of the additive.

(D) Optimum pH, temperature, and salinity ranges for use of the additive, and maximum and minimum pH, temperature, and salinity levels above or below which the effectiveness of the additive is reduced to half its optimum capacity.

(E) Special nutrient requirements, if any.

(F) Separate listing of the following, and test methods for such determinations: Salmonella, fecal coliform, Shigella, Staphylococcus Coagulase positive, and Beta Hemolytic Streptococci.

(ii) For enzyme additives, furnish the following information:

(A) Listing of each component of the total formulation, other than enzymes, by chemical name and percentage by weight.

(B) Enzyme name(s).

(C) International Union of Biochemistry (I.U.B.) number(s).

(D) Source of the enzyme.

(E) Units.

(F) Specific Activity.

(G) Optimum pH, temperature, and salinity ranges for use of the additive, and maximum and minimum pH, temperature, and salinity levels above or below which the effectiveness of the additive is reduced to half its optimum capacity.

(H) Enzyme shelf life.

(I) Enzyme optimum storage conditions.

(10) For nutrient additives, furnish the following information:

(i) Listing of each component of the total formulation by chemical name and percentage by weight.

(ii) Nutrient additive optimum storage conditions.

(11) Analytical Laboratory Requirements for Technical Product Data. Follow specifications in paragraph (a)(12) of this section.

(e) *Burning Agents.* EPA does not require technical product data submissions for burning agents and does not include burning agents on the NCP Product Schedule.

(f) *Miscellaneous Oil Spill Control Agents.* (1) Name, brand, or trademark, if any, under which the miscellaneous oil spill control agent is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Brief description of recommended uses of the product and how the product works.

(5) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alternatives to the effectiveness of the product.

(6) Shelf life.

(7) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(8) Toxicity. Use standard toxicity test methods described in Appendix C to part 300.

(9) Follow the data requirement specifications in paragraph (a)(9) of this section.

(10) Miscellaneous Oil Spill Control Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages should include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface active agents, solvents, and additives.

(11) Heavy Metals, Cyanide, and Chlorinated Hydrocarbons. Follow specifications in paragraph (a)(11) of this section.

(12) For any miscellaneous oil spill control agent that contains microbiological cultures, enzyme additives, or nutrient additives, furnish the information specified in paragraphs (d)(9) and (d)(10) of this section, as appropriate.

(13) Analytical Laboratory Requirements for Technical Product Data. Follow specifications in paragraph (a)(12) of this section.

(g) *Sorbents.* (1) Sorbent material may consist of, but is not limited to, the following materials:

(i) Organic products—

(A) Peat moss or straw;

(B) Cellulose fibers or cork;

(C) Corn cobs;

(D) Chicken, duck, or other bird feathers.

(ii) Mineral compounds—

(A) Volcanic ash or perlite;

(B) Vermiculite or zeolite.

(iii) Synthetic products—

(A) Polypropylene;

(B) Polyethylene;

(C) Polyurethane;

(D) Polyester.

(2) EPA does not require technical product data submissions for sorbents and does not include sorbents on the NCP Product Schedule.

(3) Manufacturers that produce sorbent materials that consist of materials other than those listed in paragraph (g)(1) of this section shall submit to EPA the technical product data specified for miscellaneous oil spill control agents in paragraph (f) of this section and EPA will consider listing those products on the NCP Product Schedule under the miscellaneous oil spill control agent category. EPA will inform the submitter in writing, within 60 days of the receipt of technical product data, of its decision on adding the product to the Schedule.

(4) Certification. OSCs may request a written certification from manufacturers that produce sorbent materials that consist solely of the materials listed in paragraph (g)(1) of this section prior to making a decision on the use of a particular sorbent material. The certification at a minimum shall state that the sorbent consists solely of the materials listed in § 300.915(g)(1) of the NCP. The following statement, when completed, dated, and signed by a sorbent manufacturer, is sufficient to meet the written certification requirement:

> [SORBENT NAME] is a sorbent material and consists solely of the materials listed in § 300.915(g)(1) of the NCP.

(h) *Mixed products.* Manufacturers of products that consist of materials that meet the definitions of two or more of the product categories contained on the NCP Product Schedule shall submit to EPA the technical product data specified in this section for each of those product categories. After review of the submitted technical product data, and the performance of required dispersant effectiveness and toxicity tests, if appropriate, EPA will make a determination on whether and under which category the mixed product should be listed on the Schedule.

§ 300.920 Addition of products to Schedule.

(a) *Dispersants.* (1) To add a dispersant to the NCP Product Schedule, submit the technical product data specified in § 300.915(a) to the Emergency Response Division (5202–G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. A dispersant must attain an effectiveness value of 45 percent or greater in order to be added to the Schedule.

(2) EPA reserves the right to request further documentation of the manufacturers' test results. EPA also reserves the right to verify test results and consider the results of EPA's verification testing in determining whether the dispersant meets listing criteria. EPA will, within 60 days of receiving a complete application as specified in § 300.915(a) of this part, notify the manufacturer of its decision to list the product on the Schedule, or request additional information and/or a sample of the product in order to review and/or conduct validation sampling. If EPA requests additional information and/or a product sample, within 60 days of receiving such additional information or sample, EPA will then notify the manufacturer in writing of its decision to list or not list the product.

(3) Request for review of decision. (i) A manufacturer whose product was determined to be ineligible for listing on the NCP Product Schedule may request EPA's Administrator to review the determination. The request must be made in writing within 30 days of receiving notification of EPA's decision to not list the dispersant on the Schedule. The request shall contain a clear and concise statement with supporting facts and technical analysis demonstrating that EPA's decision was incorrect.

(ii) The Administrator or his designee may request additional information from the manufacturer, or from any other person, and may provide for a conference between EPA and the manufacturer, if appropriate. The Administrator or his designee shall render a decision within 60 days of receiving the request, or within 60 days of receiving requested additional information, if appropriate, and shall notify the manufacturer of his decision in writing.

(b) *Surface washing agents, surface collecting agents, bioremediation agents, and miscellaneous oil spill control agents.* (1) To add a surface washing agent, surface collecting agent, bioremediation agent, or miscellaneous oil spill control agent to the NCP Product Schedule, the technical product data specified in § 300.915 must be submitted to the Emergency Response Division (5202–G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. If EPA determines that the required data were submitted, EPA will add the product to the Schedule.

(2) EPA will inform the submitter in writing, within 60 days of the receipt of technical product data, of its decision on adding the product to the Schedule.

(c) The submitter may assert that certain information in the technical product data submissions, including technical product data submissions for sorbents pursuant to § 300.915(g)(3), is confidential business information. EPA will handle such claims pursuant to the provisions in 40 CFR part 2, subpart B. Such information must be submitted separately from non-confidential information, clearly identified, and clearly marked "Confidential Business Information." If the submitter fails to make such a claim at the time of submittal, EPA may make the information available to the public without further notice.

(d) The submitter must notify EPA of any changes in the composition, formulation, or application of the dispersant, surface washing agent, surface collecting agent, bioremediation agent, or miscellaneous oil spill control agent. On the basis of this data, EPA may require retesting of the product if the change is likely to affect the effectiveness or toxicity of the product.

(e) The listing of a product on the NCP Product Schedule does not constitute approval of the product. To avoid possible misinterpretation or misrepresentation, any label, advertisement, or technical literature that refers to the placement of the product on the NCP Product Schedule must either reproduce in its entirety EPA's written statement that it will add the product to the NCP Product Schedule under § 300.920(a)(2) or (b)(2), or include the disclaimer shown below. If the disclaimer is used, it must be conspicuous and must be fully reproduced. Failure to comply with these restrictions or any other improper attempt to demonstrate the approval of the product by any NRT or other U.S. Government agency shall constitute grounds for removing the product from the NCP Product Schedule.

DISCLAIMER

[PRODUCT NAME] is on the U.S. Environmental Protection Agency's NCP Product Schedule. This listing does NOT mean that EPA approves, recommends, licenses, certifies, or authorizes the use of [PRODUCT NAME] on an oil discharge. This listing means only that data have been submitted to EPA as required by subpart J of the National Contingency Plan, § 300.915.

12. Appendix C to part 300 is revised to read as follows:

Appendix C to Part 300—Swirling Flask Dispersant Effectiveness Test, Revised Standard Dispersant Toxicity Test, and Bioremediation Agent Effectiveness Test

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1.0 Introduction

1.1 *Scope and Application.* The methods described below apply to "dispersants, surface washing agents, surface collecting agents, bioremediation agents, and miscellaneous oil spill control agents" involving subpart J (Use of Dispersants and Other Chemicals) in 40 CFR Part 300 (National Oil and Hazardous Substances Pollution Contingency Plan). They are revisions and additions to the EPA's Standard Dispersant Effectiveness and Toxicity Tests (1). The new Swirling Flask Dispersant Effectiveness Test is used only for testing dispersants. The Revised Standard Dispersant Toxicity Test is used for testing dispersants, as well as surface washing agents, surface collecting agents, and miscellaneous oil spill control agents. The bioremediation agent effectiveness test is used for testing bioremediation agents only.

1.2 *Definitions.* The definitions of dispersants, surface washing agents, surface collecting agents, bioremediation agents, and miscellaneous oil spill control agents are provided in 40 CFR 300.5.

2.0 Swirling Flask Dispersant Effectiveness Test

2.1 *Summary of Method.* This protocol was developed by Environment Canada to provide a relatively rapid and simple testing procedure for evaluating dispersant effectiveness (2). It uses a modified Erlenmeyer flask to which a side spout has been added for removing subsurface samples of water near the bottom of the flask without disturbing a surface oil layer. Seawater and a surface layer of oil are added to the flask. Turbulent mixing is provided by placing the flask on a standard shaker table at 150 rpm for 20 minutes to induce a swirling motion to the liquid contents. Following shaking, the flask is immediately removed from the shaker table and maintained in a stationary position for 10 minutes to allow the oil that will reform a slick to return to the water's surface. A sample of water for chemical analysis is then removed from the bottom of the flask through the side spout, extracted with methylene chloride (dichloromethane-DCM), and analyzed for oil content by UV-visible absorption spectrophotometry at wavelengths of 340, 370, and 400 nm (2).

2.2 *Apparatus.*

2.2.1 Modified Erlenmeyer Flask. Use 125-ml glass Erlenmeyer flasks that have been modified to include an attachment of a glass side spout that extends from the bottom of the flask upward to the neck region, as shown in Figure 1.

2.2.2 *Shaker Table.* Use a shaker table with speed control unit with variable speed (40–400 rpm) and an orbital diameter of approximately 0.75 inches (2 cm) to provide turbulence to solutions in test flasks.

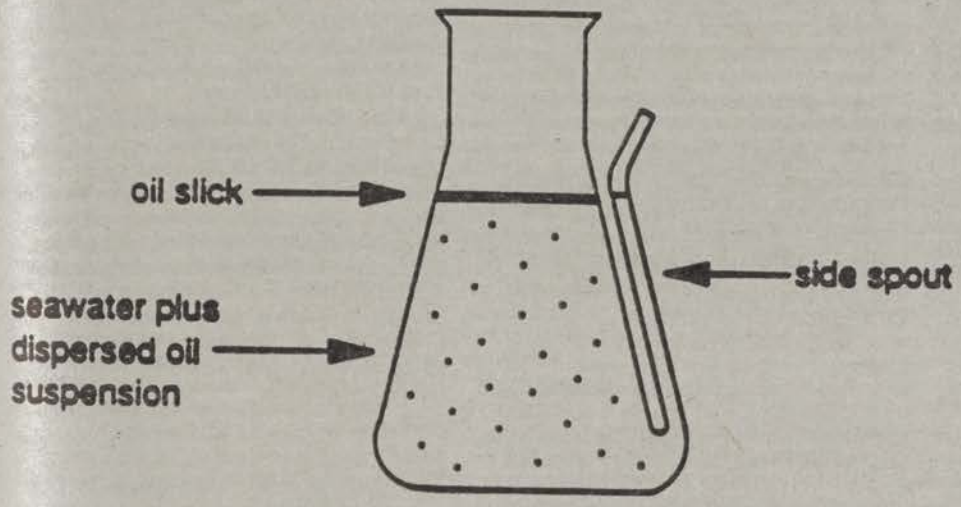
2.2.3 *Spectrophotometer.* Use a UV-visible spectrophotometer capable of measuring absorbance at 340, 370, and 400 nm. A Hitachi Model U–2000 or equivalent is acceptable for this purpose.

2.2.4 *Glassware.* Glassware should consist of 5-, 10-, 25-, 100-, and 500-ml graduated cylinders; 125-ml separatory funnels with Teflon stopcocks; and 10-, 100-, and 1,000-ml volumetric flasks and micropipettes.

BILLING CODE 6560–50–P

Figure 1

Swirling Flask Test Apparatus



BILLING CODE 6560-50-C

2.3 *Reagents.* 2.3.1 *Synthetic seawater.* The synthetic sea salt "Instant Ocean," manufactured by Aquarium Systems of Mentor, OH, can be used for this purpose. The synthetic seawater solution is prepared by dissolving 34 g of the salt mixture in 1 liter of distilled water (i.e., a salinity of 34 ppt). Table 1 provides a list of the ion composition of the seasalt mixture.

TABLE 1.—MAJOR ION COMPOSITION OF "INSTANT OCEAN" SYNTHETIC SEA SALT

Major Ion	% Total Weight	Ionic Concentration at 34 ppt salinity (mg/l)
Chloride (Cl^-)	47.470	18,740
Sodium (NA^+)	26.280	10,454
Sulfate (SO_4^-)	6.602	2,631
Magnesium (Mg^{++})	3.230	1,256
Calcium (Ca^{++})	1.013	400
Potassium (K^+)	1.015	401
Bicarbonate (HCO_3^-)	0.491	194
Boron (B)	0.015	6.0
Strontium (Sr^{++})	0.001	7.5
SOLIDS TOTAL	86.11%	34,089.50
Water	13.88	
TOTAL	99.99%	

Following the preparation, the saltwater solution is allowed to equilibrate to the ambient temperature of the laboratory and should be in the range of 22±3 °C.

2.3.2 *Test oil.* Two EPA/American Petroleum Institute (API) standard reference oils, Prudhoe Bay and South Louisiana crude, should be used for this test. These oils can be obtained from the Resource Technology Corporation, 2931 Soldier Springs Road, P.O. Box 1346, Laramie, WY 82070, (307) 742–5452. These oils have been thoroughly homogenized, as well as characterized physically and chemically for previous EPA and API studies. Various selected parameters are presented in Table 2.

TABLE 2.—TEST OIL CHARACTERISTICS

	Prudhoe Bay crude oil	South Louisiana crude oil
Specific gravity [1].	0.894 kg/1	0.840 kg/1
API gravity [1]	26.8 degrees	37.0 degrees
Sulfur	1.03 wt%	0.23 wt%
Sulfur compounds, profile.		
Nitrogen	0.20 wt%	0.031 wt%
Vanadium	21 mg/1	0.95 mg/1
Nickel	11 mg/1	1.1 mg/1
Simulated distillation profile.		
Infrared spectrum.		
UV fluorescence spectrum.		
Pour Point	+25 °F	0 °F
Viscosity		
at 40 °C	14.09 cST	3.582 cST
at 100 °C	4.059 cST	1.568 cST
Index	210	[2]

[1] At 15 °C

[2] ANot calculable when viscosity at 100 °C is less than 2.0.

2.3.3 *Methylene Chloride (Dichloromethane-DCM), pesticide quality.* For extraction of all sample water and oil-standard water samples.

2.4 *Pretest preparation.* 2.4.1 *Preparation and analysis of oil standards.* 2.4.1.1 Standard solutions of oil for calibrating the UV-visible spectrophotometer are prepared with the specific reference oils and dispersant used for a particular set of experimental test runs. For experiments with no dispersant, only oil is used to make the standard solution. For experiments with the oil plus dispersant, the standard is made with a 1:10 (v:v) mixture of the dispersant to the test oil (i.e., a dispersant-to-oil ratio of 1:10). This ratio is used in the test tank with dispersant added. The presence of water and certain dispersants in DCM extracts can affect absorbance readings in a spectrophotometer. All standard solutions of oil (and dispersant, if present) should be prepared in a stepwise manner that reflects the analytical protocol used for the experimental water samples.

2.4.1.2 To prepare the standards, prepare a parent oil-DCM standard by mixing 1 part oil (plus 1/10 part premixed dispersant, if applicable) to 9 parts DCM (i.e., 1:10 dilution of the oil v:v). Add a specific volume of the parent oil-DCM standard to 30 ml of synthetic seawater in a separatory funnel. Extract the oil-water mixture with 5-ml volumes of DCM after 15 seconds of vigorous shaking followed by a 2 minute stationary period to allow for phase separation for each extraction. Repeat the extraction using a total of three 5-ml portions of DCM. Adjust the final DCM volume for the combined extracts to 20 ml with DCM in a 25-ml graduated cylinder.

2.4.1.3 The quantities of oil used to achieve the desired concentrations in the final 20-ml DCM extracts for the standard oil-solutions are summarized in Table 3. Specific masses for oil amounts in standards are determined as volumes of oil multiplied by the density of the oil.

2.4.2 *Linear stability calibration of UV-Visible spectrophotometer.*

2.4.2.1 Before DCM-extracts of dispersed oil-water samples can be analyzed for their oil content, the UV-visible spectrophotometer must meet an instrument stability calibration criterion. This criterion is determined with the six oil standards identified in Table 3. Determine the absorbance of standards at each of the three analytical wavelengths (i.e., 340, 370, and 400 nm). Determine the response factors (RFs) for the test oil at each of the three analytical wavelengths using the following equation:

$$RF_x = C/A_x \qquad (1)$$

where:

RF_x=Response factor at wavelength x (x=340, 370, or 400 nm)

C=Oil concentration, in mg of oil/ml of DCM in standard solution

A_x=Spectrophotometric absorbance of wavelength x

TABLE 3—OIL STANDARD SOLUTIONS: CONCENTRATIONS IN FINAL DCM EXTRACTIONS [1]

Final oil concentration (mg/ml of DCM)	Final extract volume (ml of DCM)	Total amount of oil in standard (mg)	Volume of parent oil-DCM std (µl) added to saltwater
4.0	20.0	80.0	890
2.0	20.0	40.0	440
1.0	20.0	20.0	220
0.50	20.0	10.0	110
0.10	20.0	2.0	22
0.05	20.0	1.0	11

[1] Assuming an oil density of 0.9 g/ml and an extraction efficiency of 100% for oil from the 30-ml of seawater.

2.4.2.2 Instrument stability for the initial calibration is acceptable when the RFs for the five highest standard extracts of oil are <20% different from the overall mean value for the five standards. If this criterion is satisfied, analysis of sample extracts can begin. RFs for the lowest concentration (0.05 mg oil/ml DCM) are not included in the consideration because the absorbance is close to the detection limit of the spectrophotometer (with associated high variability in the value) for the 1-cm path-length cell used for measurements. Absorbances ≥3.5 are not included because absorbance saturation occurs at and above this value.

2.4.2.3 If one or more of the standard oil extracts do not meet this linear-stability criterion, then the "offending" standard(s) can be prepared a second time (i.e., extraction of the specified amount of oil from

30-ml or seawater for the "offending" standard according to the pretest preparation procedure). If replacement of the reanalyzed standard solution(s) in the standard curve meets the linear-stability criterion (i.e., no RF >20% different from the overall mean), then analysis of sample extracts can begin.

2.4.2.4 If the initial-stability criterion is still not satisfied, analysis of sample extract cannot begin and the source of the problem (e.g., preparation protocol for the oil standards, spectrophotometer stability, etc.) must be corrected.

2.4.2.5 The initial six-point calibration of the UV-visible spectrophotometer at the oil concentrations identified is required at least once per test day.

2.5 *Test procedure.* 2.5.1 *Preparation of premixed dispersant oil.* Prepare a premixed dispersant oil by mixing 1 part dispersant to 10 parts oil. Store this mixture in a glass container. The dispersant effectiveness test procedures are listed in steps 1–20:

1. Prepare 4 replicates (same test oil and dispersant), one control (i.e., no dispersant), and one method blank and run at the same time on the shaker table.

2. Add 120±2 ml of synthetic seawater to each of the modified 125-ml glass Erlenmeyer flasks. Measure and record the water temperature.

3. Place the flasks securely into the attached slot on the shaker table.

4. Carefully add 100 µl of an oil-dispersant solution onto the center of the water's surface using a positive displacement pipette.

5. Agitate the flasks for 20±1 minutes at 150±10 rpm on the shaker table.

6. After the 20±1 minutes shaking, remove the flasks from the shaker table and allow them to remain stationary for 10±1 minutes for oil droplet "settling."

7. At the conclusion of the 10-minute settling period, carefully decant a 30-ml sample through the side spout of the test flasks into a 50-ml graduated cylinder.

Note: Discard the first 1–2 ml of sample water to remove nonhomogeneous water-oil initially contained in the spout.

8. Transfer the samples from the graduated cylinder into a 125- or 250-ml glass separatory funnel fitted with a Teflon stopcock.

9. Add 5 ml of pesticide-quality DCM to the separatory funnel and shake vigorously for 15 seconds. Release the pressure carefully from the separatory funnel through the stopcock into a fume hood.

10. Allow the funnel to remain in a stationary position for 2 minutes to allow phase-separation of the water and DCM.

11. Drain the DCM layer from the separatory funnel into a glass-stoppered, 25-ml graduated glass cylinder.

12. Repeat the DCM-extraction process two additional times.

13. Combine the three extracts in the graduated cylinder and adjust the final volume to 20-ml with additional DCM.

14. Analyze the samples using a UV-spectrophotometer at 340, 370, and 400 nm-wavelengths and determine the quantity of oil as follows:

$$C_x=(A_x)x(RF_x)x(V_{DCM})x(V_{tw}/V_{ew}) \quad (2)$$

where:

C_x=Total mass of dispersed oil in swirling flask at wavelength x (x=340, 370, or 400 nm)

A_x=Spectrophotometric absorbance at wavelength x

RF_x=Mean response factor at wavelength x (determined from equation 1)

V_{DCM}=Final volume of DCM-extract of water sample (20 ml)

V_{tw}=Total water volume in swirling flask vessel (120 ml)

V_{ew}=Volume of water extracted for dispersed oil content (30 ml)

15. Obtain three concentration values for oil in each experimental water sample (340, 370, and 400 nm).

16. Determine the mean of three values as follows:

$$C_{mean}=(C_{340}+C_{370}+C_{400})/3 \quad (3)$$

Note: Means will be used for all dispersion-performance calculations. Samples where one of the values for C_{340}, C_{370}, or C_{400} is more than 30% different from C_{mean} will be flagged. Whenever oil measurements are flagged as having a concentration based on one wavelength as >30% different from C_{mean}, raw data will be evaluated to establish that the measurements are valid. In addition, attempts will be made to correlate the difference to oil type, dispersant test, or dispersant used. If no errors or correlations are apparent and >10% of all oil measurements are flagged, the mean concentration data will be used in the calculation for dispersant performance and the subject data will be flagged.

17. Determine the dispersant performance (i.e., percent of oil that is dispersed, or EFF) based on the ratio of oil dispersed in the test system to the total oil added to the system as follows:

$$EFF\ (in\ \%)=(C_{mean}/C_{TOT})x100 \quad (4)$$

where:

C_{mean}=Mean value for total mass of dispersed oil in the swirling flask determined by spectrophotometric analysis

C_{TOT}=Total mass of oil initially added to the experimental swirling flask

18. Calculate EFF using equation 4 for coupled experiments with and without dispersant (EFF_c and EFF_d, respectively). EFF_c is the effectiveness of the control and represents natural dispersion of the oil in the test apparatus. EFF_d is the measured uncorrected value.

19. Calculate the final dispersant performance of a chemical dispersant agent after correcting for natural dispersion using equation 5.

$$EFF_D=EFF_d—EFF_c \quad (5)$$

where:

EFF_D=% dispersed oil due to dispersant only

EFF_d=% dispersed oil with dispersant added

EFF_c= % dispersed oil with no dispersant added

20. Calculate the average dispersant effectiveness value by summing the corrected values (EFF_D) for each of the four replicates for each of the two test oils and dividing this sum by eight.

2.6 *Performance criterion.* The dispersant product tested will remain in consideration for addition to the NCP Product Schedule if the average dispersant effectiveness, as calculated in section 2.5 above, is at least 45% (i.e., 50%±5%).

2.7 *Quality Control (QC) procedures for measurements of oil concentrations.* 2.7.1 *UV-visible spectrophotometric measurements.* At least 5% of all UV-visible spectrophotometric measurements will be performed in duplicate as a QC check on the analytical measurement method. The absorbance values for the duplicates should agree within ±5% of their mean value.

2.7.2 *Method blanks.* Analytical method blanks involve an analysis of seawater blanks (i.e., seawater but no oil or dispersant in a swirling flask vessel) through testing and analytical procedures (3, pp 79–80). Method blanks are analyzed with a frequency of at least 1 for every 12 experimental swirling flask samples. Oil concentrations in method blanks must be <5% of that occurring for 100% dispersion of oil in testing apparatus.

3.0 Revised standard dispersant toxicity test

3.1 *Summary of method.* The standard toxicity test for dispersants and other products involves exposing two species (Menidia beryllina (silversides) and Mysidopsis bahia (mysid shrimp)) to five concentrations of the test product and No. 2 fuel oil alone and in a 1:10 mixture of product to oil. To aid in comparing results from assays performed by different workers, reference toxicity tests are conducted using dodecyl sodium sulfate (DSS) as a reference toxicant. The test length is 96 hours for Menidia and 48 hours for Mysidopsis. LC_{50}s are calculated based on mortality data at the end of the exposure period (for method of calculation, see section 3.6 below).

3.2 *Selection and preparation of test materials.*

3.2.1 Test organisms.

3.2.1.1 *Menidia beryllina.* Obtain fish (silversides) from a single source for each series of toxicity tests. In-house cultures are recommended wherever it is cost-effective; however, organisms are available from commercial suppliers. Information on the source of test organisms and any known unusual condition to which fish were exposed before use should be included in the data report. Use of animals previously treated with pesticides or chemotherapeutic agents should be avoided. Organisms should not be used if they appear to be unhealthy, discolored, or show signs of stress. Use 7-day old larval fish. Fish should be cultured in accordance with the methods outlined in Middaugh, et al. (5). There should be no need to acclimate organisms to the 25±1°C temperature recommended for the toxicity tests if laboratory stock cultures of Menidia are maintained at the recommended culture temperature of 25±1°C. If test organisms must be obtained from a commercial source, it may become necessary to acclimate test fish to the test temperature of 25±1°C, a pH of 8.0±0.2, and 20±2 ppt salinity since changes in temperature may occur during shipping. Eliminate groups of fish having a mortality of more than 10% during the first 48 hours, and more than 5% thereafter. During acclimation, organisms should be maintained on a diet of freshly hatched Artemia (brine shrimp)

nauplii. Feed the fish daily to satiation during the acclimation period, and once daily during the 96-hour test. Care should be taken daily to remove excess food and fecal material from beakers during the test. Use only those organisms that feed actively and that appear to be healthy. Organisms should be free of disease, external parasites, and any signs of physical damage or stress. Discard any fish injured or dropped while handling.

3.2.1.2 *Mysidopsis bahia.* Several methods for culturing Mysidopsis bahia (mysid shrimp) may be used and are noted in Appendix A of Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (6). To ensure uniformity of mysids, recently hatched mysids should be collected daily from stock cultures and identified by the date of hatch. Mysids used in 48-hour tests should be from a single day's collection, but may have an age range of 5–7 days old. In cases where in-house cultures of mysids are unavailable, organisms may be purchased from a commercial source. Information on the source of test organisms should be submitted in the data report.

3.2.2 *Preparation of experimental water.* Filtered natural seawater is recommended for use since it represents a natural source of saltwater containing an inherent population of microorganisms. Synthetic seawater formulated according to the following method can serve as an acceptable alternative to filtered, natural seawater for toxicity tests performed in laboratories in which natural seawater is unavailable.

3.2.3 *Synthetic seawater formation.* To prepare standard seawater, mix technical-grade salts with 900 liters of distilled or demineralized water in the order and quantities listed in Table 4. These ingredients must be added in the order listed and each ingredient must be dissolved before another is added. Stir constantly after each addition during preparation until dissolution is complete. Add distilled or demineralized water to make up to 1,000 liters. The pH should now be 8.0±0.2. To attain the desired salinity of 20±1 ppt, dilute again with distilled or demineralized water at time of use.

3.3 *Sampling and storage of test materials.* Toxicity tests are performed with No. 2 fuel oil having the characteristics defined in Table 5. Store oil used for toxicity tests in sealed containers to prevent the loss of volatiles and other changes. For ease in handling and use, it is recommended that 1,000-ml glass containers be used. To ensure comparable results in the bioassay tests, use oils packaged and sealed at the source. Dispose of unused oil in each open container on completion of dosing to prevent its use at a later date when it may have lost some of its volatile components. Run all tests in a bioassay series with oil from the same container and with organisms from the same group collected or secured from the same source.

TABLE 4.—SYNTHETIC SEAWATER
[Toxicity Test]

Salt	(g) [1]
NaF	1.9
$SrCl_2 \cdot 6H_2O$	13.0
H_3BO_2	20.0
KBr	67.0
KCl	466.0
$CaCl_2 \cdot 2H_2O$	733.0
Na_2SO_4	2,660.0
$MgCl_2 \cdot 6H_2O$	3,330.0
NaCl	15,650.0
$Na_2SiO_3 \cdot 9H_2O$	13.0
EDTA[2]	0.4
$NaHCO_3$	133.0

[1] Amount added to 900 liters of water, as described in the text.
[2] Ethylenediaminetetraacetate tetrasodium salt

3.4 *General test conditions and procedures for toxicity tests.*

3.4.1 *Temperature.* For these toxicity tests, use test solutions with temperatures of 25±1°C.

3.4.2 *Dissolved oxygen and aeration.*

3.4.2.1 *Menidia.* Because oils contain toxic, volatile materials, and because the toxicity of some water-soluble fractions of oil and degradation products are changed by oxidation, special care must be used in the oxygenation of test solutions. Aeration during the test is generally not recommended but should be used to maintain the required dissolved oxygen (DO) in cases where low DO is observed. The DO content of test solutions must not drop below 60% saturation during the first 48 hours of a static acute (96-hour) test and must remain between 40–100% after the first 48 hours of the test. Aeration at a rate of 100±15 bubbles per minute is supplied by a serological pipette as needed for maintenance of DO. If aeration is necessary, all test chambers should be aerated. At this rate, and with the proper weight of fish, DO concentration should remain slightly above 4 ppm over a 96-hour period. Take DO measurements daily.

TABLE 5.—TEST OIL CHARACTERISTICS: NO. 2 FUEL OIL

Characteristic	Minimum	Maximum
Gravity (°API)	32.1	42.8
Viscosity kinematic at 100°F (cs)	2.35	3.00
Flash point (°F)	150	...
Pour point (°F)	...	0
Cloud point (°F)	...	10
Sulfur (wt %)	...	0.35
Aniline point (°F)	125	180
Carbon residue (wt %)	...	0.16
Water (vol %)	...	0
Sediment (wt %)	...	0
Aromatics (vol %)	10	15
Distillation:		
IBP (°F)	347	407
10% (°F)	402	456
50% (°F)	475	530
90% (°F)	542	606

TABLE 5.—TEST OIL CHARACTERISTICS: NO. 2 FUEL OIL—Continued

Characteristic	Minimum	Maximum
End Point (°F)	596	655
Neutralization No	...	0.05

3.4.2.2 *Mysidopsis.* Achieve sufficient DO by ensuring that the surface area to volume ratio of the test solution exposed is large enough. Oxygen content should remain high throughout the test because of the low oxygen demand of the organisms. Aeration is not recommended during 48-hour acute toxicity tests unless the DO falls below 60% saturation.

3.4.3 *Controls.* With each fish or mysid test or each series of simultaneous tests of different solutions, perform a concurrent control test in exactly the same manner as the other tests and under the conditions prescribed or selected for those tests. Use the diluent water alone as the medium in which the controls are held. There must be no more than 10% mortality among the controls during the course of any valid test.

3.4.4 *Reference toxicant.* To aid in comparing results from tests performed by different workers and to detect changes in the condition of the test organisms that might lead to different results, perform reference toxicity tests with reagent grade DSS in addition to the usual control tests. Prepare a stock solution of DSS immediately before use by adding 1 gram of DSS per 500 ml of test water solution. Use exploratory tests before the full scale tests are begun to determine the amount of reference standard to be used in each of the five different concentrations.

3.4.5 *Number of organisms.* At a minimum, 20 organisms of a given species are exposed for each test concentration. For the toxicity test procedures using Menidia, place 10 fish in each of two jars. For the toxicity tests using Mysidopsis, place 10 larvae in each of two containers.

3.4.6 *Transfer of organisms.* Organisms should be handled as little as possible in order to minimize stress. Transfer Menidia and Mysidopsis from the acclimatization aquaria to the test chambers with a pipette or a wide-bore, smooth glass tube (4 to 8 mm internal diameter) fitted with a rubber bulb. Dip nets should be avoided when handling larval fish and mysids. Do not hold fish out of the water longer than necessary and discard any specimen accidentally dropped or otherwise mishandled during transfer.

3.4.6.1 *Mysidopsis.* To have the mysids ready for study, mysids may be sorted 24 hours prior to initiation of the 48-hour test. Transfer the mysids to a beaker containing a small volume of water; this vessel serves as a holding chamber during randomized transfer of the organisms to test solutions. Mysids are randomly selected from the batch of mysids in the holding chamber, and transferred to 50-ml beakers containing a small volume of seawater. One mysid is added per beaker using a small piece of flexible 500-μm screening until all of the beakers contain one mysid. The process of random selection and sorting is continued until the appropriate number of mysids has

been delivered to each of the 50-ml beakers. The mysids are gently released from the 50-ml beakers into larger beakers filled with an appropriate volume of 20-ppt seawater (25 °C) to bring the total volume to 200 ml. The beakers are randomly placed into a temperature-controlled water bath to acclimate overnight at 25 °C. The mysids are transferred to larger beakers (1-liter) for the 48-hour test after the addition of 800 ml of the test solution. A total of 10 mysids per beaker are used for 48-hour acute toxicity tests. A minimum of two replicate chambers are used for each test concentration and control.

3.4.6.2 *Menidia and Mysidopsis* are fed 50 brine shrimp nauplii/organism daily during the 96-hour and 48-hour tests. Excess food should be removed daily by aspirating with a pipette.

3.4.7 *Test duration and observations.* 3.4.7.1 *Menidia.* Observe the number of dead fish in each test container and record at the end of each 24-hour period. Fish are considered dead upon cessation of respiratory and all other overt movements, whether spontaneous or in response to mild mechanical prodding. Remove dead fish as soon as observed. Also note and report when the behavior of test fish deviates from that of control fish. Such behavioral changes would include variations in opercular movement, coloration, body orientation, movement, depth in container, schooling tendencies, and others. Abnormal behavior of the test organisms (especially during the first 24 hours) is a desirable parameter to monitor in a toxicity test because changes in behavior and appearance may precede mortality. Toxicants can reduce an organism's ability to survive natural stresses. In these cases, the mortality is not directly attributed to the toxicant, but most certainly is an indirect effect. Reports on behavioral changes during a toxicity test can give insight into the non-acute effects of the tested material. At the end of the 96-hour period, terminate the fish tests and determine the LC_{50} values. The acute toxicity test is terminated after four days of exposure. The number of surviving fish are counted and recorded for each chamber in accordance with standard EPA methods (6). The LC_{50} is calculated using survival data from the test in accordance with the methods described in the guidelines (6).

3.4.7.2 *Mysidopsis.* Terminate the mysid test after 48 hours of incubation. To count the dead animals accurately, place the exposure vessels on a light table such that light passes through the bottom of the vessel. Most of the dead mysids will be on the bottom of the beaker and can readily be seen against the background of the light table. Also search the top of the liquid for mysids trapped there by surface tension. Exercise caution when determining death of the animals. Occasionally, an animal appears dead, but closer observation shows slight movement of an appendage or a periodic spasm of its entire body. For these tests, animals exhibiting any movement when touched with a pipette tip are considered alive. Account for all test animals to ensure accuracy since *Mysidopsis bahia* may disintegrate or be cannibalized by other mysids. Consider individuals not accounted for as dead. At the end of 48 hours of exposure, terminate the mysid assay and determine the LC_{50} values in accordance with the methods described in the guidelines (6).

3.4.8 *Physical and chemical determinations.* 3.4.8.1 *Menidia.* Determine the temperature, DO, and pH of the test solutions before the fish are added and at 24-, 48-, 72-, and 96-hour exposure intervals. It is necessary to take measurements from only one of the replicates of each of the toxicant series.

3.4.8.2 *Mysidopsis.* Determine the temperature, DO, and pH of the test solutions before the nauplii are added and at the 24- and 48-hour exposure interval. Measure DO and pH in only one of the replicates of each of the toxicant series.

3.4.9 *Testing laboratory.* An ordinary heated or air-conditioned laboratory room with thermostatic controls suitable for maintaining the prescribed test temperatures generally will suffice to conduct the toxicity tests. Where ambient temperatures cannot be controlled to 25±1 °C, use water baths with the necessary temperature controls.

3.4.10 *Test containers.* For tests with fish or mysids, use 1-liter glass beakers measuring approximately 10 cm in diameter. In conducting the test, add to each beaker 1 liter of the test solution or seawater formulation aerated to saturation with DO. To add the liter volume easily and accurately, use a large volume (1-liter) graduated cylinder. Process all required glassware before each test. Immerse in normal hexane for 10 minutes. Follow this with a thorough rinse with hot tap water; three hot detergent scrubs; an additional hot tap-water rinse; and three rinses with distilled water. Oven or air dry the glassware in a reasonably dust-free atmosphere.

3.5 *Preparation of test concentrations.* 3.5.1 *Menidia.* Place test jars (approximately 22.5 cm in height, 15 cm in diameter, 11 cm in diameter at the mouth) containing 2 liters of synthetic seawater on a reciprocal shaker. The shaker platform should be adapted to hold firmly six of the toxicity test jars. Add the desired amount of the petroleum product (if applicable) under test directly to each test jar. Dispense the appropriate amount of toxicant (if applicable) into the jars with a pipette. Tightly cap the test jars and shake for 5 minutes at approximately 315 to 333 2-cm (0.75-inch) strokes per minute in a reciprocal shaker or at approximately 150 to 160 rpm on orbital shakers. At the completion of shaking, remove the jars from the shaker and dispense 1 liter of the mixture to each of the 1-liter glass beakers. Randomly place beakers in a constant-temperature water bath or room, take water quality measurements, add fish, and initiate aeration.

3.5.2 *Mysidopsis.* 3.5.2.1 To prepare test solutions for products and oil/product mixtures, blend or mix the test solutions with an electric blender having: speeds of 10,000 rpm or less; a stainless-steel cutting assembly; and a 1-liter borosilicate jar. To minimize foaming, blend at speeds below 10,000 rpm.

3.5.2.2 For the product test solution, add 550 ml of the synthetic seawater to the jar, then with the use of a gas-tight calibrated glass syringe with a Teflon-tipped plunger, add 0.55 ml of the product and mix for 5 seconds.

3.5.2.3 For the oil test solution, add 550 ml of the synthetic seawater to the jar. Then with the use of a gas-tight calibrated glass syringe equipped with a Teflon-tipped plunger, add 0.55 ml of the oil and mix for 5 seconds.

3.5.2.4 For the oil/product mixture, add 550 ml of the synthetic seawater to the mixing jar. While the blender is in operation, add 0.5 ml of the oil under study with the use of a calibrated syringe with a Teflon-tipper plunger and then 0.05 ml of the product as indicated above. Blend for 5 seconds after addition of product. These additions provide test solutions of the product, oil, and the oil/product mixture at concentrations of 1,000 ppm.

3.5.2.5 Immediately after the test solutions are prepared, draw up the necessary amount of test solution with a gas-tight Teflon-tipped glass syringe of appropriate size and dispense into each of the five containers in each series. If the series of five concentrations to be tested are 10, 18, 32, 56, and 100 ppm, the amount of the test solution in the order of the concentrations listed above would be as follows: 10, 18, 32, 56, and 100 ml.

3.5.2.6 Each time a syringe is to be filled for dispensing to the series of test containers, start the mixer and withdraw the desired amount in the appropriate syringe while the mixer is in operation. Turn off immediately after the sample is taken to limit the loss of volatiles.

3.5.2.7 Use exploratory tests before the full-scale test is set up to determine the concentration of toxicant to be used in each of the five different concentrations. After adding the required amounts of liquid, bring the volume in each of the test containers up to 800 ml with the artificial seawater. To ensure keeping each of the series separate, designate on the lid of each container the date, the material under test, and its concentration.

3.5.2.8 When the desired concentrations are prepared, gently release into each beaker the 10 test *Mysidopsis* (previously transferred into 200 ml of medium). This provides a volume of 1 liter in each test chamber. A pair of standard cover glass forceps with flat, bent ends is an ideal tool for handling and tipping the small beaker without risk of contaminating the medium.

3.5.2.9 After adding the test animals, incubate the test beakers at 25±1°C for 48 hours. Recommended lighting is 2,000 lumens/m^2 (200 ft-c) of diffused, constant, fluorescent illumination.

3.5.2.10 Wash the blender thoroughly after use and repeat the above procedures for each series of tests. Wash the blender as follows: rinse with normal hexane; pour a strong solution of laboratory detergent into the blender to cover the blades; fill the container to about half of its volume with hot tap water; operate the blender for about 30 seconds at high speed; remove and rinse twice with hot tap water, mixing each rinse for 5 seconds at high speed; and then rinse twice with distilled water, mixing each rinse for 5 seconds at high speed.

3.6 *Calculating and reporting.* At the end of the test period, the toxicity tests are terminated and the LC_{50} values are determined.

3.6.1 *Calculations.* The LC_{50} is the concentration lethal to 50% of the test population. It can be calculated as an interpolated value based on percentages of organisms surviving at two or more concentrations, at which less than half and more than half survived. The LC_{50} can be estimated with the aid of computer programs or graphic techniques (log paper). The 95% confidence intervals for the LC_{50} estimate should also be determined.

3.6.2 *Reporting.* The test product and oil and their source and storage are described in the toxicity test report. Note any observed changes in the experimental water or the test solutions. Also include the species of fish used; the sources, size, and condition of the fish; data of any known treatment of the fish for disease or infestation with parasites before their use; and any observations on the fish behavior at regular intervals during the tests. In addition to the calculated LC_{50} values, other data necessary for interpretation (e.g., DO, pH, other physical parameters, and the percent survival at the end of each day of exposure at each concentration of toxicant) should be reported.

3.7 *Summary of procedures.* 3.7.1 *Menidia:*

1. Prepare adequate stocks of the appropriate standard dilution water.

2. Add 2 liters of the standard dilution water to the test jars. Each test consists of 5 replicates of each of 5 concentrations of the test material, a control series of 5 beakers, and a standard reference series of 5 different concentrations for a total of 35 beakers. Simultaneous performance of toxicity tests on the oil, product, and oil/product mixture requires a total of 105 beakers.

3. Add the determined amount (quarter points on the log scale) of test material to the appropriate jars. Preliminary tests will be necessary to define the range of definitive test concentrations.

4. Cap the jars tightly with the Teflon-lined screw caps and shake for 5 minutes at 315 to 333 2-cm (0.75-inch) strokes per minute on a reciprocal shaker.

5. Remove the jars from the shaker, take water quality data, dispense 1 liter of solution to the 1-liter glass beaker, and add 10 acclimated fish per beaker.

6. Aerate with 100±15 bubbles per minute through a 1-ml serological pipette, as needed, to maintain DO above 4.0 mg/l.

7. Observe and record mortalities, water quality, and behavioral changes every 24 hours.

8. After 96 hours, terminate the test, and calculate LC_{50} values and corresponding confidence limits.

3.7.2 *Mysidopsis:*

1. Initiate the procedure for hatching the Mysidopsis in sufficient time before the toxicity test is to be conducted so that 5–7 day old larvae are available.

2. With the use of a small pipette, transfer 10 Mysidopsis into small beakers, each containing 200 ml of the proper synthetic seawater.

3. To prepare the test stock product and oil solutions, add 550 ml of the artificial seawater to the prescribed blender jar. By means of a gas-tight glass syringe with a Teflon-tipped plunger, add 0.55 ml of the product (or oil) and mix at 10,000 rpm for 5 seconds. To prepare the test stock oil/product mixture, add 550 ml of the standard seawater to the blender jar. While the blender is in operation (10,000 rpm), add 0.5 ml of the oil, then 0.05 ml of the product with the use of a calibrated syringe with a Teflon-tipped plunger. Blend for 5 seconds after adding the product. One ml of these stock solutions added to the 100 ml of standard seawater in the test containers yields a concentration of 10 ppm product, oil, or oil/product combination (the test will be in a ratio of 1 part product to 10 parts of oil).

4. Each test consists of 5 replications of each of 5 concentrations of the material under study, a control series of 5 beakers and a standard reference series of 5 different concentrations, for a total of 35 beakers. Simultaneous performance of toxicity tests on the oil, product, and oil/product mixture requires a total of 105 beakers. Immediately after preparing the test solution of the product or oil/product solution, and using an appropriately sized syringe, draw up the necessary amount of test solution and dispense into each of the five containers in each series. Each time a syringe is to be filled for dispensing to the series of test containers, start the mixer and withdraw the desired amount in the appropriate syringe while the mixer is in operation. Turn mixer off immediately after the sample is taken to limit the loss of volatiles. After adding the required amount of the test oil/product or product mixture, bring the volume of liquid in each of the test containers up to 800 ml with the artificial seawater. When the desired concentrations have been prepared, gently release into each beaker the 10 mysids previously transferred into 200 ml of medium. This provides a volume of 1 liter in each test chamber.

5. Wash the blender as prescribed for each series of tests.

6. Incubate the test beakers at 25±1°C for 48 hours with the prescribed lighting.

7. Terminate the experiment after 48 hours, observe and record the mortalities, and determine the LC_{50}s and corresponding confidence limits.

4.0 Bioremediation agent effectiveness test

4.1 *Summary of method.* The bioremediation agent effectiveness testing protocol is designed to determine a product's ability to biodegrade oil by quantifying changes in the oil composition resulting from biodegradation. The protocol tests for microbial activity and quantifies the disappearance of saturated hydrocarbons and polynuclear aromatic hydrocarbons (PAHs). The sample preparation procedure extracts the oil phase into dichloromethane (DCM), with a subsequent solvent exchange into hexane. To effectively accomplish the goals of the testing protocol, it is necessary to normalize the concentration of the various analytes in oil to a non-biodegradable marker, either C_2-or C_3-phenanthrene, C_2-chrysene, or hopane [1] (7). The test method targets the relatively easy to degrade normal alkanes and the more resistant and toxic PAHs. It normalizes their concentrations to C_2-or C_3-phenanthrene, C_2-chrysene, or $C_{30}17\alpha(H), 21\beta$ (H)-hopane on an oil weight basis (mg marker/kg oil, mg target analyte/kg oil). The analytical technique uses a high resolution gas chromatograph/mass spectrometer (GC/MS) because of its high degree of chemical separation and spectral resolution. GC/MS has long been used to study the weathering and fate of oil spilled into the environment. For quantitative analyses, the instrument is operated in the selective ion detection (SIM) mode at a scan rate of greater than 1.5 scans per second to maximize the linear quantitative range and precision of the instrument. The sample preparation method does not exclude analysis of selected samples by GC/MS in the full scanning mode of operation to qualitatively assess changes in the oil not accounted for by the SIM approach. Performed concurrently with the chemical analysis described above is a microbiological analysis. The microbiological analysis is performed to determine and monitor the viability of the microbial cultures being studied. Under this procedure, microbial enumerations of hydrocarbon degraders are performed at each sampling event using a microtiter Most Probable Number (MPN) determination.

4.2 *Apparatus.* The following materials and equipment are required for the protocol: Appropriate flasks and other glassware; sterile tubes; graduated cylinders (100-ml); deionized water; p-iodonitrotetrazolium violet dye; weighing pans or paper; 250-ml borosilicate glass Erlenmeyer flasks with screw tops; Pasteur pipettes; laboratory notebook; microtiter MPN plates (24-well) multi-channel pipetting device; dilution tube and caps; autoclave; environmental room or incubator; balance accurate to 0.1 mg (XD–400); GC/MS instrument equipped with a DB–5 capillary column (30 m, 0.25-mm I.D., and 0.25-μm film thickness) and a split/splitless injection port operating in the splitless mode, such as Hewlett-Packard 5890/5971 GC/MS (recommended for use); and an autosampler for testing multiple samples.

4.3 *Reagents and culture medium.* 4.3.1 *Preparation of seawater.* All products are tested in clean natural seawater. Clean natural seawater means that the source of this seawater must not be heavily contaminated with industrial or other types of effluent. For example, seawater should not be obtained from a source near shipping channels or discharges of industrial or municipal wastewater, or with high turbidity. The seawater is used within seven days of collection. No microbial inoculum is added.

4.3.2 *Preparation of oil.* A medium weight crude oil, Alaska North Slope (ANS), is artificially weathered by heating to 521°F to remove the light end hydrocarbons prior to experimental start-up (ANS 521). The method is described in the Draft International

[1] Although any of these biomarkers can be used to conduct this test, it is recommended that hopane be used.

Standard ISO/DIS 8708 "Crude Petroleum Oil—Determination of Distillation Characteristics Using 15 Theoretical Plates Columns" by the International Organization for Standardization (8). The ANS521 crude oil can be obtained from the National Environmental Technology Applications Center's (NETAC) Bioremediation Products Evaluation Center (BPEC), University of Pittsburgh Applied Research Center, 615 William Pitt Way, Pittsburgh, PA, 15238, (412) 826–5511. The crude oil is heated to 190°C (374°F) under atmospheric pressure. The system is then cooled and placed under vacuum (or under an atmospheric pressure of 20 mm Hg) for the final distillation to an atmospheric equivalent boiling point of 272°C (521°F).

4.3.3 *Preparation of mineral nutrient solution.* If a commercial product is strictly a microbial agent and does not contain its own nutrients, a mineral nutrient solution will be provided if requested by the product manufacturer or vendor. If a commercial product contains its own nutrients, no further nutrients will be added. The nutrient solution is a modified salt solution and is described below.

4.3.3.1 *Nutrient preparation:*

1. N&P Salts. The following salts are added to distilled water and made up to a 1,000-ml volume. Adjust final pH to 7.8. The solution is sterilized by autoclaving at 121°C at 15 psig for 20 minutes or by filtering through a sterile 0.22 µm membrane filter.

$Na_2HPO_4.2H_2$—18.40 g
KNO_3—76.30 g

2. $MgSO_4.7H_2O$ solution. Dissolve 22.50 g in 1,000 ml distilled water. The solution is sterilized by autoclaving at 121°C at 15 psig for 20 minutes.

3. $CaCl_2$ solution. Dissolve 27.50 g in 1,000 ml of distilled water. The solution is sterilized by autoclaving at 121°C at 15 psig for 20 minutes.

4. $FeCl_3 \cdot 6H_2O$ solution. Dissolve 0.25 g in 1,000 ml of distilled water. The solution is sterilized by autoclaving at 121°C at 15 psig for 20 minutes.

5. Trace Element Solution. The following salts are added to distilled water and made up to a 1,000-ml volume. The solution is sterilized by autoclaving at 121°C at 15 psig for 20 minutes.

$MnSO_4.H_2O$—30.2 mg
H_3BO_3—57.2 mg
$ZnSO_4.7H_2O$—42.8 mg
$(NH_4)6Mo_7(O_2)_4$—34.7 mg

The pH of the nutrient solution is adjusted with a pH meter calibrated at room temperature (approximately 25 °C) using commercial buffers of pH 4.0, 7.0, and 10.0 (Fisher Scientific), as appropriate, prior to use. The pH is adjusted with concentrated HCl or 10 M NaOH, as appropriate.

4.3.3.2 *Final concentrations:* Ten (10) ml of solution 1 and 2 ml of solutions 2–5 are added to non-sterile seawater and made up to a 1,000-ml volume immediately prior to test start-up. This seawater/mineral nutrient solution is used for all flasks containing products requiring nutrient supplements and for the flasks containing no commercial additive. Seawater without the above nutrient solutions is used for products containing their own source of nutrients.

4.4 *Pretest preparation.*

4.4.1 *Experimental setup.*

4.4.1.1 The procedure consists of an experimental shaker flask setup and the specific set of microbiological and chemical analyses that are performed on individual product samples. The following test flasks (labeled with unique identifiers) are prepared and set up on a gyratory shaker at day 0 to reflect the following treatment design:

Treatment	No. of samples at sampling times			Total No. of analytical determinations		
	Day 0	Day 7	Day 28	Microbial counts	Gravimetric	GC/MS
Control	3	3	3	9	9	9
Nutrient	3	3	3	9	9	9
Product	3	3	3	9	9	9

Control = Oil + Seawater
Nutrient = Oil + Seawater + Nutrient
Product = Oil + Seawater + Product (+ Nutrient, if required).

4.4.1.2 For each test, a sheet listing the number of flasks, types of controls, number of replicates, product to be tested, and other information is prepared. The following steps should be adhered to for the experimental setup:

1. Borosilicate glass Erlenmeyer flasks (250–ml) are thoroughly cleaned and autoclaved for 20 minutes at 120 °C at 15 psi, then dried in the drying oven.

2. Flasks are labeled with the appropriate code: product or control, sample day, and letter indicating replicate.

3. 100 ml of seawater is added to each flask.

4. For nutrient and product treatments that require the addition of nutrients, seawater containing the nutrient solution is prepared.

5. Pasteur pipettes should be sterilized in advance. Break off the tip to provide a larger opening prior to sterilization.

6. Pour the approximate amount of oil to be used from the large stock bottle into a sterile beaker. Keep the beaker covered when oil is not being removed.

7. The labeled flasks containing seawater and other additions, as necessary, are placed on the balance. The flask is tared. The appropriate amount of oil (0.5 g) is added drop by drop using a sterile Pasteur pipette with the tip broken off to provide a wider opening. Care is taken to avoid splashing the oil or getting it on the sides of flasks. Precautions are taken when handling and charging the flasks to minimize the likelihood of contamination by exogenous microbes. This includes using a new sterile pipette for each series of flasks.

8. The weight of the oil is recorded in the laboratory notebook.

9. The product is prepared and added to the appropriate flasks according to the manufacturer's or vendor's instructions.

10. Flasks are carried upright and carefully placed in the holders on the shaker table to minimize the amount of oil that might adhere to the side of the flasks. Flasks in which a significant amount of oil is splashed on the sides are redone.

11. The prepared flasks are shaken at 200 rpm at 20°C until such time that they will be removed for sampling.

4.4.2 *Sampling.* The control and treatments (nutrient and product flasks) are sampled three times over a 28-day period: day 0, day 7, and day 28. The entire flask is sacrificed for analysis; a 0.5–ml aliquot is removed from each flask for the microbiological analysis and the remainder of each flask is used for the chemical analysis. Specific procedures for both the microbiological and chemical analysis are described below. At the time of each sampling event, physical observations of each flask should be recorded.

4.5 *Microbiological analysis.* To monitor the viability of the microbial cultures being studied, microbial enumerations of hydrocarbon degraders are performed at each sampling event using a microtiter MPN determination. This is used as an indicator of the relative change in biomass. This test design relies on using growth response as an indication of enhanced activity as compared to a "no addition" control.

4.5.1 *Media preparation.* Media for microbial enumerations are carefully prepared according to manufacturer's or other instructions and sterilized using appropriate methods.

4.5.1.1 *General media treatment:* Buy Bushnell-Haas (B–H) broth in quantities to last no longer than one year. Use media on a first-in, first-out basis. When practical, buy media in quarter-pound multiples, rather than one-pound multiples to keep supply sealed as long as possible. Keep an inventory of media, including kind, amount, lot number, expiration date, date received, and date opened. Check inventory before reordering media. Discard media that are caked, discolored, or show other deterioration.

4.5.1.2 *Sterile saline (pH adjusted):*

1. Weigh 30 g of NaCl.

2. Dissolve in enough water to make 1,000 ml.

3. Adjust pH to 8.0 with NaOH (10M and 0.5M).

4. Sterilize by autoclaving for 15 minutes at 15 psig.

4.5.1.3 *Standard nutrient concentrate (add 1 ml to each 100 ml of Bushnell-Haas medium for MPNs):*

1. Weigh compounds listed below, dissolve in DIH_2O, dilute to 1 liter.

Potassium Phosphate, monobasic KH_2PO_4—0.633 g
Potassium Phosphate, dibasic K_2HPO_4—1.619 g
Sodium Phosphate, dibasic Na_2HPO_4—2.486 g
Ammonium Chloride NH_4Cl—3.850 g
Magnesium Sulfate, heptahydrate $MgSO_4 \cdot 7H_2O$—4.500 g
Calcium Chloride, dihydrate $CaCl_2 \cdot 2H_2O$—7.290 g
Ferric Chloride, hexahydrate $FeCl_3 \cdot 6H_2O$—0.250 g

Trace Elements

Manganese Sulfate, monohydrate $MnSO_2 \cdot H_2O$—6.04 mg
Boric Acid H_3Bo_3—11.44 mg
Zinc Sulfate, heptahydrate $ZnSO_4 \cdot 7H_2O$—8.56 mg
Ammonium Moybdate, tetrahydrate $(NH_4)6Mo_7O_{24} \cdot 4H_2O$—6.94 mg

2. Adjust pH to 6.0.

3. Stir solution for approximately 3 hours, then filter through a Buchner funnel using #1 paper, which will retain approximately 3.8 g of insolubles.

4. Then filter through a 0.45 micron filter into sterile bottles.

5. Cap bottles, label, and store in refrigerator until used.

4.5.1.4 *Quality assurance/Quality control (QA/QC):*

1. Periodically check the effectiveness of sterilization using commercially available tapes or *Bacillus stearothermophilus* spore suspensions, following the instructions with these products.

2. Maintain a media log book that includes the dates, kinds and amounts of media made, pH, and any problems or observations.

3. Before use, check plates and tubes for signs of contamination, drying, or other problems.

4.5.1.5 *Safety/Special precautions:*

1. Note any safety or other precautions for particular media.

2. Note precautions to be followed when using the autoclave.

3. Use gloves and other protective clothes when handling media.

4. Use care in handling hot media.

4.5.2 *Microbial enumeration.* Standardized techniques for performing Most Probable Number microbial enumerations are described below.

4.5.2.1 *Dilutions:*

1. Prior to sacrificing each flask, remove 0.5 ml of water from each flask and add it to a tube of 4.5 ml sterile phosphate buffer (1:10 dilution) as prepared in the *Standard Methods for the Examination of Water and Wastewater* (9). Using sterile technique, mix and perform serial dilutions (0.5 ml of previous dilution to 4.5 ml of sterile phosphate buffer) to 10^{-9} dilution.

4.5.2.2 *Inoculating MPN plates (oil degrader):*

1. Prepare sufficient sterile 0.4 M NaCl (23.4 g NaCl/1,000 ml B–H) and B–H at pH 7.0 to fill the number of wells required for the test (1.75 ml/well).

2. Using sterile technique, add 1.75 ml of B–H broth to each well.

3. Label the top of the plate with the proper dilution for each row.

4. Add 0.1 ml of fluid from each dilution tube to each well in the appropriate row, starting with the most dilute.

5. After adding the fluid to all the wells, add 20 µl of sterilized No. 2 fuel oil to the top of each well.

6. Incubate each plate at 20°C.

7. After 14 days of incubation, add 100 µl of p-iodotetrazolium violet dye (50 mg/10 ml of D.I. water) to each well to determine growth.

8. View plates against a white background to determine if color is present. Development of a purple or pink color upon standing for 45 minutes constitutes a positive test.

9. Record the number of positive wells and the dilutions at which they occur.

10. Enter data into a computerized enumeration method using "MPN Calculator" software program (version 2.3 or higher) by Albert J. Klee, U.S. EPA Office of Research and Development, Risk Reduction Engineering Laboratory, Cincinnati, OH.

4.5.2.3 *Quality assurance/Quality control:*

1. Check pH of medium before preparing wells (pH should be approximately 8.0). Adjust pH, if necessary, with dilute NaOH.

2. Keep prepared tetrazolium violet dye solution in the refrigerator in an amber bottle when not in use.

3. Have all laboratory personnel periodically run MPNs on the same sample to test precision.

4.5.2.4 *Safety/Special precautions:*

1. Use sterile technique in preparing solutions, dilutions, plates, and MPN wells.

2. Do not pipette potentially hazardous solutions by mouth.

3. Autoclave all plates and wells before discarding.

4.6 *Chemical analysis of oil composition.*

4.6.1 *Sample procedure.* After 0, 7, and 28 days of incubation on a rotary shaker, the appropriate flasks are sacrificed and extracted with dichloromethane and spiked with a surrogate recovery standard. A 10-ml aliquot of the DCM layer is used for the gravimetric analysis. If significant biodegradation is evident in the results of the gravimetric analysis, then a solvent exchange into hexane takes place prior to the GC/MS analysis. Follow steps 1–19 below when preparing for the chemical analysis.

1. After 0, 7, and 28 days of rotary shaking and incubating at 20°C, the reaction vessels are sacrificed. Prior to the chemical analysis, a 0.5-ml sample of the aqueous phase is removed for the microbiological analysis (see Microbial Enumeration above).

2. A surrogate recovery standard is prepared in the following manner: 1,000 mg of d_{10}-phenanthrene and 1,000 mg of 5α-androstane are measured into a 500-ml volumetric flask and DCM is added to the mark to produce a 2,000-ng/µl stock solution.

3. A 100-µl aliquot of the surrogate solution is added to each test flask. The final concentration of surrogates in each flask is approximately 4 ng/µl of solvent in the final extract. The aliphatics and marker data should be corrected for percent recovery of the 5α-androstane surrogate and the aromatics for the d_{10}-phenanthrene surrogate.

4. The contents of the flask are placed into a 250-ml separatory funnel.

5. Measure a total volume of 50 ml DCM for use in the extraction. Use 3 10-ml fractions to rinse the flask into the funnel and transfer the remaining aliquot of DCM to the funnel.

6. Stopper and mix vigorously by shaking (approximately 50 times) while ventilating properly.

7. Each funnel is set aside to allow the DCM and water layers to partition. This may take 5–10 minutes for some products, or up to 3 hours if the product has caused the formation of an emulsion.

8. Drain the first 10 ml of the DCM (bottom) layer, collect, cap, uniquely label, and use for gravimetric analysis (see below). Drain the remaining 40 ml and dry it by passing it through a funnel packed with anhydrous sodium sulfate.

9. Assemble a Kuderna-Danish (KD) concentrator by attaching a Snyder column to an evaporation flask with a graduated concentrator tube. Align vertically and partially immerse concentrator tube in a water bath (10). Set the water bath to the appropriate temperature to maintain proper distillation.

10. Collect the de-watered extract into the KD concentrator.

11. Evaporate DCM to approximately 10 ml, then add approximately 50 ml of the exchange solvent (hexane) and concentrate the volume to 10 ml.

12. Rinse the flask into the concentrator tube with 50 ml hexane and concentrate to 10 ml. Repeat one more time with 50 ml of hexane.

13. Remove concentrator tube with the recovered 10 ml of sample volume. The heavier residual material should be present as a precipitate (bottom layer).

14. Centrifuge to aid the separation of the hexane from the precipitant fraction.

15. Place hexane-soluble fraction (top layer)—approximately 1.0 ml—into a GC/MS vial for analysis (see GC/MS Analysis Procedure below). If column fouling and deterioration of separation characteristics occur, an alumina column sample cleanup method can be considered (see Alternative GC/MS Sample Cleanup Procedure below).

16. Analyze by GC/MS using the conditions determined by the U.S. EPA Risk Reduction Engineering Laboratory, Water and Hazardous Waste Treatment Research Division, in Cincinnati, OH, which follows U.S. EPA Method 8270 (see GC/MS Analysis Procedure below).

17. Calculate surrogate recovery. If surrogate recovery is less than 85 percent for the marker relative to the surrogate recovery standard (d_{10}-phenanthrene), then the water layer should be extracted again using three separate extractions with DCM. Pool the three extractions with original extract and concentrate to 10 ml, and reanalyze by GC/MS.

18. Drain the seawater into a storage sample vial/container.

19. Seal the vial with a Teflon-lined cap and store frozen. This water layer is kept in case additional extractions are necessary.

4.6.2 *Gravimetric analysis.* The initial means to evaluate the effectiveness of a bioremediation agent for oil spill response is through gravimetric analysis. A statistically significant difference ($p < 0.05$) in analytical weight of the oil from the control system as compared to the analytical weight of the oil treated with a bioremediation agent indicates biodegradation has successfully occurred. Hence, the disappearance of oil should be accompanied by significant decreases in total oil residue weight of extractable materials versus a control. If no significant decrease in oil residue weight is observed, the need to perform further chemical analysis should be evaluated. Follow steps 1–3 to conduct the gravimetric analysis.

1. The 10 ml of DCM extract (from Sample Procedure step 8 above) is placed in a small vial and concentrated to dryness by nitrogen blowdown techniques using a steady stream of nitrogen (pre-purified gas). If the oil is severely biodegraded, a larger volume of DCM (>10 ml) may be necessary for the gravimetric analysis.

2. The residue is weighed 3 times for the gravimetric weight of oil. Record the weight of the oil.

3. Compare statistically ($p < 0.05$) the weight of the product treatment versus the weight of the control from each respective time period. If a significant decrease is observed in the sampling (flask containing bioremediation agent) weight, then proceed with the remainder of the sample procedure.

4.6.3 *GC/MS analysis.* Often, analysis of saturated and aromatic hydrocarbons by capillary gas chromatography of DCM extracts leads to column fouling and deterioration of separation characteristics. An alternative, simple "one-step" alumina sample cleanup procedure can be performed on oil before injection; this cleanup removes both asphaltenes and polar compounds and can be applied to DCM extracts as well. This procedure is described in steps 1–11 below.

4.6.3.1 Alternative GC/MS sample cleanup procedure:

1. Weigh 4.0 g alumina (neutral, 80–200 mesh) into scintillation vials covered loosely with aluminum foil caps. Prepare one scintillation vial per sample. Heat for 18 hours at 300°C or longer. Place in a desiccator of silica until needed.

2. Add 5.0 ml of DCM to a glass luerlok multi-fit syringe (e.g., BD #2471) with stopcock (e.g., Perfectum #6021) in closed position, stainless steel syringe needle (18 gauge), and PTFE frits. Clamp in a vertical position.

3. Transfer 4.0 g of prepared alumina to a plastic weighing boat and fill syringe slowly while applying continuous vibration (e.g., Conair #HM 11FF1).

4. Add a second PTFE frit and push into place on top of the alumina bed.

5. Drain 5.0 ml DCM to the top level of the column frit to await sample addition and discard DCM.

6. Weigh 50 mg ± 0.1 mg ANS521 oil into a tared vial.

7. Premeasure 10 ml of DCM into a graduated cylinder. Add 0.2 to 0.3 ml of the DCM to the tared oil vial. Mix and transfer solvent to the column bed with a Pasteur pipette. Open stopcock and collect in a 10-ml volumetric flask. Repeat until approximately 1.0 ml (do not exceed 1.0 ml) of DCM has rinsed the vial and inner walls of the syringe body into the 10-ml flask.

8. Transfer balance of DCM from the graduated cylinder to the column and regulate the solvent flow rate to approximately 1 to 2 ml/minute. Collect all eluent in the 10-ml flask.

9. Transfer a known volume of eluent to another scintillation vial and blow down to dryness (nitrogen).

10. Determine and record weight.

11. Dissolve in 1.0 ml hexane for the GC/MS analysis procedure (see below).

4.6.3.2 GC/MS analysis procedure:

Immediately prior to injection, an internal standard solution of four deuterated compounds is spiked into the sample extracts and injected. Samples are quantified using the internal standard technique (10) for both the aliphatic and aromatic fractions of the oil extracts in order to provide sufficient information that the oil is being degraded. To help ensure that the observed decline in target analytes is caused by biodegradation rather than by physical loss from mishandling or inefficient extraction, it is necessary to normalize the concentrations of the target analytes via a "conserved internal marker." Conserved internal markers that have been found useful for quantification are C_2- or C_3-phenanthrene, C_2-chrysene, and $C_{30}17\alpha(H),21\beta(H)$-hopane. Deuterated internal standards are used to calculate the relative response factor (RRF) for the target analyte(s). To compute the "normalized concentrations," the target analyte concentration at a given sampling time is simply divided by the selected conserved analyte concentration at the same sampling time (11). Conduct the GC/MS analysis using the following procedure.

1. One (1) ml of the hexane extract (from Sample Procedure step 15 above) is placed into a 1.5-ml vial for use on the autosampler of the GC/MS instrument.

2. To this solution, 20 µl of a 500-ng/µl solution of the internal standards is added and the vial is capped for injection. The final concentration of the internal standards in each sample is 10 ng/µl. This solution contains 4 deuterated compounds: d_8-naphthalene, d_{10}-anthracene, d_{12}-chrysene, and d_{12}-perylene.

3. At the start of any analysis period, the mass spectrometer (MS) is tuned to PFTBA by an autotune program, such as the Hewlett-Packard quicktune routine, to reduce operator variability. Set the GC/MS in the SIM mode at a scan rate of 1.5 scans/second to maximize the linear quantitative range and precision of the instrument. Set all other conditions to those specified in Instrument Configuration and Calibration section below.

4. An instrument blank and a daily standard are analyzed prior to analysis of unknowns. Internal standards are combined with the sample extracts and coinjected with each analysis to monitor the instrument's performance during each run.

5. Information that should be included on the acquisition form include operator's name and signature, date of extraction, date and time of autotune, date of injection(s), instrument blank, daily standard mix injection, GC column number, and standards for the 5-point calibration curve.

6. If the instrument is operated for a period of time greater than 12 hours, the tune will be checked and another daily standard analyzed prior to continuing with analyses.

TABLE 6.—ANALYTES LISTED UNDER THE CORRESPONDING INTERNAL STANDARD USED FOR CALCULATING RRFS

Internal Standard	d_8-naphthalene	d_{10}-anthracene	d_{12}-chrysene	d_{12}-perylene
Alkanes	nC10–nC15	nC16–nC23	nC24-nC29	nC30-nC35.
		Pristane		$C_{30}17\beta(H)$, 21α(H)-hopane.
		Phytane		
		5α-androstane		
Aromatics	Naphthalene	Dibenzothiophene	Fluoranthene	Benzo(b)fluoranthene.
		Fluorene	Pyrene	Benzo(k)fluoranthene.
		Anthracene	Chrysene	Benzo(e)pyrene.
		Phenanthrene		Benzo(a)pyrene.
				Perylene.
				Indeno(g,h,i)pyrene.
				Dibenzo(a,h) anthracene.
				Benzo(1,2,3-cd)perylene.

7. The MS is calibrated using a modified version of EPA Method 8270 (10). Specifically, the concentrations of internal standards are 10 ng/µl instead of 40 ng/µl. A five-point calibration curve is obtained for each compound listed in Table 6 prior to

sample analysis at 1, 5, 10, 25, and 50 ng/μl. A 5-point calibration must be conducted on a standard mix of compounds to determine RRFs for the analytes. The standard mix (excluding the marker) for this calibration curve may be obtained from Absolute Standards, Inc., 498 Russell St., New Haven, CT, 06513, (800) 368–1131. If $C_{30}17\beta(H),21\alpha(H)$-hopane is used, it may be obtained from Dr. Charles Kennicutt II, Geochemical and Environmental Research Group, Texas A&M University, 833 Graham Rd., College Station, TX, 77845, (409) 690–0095.

8. Calculate each compound's relative response factor to its corresponding deuterated internal standard indicated above, using the following equation:

$$RRF=(A_xC_{is})/(A_{is}C_x)(6)$$

where:

RRF=relative response factor

A_x=peak area of the characteristic ion for the compound being measured (analyte)

A_{is}=peak area of the characteristic ion for the specific internal standard

C_x=concentration of the compound being measured (ng/μl)

C_{is}=concentration of the specific internal standard (10 ng/μl). (This concentration is a constant in this equation for the calibration curve.)

9. Identify each analyte based on the integrated abundance from the primary characteristic ion indicated in Table 7.

10. Quantitate each analyte using the internal standard technique. The internal standard used shall be the one nearest the retention time of that of a given analyte (Table 8).

TABLE 7.—PRIMARY IONS MONITORED FOR EACH TARGET ANALYTE DURING GC/MS ANALYSIS

Compound	Ion
n-alkanes (C_{10}–C_{35})	85
Pristane	85
Phytane	85
Naphthalene	128
C1-naphthalenes	142
C2-naphthalenes	156
C3-naphthalenes	170
C4-naphthalenes	184
Fluorene	166
C1-fluorenes	180
C2-fluorenes	194
C3-fluorenes	208
Dibenzothiophenes	184
C1-dibenzothiophenes	198
C2-dibenzothiophenes	212
C3-dibenzothiophenes	226
Anthracene	178
Phenanthrene	178

TABLE 7.—PRIMARY IONS MONITORED FOR EACH TARGET ANALYTE DURING GC/MS ANALYSIS—Continued

Compound	Ion
C1-phenanthrenes	192
C2-phenanthrenes	206
C3-phenanthrenes	220
Fluoranthene/pyrene	202
C1-pyrenes	216
C2-pyrenes	230
Chrysene	228
C1-chrysenes	242
C2-chrysenes	256
Hopanes (177 family)	177
Hopanes (191 family)	191
Steranes (217 family)	217
Benzo(b)fluoranthene	252
Benzo(k)fluoranthene	252
Benzo(e)pyrene	252
Benzo(a)pyrene	252
Perylene	252
Ideno(g,h,i)pyrene	276
Dibenzo(a,h)anthracene	278
Benzo(1,2,3-cd)perylene	276
d_8-naphthalene	136
d_{10}-anthracene	188
d_{10}-phenanthrene	188
d_{12}-chrysene	240
d_{12}-perylene	264
α-androstane	260

TABLE 8.—ANALYTES AND REFERENCE COMPOUNDS

Compound	Reference compound	Compound	Reference compound
n-C10	n-C10	C2-naphthalene	Naphthalene.
n-C11	n-C11	C3-naphthalene	Naphthalene.
n-C12	n-C12	C4-naphthalene	Naphthalene.
n-C13	n-C13	Fluorene	Fluorene.
n-C14	n-C14	C1-fluorene	Fluorene.
n-C15	n-C15	C2-fluorene	Fluorene.
n-C16	n-C16	C3-fluorene	Fluorene.
n-C17	n-C17	Dibenzothiophene	Dibenzothiophene.
Pristane	Pristane	C1-dibenzothiophene	Dibenzothiophene.
n-C18	n-C18	C2-dibenzothiophene	Dibenzothiophene.
Phytane	Phytane	C3-dibenzothiophene	Dibenzothiophene.
n-C19	n-C19	Phenanthrene	Phenanthrene.
n-C20	n-C20	Anthracene	Anthracene.
n-C21	n-C21	C1-phenanthrene	Phenanthrene.
n-C22	n-C22	C2-phenanthrene	Phenanthrene.
n-C23	n-C23	C3-phenanthrene	Phenanthrene.
n-C24	n-C24	Fluoranthene	Fluoranthene.
n-C25	n-C25	Pyrene	Pyrene.
n-C26	n-C26	C1-pyrene	Pyrene.
n-C27	n-C27	C2-pyrene	Pyrene.
n-C28	n-C28	Chrysene	Chrysene.
n-C29	n-C29	C1-chrysene	Chrysene.
n-C30	n-C30	C2-chrysene	Chrysene.
n-C31	n-C31	Benzo(b)fluoranthene	Benzo(b)fluoranthene.
n-C32	n-C32	Benzo(k)fluoranthene	Benzo(k)fluoranthene.
n-C33	n-C33	Benzo(e)pyrene	Benzo(e)pyrene.
n-C34	n-C34	Benzo(a)pyrene	Benzo(a)pyrene.
n-C35 $C_{30}17\alpha,21\beta$-hopane	n-C35 $C_{30}17\alpha,21\beta$-hopane	Perylene ideno(g,h,i)pyrene	Perylene ideno(g,h,i)pyrene.
5α-androstane	5α-androstane	Dibenzo(a,h)anthracene	Dibenzo(a,h)anthracene.
C1-naphthalene	Naphthalene	Benzo(1,2,3-cd)perylene	Benzo(1,2,3-cd)perylene.

11. Use equation 7 to calculate the concentration of analytes in ng/mg (ppm) oil:

$$\text{Concentration (ng/mg)} = (A_x I_s V_i \times 1{,}000)/(A_{is}(RRF)V_i M_o) \quad (7)$$

where:

A_x=peak area of characteristic ion for compound being measured
I_s=amount of internal standard injected, in ng (i.e., 20 ng)
V_i=volume of the total DCM extract (50 ml)
A_{is}=peak area of the characteristic ion of the internal standard
RRF=relative response factor
V_i=volume of the extract injected (2 µl)
M_o=total mass of the oil added to the flask, mg

12. Compute the "normalized concentrations" for each target analyte concentration at a given sampling time (equation 7) by simply dividing by the conserved internal marker concentration at the same sampling time.

4.6.4 *Generally accepted laboratory procedures.* Samples are immediately logged into the laboratory, where they will be given a unique sample identification based on Julian data and the number logged in. Prior to the analysis of any experimental samples, a five-point standard curve is prepared. One of the mid-range standard curve concentration levels is analyzed daily before sample analysis as a continuing standard. RRFs for all target analytes *should* be within 25% of the standard curve response values at day 0, and at any sampling event the check standard percent difference from the initial five-point calibration must not exceed 20% between the before and after daily standard mix (see below). The collected GC/MS data are initially processed by a macro routine, which performs extracted chromatographic plots of the target compounds, integrates the target compounds, and shows integration results to include tabular numbers. The integration values are then transferred to a spreadsheet format to be quantified. Because of the complexity of the analyte matrix (oil), a very high degree of manual verification and reintegration of the spectral data is required.

4.6.5 *QA/QC procedures.* The reliability of this method is dependent on the QA/QC procedures followed. Before and after each analytical batch (approximately 10 samples), analyze one procedural blank, one duplicate, and one calibration verification standard (10 ng/µl). Analyze one reference crude oil standard. The instrument's performance and reproducibility are validated routinely in this manner. Surrogate recoveries should be within 70 to 120%, and duplicate relative percent difference values should be ±20%. A control chart of the standard oil should be prepared and monitored. Variations of analytes in the control chart should be no more than 25% from the historical averages. Injection port discrimination for n-C25 and greater alkanes must be carefully monitored; the ratio of RRF n-C32/RRF n-C21 alkanes should not be allowed to fall below 80%. The mass discrimination can be reduced by replacing the quartz liner in the injection port after every analytical batch. The instrument's performance and reproducibility are validated routinely by analyzing the reference crude oil standard. All analyses are recorded in instrument logs detailing operating conditions, date and time, file name, etc. After analysis, the sample extracts are archived at refrigeration temperatures. To document QA/QC, the following information is contained in the detailed quantitative reports: average RRF derived from the standard curve; RRF from the daily standard; percent relative standard deviation; area of target analyte; concentration determined both on a weight and volume basis; and values for any surrogates and internal standards.

4.6.6 *Instrument configuration and calibration.* A 2-ml aliquot of the hexane extract prepared by the above procedure is injected into a GC/MS instrument, such as the Hewlett-Packard 5890/5971 GC/MS (recommended for use). This instrument should be equipped with a DB–5 capillary column (30 m, 0.25-mm I.D., and 0.25-µm film thickness) and a split/splitless injection port operating in the splitless mode. Table 9 summarizes the temperature program used for the analysis. This temperature program has been optimized to give the best separation and sensitivity for analysis of the desired compounds on the instrument. Prior to the sample analysis, a five-point calibration must be conducted on a standard mix of the compounds listed in Table 7 to determine RRFs for the analyses.

TABLE 9.—OPERATING CONDITIONS AND TEMPERATURE PROGRAM OF GC/MS

Operating conditions
Injector port—290°C
Transfer line—320°C
Total run time—73 minutes
Column flow rate (He)—1.0 ml/minute

Temperature Program

Level	Temp. 1, °C	Time 1, minutes	Rate, °C/minute	Temp 2, °C	Time 2, minutes
Level 1	55	3	5	280	5
Level 2	280	0	3	310	10

4.7 *Statistical analysis.* The determination of a bioremediation agent's effectiveness will be partially based upon the results of a statistical analysis of the shaker flask experiment. The experimental design for this test is a two factorial design. This two-way analysis of variance (ANOVA) will be used to determine data trends. The statistical method is designed to test various types of bioremediation treatments including microbial, nutrient, enzyme, and combination products. The following is a summary of the statistical methods to be used to evaluate the analytical data obtained from all product tests. The experimental design, data analysis methodology, interpretation of results, required documentation, and a numeric example are outlined below.

4.7.1 *Experimental design.* The experimental design for this test is known as a factorial experiment with two factors. The first factor is product/control group; the second factor is time (measured in days). For example, if two groups (product A and a non-nutrient control) are tested at each of three points in time (day 0, 7, and 28), the experiment is called a 2x3 factorial experiment. There will be three replications (replicated shaker flasks) of each group-time combination.

4.7.2 *Data analysis methods.* For each analyte and each product used, a product is considered a success by the demonstration of a statistically significant difference between the mean analyte degradation by the product and the mean analyte degradation by the non-nutrient control. Such a determination will be made by performing an ANOVA on the sample data. The technical aspects of this procedure are outlined in Snedecor and Cochran (12). Most statistical software packages support the use of two-way ANOVA. However, the format required for the input data differs among the various commercial packages. Whichever package is used, the following ANOVA table will be provided as part of the output. In the Degree of Freedom column of Table 10, p = the number of product/control groups, t = the number of days at which each group is analyzed, and n = the number of replications. For the example of the 2x3 factorial experiment discussed above, p=2, t=3, and n=3. The significance of the F-statistics (as indicated by their corresponding p-values) are used to interpret the analysis.

TABLE 10.—TWO-WAY ANOVA TABLE

Source	Degree of freedom (df)	Sum of squares	Mean square	F-Statistic	p-Value
Group	p-1	SSG	MSG–MSG/MSE	MSG/MSE	[1]
Time	t-1	SST	MST–MST/MSE	MST/MSE	[1]
Interaction	(p–1)(t–1)	SSI	MSI–MSI/MSE	MSI/MSE	[1]
Error	pt(n–1)	SSE	MSE–SSE		
Total	npt–1	SSTOT			

[1] To be determined from the value of the F-statistic.

4.7.3 *Interpretation.* 4.7.3.1 If the F-statistic for the interaction is significant at the 0.05 level (i.e., p-value is less than 0.05), the data indicate that the mean response of at least two groups being tested differ for at least one point in time. In order to find out which groups and at which points in time the difference occurs, pairwise comparisons between the group means should be conducted for all time points. These comparisons can be made using protected least squared difference (LSD) or Dunnett mean separation techniques. The protected LSD procedure is detailed in Snedecor and Cochran (12); the Dunnett procedure is outlined in Montgomery (13). For both methods, the mean square error (MSE) from the two-way ANOVA table should be used to compute the separation values.

4.7.3.2 If the F-statistic for the interaction is not significant at the 0.05 level (i.e., p-value not less than 0.05), but the F-statistic for the group is significant (i.e., p-value is less than 0.05), the data indicate that any differences that exist among the group means are consistent across time. To find out which group means differ, a pairwise comparison of the group means should be carried out by pooling data across all points in time. Again, the MSE from the two-way ANOVA table should be used to compute the separation values.

4.7.3.3 If the F-statistic corresponding to both interaction and group are not significant at the 0.05 level, the data indicate no difference between the group means at any point in time. In this case, no further analysis is necessary.

4.7.3.4 Finally, Snedecor and Cochran (12) use caution concerning the use of multiple comparisons. If many such comparisons are being conducted, then about 5% of the tested differences will erroneously be concluded as significant. The researcher must guard against such differences causing undue attention.

4.7.4 *Required documentation.* 4.7.4.1 The following documents should be included to summarize the findings from a product test.

1. Data listings for each analyte that was analyzed. These should show all raw data.

2. A table of summary statistics for each analyte. The table should include the mean, standard deviation, and sample size for each group at each day.

3. An ANOVA table for each analyte. The table should be of the same format as Table 10.

4. A clear summary of the mean separations (if mean separations were necessary). The mean separation methods (LSD or Dunnett), the significance level, the minimum significant difference value, and the significant differences should be clearly marked on each output page.

5. All computer outputs should be included. No programming alterations are necessary. The specific computer package used to analyze the data should be included in the report.

Example. An analysis of the total aromatic data (in ppm) was conducted for the following three groups:

Group 1: Non-nutrient Control
Group 2: Nutrient Control
Group 3: Test Product

4.7.4.2 The raw data are shown in Table 11. Note the three replications for each group-time combination.

TABLE 11.—PRODUCT TEST DATA, TOTAL AROMATICS (PPM)

	Group 1	Group 2	Group 3
Day 0	8153	7912	7711
	8299	8309	8311
	8088	8111	8200
Day 7	8100	7950	6900
	8078	8200	6702
	7999	8019	5987
Day 28	8259	8102	4000
	8111	7754	3875
	8344	7659	3100

4.7.4.3 Table 12 gives the summary statistics (number of observations, means, and standard deviations) for each group-time combination.

TABLE 12.—SUMMARY STATISTICS FOR PRODUCT TEST DATA TOTAL AROMATICS (PPM)

Time	Product	n	Mean	Standard deviation
Day 0	Group 1	3	8,180.0	108.1
	Group 2	3	8,110.7	198.5
	Group 3	3	8,074.0	319.2
Day 7	Group 1	3	8,059.0	53.1
	Group 2	3	8,056.3	129.1
	Group 3	3	6,529.7	480.3
Day 28	Group 1	3	8,238.0	117.9
	Group 2	3	7,838.3	233.2
	Group 3	3	3,658.3	487.6

4.7.4.4 Table 13 shows the results of the two-way ANOVA.

TABLE 13.—EXAMPLE TWO-WAY ANOVA TABLE

Source	df	Sum of squares	Mean square	F-statistic	p-value
Group	2	23,944,856.41	11,972,428.70	151.94	0.0001
Time	2	10,954,731.19	5,477,365.59	69.51	0.0001
Interaction	4	19,347,589.04	4,836,897.26	61.39	0.0001
Error	18	1,418,303.33	78,794.63	.....	.....
Total	26	55,665,480.96	.....	.....	.....

4.7.4.5 From Table 13, it can be seen that the F-statistic for interaction is significant (F=61.39, p=0.0001). This indicates that group differences exist for one or more days. Protected LSD mean separations were then conducted for each day to determine which group differences exist. The results are summarized in Table 14. Note that means with the same letter (T grouping) are not significantly different.

TABLE 14.—PAIRWISE PROTECTED LSD MEAN SEPARATION

T grouping	Mean	n	Interaction
A	8,338.0	3	Group 1, Day 28.
A	8,180.0	3	Group 1, Day 0.
A	8,110.7	3	Group 2, Day 0.
A	8,074.0	3	Group 3, Day 0.
A	8,059.0	3	Group 1, Day 7.
A	8,056.3	3	Group 2, Day 7.
A	7,838.3	3	Group 2, Day 28.
B	6,529.7	3	Group 3, Day 7.
C	3,658.3	3	Group 3, Day 28.

Significant Level = 0.05.
Degrees of Freedom = 18.
Mean Square Error = 78794.63.
Critical Value = 2.10.
Least Significant Difference = 481.52.

4.7.4.6 The grouping letters indicate that the product mean values (group 3) at day 7 and day 28 are significantly different from those of both the nutrient control (group 2) and the non-nutrient control (group 1) for those days. No other significant differences are shown. Therefore, in terms of total aromatic degradation, the test indicates the desired statistically significant difference between the mean of the product and the mean of the non-nutrient control.

5.0 Bioremediation agent toxicity test [Reserved].

6.0 Summary technical product test data format.

The purpose of this format is to summarize in a standard and convenient presentation the technical product test data required by the U.S. Environmental Protection Agency before a product may be added to EPA's NCP Product Schedule, which may be used in carrying out the National Oil and Hazardous Substances Pollution Contingency Plan. This format, however, is not to preclude the submission of all the laboratory data used to develop the data summarized in this format. Sufficient data should be presented on both the effectiveness and toxicity tests to enable EPA to evaluate the adequacy of the summarized data. A summary of the technical product test data should be submitted in the following format. The numbered headings should be used in all submissions. The subheadings indicate the kinds of information to be supplied. The listed subheadings, however, are not exhaustive; additional relevant information should be reported where necessary. As noted, some subheadings may apply only to particular types of agents.

I. *Name, Brand, or Trademark*

II. *Name, Address, and Telephone Number of Manufacturer*

III. *Name, Address, and Telephone Numbers of Primary Distributors*

IV. *Special Handling and Worker Precautions for Storage and Field Application*

1. Flammability.

2. Ventilation.

3. Skin and eye contact; protective clothing; treatment in case of contact.

4. Maximum and minimum storage temperatures; optimum storage temperature range; temperatures of phase separations and chemical changes.

V. *Shelf Life*

VI. *Recommended Application Procedure*

1. Application method.

2. Concentration, application rate (e.g., gallons of dispersant per ton of oil).

3. Conditions for use: water salinity, water temperature, types and ages of pollutants.

VII. *Toxicity (Dispersants, Surface Washing Agents, Surface Collecting Agents, and Miscellaneous Oil Spill Control Agents)*

Materials Tested	Species	LC_{50} (ppm)
Product	Menidia beryllina	96-hr.
	Mysidopsis bahia 2	48-hr.
No. 2 fuel oil	Menidia beryllina	96-hr.
	Mysidopsis bahia	48-hr.
Product and No. 2 fuel oil (1:10)	Menidia beryllina	96-hr.
	Mysidopsis bahia	48-hr.

VIII.(a). *Effectiveness (bioremediation agents).* Raw data must be reported according to the format shown below. The first column lists the names of the analytes measured by GC/MS (SIM), the surrogate standards, and various ratios and sums. In the next three columns, the concentration of the analytes (ng/mg oil), the concentration of the analytes corrected for the recovery of the surrogate standard (α-androstane for alkanes, d_{10}-phenanthrene for aromatics), and the concentration of corrected analytes normalized against the conserved internal marker, respectively, are reported for the first replicate from the first sampling event. These three columns are each repeated for the next two replicates, giving 9 total columns for the product of interest. The next 9 columns are the same as the product columns except they are for the non-nutrient control. The last nine columns are for the nutrient control. Thus, a total of 28 columns are needed in the spreadsheet. This spreadsheet is for the first sampling event (day 0). Two more identical spreadsheets will be needed for each of the next two sampling events (days 7 and 28). For the statistical analysis, a report showing the two-way analysis of variance (ANOVA) table created by the software used by the investigator must be shown in its entirety along with the name of the software package used. Another printout showing the mean separation table (protected LSD test results) generated by the software must be reported. The statistical analyses are conducted using the sum of the alkane concentrations and the sum of the aromatics concentrations from the raw data table. Thus, two ANOVAs are run for each sampling event, one for total alkanes and one for total aromatics, giving a total of 6 ANOVAs for a product test (2 ANOVAs × 3 sampling events). Only if significant differences are detected by a given ANOVA will it be necessary to run a protected LSD test.

BIOREMEDIATION AGENT EFFECTIVENESS TEST RAW DATA

[Date: . Testing Date: 0, 7, 28 (Circle One). Initial Oil Weight: .]

	Product Replicate 1			Product Replicate 2
	Concentration ng/mg	Surrogate corrected ng/mg	Normalized to marker ng/mg	
Alkane Analyte				
n-C10				
n-C11				
n-C12				
n-C13				
n-C14				

BIOREMEDIATION AGENT EFFECTIVENESS TEST RAW DATA—Continued

[Date: . Testing Date: 0, 7, 28 (Circle One). Initial Oil Weight: .]

	Product Replicate 1			Product Replicate 2
	Concentration ng/mg	Surrogate corrected ng/mg	Normalized to marker ng/mg	
n-C15				
n-C16				
n-C17				
pristane				
n-C18				
phytane				
n-C19				
n-C20				
n-C21				
n-C22				
n-C23				
n-C24				
n-C25				
n-C26				
n-C27				
n-C28				
n-C29				
n-C30				
n-C31				
n-C32				
n-C33				
n-C34				
n-C35				
n-C36				
α-androstane				
Total alkanes				
n-C17:pristane				
n-C18:phytane				
Aromatic Analyte:				
naphthalene				
C1-naphthalenes				
C2-naphthalenes				
C3-naphthalenes				
C4-naphthalenes				
dibenzothiophene				
fluorene				
C1-fluorenes				
C2-fluorenes				
C3-fluorenes				
C1-dibenzothiophenes				
C2-dibenzothiophenes				
C3-dibenzothiophenes				
phenanthrene				
anthracene				
C1-phenanthrenes				
C2-phenanthrenes				
C3-phenanthrenes				
naphthobenzothio				
C1-naphthobenzothio				
C2-naphthobenzothio				
C3-naphthobenzothio				
fluoranthene				
pyrene				
C1-pyrenes				
C1-pyrenes				
chrysene				
benzo(a)anthracene				
C1-chrysenes				
c2-chrysenes				
benzo(b)fluoranth				
benzo(k)fluoranth				
benzo(e)pyrene				
benzo(a)pyrene				
perylene				
indeno(1,2,3-cd)per				
benzo(g,h,i)pyrene				
dibenz(ah)anthrac				
α,β-hopane				

BIOREMEDIATION AGENT EFFECTIVENESS TEST RAW DATA—Continued

[Date: . Testing Date: 0, 7, 28 (Circle One). Initial Oil Weight: .]

	Product Replicate 1			Product Replicate 2
	Concentration ng/mg	Surrogate corrected ng/mg	Normalized to marker ng/mg	
d8-naphthalene				
d10-phenanthrene				
d12-chrysene				
d12-perylene				
Total aromatics				
Grav. weight oil				
No. oil degraders/ml				

VIII.(b). *Toxicity (Bioremediation Agents)*

[Reserved]

IX. *Microbiological Analysis (Bioremediation Agents)*

X. *Physical Properties of Dispersant/Surface Washing Agent/Surface Collecting Agent/Miscellaneous Oil Spill Control Agent:*

1. Flash Point: (°F)
2. Pour Point: (°F)
3. Viscosity: _____ at _____ °F (furol seconds)
4. Specific Gravity: _____ at _____ °F
5. pH: (10% solution if hydrocarbon based)
6. Surface Active Agents (Dispersants and Surface Washing Agents)[2]
7. Solvents (Dispersants and Surface Washing Agents)[2]
8. Additives (Dispersants and Surface Washing Agents)
9. Solubility (Surface Collecting Agents)

XI. *Analysis for Heavy Metals, Chlorinated Hydrocarbons, and Cyanide (Dispersants, Surface Washing Agents, Surface Collecting Agents, and Miscellaneous Oil Spill Control Agents):*

Compounds	Concentration (ppm)
Arsenic	
Cadmium	
Chromium	
Copper	
Lead	
Mercury	
Nickel	
Zinc	
Cyanide	
Chlorinated Hydrocarbons.	

References

(1) L.T. McCarthy, Jr., I. Wilder, and J.S. Dorrier. *Standard Dispersant Effectiveness and Toxicity Tests.* EPA Report EPA–R2–73–201 (May 1973).

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(12) G.W. Snedecor and W.G. Cochran. *Statistical Methods,* 7th edition, The Iowa State University Press, Ames, Iowa, 1980.

(13) D.C. Montgomery. *Design and Analysis of Experiments.* Third edition. John Wiley & Sons, New York, NY, 1991.

[2] If the submitter claims that the information presented under this subheading is confidential, this information should be submitted on a separate sheet of paper clearly labeled according to the subheading and entitled "Confidential Information."

13. Appendix E to part 300 is added to read as follows:

Appendix E To Part 300

Oil Spill Response

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1.0 Introduction.

1.1 Background. The Oil Pollution Act of 1990 (OPA) amends the Federal Water Pollution Control Act (FWPCA), commonly referred to as the Clean Water Act (CWA), to require the revision of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). In revising the NCP, the need to separate the response requirements for oil discharges and release of hazardous substances, pollutants, and contaminants became evident.

1.2 Purpose/objective. This document compiles general oil discharge response requirements into one appendix to aid participants and responders under the national response system (NRS). This appendix provides the organizational structure and procedures to prepare for and respond to oil discharges. Nothing in this appendix alters the meaning or policy stated in other sections or subparts of the NCP.

1.3 Scope.

(a) This appendix applies to discharges of oil into or upon the navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, or waters of the exclusive economic zone, or which may affect the natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

(b) This appendix is designed to facilitate efficient, coordinated, and effective response to discharges of oil in accordance with the authorities of the CWA. It addresses:

(1) The national response organization that may be activated in response actions, the responsibilities among the federal, state, and local governments, and the resources that are available for response.

(2) The establishment of regional and area contingency plans.

(3) Procedures for undertaking removal actions pursuant to section 311 of the CWA.

(4) Listing of federal trustees for natural resources for purposes of the CWA.

(5) Procedures for the participation of other persons in response actions.

(6) Procedures for compiling and making available cost documentation for response actions.

(7) National procedures for the use of dispersants and other chemicals in removals under the CWA.

(c) In implementing the NCP provisions compiled in this appendix, consideration shall be given to international assistance plans and agreements, security regulations and responsibilities based on international agreements, federal statutes, and executive orders. Actions taken pursuant to the provisions of any applicable international joint contingency plans shall be consistent with the NCP to the greatest extent possible. The Department of State shall be consulted, as appropriate, prior to taking action that may affect its activities.

1.4 Abbreviations. This section of the appendix provides abbreviations relating to oil.

(a) Department and Agency Title Abbreviations:

ATSDR—Agency for Toxic Substances and Disease Registry
CDC—Centers for Disease Control
DOC—Department of Commerce
DOD—Department of Defense
DOE—Department of Energy
DOI—Department of Interior
DOJ—Department of Justice
DOL—Department of Labor
DOS—Department of State
DOT—Department of Transportation
EPA—Environmental Protection Agency
FEMA—Federal Emergency Management Agency
GSA—General Services Administration
HHS—Department of Health and Human Services
NIOSH—National Institute for Occupational Safety and Health
NOAA—National Oceanic and Atmospheric Administration
OSHA—Occupational Safety and Health Administration
RSPA—Research and Special Programs Administration
USCG—United States Coast Guard
USDA—United States Department of Agriculture

Note: Reference is made in the NCP to both the Nuclear Regulatory Commission and the National Response Center. In order to avoid confusion, the NCP will spell out Nuclear Regulatory Commission and use the abbreviation "NRC" only with respect to the National Response Center.

(b) Operational Abbreviations:

AC—Area Committee
ACP—Area Contingency Plan
DRAT—District Response Advisory Team
DRG—District Response Group
ERT—Environmental Response Team
ESF—Emergency Support Functions
FCO—Federal Coordinating Officer
FRERP—Federal Radiological Emergency Response Plan
FRP—Federal Response Plan
LEPC—Local Emergency Planning Committee
NCP—National Contingency Plan
NPFC—National Pollution Funds Center
NRC—National Response Center
NRS—National Response System
NRT—National Response Team
NSF—National Strike Force
NSFCC—National Strike Force Coordination Center
OSC—On-Scene Coordinator
OSLTF—Oil Spill Liability Trust Fund
POLREP—Pollution Report
PIAT—Public Information Assist Team
RCP—Regional Contingency Plan
RERT—Radiological Emergency Response Team
RRT—Regional Response Team
SERC—State Emergency Response Commission
SONS—Spill of National Significance
SSC—Scientific Support Coordinator
SUPSALV—United States Navy Supervisor of Salvage
USFWS—United States Fish and Wildlife Service

1.5 Definitions. Terms not defined in this section have the meaning given by CERCLA, the OPA, or the CWA. This appendix restates the NCP definitions relating to oil.

Activation means notification by telephone or other expeditious manner or, when required, the assembly of some or all appropriate members of the RRT or NRT.

Area Committee (AC) as provided for by CWA sections 311(a)(18) and (j)(4), means the entity appointed by the President consisting of members from qualified personnel of federal, state, and local agencies with responsibilities that include preparing an area contingency plan for an area designated by the President.

Area contingency plan (ACP) as defined by CWA sections 311(a)(19) and (j)(4) means the plan prepared by an Area Committee that is developed to be implemented in conjunction with the NCP and RCP, in part to address removal of a worst case discharge and to mitigate or prevent a substantial threat of such a discharge from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President.

Bioremediation agents means microbiological cultures, enzyme additives, or nutrient additives that are deliberately introduced into an oil discharge and that will significantly increase the rate of biodegradation to mitigate the effects of the discharge.

Burning agents means those additives that, through physical or chemical means, improve the combustibility of the materials to which they are applied.

CERCLA is the Comprehensive Environmental Response, Compensation, and

Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

Chemical agents means those elements, compounds, or mixtures that coagulate, disperse, dissolve, emulsify, foam, neutralize, precipitate, reduce, solubilize, oxidize, concentrate, congeal, entrap, fix, make the pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects or the removal of the oil pollutant from the water. Chemical agents include biological additives, dispersants, sinking agents, miscellaneous oil spill control agents, and burning agents, but do not include solvents.

Claim in the case of a discharge under CWA means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from an incident.

Claimant as defined by section 1001 of the OPA means any person or government who presents a claim for compensation under Title I of the OPA.

Clean natural seawater means that the source of this seawater must not be heavily contaminated with industrial or other types of effluent.

Coastal waters for the purpose of classifying the size of discharges, means the waters of the coastal zone except for the Great Lakes and specified ports and harbors on inland rivers.

Coastal zone as defined for the purpose of the NCP, means all United States waters subject to the tide, United States waters of the Great Lakes, specified ports and harbors on inland rivers, waters of the contiguous zone, other waters of the high seas subject to the NCP, and the land surface or land substrata, ground waters, and ambient air proximal to those waters. The term coastal zone delineates an area of federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in federal regional contingency plans.

Coast Guard District Response Group (DRG) as provided for by CWA sections 311(a)(20) and (j)(3), means the entity established by the Secretary of the department in which the USCG is operating within each USCG district and shall consist of: the combined USCG personnel and equipment, including firefighting equipment, of each port within the district; additional prepositioned response equipment; and a district response advisory team.

Contiguous zone means the zone of the high seas, established by the United States under Article 24 of the Convention on the Territorial Sea and Contiguous Zone, which is contiguous to the territorial sea and which extends nine miles seaward from the outer limit of the territorial sea.

Damages as defined by section 1001 of the OPA means damages specified in section 1002(b) of the Act, and includes the cost of assessing these damages.

Discharge as defined by section 311(a)(2) of the CWA, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil, but excludes discharges in compliance with a permit under section 402 of the CWA, discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the CWA, and subject to a condition in such permit, or continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems. For purposes of the NCP, discharge also means substantial threat of discharge.

Dispersants means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

Exclusive economic zone as defined in OPA section 1001, means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983, including the ocean waters of the areas referred to as "eastern special areas" in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990.

Facility as defined by section 1001 of the OPA means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.

Federal Response Plan (FRP) means the agreement signed by 25 federal departments and agencies in April 1987 and developed under the authorities of the Earthquake Hazards Reduction Act of 1977 and the Disaster Relief Act of 1974, as amended by the Stafford Disaster Relief Act of 1988.

First federal official means the first federal representative of a participating agency of the National Response Team to arrive at the scene of a discharge or a release. This official coordinates activities under the NCP and may initiate, in consultation with the OSC, any necessary actions until the arrival of the predesignated OSC.

Indian tribe as defined in OPA section 1001, means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the Tribe.

Inland waters for the purposes of classifying the size of discharges, means those waters of the United States in the inland zone, waters of the Great Lakes, and specified ports and harbors on inland rivers.

Inland zone means the environment inland of the coastal zone excluding the Great Lakes, and specified ports and harbors on inland rivers. The term inland zone delineates an area of federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in federal regional contingency plans.

Lead administrative trustee means a natural resource trustee who is designated on an incident-by-incident basis for the purpose of preassessment and damage assessment and chosen by the other trustees whose natural resources are affected by the incident. The lead administrative trustee facilitates effective and efficient communication during response operations between the OSC and the other natural resource trustees conducting activities associated with damage assessment and is responsible for applying to the OSC for access to response operations resources on behalf of all trustees for initiation of damage assessment.

Lead agency means the agency that provides the OSC to plan and implement response actions under the NCP.

Miscellaneous oil spill control agent is any product, other than a dispersant, sinking agent, surface washing agent, surface collecting agent, bioremediation agent, burning agent, or sorbent that can be used to enhance oil spill cleanup, removal, treatment, or mitigation.

National Pollution Funds Center (NPFC) means the entity established by the Secretary of Transportation whose function is the administration of the Oil Spill Liability Trust Fund (OSLTF). Among the NPFC's duties are: providing appropriate access to the OSLTF for federal agencies and states for removal actions and for federal trustees to initiate the assessment of natural resource damages; providing appropriate access to the OSLTF for claims; and coordinating cost recovery efforts.

National Response System (NRS) is the mechanism for coordinating response actions by all levels of government in support of the OSC. The NRS is composed of the NRT, RRTs, OSC, Area Committees, and Special Teams and related support entities.

National Strike Force (NSF) is a special team established by the USCG, including the three USCG Strike Teams, the Public Information Assist Team (PIAT), and the National Strike Force Coordination Center. The NSF is available to assist OSCs in their preparedness and response duties.

National Strike Force Coordination Center (NSFCC), authorized as the National Response Unit by CWA section 311(a)(23) and (j)(2), means the entity established by the Secretary of the department in which the USCG is operating at Elizabeth City, North Carolina, with responsibilities that include administration of the USCG Strike Teams, maintenance of response equipment inventories and logistic networks, and conducting a national exercise program.

Natural resources means land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone defined by the Magnuson Fishery Conservation and Management Act of 1976), any state or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

Navigable waters as defined by 40 CFR 110.1 means the waters of the United States, including the territorial seas. The term includes:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; and

(3) That are used or could be used for industrial purposes by industries in interstate commerce.

(d) All impoundments of waters otherwise defined as navigable waters under this section;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition, including adjacent wetlands; and

(f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this definition: Provided, that waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

(g) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Offshore facility as defined by section 311(a)(11) of the CWA means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

Oil as defined by section 311(a)(1) of the CWA means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil, as defined by section 1001 of the OPA means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act.

Oil Spill Liability Trust Fund means the fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509).

On-scene coordinator (OSC) means the federal official predesignated by the EPA or the USCG to coordinate and direct response under subpart D.

Onshore facility as defined by section 311(a)(10) of the CWA, means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

On-site means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of a response action.

Person as defined by section 1001 of the OPA, means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

Public vessel as defined by section 311(a)(4) of the CWA, means a vessel owned or bareboat-chartered and operated by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

Remove or removal as defined by section 311(a)(8) of the CWA, refers to containment and removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare (including, but not limited to, fish, shellfish, wildlife, public and private property, and shorelines and beaches) or to the environment. For the purpose of the NCP, the term also includes monitoring of action to remove a discharge.

Removal costs as defined by section 1001 of the OPA means the costs of removal that are incurred after a discharge of oil has occurred, or in any case in which there is a substantial threat of a discharge of oil the costs to prevent, minimize, or mitigate oil pollution from such an incident.

Responsible party as defined by section 1001 of the OPA means the following:

(a) Vessels—In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(b) Onshore Facilities—In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(c) Offshore Facilities—In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301–1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(d) Deepwater Ports—In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524), the licensee.

(e) Pipelines—In the case of a pipeline, any person owning or operating the pipeline.

(f) Abandonment—In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the person who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

Sinking agents means those additives applied to oil discharges to sink floating pollutants below the water surface.

Size classes of discharges refers to the following size classes of oil discharges which are provided as guidance to the OSC and serve as the criteria for the actions delineated in subpart D. They are not meant to imply associated degrees of hazard to public health or welfare, nor are they a measure of environmental injury. Any oil discharge that poses a substantial threat to public health or welfare or the environment or results in significant public concern shall be classified as a major discharge regardless of the following quantitative measures:

(a) Minor discharge means a discharge in inland waters of less than 1,000 gallons of oil or a discharge to the coastal waters of less than 10,000 gallons of oil.

(b) Medium discharge means a discharge of 1,000 to 10,000 gallons of oil to the inland waters or a discharge of 10,000 to 100,000 gallons of oil to the coastal waters.

(c) Major discharge means a discharge of more than 10,000 gallons of oil to the inland waters or more than 100,000 gallons of oil to the coastal waters.

Sorbents means essentially inert and insoluble materials that are used to remove oil and hazardous substances from water through adsorption, in which the oil or hazardous substance is attracted to the sorbent surface and then adheres to it, absorption, in which the oil or hazardous substance penetrates the pores of the sorbent material, or a combination of the two. Sorbents are generally manufactured in particulate form for spreading over an oil slick or as sheets, rolls, pillows, or booms. The sorbent material may consist of, but is not limited to, the following materials:

(a) Organic products—

(1) Peat moss or straw;

(2) Cellulose fibers or cork;

(3) Corn cobs;

(4) Chicken or duck feathers.

(b) Mineral compounds—

(1) Volcanic ash or perlite;

(2) Vermiculite or zeolite.

(c) Synthetic products—

(1) Polypropylene;

(2) Polyethylene;

(3) Polyurethane;

(4) Polyester.

Specified ports and harbors means those ports and harbor areas on inland rivers, and land areas immediately adjacent to those waters, where the USCG acts as predesignated on-scene coordinator. Precise locations are determined by EPA/USCG regional agreements and identified in federal regional contingency plans and area contingency plans.

Spill of national significance (SONS) means a spill which due to its severity, size, location, actual or potential impact on the public health and welfare or the

environment, or the necessary response effort, is so complex that it requires extraordinary coordination of federal, state, local, and responsible party resources to contain and cleanup the discharge.

State means the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction. For purposes of the NCP, the term includes Indian tribes as defined in the NCP except where specifically noted.

Surface collecting agents means those chemical agents that form a surface film to control the layer thickness of oil.

Surface washing agent is any product that removes oil from solid surfaces, such as beaches and rocks, through a detergency mechanism and does not involve dispersing or solubilizing the oil into the water column.

Tank vessel as defined by section 1001 of OPA means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that: (1) is a vessel of the United States; (2) operates on the navigable waters; or (3) transfers oil or hazardous material in a place subject to the jurisdiction of the United States.

Threat of discharge, see definition for discharge.

Trustee means an official of a federal natural resources management agency designated in subpart G of the NCP or a designated state official or Indian tribe or, in the case of discharges covered by the OPA, a foreign government official, who may pursue claims for damages under section 1006 of the OPA.

United States when used in relation to section 311(a)(5) of the CWA, mean the states, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Pacific Island Governments.

Vessel as defined by section 311(a)(3) of the CWA means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

Volunteer means any individual accepted to perform services by the lead agency which has authority to accept volunteer services (for examples, see 16 U.S.C. 742f(c)). A volunteer is subject to the provisions of the authorizing statute and the NCP.

Worst case discharge as defined by section 311(a)(24) of the CWA means, in the case of a vessel, a discharge in adverse weather conditions of its entire cargo, and in the case of an offshore facility or onshore facility, the largest foreseeable discharge in adverse weather conditions.

2.0 National response system.

2.1 Overview. The national response system (NRS) is the mechanism for coordinating response actions by all levels of government in support of the OSC. The NRS is composed of the National Response Team (NRT), Regional Response Teams (RRTs), On-scene coordinator (OSC), Area Committees, and Special Teams and related support entities. The NRS functions as an incident command system (ICS) under the direction of the OSC. Typical of an ICS, the NRS is capable of expanding or contracting to accommodate the response effort required by the size or complexity of the discharge.

2.2 Priorities. (a) Safety of human life must be given the highest priority during every response action. This includes any search and rescue efforts in the general proximity of the discharge and the insurance of safety of response personnel.

(b) Stabilizing the situation to preclude the event from worsening is the next priority. All efforts must be focused on saving a vessel that has been involved in a grounding, collision, fire or explosion, so that it does not compound the problem. Comparable measures should be taken to stabilize a situation involving a facility, pipeline, or other source of pollution. Stabilizing the situation includes securing the source of the spill and/or removing the remaining oil from the container (vessel, tank, or pipeline) to prevent additional oil spillage, to reduce the need for follow-up response action, and to minimize adverse impact to the environment.

(c) The response must use all necessary containment and removal tactics in a coordinated manner to ensure a timely, effective response that minimizes adverse impact to the environment.

(d) All parts of this national response strategy should be addressed concurrently, but safety and stabilization are the highest priorities. The OSC should not delay containment and removal decisions unnecessarily and should take actions to minimize adverse impact to the environment that begins as soon as a discharge occurs, as well as actions to minimize further adverse environmental impact from additional discharges.

(e) The priorities set forth in this section are broad in nature, and should not be interpreted to preclude the consideration of other priorities that may arise on a site-specific basis.

2.3 Responsibility. (a) The predesignated OSC has the responsibility to direct response actions and coordinate all other response efforts at the scene of an oil discharge or threatened discharge. The OSC monitors or directs all federal, state, local, and private removal actions, or arranges for the removal of an actual or threatened oil discharge, removing and if necessary, requesting authority to destroy a vessel. Additionally, the CWA requires the OSC to direct all federal, state, local, and private removal actions to any incident that poses a substantial threat to the public health or welfare.

(b) Cleanup responsibility for an oil discharge immediately falls on the responsible party, unless the discharge poses a substantial threat to public health or welfare. In a large percentage of oil discharges, the responsible party shall conduct the cleanup. If the responsible party does conduct the removal, the OSC shall ensure adequate surveillance over whatever actions are initiated.

(1) If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC should, to the extent practicable under the circumstances, so advise the responsible party. If the responsible party does not respond properly, the OSC shall take appropriate response actions and should notify the responsible party of the potential liability for federal response costs incurred by the OSC pursuant to the OPA and CWA. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(2) If the Administrator of EPA or the Secretary of the department in which the USCG is operating determines that there may be an imminent and substantial threat to the public health or welfare or the environment of the United States (including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitats, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil from any vessel or offshore or onshore facility into or upon the navigable waters of the United States), the Administrator or Secretary may request the U.S. Attorney General to secure the relief from any person, including the owner or operator of the vessel or facility necessary to abate a threat or, after notice to the affected state, take any other action authorized by section 311 of the CWA including administrative orders, that may be necessary to protect the public health or welfare.

(3) The responsible party is liable for costs of federal removal and damages in accordance with section 311(f) of the CWA, section 1002 of the OPA, and other federal laws.

(c) In those incidents where a discharge or threat of discharge poses a substantial threat to the public health or welfare of the United States, the OSC shall direct all federal, state, or private actions to remove the discharge or to mitigate or prevent the threat of such a discharge, as appropriate. The OSC shall also request immediate activation of the RRT.

(d) During responses to any discharge the OSC may request advice or support from the Special Teams and any local support units identified by the Area Committee. Examples include scientific advice from the Scientific Support Coordinator (SSC), technical guidance or prepositioned equipment from the District Response Group (DRG), or public information assistance from the National Strike Force (NSF).

(e) When an oil discharge exceeds the response capability of the region in which it occurs, transects regional boundaries, or involves a substantial threat to the public health or welfare, substantial amounts of property, or substantial threats to the natural resources, the NRT should be activated as an emergency response team. If appropriate the RRT Chairman may contact the NRT Chairman and request the NRT activation.

3.0 Components of national response system and responsibilities.

The NRS is the mechanism for coordinating response actions by all levels of government in support of the OSC. The NRS organization is divided into national, regional, and area levels. The national level comprises the NRT, the National Strike Force

Coordination Center (NSFCC), and the National Response Center (NRC). The regional level is comprised of the RRT. The area level is made up of the OSC, Special Teams, and Area Committees. The basic framework for the response management structure is a system (e.g., a unified command system), that brings together the functions of the federal government, the state government, and the responsible party to achieve an effective and efficient response, where the OSC retains authority.

3.1 National.

3.1.1 National response team. (a) National planning and coordination is accomplished through the NRT. The NRT consists of representatives from the USCG, EPA, Federal Emergency Management Agency (FEMA), Department of Defense (DOD), Department of Energy (DOE), Department of Agriculture (DOA), Department of Commerce (DOC), Department of Health and Human Services (HHS), Department of the Interior (DOI), Department of Justice (DOJ), Department of Labor (DOL), Department of Transportation (DOT), Department of State (DOS), Nuclear Regulatory Commission, and General Services Administration (GSA). Each agency shall designate a member to the team and sufficient alternates to ensure representation, as agency resources permit. The NRT will consider requests for membership on the NRT from other agencies. Other agencies may request membership by forwarding such requests to the chair of the NRT (see Figure 1).

(b) The chair of the NRT shall be the representative of the EPA and the vice chair shall be the representative of the USCG, with the exception of periods of activation because of response action. During activation, the chair shall be the member agency providing the OSC. The vice chair shall maintain records of NRT activities along with national, regional, and area plans for response actions.

(c) While the NRT desires to achieve a consensus on all matters brought before it, certain matters may prove unresolvable by this means. In such cases, each agency serving as a participating agency on the NRT may be accorded one vote in NRT proceedings.

(d) The NRT may establish such bylaws, procedures, and committees as it deems appropriate to further the purposes for which it is established.

(e) The NRT shall evaluate methods of responding to discharges, shall recommend any changes needed in the response organization, and shall recommend to the Administrator of EPA changes to the NCP designed to improve the effectiveness of the national response system, including drafting of regulatory language.

(f) The NRT shall provide policy and program direction to the RRTs.

(g) The NRT may consider and make recommendations to appropriate agencies on the training, equipping, and protection of response teams and necessary research, development, demonstration, and evaluation to improve response capabilities.

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Figure 1



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(h) Direct planning and preparedness responsibilities of the NRT include:

(1) Maintaining national preparedness to respond to a major discharge of oil that is beyond regional capabilities;

(2) Monitoring incoming reports from all RRTs and activating for a response action, when necessary;

(3) Coordinating a national program to assist member agencies in preparedness planning and response, and enhancing coordination of member agency preparedness programs;

(4) Developing procedures, in coordination with the NSFCC, as appropriate, to ensure the coordination of federal, state, and local governments, and private response to oil discharges;

(5) Monitoring response-related research and development, testing, and evaluation activities of NRT agencies to enhance coordination, avoid duplication of effort, and facilitate research in support of response activities;

(6) Developing recommendations for response training and for enhancing the coordination of available resources among agencies with training responsibilities under the NCP;

(7) Reviewing regional responses to oil discharges, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations; and

(8) Assisting in developing a national exercise program, in coordination with the NSFCC to ensure preparedness and coordination nationwide.

(i) The NRT shall consider matters referred to it for advice or resolution by an RRT.

(j) The NRT should be activated as an emergency response team:

(1) When an oil discharge:

(A) Exceeds the response capability of the region in which it occurs;

(B) Transects regional boundaries; or

(C) Involves a substantial threat to the public health or welfare, substantial amounts of property, or substantial threats to natural resources;

(2) If requested by any NRT member.

(k) When activated for a response action, the NRT will meet at the call of the chair and may:

(1) Monitor and evaluate reports from the OSC and recommend to the OSC, through the RRT, actions to combat the discharge;

(2) Request other federal, state and local governments, or private agencies, to provide resources under their existing authorities to combat a discharge, or to monitor response operations; and

(3) Coordinate the supply of equipment, personnel, or technical advice to the affected region from other regions or districts.

3.1.2 National response center. (a) The NRC, located at USCG Headquarters, is the national communications center, continuously manned for handling activities related to response actions, including those involving discharges of oil. The NRC acts as the single point of contact for all pollution incident reporting, and as the NRT communications center. Notice of discharges must be made by telephone through a toll free number or a special number (Telecommunication Device for the Deaf (TDD) and collect calls accepted). Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The telephone report is distributed to any interested NRT member agency or federal entity that has established a written agreement or understanding with the NRC.

(b) The Commandant, USCG, in conjunction with other NRT agencies, provides the necessary personnel, communications, plotting facilities, and equipment for the NRC.

(c) Notice of an oil discharge in an amount equal to or greater than the reportable quantity must be made immediately in accordance with 33 CFR part 153, subpart B. Notification will be made to the NRC Duty Officer, HQ USCG, Washington, DC, telephone (800) 424–8802 or (202) 267–2675. All notices of discharges received at the NRC will be relayed immediately by telephone to the OSC.

3.1.3 National strike force coordination center. NSFCC, located in Elizabeth City, North Carolina, may assist the OSC by providing information on available spill removal resources, personnel, and equipment. The NSFCC can provide the following support to the OSC:

(a) Technical assistance, equipment, and other resources to augment the OSC staff during spill response;

(b) Assistance in coordinating the use of private and public resources in support of the OSC during a response to or a threat of a worst case discharge of oil;

(c) Review of the area contingency plan, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations;

(d) Assistance in locating spill response resources for both response and planning, using the NSFCC's national and international computerized inventory of spill response resources;

(e) Coordination and evaluation of pollution response exercises; and

(f) Inspection of district prepositioned pollution response equipment.

3.2 Regional. (a) Regional planning and coordination of preparedness and response actions is accomplished through the RRT. In the case of a discharge of oil, preparedness activities shall be carried out in conjunction with Area Committees as appropriate. The RRT agency membership parallels that of the NRT, but also includes state and local representation. The RRT provides: (1) the appropriate regional mechanism for development and coordination of preparedness activities before a response action is taken and for coordination of assistance and advice to the OSC during such response actions; and (2) guidance to Area Committees, as appropriate, to ensure inter-area consistency and consistency of individual ACPs with the RCP and NCP.

(b) The two principal components of the RRT mechanism are a standing team, which consists of designated representatives from each participating federal agency, state governments, and local governments (as agreed upon by the states); and incident-specific teams formed from the standing team when the RRT is activated for a response. On incident-specific teams, participation by the RRT member agencies will relate to the technical nature of the incident and its geographic location.

(1) The standing team's jurisdiction corresponds to the standard federal regions, except for Alaska, Oceania in the Pacific, and the Caribbean area, each of which has a separate standing RRT. The role of the standing RRT includes communications systems and procedures, planning, coordination, training, evaluation, preparedness, and related matters on a regionwide basis. It also includes coordination of Area Committees for these functions in areas within their respective regions, as appropriate.

(2) The role of the incident-specific team is determined by the operational requirements of the response to a specific discharge. Appropriate levels of activation and/or notification of the incident-specific RRT, including participation by state and local governments, shall be determined by the designated RRT chair for the incident, based on the RCP. The incident-specific RRT supports the designated OSC. The designated OSC manages response efforts and coordinates all other efforts at the scene of a discharge.

(c) The representatives of EPA and the USCG shall act as co-chairs of the RRTs except when the RRT is activated. When the RRT is activated for response actions, the chair is the member agency providing the OSC.

(d) Each participating agency should designate one member and at least one alternate member to the RRT. Agencies whose regional subdivisions do not correspond to the standard federal regions may designate additional representatives to the standing RRT to ensure appropriate coverage of the standard federal region. Participating states may also designate one member and at least one alternate member to the RRT. Indian tribal governments may arrange with the RRT for representation appropriate to their geographical location. All agencies and states may also provide additional representatives as observers to meetings of the RRT.

(e) RRT members should designate representatives and alternates from their agencies as resource personnel for RRT activities, including RRT work planning, and membership on incident-specific teams in support of the OSCs.

(f) Federal RRT members or their representatives should provide OSCs with assistance from their respective federal agencies commensurate with agency responsibilities, resources, and capabilities within the region. During a response action, the members of the RRT should seek to make available the resources of their agencies to the OSC as specified in the RCP and ACP.

(g) RRT members should nominate appropriately qualified representatives from their agencies to work with OSCs in developing and maintaining ACPs.

(h) Affected states are encouraged to participate actively in all RRT activities. Each state Governor is requested to assign an office or agency to represent the state on the

appropriate RRT; to designate representatives to work with the RRT in developing RCPs; to plan for, make available, and coordinate state resources for use in response actions; and to serve as the contact point for coordination of response with local government agencies, whether or not represented on the RRT. The state's RRT representative should keep the State Emergency Response Commission (SERC) apprised of RRT activities and coordinate RRT activities with the SERC. Local governments are invited to participate in activities on the appropriate RRT as provided by state law or as arranged by the state's representative. Indian tribes are also invited to participate in such activities.

(i) The standing RRT shall recommend changes in the regional response organization as needed, revise the RCP as needed, evaluate the preparedness of the participating agencies and the effectiveness of ACPs for the federal response to discharges, and provide technical assistance for preparedness to the response community. The RRT should:

(1) Review and comment, to the extent practicable, on local emergency response plans or other issues related to the preparation, implementation, or exercise of such plans upon request of a local emergency planning committee;

(2) Evaluate regional and local responses to discharges on a continuing basis, considering available legal remedies, equipment readiness, and coordination among responsible public agencies and private organizations, and recommend improvements;

(3) Recommend revisions of the NCP to the NRT, based on observations of response operations;

(4) Review OSC actions to ensure that RCPs and ACPs are effective;

(5) Encourage the state and local response community to improve its preparedness for response;

(6) In coordination with the Area Committee and in accordance with any applicable laws, regulations, or requirements, conduct advance planning for use of dispersants, surface washing agents, surface collecting agents, burning agents, bioremediation agents, or other chemical agents in accordance with subpart J of this part;

(7) Be prepared to provide response resources to major discharges or releases outside the region;

(8) Conduct or participate in training and exercises as necessary to encourage preparedness activities of the response community within the region;

(9) Meet at least semiannually to review response actions carried out during the preceding period, consider changes in RCPs, and recommend changes in ACPs;

(10) Provide letter reports on RRT activities to the NRT twice a year, no later than January 31 and July 31; and

(11) Ensure maximum participation in the national exercise program for announced and unannounced exercises.

(j)(1) The RRT may be activated by the chair as an incident-specific response team when a discharge:

(A) Exceeds the response capability available to the OSC in the place where it occurs;

(B) Transects state boundaries;

(C) May pose a substantial threat to the public health or welfare, or to regionally significant amounts of property; or

(D) Is a worst case discharge, as defined in section 1.5 of this appendix.

(2) The RRT shall be activated during any discharge upon a request from the OSC, or from any RRT representative, to the chair of the RRT. Requests for RRT activation shall later be confirmed in writing. Each representative, or an appropriate alternate, should be notified immediately when the RRT is activated.

(3) During prolonged removal or remedial action, the RRT may not need to be activated or may need to be activated only in a limited sense, or may need to have available only those member agencies of the RRT who are directly affected or who can provide direct response assistance.

(4) When the RRT is activated for a discharge or release, agency representatives will meet at the call of the chair and may:

(A) Monitor and evaluate reports from the OSC, advise the OSC on the duration and extent of response, and recommend to the OSC specific actions to respond to the discharge;

(B) Request other federal, state, or local governments, or private agencies, to provide resources under their existing authorities to respond to a discharge or to monitor response operations;

(C) Help the OSC prepare information releases for the public and for communication with the NRT;

(D) If the circumstances warrant, make recommendations to the regional or district head of the agency providing the OSC that a different OSC should be designated; and

(E) Submit pollution reports to the NRC as significant developments occur.

(5) RCPs shall specify detailed criteria for activation of RRTs.

(6) At the regional level, a Regional Response Center (RRC) may provide facilities and personnel for communications, information storage, and other requirements for coordinating response. The location of each RRC should be provided in the RCP.

(7) When the RRT is activated, affected states may participate in all RRT deliberations. State government representatives participating in the RRT have the same status as any federal member of the RRT.

(8) The RRT can be deactivated when the incident-specific RRT chair determines that the OSC no longer requires RRT assistance.

(9) Notification of the RRT may be appropriate when full activation is not necessary, with systematic communication of pollution reports or other means to keep RRT members informed as to actions of potential concern to a particular agency, or to assist in later RRT evaluation of regionwide response effectiveness.

(k) Whenever there is insufficient national policy guidance on a matter before the RRT, a technical matter requiring solution, a question concerning interpretation of the NCP, or a disagreement on discretionary actions among RRT members that cannot be resolved at the regional level, it may be referred to the NRT for advice.

3.3 Area.

3.3.1 On-scene coordinator. The OSC is the federal official predesignated by EPA or the USCG to coordinate and direct federal responses under subpart D of the NCP. The USCG shall provide OSCs for oil discharges, including discharges from facilities and vessels under the jurisdiction of another federal agency, within or threatening the coastal zone. EPA shall provide OSCs for discharges into or threatening the inland zone. In carrying out a response, the OSC may direct or monitor all federal, state, and private actions to remove a discharge. In contingency planning and removal, the OSC coordinates, directs, and reviews the work of other agencies, Area Committees, responsible parties, and contractors to assure compliance with the NCP, decision document, consent decree, administrative order, and lead agency-approved plans applicable to the response.

3.3.2 Area committees. (a) Area Committees shall be responsible for: (1) preparing an ACP for their areas; (2) working with appropriate federal, state, and local officials to enhance the contingency planning of those officials and to assure pre-planning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife; and (3) working with appropriate federal, state, and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

(b) The OSC is responsible for overseeing development of the ACP in the area of the OSC's responsibility. The ACP, when implemented in conjunction with other provisions of the NCP, shall be adequate to remove a worst case discharge, and to mitigate and prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area.

3.3.3 Special teams. (a) Special teams include: NOAA/EPA's SSCs; EPA's Environmental Response Team (ERT); and USCG's NSF; DRGs; and NPFC (see Figure 2).

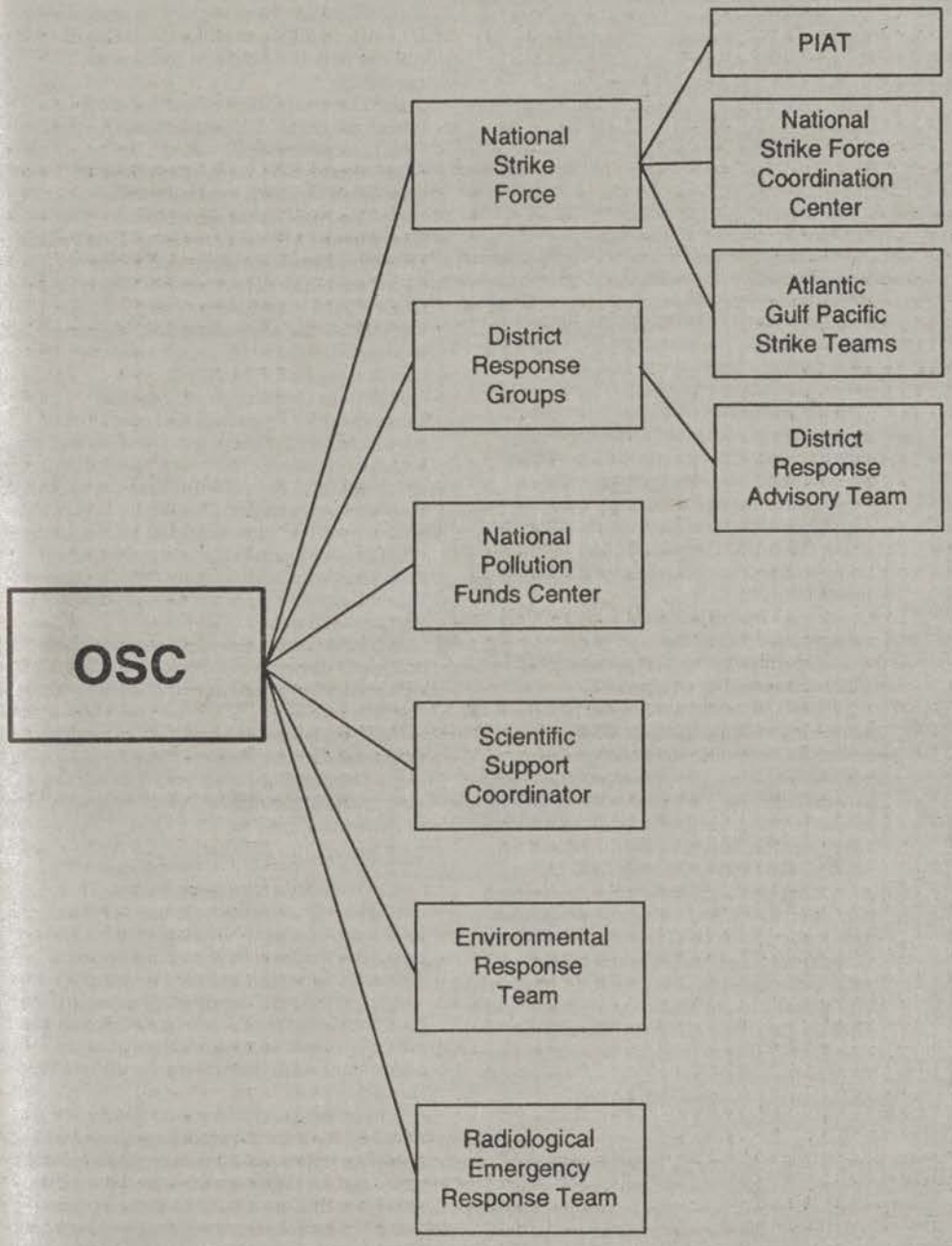
(b) SSCs may be designated by the OSC as the principal advisors for scientific issues, communication with the scientific community, and coordination of requests for assistance from state and federal agencies regarding scientific studies. The SSC strives for a consensus on scientific issues affecting the response, but ensures that differing opinions within the community are communicated to the OSC.

(1) Generally, SSCs are provided by NOAA in the coastal zones, and by EPA in the inland zone. OSC requests for SSC support may be made directly to the SSC assigned to the area or to the agency member of the RRT. NOAA SSCs may also be requested through NOAA's SSC program office in Seattle, WA. NOAA SSCs are assigned to USCG Districts and are supported by a scientific support team that includes expertise in environmental chemistry, oil slick tracking, pollutant transport modeling, natural resources at risk, environmental tradeoffs of countermeasures and cleanup, and information management.

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Figure 2

National Response System Special Teams



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(2) During a response, the SSC serves on the federal OSC's staff and may, at the request of the OSC, lead the scientific team and be responsible for providing scientific support for operational decisions and for coordinating on-scene scientific activity. Depending on the nature and location of the incident, the SSC integrates expertise from governmental agencies, universities, community representatives, and industry to assist the OSC in evaluating the hazards and potential effects of releases and in developing response strategies.

(3) At the request of the OSC, the SSC may facilitate the OSC's work with the lead administrative trustee for natural resources to ensure coordination between damage assessment data collection efforts and data collected in support of response operations.

(4) SSCs support the RRTs and the Area Committees in preparing regional and area contingency plans and in conducting spill training and exercises. For area plans, the SSC provides leadership for the synthesis and integration of environmental information required for spill response decisions in support of the OSC.

(c)(1) SUPSALV has an extensive salvage/search and recovery equipment inventory with the requisite knowledge and expertise to support these operations, including specialized salvage, firefighting, and petroleum, oil and lubricants offloading capability.

(2) When possible, SUPSALV will provide equipment for training exercises in support of national and regional contingency planning objectives.

(3) The OSC/RPM may request assistance directly from SUPSALV. Formal requests are routed through the Chief of Naval Operations (N312).

(d) The ERT is established by the EPA in accordance with its disaster and emergency responsibilities. The ERT has expertise in treatment technology, biology, chemistry, hydrology, geology and engineering.

(1) The ERT can provide access to special decontamination equipment and advice to the OSC in hazard evaluation; risk assessment; multimedia sampling and analysis program; on-site safety, including development and implementation plans; cleanup techniques and priorities; water supply decontamination and protection; application of dispersants; environmental assessment; degree of cleanup required; and disposal of contaminated material. The ERT also provides both introductory and intermediate level training courses to prepare response personnel.

(2) OSC or RRT requests for ERT support should be made to the EPA representative on the RRT; EPA Headquarters, Director, Emergency Response Division; or the appropriate EPA regional emergency coordinator.

(e) The NSF is a special team established by the USCG, including the three USCG Strike Teams, the Public Information Assist Team (PIAT), and the NSFCC. The NSF is available to assist OSCs in their preparedness and response duties.

(1) The three Strike Teams (Atlantic, Gulf, and Pacific) provide trained personnel and specialized equipment to assist the OSC in training for spill response, stabilizing and containing the spill, and in monitoring or directing the response actions of the responsible parties and/or contractors. The OSC has a specific team designated for initial contact and may contact that team directly for any assistance.

(2) The NSFCC can provide the following support to the OSC:

—Technical assistance, equipment and other resources to augment the OSC staff during spill response;

—Assistance in coordinating the use of private and public resources in support of the OSC during a response to or a threat of a worst case discharge of oil;

—Review of the ACP, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations;

—Assistance in locating spill response resources for both response and planning, using the NSFCC's national and international computerized inventory of spill response resources;

—Coordination and evaluation of pollution response exercises; and

—Inspection of district prepositioned pollution response equipment.

(3) PIAT is an element of the NSFCC staff which is available to assist OSCs to meet the demands for public information during a response or exercise. Its use is encouraged any time the OSC requires outside public affairs support. Requests for PIAT assistance may be made through the NSFCC or NRC.

(f)(1) The DRG assists the OSC by providing technical assistance, personnel, and equipment, including pre-positioned equipment. Each DRG consists of all Coast Guard personnel and equipment, including marine firefighting equipment, in its district, additional pre-positioned equipment, and a District Response Advisory Team (DRAT) that is available to provide support to the OSC in the event that a spill exceeds local response capabilities. Each DRG:

(A) Shall provide technical assistance, equipment, and other resources as available when requested by an OSC through the USCG representative to the RRT;

(B) Shall ensure maintenance of all USCG response equipment within its district;

(C) May provide technical assistance in the preparation of the ACP; and

(D) Shall review each of those plans that affect its area of geographic responsibility.

(2) In deciding where to locate personnel and pre-positioned equipment, the USCG shall give priority emphasis to:

(A) The availability of facilities for loading and unloading heavy or bulky equipment by barge;

(B) The proximity to an airport capable of supporting large military transport aircraft;

(C) The flight time to provide response to oil spills in all areas of the Coast Guard district with the potential for marine casualties;

(D) The availability of trained local personnel capable of responding in an oil spill emergency; and

(E) Areas where large quantities of petroleum products are transported.

(g) The NPFC is responsible for implementing those portions of Title I of the OPA that have been delegated to the Secretary of the department in which the Coast Guard is operating. The NPFC is responsible for addressing funding issues arising from discharges and threats of discharges of oil. The NPFC:

(1) Issues Certificates of Financial Responsibility to owners and operators of vessels to pay for costs and damages that are incurred by their vessels as a result of oil discharges; (2) Provides funding for various response organizations for timely abatement and removal actions related to oil discharges;

(3) Provides equitable compensation to claimants who sustain costs and damages from oil discharges when the responsible party fails to do so;

(4) Recovers monies from persons liable for costs and damages resulting from oil discharges to the full extent of liability under the law; and

(5) Provides funds to initiate natural resources damage assessment.

(h) The organizational concepts of the national response system discussed above are depicted in Figure 3.

4.0 Preparedness activities.

4.1 Federal contingency plans. This section summarizes emergency preparedness activities relating to discharges of oil and describes the three levels of contingency planning under the national response system.

4.1.1 National contingency plan. (a) The NCP provides for efficient, coordinated, and effective response to discharges of oil in accordance with the authorities of the CWA. It provides for:

(1) The national response organization that may be activated in response actions and specifies responsibilities among the federal, state, and local governments and describes resources that are available for response;

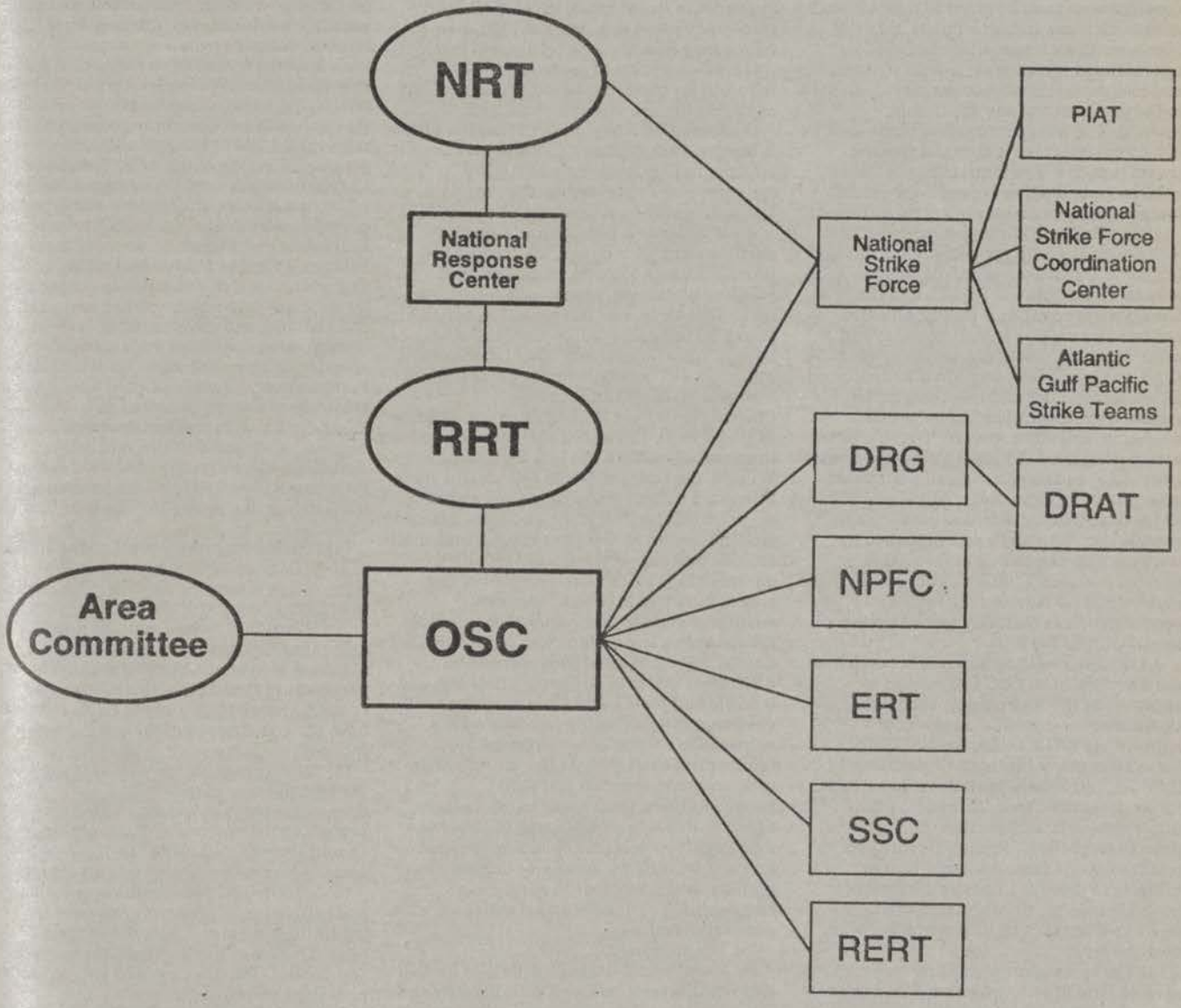
(2) The establishment of requirements for federal, regional, and area contingency plans;

(3) Procedures for undertaking removal actions pursuant to section 311 of the CWA;

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Figure 3

National Response System Organization



BILLDING CODE 6560-50-C

(4) Procedures for involving state governments in the initiation, development, selection, and implementation of response actions;

(5) Listing of federal trustees for natural resources for purposes of the CWA;

(6) Procedures for the participation of other persons in response actions; and

(7) National procedures for the use of dispersants and other chemicals in removals under the CWA.

(b) In implementing the NCP, consideration shall be given to international assistance plans and agreements, security regulations and responsibilities based on international agreements, federal statutes, and executive orders. Actions taken pursuant to the provisions of any applicable international joint contingency plans shall be consistent with the NCP, to the greatest extent possible. The Department of State shall be consulted, as appropriate, prior to taking action which may affect its activities.

4.1.2 Regional contingency plans. The RRTs, working with the states, shall develop federal RCPs for each standard federal region, Alaska, Oceania in the Pacific, and the Caribbean to coordinate timely, effective response by various federal agencies and other organizations to discharges of oil. RCPs shall, as appropriate, include information on all useful facilities and resources in the region, from government, commercial, academic, and other sources. To the greatest extent possible, RCPs shall follow the format of the NCP and be coordinated with state emergency response plans, ACPs, and Title III local emergency response plans. Such coordination should be accomplished by working with the SERCs in the region covered by the RCP. RCPs shall contain lines of demarcation between the inland and coastal zones, as mutually agreed upon by the USCG and the EPA.

4.1.3 Area contingency plans. (a) Under the direction of an OSC and subject to approval by the lead agency, each Area Committee, in consultation with the appropriate RRTs, DRGs, the NSFCC, SSCs, Local Emergency Planning Committees (LEPCs), and SERCs, shall develop an ACP for its designated area. This plan, when implemented in conjunction with other provisions of the NCP, shall be adequate to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area.

(b) The areas of responsibility may include several Title III local planning districts, or parts of such districts. In developing the ACP, the OSC shall coordinate with affected SERCs and LEPCs. The ACP shall provide for a well coordinated response that is integrated and compatible to the greatest extent possible with all appropriate response plans of state, local, and non-federal entities, and especially with Title III local emergency response plans.

(c) The ACP shall include the following:

(1) A description of the area covered by the plan, including the areas of special economic or environmental importance that might be impacted by a discharge;

(2) A description in detail of the responsibilities of an owner or operator and of federal, state, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge;

(3) A list of equipment (including firefighting equipment), dispersants, or other mitigating substances and devices, and personnel available to an owner or operator and federal, state, and local agencies, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge (this may be provided in an appendix or by reference to other relevant emergency plans (e.g., state or LEPC plans), which may include such equipment lists);

(4) A description of procedures to be followed for obtaining an expedited decision regarding the use of dispersants; and

(5) A detailed description of how the plan is integrated into other ACPs and tank vessel, offshore facility, and onshore facility response plans approved by the President, and into operating procedures of the NSFCC.

4.1.4 Fish and Wildlife and sensitive environments plan annex. (a) In order to provide for coordinated, immediate and effective protection, rescue, and rehabilitation of, and minimization of risk of injury to, fish and wildlife resources and habitat, Area Committees shall incorporate into each ACP a detailed annex containing a Fish and Wildlife and Sensitive Environments Plan that is consistent with the RCP and NCP. The annex shall be prepared in consultation with the U.S. Fish and Wildlife Service (FWS) and NOAA and other interested natural resource management agencies and parties. It shall address fish and wildlife resources and their habitat, and shall include other areas considered sensitive environments in a separate section of the annex, based upon Area Committee recommendations. The annex shall provide the necessary information and procedures to immediately and effectively respond to discharges that may adversely affect fish and wildlife and their habitat and sensitive environments, including provisions for a response to a worst case discharge. Such information shall include the identification of appropriate agencies and their responsibilities, procedures to notify these agencies following a discharge or threat of a discharge; protocols for obtaining required fish and wildlife permits and other necessary permits, and provisions to ensure compatibility of annex-related activities with removal operations.

(b) The annex shall:

(1) Identify and establish priorities for fish and wildlife resources and their habitats and other important sensitive areas requiring protection from any direct or indirect effects from discharges that may occur. These effects include, but are not limited to, any seasonal or historical use, as well as all critical, special, significant or otherwise designated protected areas.

(2) Provide a mechanism to be used during a spill response for timely identification of protection priorities of those fish and wildlife resources and habitats and sensitive environmental areas that may be threatened or injured by a discharge. These include as appropriate, not only marine and freshwater species, habitats, and their food sources, but also terrestrial wildlife and their habitats that may be affected directly by onshore oil or indirectly by oil-related factors, such as loss or contamination of forage. The mechanism shall also provide for expeditious evaluation and appropriate consultations on the effects to fish and wildlife, their habitat, and other sensitive environments from the application of chemical countermeasures or other countermeasures not addressed under paragraph (3) of this section.

(3) Identify potential environmental effects on fish and wildlife, their habitat, and other sensitive environments resulting from removal actions or countermeasures, including the option of no removal. Based on this evaluation of potential environmental effects, the annex should establish priorities for application of countermeasure and removal actions to habitats within the geographic region of the ACP. The annex should establish methods to minimize the identified effects on fish and wildlife because of response activities, including, but not limited to, disturbance of sensitive areas and habitats; illegal or inadvertent taking or disturbance of fish and wildlife or specimens by response personnel; and fish and wildlife, their habitat, and environmentally sensitive areas coming in contact with various cleaning or bioremediation agents. Furthermore, the annex should identify the areas where the movement of oiled debris may pose a risk to resident, transient, or migratory fish and wildlife, and other sensitive environments and should discuss measures to be considered for removing such oiled debris in a timely fashion to reduce such risk.

(4) Provide for pre-approval of application of specific countermeasures or removal actions that, if expeditiously applied, will minimize adverse spill-induced impacts to fish and wildlife resources, their habitat, and other sensitive environments. Such pre-approval plans must be consistent with paragraphs (2) and (3) of this section and subpart J requirements of the NCP, and must have the concurrence of the natural resource trustees.

(5) Provide monitoring plan(s) to evaluate the effectiveness of different countermeasures or removal actions in protecting the environment. Monitoring should include "set-aside" or "control" areas, where no mitigative actions are taken.

(6) Identify and plan for the acquisition and utilization of necessary response capabilities for protection, rescue, and rehabilitation of fish and wildlife resources and habitat. This may include appropriately permitted private organizations and individuals with appropriate expertise and experience. The suitable organizations should be identified in cooperation with natural resource law enforcement agencies. Such capabilities shall include, but not be limited to, identification of facilities and equipment necessary for deterring sensitive fish and wildlife from entering oiled areas, and for capturing, holding, cleaning, and releasing injured wildlife. Plans for the provision of such capabilities shall ensure that there is no interference with other OSC removal operations.

(7) Identify appropriate federal and state agency contacts and alternates responsible

for coordination of fish and wildlife rescue and rehabilitation and protection of sensitive environments; identify and provide for required fish and wildlife handling and rehabilitation permits necessary under federal and state laws; and provide guidance on the implementation of law enforcement requirements included under current federal and state laws and corresponding regulations. Requirements include, but are not limited to procedures regarding the capture, transport, rehabilitation, release of wildlife exposed to or threatened by oil, and disposal of contaminated carcasses of wildlife.

(8) Identify and secure the means for providing, if needed, the minimum required Occupational Safety and Health Administration (OSHA) training for volunteers, including those who assist with injured wildlife.

(9) Evaluate the compatibility between this annex and non-federal response plans (including those of vessels, facilities and pipelines) on issues affecting fish and wildlife, their habitat, and sensitive environments.

4.2 OPA facility and vessel response plans

This section describes and cross-references the regulations that implement section 311(j)(5) of the CWA. A tank vessel, as defined under section 2101 of title 46, U.S. Code, an offshore facility, and an onshore facility that, because of its location, could reasonably expect to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or exclusive economic zone must prepare and submit a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance. These response plans are required to be consistent with applicable Area Contingency Plans. These regulations are codified as follows:

(a) For tank vessels, these regulations are codified in 33 CFR part 155;

(b) For offshore facilities, these regulations are codified in 30 CFR part 254;

(c) For non-transportation related onshore facilities, these regulations are codified in 40 CFR part 112.20;

(d) For transportation-related onshore facilities, these regulations are cofidied in 33 CFR part 154;

(e) For pipeline facilities, these regulations are codified in 49 CFR part 194; and

(f) For rolling stock, these regulations are codified in 49 CFR part 106 et al.

4.3 Relation to others plans.

4.3.1 Federal response plans. In the event of a declaration of a major disaster by the President, the FEMA may activate the Federal Response Plan (FRP). A Federal Coordinating Officer (FCO), designated by the President, may implement the FRP and coordinate and direct emergency assistance and disaster relief of impacted individuals, business, and public services under the Robert T. Stafford Disaster Relief Act. Delivery of federal assistance is facilitated through twelve functional annexes to the FRP known as Emergency Support Functions (ESFs). EPA coordinates activities under ESF #10—Hazardous Materials, which addresses preparedness and response to hazardous materials and oil incidents caused by a natural disaster or other catastrophic event. In such cases, the OSC should coordinate response activities with the FCO, through the incident-specific ESF #10 Chair, to ensure consistency with federal disaster assistance activities.

4.3.2 Tank Vessel and Facility Response Plans. (a) Under CWA section 311(j)(5), tank vessels, offshore facilities, and certain onshore facilities are required to prepare and submit response plans for review and approval by the President for the carriage, storage, and transportation of oil and hazardous substances. Separate regulations published by the appropriate federal agencies provide for required response plan development and/or approval.

(b) These plans shall be developed to coordinate responsible party actions with the OSC and the ACP response strategies, for response to oil discharges within the inland and coastal zones of the United States.

4.4 Pre-approval authority.

(a) RRTs and Area Committees shall address, as part of their planning activities, the desirability of using appropriate dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents listed on the NCP Product Schedule, and the desirability of using appropriate burning agents. RCPs and ACPs shall, as appropriate, include applicable preauthorization plans and address the specific contexts in which such products should and should not be used. In meeting the provisions of this paragraph, preauthorization plans may address factors such as the potential sources and types of oil that might be spilled, the existence and location of environmentally sensitive resources that might be impacted by spilled oil, available product and storage locations, available equipment and adequately trained operators, and the available means to monitor product application and effectiveness. The RRT representatives from EPA and the states with jurisdiction over the waters of the area to which a preauthorization plan applies and the DOC and DOI natural resource trustees shall review and either approve, disapprove, or approve with modification the preauthorization plans developed by Area Committees, as appropriate. Approved preauthorization plans shall be included in the appropriate RCPs and ACPs. If the RRT representatives from EPA and the states with jurisdiction over the waters of the area to which a preauthorization plan applies and the DOC and DOI natural resource trustees approve in advance the use of certain products under specified circumstances as described in the preauthorization plan, the OSC may authorize the use of the products without obtaining the specific concurrences described in paragraphs (b) and (c) of this section.

(b) For spill situations that are not addressed by the preauthorization plans developed pursuant to paragraph (a) of this section, the OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents on the oil discharge, provided that the products are listed on the NCP Product Schedule.

(c) The OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of burning agents on a case-by-case basis.

(d) The OSC may authorize the use of any dispersant, surface washing agent, surface collecting agent, other chemical agent, burning agent, bioremediation agent, or miscellaneous oil spill control agent, including products not listed on the NCP Product Schedule, without obtaining the concurrence of the EPA representative to the RRT and, as appropriate, the RRT representatives from the states with jurisdiction over the navigable waters threatened by the discharge, when, in the judgment of the OSC, the use of the product is necessary to prevent or substantially reduce a hazard to human life. Whenever the OSC authorizes the use of a product pursuant to this paragraph, the OSC is to inform the EPA RRT representative and, as appropriate, the RRT representatives from the affected states and, when practicable, the DOC/DOI natural resource trustees of the use of a product, including products not on the Schedule, as soon as possible. Once the threat to human life has subsided, the continued use of a product shall be in accordance with paragraphs (a), (b), and (c) of this section.

(e) Sinking agents shall not be authorized for application to oil discharges.

(f) When developing preauthorization plans, RRTs may require the performance of supplementary toxicity and effectiveness testing of products, in addition to the test methods specified in § 300.915 and described in Appendix C to part 300, due to existing site-specific or area-specific concerns.

4.5 Area response drills. The OSC periodically shall conduct drills of removal capability (including fish and wildlife response), without prior notice, in areas for which ACPs are required and under relevant tank vessel and facility response plans.

5.0 Response operations.

(a) The OSC shall direct response efforts and coordinate all other efforts at the scene of a discharge. As part of the planning and preparation for response, OSCs shall be predesignated by the regional or district head of the lead agency.

(b) The first federal official affiliated with an NRT member agency to arrive at the scene of a discharge should coordinate activities

under the NCP and is authorized to initiate, in consultation with the OSC, any necessary actions normally carried out by the OSC until the arrival of the predesignated OSC. This official may initiate federal OSLTF-financed actions only as authorized by the OSC or, if the OSC is unavailable, the authorized representative of the lead agency.

(c) The OSC shall, to the extent practicable, collect pertinent facts about the discharge, such as its source and cause; the identification of responsible parties; the nature, amount, and location of discharged materials; the probable direction and time of travel of discharged materials; whether the discharge is a worst case discharge; the pathways to human and environmental exposure; the potential impact on human health, welfare, and safety and the environment; whether the discharge poses a substantial threat to the public health or welfare; the potential impact on natural resources and property which may be affected; priorities for protecting human health and welfare and the environment; and appropriate cost documentation.

(d) The OSC's efforts shall be coordinated with other appropriate federal, state, local, and private response agencies. OSCs may designate capable persons from federal, state, or local agencies to act as their on-scene representatives. State and local governments, however, are not authorized to take actions under subpart D of the NCP that involve expenditures of the OSLTF unless an appropriate contract or cooperative agreement has been established.

(e) The OSC should consult regularly with the RRT and NSFCC, as appropriate, in carrying out the NCP and keep the RRT and NSFCC, as appropriate, informed of activities under the NCP.

(f) The OSC should evaluate incoming information and immediately advise FEMA of potential major disaster situations.

(g) The OSC is responsible for addressing worker health and safety concerns at a response scene.

(h) In those instances where a possible public health emergency exists, the OSC should notify the HHS representative to the RRT. Throughout response actions, the OSC may call upon the OSHA and HHS representative for assistance on worker health and safety issues.

(i) All federal agencies should plan for emergencies and develop procedures for dealing with oil discharges and releases of hazardous substances, pollutants, or contaminants from vessels and facilities under their jurisdiction. All federal agencies, therefore, are responsible for designating the office that coordinates response to such incidents in accordance with the NCP and applicable federal regulations and guidelines.

(j)(1) The OSC shall ensure that the natural resource trustees are promptly notified of discharges.

(2) The OSC shall coordinate all response activities with the affected natural resource trustees and shall consult with the affected trustees on the appropriate removal action to be taken.

(3) Where the OSC becomes aware that a discharge may affect any endangered or threatened species, or their habitat, the OSC shall consult with DOI, DOC/NOAA, and, if appropriate, the cognizant federal land managing agency.

(k) The OSC shall submit pollution reports (POLREPs) to the RRT and other appropriate agencies as significant developments occur during response actions, through communications networks or procedures agreed to by the RRT and covered in the RCP.

(l) The OSC should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response, to the extent practicable.

5.1 Phase I—Discovery or notification. (a) A discharge of oil may be discovered through:

(1) A report submitted by the person in charge of a vessel or facility, in accordance with statutory requirements;

(2) Deliberate search by patrols;

(3) Random or incidental observation by government agencies or the public; or

(4) Other sources.

(b) Any person in charge of a vessel or a facility shall, as soon as he or she has knowledge of any discharge from such vessel or facility in violation of section 311(b)(3) of the CWA, immediately notify the NRC. Notification shall be made to the NRC Duty Officer, HQ USCG, Washington, DC, telephone (800) 424–8802 or (202) 267–2675. If direct reporting to the NRC is not practicable, reports may be made to the USCG or EPA predesignated OSC for the geographic area where the discharge occurs. The EPA predesignated OSC may also be contacted through the regional 24-hour emergency response telephone number. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or predesignated OSC immediately, reports may be made immediately to the nearest Coast Guard unit. In any event, such person in charge of the vessel or facility shall notify the NRC as soon as possible.

(c) Any other person shall, as appropriate, notify the NRC of a discharge of oil.

(d) Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The OSC shall ensure notification of the appropriate state agency of any state which is, or may reasonably be expected to be, affected by the discharge. The OSC shall then proceed with the following phases as outlined in the RCP and ACP.

5.2 Phase II—Preliminary assessment and initiation of action

(a) The OSC is responsible for promptly initiating a preliminary assessment.

(b) The preliminary assessment shall be conducted using available information, supplemented where necessary and possible by an on-scene inspection. The OSC shall undertake actions to:

(1) Evaluate the magnitude and severity of the discharge or threat to public health or welfare or the environment;

(2) Assess the feasibility of removal; and

(3) To the extent practicable, identify potentially responsible parties.

(c) Where practicable, the framework for the response management structure is a system (e.g., a unified command system), that brings together the functions of the federal government, the state government, and the responsible party to achieve an effective and efficient response, where the OSC maintains authority.

(d) Except in a case when the OSC is required to direct the response to a discharge that may pose a substantial threat to the public health or welfare (including, but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the OSC may allow the responsible party to voluntarily and promptly perform removal actions, provided the OSC determines such actions will ensure an effective and immediate removal of the discharge or mitigation or prevention of a substantial threat of a discharge. If the responsible party does conduct the removal, the OSC shall ensure adequate surveillance over whatever actions are initiated. If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC should, to the extent practicable under the circumstances, so advise the responsible party. If the responsible party does not respond properly, the OSC shall take appropriate response actions and should notify the responsible party of the potential liability for federal response costs incurred by the OSC pursuant to the OPA and CWA. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(1) In carrying out a response under this section, the OSC may:

(A) Remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;

(B) Direct or monitor all federal, state, and private actions to remove a discharge; and

(C) Remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(2) If the discharge results in a substantial threat to the public health or welfare of the United States (including, but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the OSC must direct all response efforts, as provided in section 5.3.4 of this appendix. The OSC should declare as expeditiously as practicable to spill response participants that the federal government will direct the response. The OSC may act without regard to any other provision of the law governing contracting procedures or employment of personnel by the federal government in removing or arranging for the removal of such a discharge.

(e) The OSC shall ensure that the natural resource trustees are promptly notified in the event of any discharge of oil, to the maximum extent practicable as provided in the Fish and Wildlife and Sensitive Environments Plan annex to the ACP for the area in which the discharge occurs. The OSC and the trustees shall coordinate assessments, evaluations, investigations, and planning with respect to appropriate removal actions. The OSC shall consult with the affected trustees on the appropriate removal action to be taken. The trustees will provide timely advice concerning recommended actions with regard to trustee resources potentially affected. The trustees also will

assure that the OSC is informed of their activities in natural resource damage assessment that may affect response operations. The trustees shall assure, through the lead administrative trustee, that all data from the natural resource damage assessment activities that may support more effective operational decisions are provided in a timely manner to the OSC. When circumstances permit, the OSC shall share the use of non-monetary response resources (i.e., personnel and equipment) with the trustees, provided trustee activities do not interfere with response actions. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other trustees during response operations and is responsible for applying to the OSC for non-monetary federal response resources on behalf of all trustees. The lead administrative trustee is also responsible for applying to the National Pollution Funds Center for funding for initiation of damage assessment for injuries to natural resources.

5.3 Patterns of response.

5.3.1 Determinations to initiate response and special conditions.

(a) In accordance with the CWA, the Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to act for the United States to take response measures deemed necessary to protect the public health or welfare or environment from discharges of oil.

(b) The Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to initiate and, in the case of a discharge posing a substantial threat to public health or welfare is required to initiate and direct, appropriate response activities when the Administrator or Secretary determines that any oil is discharged or there is a substantial threat of such discharge from any vessel or offshore or onshore facility into or on the navigable waters of the United States, on the adjoining shorelines to the navigable waters, into or on the waters of the exclusive economic zone, or that may affect natural resources belonging to, appertaining to, or under exclusive management authority of the United States.

(c) In addition to any actions taken by a state or local government, the Administrator of EPA or the Secretary of the department in which the USCG is operating may request the U.S. Attorney General to secure the relief from any person, including the owner or operator of the vessel or facility necessary to abate a threat or, after notice to the affected state, take any other action authorized by section 311 of the CWA, including issuing administrative orders, that may be necessary to protect the public health or welfare, if the Administrator or Secretary determines that there may be an imminent and substantial threat to the public health or welfare or the environment of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitats, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil from any vessel or offshore or onshore facility into or upon the navigable waters of the United States.

(d) Response actions to remove discharges originating from operations conducted subject to the Outer Continental Shelf Lands Act shall be in accordance with the NCP.

(e) Where appropriate, when a discharge involves radioactive materials, the lead or support federal agency shall act consistent with the notification and assistance procedures described in the appropriate Federal Radiological Plan. For the purpose of the NCP, the Federal Radiological Emergency Response Plan (FRERP) (50 FR 46542, November 8, 1985) is the appropriate plan. Most radiological discharges and releases do not result in FRERP activation and should be handled in accordance with the NCP. However, releases from nuclear incidents subject to requirements for financial protection established by the Nuclear Regulatory Commission under the Price-Anderson amendments (section 170) of the Atomic Energy Act are specifically excluded from CERCLA and NCP requirements.

(f) Removal actions involving nuclear weapons should be conducted in accordance with the joint Department of Defense, Department of Energy, and FEMA Agreement for Response to Nuclear Incidents and Nuclear Weapons Significant Incidents (January 8, 1981).

(g) If the situation is beyond the capability of state and local governments and the statutory authority of federal agencies, the President may, under the Disaster Relief Act of 1974, act upon a request by the Governor and declare a major disaster or emergency and appoint a FCO to coordinate all federal disaster assistance activities. In such cases, the OSC would continue to carry out OSC responsibilities under the NCP, but would coordinate those activities with the FCO to ensure consistency with other federal disaster assistance activities.

(h) In the event of a declaration of a major disaster by the President, FEMA may activate the FRP. An FCO, designated by the President, may implement the FRP and coordinate and direct emergency assistance and disaster relief of impacted individuals, business, and public services under the Robert T. Stafford Disaster Relief Act. Delivery of federal assistance is facilitated through twelve functional annexes to the FRP known as ESFs. EPA coordinates activities under ESF #10—Hazardous Materials, which addresses preparedness and response to hazardous materials and oil incidents caused by a natural disaster or other catastrophic event. In such cases, the OSC/RPM should coordinate response activities with the FCO, through the incident-specific ESF #10 Chair, to ensure consistency with federal disaster assistance activities.

5.3.2 General pattern of response. (a) When the OSC receives a report of a discharge, actions normally should be taken in the following sequence:

(1) Investigate the report to determine pertinent information such as the threat posed to public health or welfare or the environment, the type and quantity of polluting material, and the source of the discharge.

(2) Officially classify the size (i.e., minor, medium, major) and type (i.e., substantial threat to the public health or welfare, worst case discharge) of the discharge and determine the course of action to be followed to ensure effective and immediate removal, mitigation, or prevention of the discharge. Some discharges that are classified as a substantial threat to the public health or welfare may be further classified as a spill of national significance by the Administrator of EPA or the Commandant of the USCG. The appropriate course of action may be prescribed in 5.3.4, 5.3.5, and 5.3.6 of this appendix.

(A) When the reported discharge is an actual or potential major discharge, the OSC shall immediately notify the RRT and the NRC.

(B) When the investigation shows that an actual or potential medium discharge exists, the OSC shall recommend activation of the RRT, if appropriate.

(C) When the investigation shows that an actual or potential minor discharge exists, the OSC shall monitor the situation to ensure that proper removal action is being taken.

(3) If the OSC determines that effective and immediate removal, mitigation, or prevention of a discharge can be achieved by private party efforts, and where the discharge does not pose a substantial threat to the public health or welfare, determine whether the responsible party or other person is properly carrying out removal. Removal is being done properly when:

(A) The responsible party is applying the resources called for in its response plan to effectively and immediately remove, minimize, or mitigate threat(s) to public health and welfare and the environment; and

(B) The removal efforts are in accordance with applicable regulations, including the NCP. Even if the OSC supplements responsible party resources with government resources, the spill response will not be considered improper, unless specifically determined by the OSC.

(4) Where appropriate, determine whether a state or political subdivision thereof has the capability to carry out any or all removal actions. If so, the OSC may arrange funding to support these actions.

(5) Ensure prompt notification of the trustees of affected natural resources in accordance with the applicable RCP and ACP.

(b) Removal shall be considered complete when so determined by the OSC in consultation with the Governor or Governors of the affected states. When the OSC considers removal complete, OSLTF removal funding shall end. This determination shall not preclude additional removal actions under applicable state law.

5.3.3 Containment, countermeasures, and cleanup. (a) Defensive actions shall begin as soon as possible to prevent, minimize, or mitigate threat(s) to the public health or welfare or the environment. Actions may include but are not limited to: analyzing water samples to determine the source and spread of the oil; controlling the source of discharge; source and spread control or salvage operations; placement of physical barriers to deter the spread of the oil and to protect natural resources and sensitive ecosystems; measuring and sampling; control

of the water discharged from upstream impoundment; and the use of chemicals and other materials in accordance with subpart J of Part 300 of the NCP to restrain the spread of the oil and mitigate its effects. The ACP should be consulted for procedures to be followed for obtaining an expedited decision regarding the use of dispersants and other products listed on the NCP Product Schedule.

(b) As appropriate, actions shall be taken to recover the oil or mitigate its effects. Of the numerous chemical or physical methods that may be used, the chosen methods shall be the most consistent with protecting public health and welfare and the environment. Sinking agents shall not be used.

(c) Oil and contaminated materials recovered in cleanup operations shall be disposed of in accordance with the RCP, ACP, and any applicable laws, regulations, or requirements. RRT and Area Committee guidelines may identify the disposal options available during an oil spill response and may describe what disposal requirements are mandatory or may not be waived by the OSC. ACP guidelines should address: the sampling, testing, and classifying of recovered oil and oiled debris; the segregation and stockpiling of recovered oil and oiled debris; prior state disposal approvals and permits; and the routes; methods (e.g. recycle/reuse, on-site burning, incineration, landfilling, etc.); and sites for the disposal of collected oil, oiled debris, and animal carcasses; procedures for obtaining waivers, exemptions, or authorizations associated with handling or transporting waste materials. The ACPs may identify a hierachy of preferences for disposal alternatives, with recycling (reprocessing) being the most preferred, and other alternatives preferred based on priorities for health or the environment.

5.3.4 Response to a substantial threat to the public health or welfare. (a) The OSC shall determine whether a discharge results in a substantial threat to public health or welfare (including, but not limited to, fish, shellfish, wildlife, other natural resources, the public and private beaches, and shorelines of the United States). Factors to be considered by the OSC in making this determination include, but are not limited to, the size of the discharge, the character of the discharge, and the nature of the threat to public health or welfare. Upon obtaining such information, the OSC shall conduct an evaluation of the threat posed, based on the OSC's experience in assessing other discharges and consultation with senior lead agency officials and readily available authorities on issues outside the OSC's technical expertise.

(b) If the investigation by the OSC shows that the discharge poses or may present a substantial threat to public health or welfare, the OSC shall direct all federal, state, or private actions to remove the discharge or to mitigate or prevent the threat of such a discharge, as appropriate. In directing the response in such cases, the OSC may act without regard to any other provision of law governing contracting procedures or employment of personnel by the federal government to:

(1) Remove or arrange for the removal of the discharge;

(2) Mitigate or prevent the substantial threat of the discharge; and

(3) Remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(c) In the case of a substantial threat to the public health or welfare, the OSC shall:

(1) Assess opportunities for the use of various special teams and other assistance, including the use of the services of the NSFCC, as appropriate;

(2) Request immediate activation of the RRT; and

(3) Take whatever additional response actions are deemed appropriate, including but not limited to implementation of the ACP or relevant tank vessel or facility response plan.

(d) When requested by the OSC, the lead agency or RRT shall dispatch appropriate personnel to the scene of the discharge to assist the OSC. This assistance may include technical support in the agency's areas of expertise and disseminating information to the public. The lead agency shall ensure that a contracting officer is available on scene, at the request of the OSC.

5.3.5 Enhanced activities during a spill of national significance. (a) A discharge may be classified as an SONS by the Administrator of EPA for discharges occurring in the inland zone and the Commandant of the USCG for discharges occurring in the coastal zone.

(b) For an SONS in the inland zone, the EPA Administrator may name a senior Agency official to assist the OSC in: (1) Communicating with affected parties and the public; and (2) coordinating federal, state, local, and international resources at the national level. This strategic coordination will involve, as appropriate, the NRT, RRT(s), the Governor(s) of affected state(s), and the mayor(s) or other chief executive(s) of local government(s).

(c) For an SONS in the coastal zone, the USCG Commandant may name a National Incident Commander (NIC) who will assume the role of the OSC in: (1) Communicating with affected parties and the public; and (2) coordinating federal, state, local, and international resources at the national level. This strategic coordination shall involve, as appropriate, the NRT, RRT(s), the Governor(s) of affected state(s), and the mayor(s) or other chief executive(s) of local government(s).

5.3.6 Response to worst case discharges. (a) If the investigation by the OSC shows that a discharge is a worst case discharge as defined in the ACP, or there is a substantial threat of such a discharge, the OSC shall:

(1) Notify the NSFCC;

(2) Require, where applicable, implementation of the worst case portion of an approved tank vessel or facility response plan;

(3) Implement the worst case portion of the ACP, if appropriate; and

(4) Take whatever additional response actions are deemed appropriate.

(b) Under the direction of the OSC, the NSFCC shall coordinate use of private and public personnel and equipment, including strike teams, to remove a worst case discharge and mitigate or prevent a substantial threat of such a discharge.

5.3.7 Multi-regional responses. (a) If a discharge moves from the area covered by one ACP or RCP into another area, the authority for response actions should likewise shift. If a discharge affects areas covered by two or more ACPs or RCPs, the response mechanisms of each applicable plan may be activated. In this case, response actions of all regions concerned shall be fully coordinated as detailed in the RCPs and ACPs.

(b) There shall be only one OSC at any time during the course of a response operation. Should a discharge affect two or more areas, EPA, the USCG, DOD, DOE, or other lead agency, as appropriate, shall give prime consideration to the area vulnerable to the greatest threat, in determining which agency should provide the OSC. The RRT shall designate the OSC if the RRT member agencies who have response authority within the affected areas are unable to agree on the designation. The NRT shall designate the OSC if members of one RRT or two adjacent RRTs are unable to agree on the designation.

5.3.8 Worker health and safety. (a) Response actions under the NCP shall comply with the provisions for response action worker safety and health in 29 CFR 1910.120. The national response system meets the requirements of 29 CFR 1910.120 concerning use of an incident command system.

(b) In a response action taken by a responsible party, the responsible party must assure that an occupational safety and health program consistent with 29 CFR 1910.120 is made available for the protection of workers at the response site.

(c) In a response taken under the NCP by a lead agency, an occupational safety and health program should be made available for the protection of workers at the response site, consistent with, and to the extent required by, 29 CFR 1910.120. Contracts relating to a response action under the NCP should contain assurances that the contractor at the response site will comply with this program and with any applicable provisions of the Occupational Safety and Health Act of 1970 (OSH Act) and state laws with plans approved under section 18 of the OSH Act.

(d) When a state, or political subdivision of a state, without an OSHA-approved state plan is the lead agency for response, the state or political subdivision must comply with standards in 40 CFR part 311, promulgated by the EPA pursuant to section 126(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA).

(e) Requirements, standards, and regulations of the OSH Act and of state OSH laws not directly referenced in paragraphs (a) through (d) of this section, must be complied with where applicable. Federal OSH Act requirements include, among other things, Construction Standards (29 CFR part 1926), General Industry Standards (29 CFR part 1910), and the general duty requirement of section 5(a)(1) of the OSH Act (29 U.S.C. 654(a)(1)). No action by the lead agency with respect to response activities under the NCP constitutes an exercise of statutory authority within the meaning of section 4(b)(1) of the

OSH Act. All governmental agencies and private employers are directly responsible for the health and safety of their own employees.

5.4 Disposal

Oil recovered in cleanup operations shall be disposed of in accordance with the RCP, ACP, and any applicable laws, regulations, or requirements. RRT and ACP guidelines may identify the disposal plans to be followed during an oil spill response and may address: the sampling, testing, and classifying of recovered oil and oiled debris; the segregation and stockpiling of recovered oil and oiled debris; prior state disposal approvals and permits; and the routes; methods (e.g., recycle/reuse, on-site burning, incineration, landfilling, etc.); and sites for the disposal of collected oil, oiled debris, and animal carcasses.

5.5 Natural Resource Trustees

5.5.1 Damage assessment. (a) Upon notification or discovery of injury to, destruction of, loss of, or threat to natural resources, trustees may, pursuant to section 1006 of the OPA, take the following actions as appropriate:

(1) Conduct a preliminary survey of the area affected by the discharge to determine if trust resources under their jurisdiction are, or potentially may be, affected;

(2) Cooperate with the OSC in coordinating assessments, investigations, and planning;

(3) Carry out damage assessments; or

(4) Devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources. In assessing damages to natural resources, the federal, state, and Indian tribe trustees have the option of following the procedures for natural resource damage assessments located at 43 CFR part 11.

(b) Upon notification or discovery of injury to, destruction of, loss of, or loss of use of, natural resources, or the potential for such, resulting from a discharge of oil occurring after August 18, 1990, the trustees, pursuant to section 1006 of the OPA, are to take the following actions:

(1) In accordance with OPA section 1006(c), determine the need for assessment of natural resource damages, collect data necessary for a potential damage assessment, and, where appropriate, assess damages to natural resources under their trusteeship; and

(2) As appropriate, and subject to the public participation requirements of OPA section 1006(c), develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(c)(1) The trustees, consistent with procedures specified in the Fish and Wildlife and Sensitive Environments Annex to the Area Contingency Plan, shall provide timely advice on recommended actions concerning trustee resources that are potentially affected by a discharge of oil. This may include providing assistance to the OSC in identifying/recommending pre-approved response techniques and in predesignating shoreline types and areas in ACPs.

(2) The trustees shall assure, through the lead administrative trustee, that the OSC is informed of their activities regarding natural resource damage assessment that may affect response operations in order to assure coordination and minimize any interference with such operations. The trustees shall assure, through the lead administrative trustee, that all data from the natural resource damage assessment activities that may support more effective operational decisions are provided in a timely manner to the OSC.

(3) The OSC deploys federal response resources, including but not limited to aircraft, vessels, and booms to contain and remove discharged oil. When circumstances permit, the OSC shall share the use of federal response resources with the trustees, providing trustee activities do not interfere with response actions. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other trustees during response operations and is responsible for applying to the OSC for non-monetary federal response resources on behalf of all trustees. The lead administrative trustee is also responsible for applying to the National Pollution Funds Center for funding for initiation of damage assessment for injuries to natural resources.

(d) The authority of federal trustees includes, but is not limited to the following actions:

(1) Requesting that the Attorney General seek compensation from the responsible parties for the damages assessed and for the costs of an assessment and of restoration planning;

(2) Participating in negotiations between the United States and potentially responsible parties (PRPs) to obtain PRP-financed or PRP-conducted assessments and restorations for injured resources or protection for threatened resources and to agree to covenants not to sue, where appropriate; and

(3) Initiating damage assessments, as provided in OPA section 6002.

(e) Actions which may be taken by any trustee pursuant to section 311(f)(5) of the CWA or section 1006 of the OPA include, but are not limited to, any of the following:

(1) Requesting that an authorized agency issue an administrative order or pursue injunctive relief against the parties responsible for the discharge; or

(2) Requesting that the lead agency remove, or arrange for the removal of any oil from a contaminated medium pursuant to section 311 of the CWA.

5.5.2 Lead administrative trustee. The lead administrative trustee is a natural resource trustee who is designated on an incident-by-incident basis and chosen by the other trustees whose natural resources are affected by the incident. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other trustees during response operations and is responsible for applying to the OSC for non-monetary federal response resources on behalf of all trustees. The lead administrative trustee is also responsible for applying to the National Pollution Funds Center for funding for initiation of damage assessment for injuries to natural resources.

5.5.3 OSC coordination. (a) The OSC shall ensure that the natural resource trustees are promptly notified in the event of any discharge of oil, to the maximum extent practicable, as provided in the Fish and Wildlife and Sensitive Environments Plan annex to the ACP for the area in which the discharge occurs. The OSC and the trustees shall coordinate assessments, evaluations, investigations, and planning with respect to appropriate removal actions. The OSC shall consult with the affected trustees on the appropriate removal action to be taken.

(b) The trustees will provide timely advice concerning recommended actions with regard to trustee resources that are potentially affected. This may include providing assistance to the OSC in identifying/recommending pre-approved response techniques, and in predesignating shoreline types and areas in ACPs.

(c) The trustees also will assure that the OSC is informed of their activities regarding natural resource damage assessment that may affect response operations.

5.5.4 Dissemination of information. (a) When an incident occurs, it is imperative to give the public prompt, accurate information on the nature of the incident and the actions underway to mitigate the damage. OSCs and community relations personnel should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response. They should coordinate with available public affairs/community relations resources to carry out this responsibility by establishing, as appropriate, a Joint Information Center bringing together resources from federal and state agencies and the responsible party.

(b) An on-scene news office may be established to coordinate media relations and to issue official federal information on an incident. Whenever possible, it will be headed by a representative of the lead agency. The OSC determines the location of the on-scene news office, but every effort should be made to locate it near the scene of the incident. If a participating agency believes public interest warrants the issuance of statements and an on-scene news office has not been established, the affected agency should recommend its establishment. All federal news releases or statements by participating agencies should be cleared through the OSC. Information dissemination relating to natural resource damage assessment activities shall be coordinated through the lead administrative trustee. The designated lead administrative trustee may assist the OSC by disseminating information on issues relating to damage assessment activities. Following termination of the removal activity, information dissemination on damage assessment activities shall be through the lead administrative trustee.

5.5.5 Responsibilities of trustees. (a) Where there are multiple trustees, because of coexisting or contiguous natural resources or concurrent jurisdictions, they should coordinate and cooperate in carrying out these responsibilities.

(b) Trustees are responsible for designating to the RRTs and the Area Committees, for inclusion in the RCP and the ACP, appropriate contacts to receive notifications from the OSCs of discharges.

(c)(1) Upon notification or discovery of injury to, destruction of, loss of, or threat to

natural resources, trustees may, pursuant to section 311(f)(5) of the CWA, take the following or other actions as appropriate:

(A) Conduct a preliminary survey of the area affected by the discharge or release to determine if trust resources under their jurisdiction are, or potentially may be, affected;

(B) Cooperate with the OSC in coordinating assessments, investigations, and planning;

(C) Carry out damage assessments; or

(D) Devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources. In assessing damages to natural resources, the federal, state, and Indian tribe trustees have the option of following the procedures for natural resource damage assessments located at 43 CFR part 11.

(2) Upon notification or discovery of injury to, destruction of, loss of, or loss of use of, natural resources, or the potential for such, resulting from a discharge of oil occurring after August 18, 1990, the trustees, pursuant to section 1006 of the OPA, are to take the following actions:

(A) In accordance with OPA section 1006(c), determine the need for assessment of natural resource damages, collect data necessary for a potential damage assessment, and, where appropriate, assess damages to natural resources under their trusteeship; and

(B) As appropriate, and subject to the public participation requirements of OPA section 1006(c), develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship;

(3)(A) The trustees, consistent with procedures specified in the Fish and Wildlife and Sensitive Environments Annex to the Area Contingency Plan, shall provide timely advice on recommended actions concerning trustee resources that are potentially affected by a discharge of oil. This may include providing assistance to the OSC in identifying/recommending pre-approved response techniques and in predesignating shoreline types and areas in ACPs.

(B) The trustees shall assure, through the lead administrative trustee, that the OSC is informed of their activities regarding natural resource damage assessment that may affect response operations in order to assure coordination and minimize any interference with such operations. The trustees shall assure, through the lead administrative trustee, that all data from the natural resource damage assessment activities that may support more effective operational decisions are provided in a timely manner to the OSC.

(C) When circumstances permit, the OSC shall share the use of federal response resources (including but not limited to aircraft, vessels, and booms to contain and remove discharged oil) with the trustees, providing trustee activities do not interfere with response actions. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other trustees during response operations and is responsible for applying to the OSC for non-monetary federal response resources on behalf of all trustees. The lead administrative trustee also is responsible for applying to the National Pollution Funds Center for funding for initiation of damage assessment for injuries to natural resources.

(d) The authority of federal trustees includes, but is not limited to the following actions:

(1) Requesting that the Attorney General seek compensation from the responsible parties for the damages assessed and for the costs of an assessment and of restoration planning; and

(2) Initiating damage assessments, as provided in OPA section 6002.

(e) Actions which may be taken by any trustee pursuant to section 1006 of the OPA include, but are not limited to, any of the following:

(1) Requesting that an authorized agency issue an administrative order or pursue injunctive relief against the parties responsible for the discharge or release; or

(2) Requesting that the lead agency remove, or arrange for the removal of, or provide for remedial action with respect to, any oil from a contaminated medium pursuant to section 311 of CWA.

5.6 Oil spill liability trust fund.

5.6.1 Funding. (a) The OSLTF is available under certain circumstances to fund removal of oil performed under section 311 of the CWA. Those circumstances and the procedures for accessing the OSLTF are described in 33 CFR Subchapter M. The responsible party is liable for costs of federal removal and damages in accordance with section 311(f) of the CWA, section 1002 of the OPA, and other federal laws.

(b) Response actions other than removal, such as scientific investigations not in support of removal actions or law enforcement, shall be provided by the agency with legal responsibility for those specific actions.

(c) The funding of a response to a discharge from a federally owned, operated, or supervised facility or vessel is the responsibility of the owning, operating, or supervising agency if it is a responsible party.

(d) The following agencies have funds available for certain discharge removal actions:

(1) DOD has two specific sources of funds that may be applicable to an oil discharge under appropriate circumstances. This does not consider military resources that might be made available under specific conditions.

(i) Funds required for removal of a sunken vessel or similar obstruction of navigation are available to the Corps of Engineers through Civil Works Appropriations, Operations and Maintenance, General.

(ii) The U.S. Navy (USN) may conduct salvage operations contingent on defense operational commitments, when funded by the requesting agency. Such funding may be requested on a direct cite basis.

(2) Pursuant to Title I of the OPA, the state or states affected by a discharge of oil may act where necessary to remove such discharge. Pursuant to 33 CFR subchapter M, states may be reimbursed from the OSLTF for the reasonable costs incurred in such a removal.

5.6.2 Claims. (a) Claims are authorized to be presented to the OSLTF under section 1013 of the OPA of 1990, for certain uncompensated removal costs or uncompensated damages resulting from the discharge, or substantial threat of discharge, of oil from a vessel or facility into or upon the navigable waters, adjoining shorelines, or exclusive economic zone of the United States.

(b) Anyone desiring to file a claim against the OSLTF may obtain general information on the procedure for filing a claim from the Director, National Pollution Funds Center, Suite 1000, 4200 Wilson Boulevard, Arlington, Virginia, 22203–1804, (703) 235–4756.

5.7 Documentation and Cost Recovery.

(a) All OSLTF users need to collect and maintain documentation to support all actions taken under the CWA. In general, documentation shall be sufficient to support full cost recovery for resources utilized and shall identify the source and circumstances of the incident, the responsible party or parties, and impacts and potential impacts to public health and welfare and the environment. Documentation procedures are contained in 33 CFR subchapter M.

(b) When appropriate, documentation shall also be collected for scientific understanding of the environment and for research and development of improved response methods and technology. Funding for these actions is restricted by section 6002 of the OPA.

(c) As requested by the NRT or RRT, the OSC shall submit to the NRT or RRT a complete report on the removal operation and the actions taken. The OSC report shall record the situation as it developed, the actions taken, the resources committed, and the problems encountered. The RRT shall review the OSC report with its comments or recommendations within 30 days after the RRT has received the OSC report.

(d) OSCs shall ensure the necessary collection and safeguarding of information, samples, and reports. Samples and information shall be gathered expeditiously during the response to ensure an accurate record of the impacts incurred. Documentation materials shall be made available to the trustees of affected natural resources. The OSC shall make available to the trustees of affected natural resources information and documentation in the OSC's possession that can assist the trustees in the determination of actual or potential natural resource injuries.

(e) Information and reports obtained by the EPA or USCG OSC shall be transmitted to the appropriate offices responsible for follow-up actions.

5.8 National response priorities

(a) Safety of human life must be given the top priority during every response action. This includes any search and rescue efforts in the general proximity of the discharge and the insurance of safety of response personnel.

(b) Stabilizing the situation to preclude the event from worsening is the next priority. All efforts must be focused on saving a vessel that has been involved in a grounding, collision, fire, or explosion, so that it does not compound the problem. Comparable measures should be taken to stabilize a

situation involving a facility, pipeline, or other source of pollution. Stabilizing the situation includes securing the source of the spill and/or removing the remaining oil from the container (vessel, tank, or pipeline) to prevent additional oil spillage, to reduce the need for follow-up response action, and to minimize adverse impact to the environment.

(c) The response must use all necessary containment and removal tactics in a coordinated manner to ensure a timely, effective response that minimizes adverse impact to the environment.

(d) All parts of this national response strategy should be addressed concurrently, but safety and stabilization are the highest priorities. The OSC should not delay containment and removal decisions unnecessarily and should take actions to minimize adverse impact to the environment that begin as soon as a discharge occurs, as well as actions to minimize further adverse environmental impact from additional discharges.

(e) The priorities set forth in this section are broad in nature, and should not be interpreted to preclude the consideration of other priorities that may arise on a site-specific basis.

6.0 Response coordination

6.1 Nongovernmental participation. (a) Industry groups, academic organizations, and others are encouraged to commit resources for response operations. Specific commitments should be listed in the RCP and ACP. Those entities required to develop tank vessel and facility response plans under CWA section 311(j) must be able to respond to a worst case discharge to the maximum extent practicable, and should commit sufficient resources to implement other aspects of those plans.

(b) The technical and scientific information generated by the local community, along with information from federal, state, and local governments, should be used to assist the OSC in devising response strategies where effective standard techniques are unavailable. Such information and strategies will be incorporated into the ACP, as appropriate. The SSC may act as liaison between the OSC and such interested organizations.

(c) ACPs shall establish procedures to allow for well organized, worthwhile, and safe use of volunteers, including compliance with requirements regarding worker health and safety. ACPs should provide for the direction of volunteers by the OSC or by other federal, state, or local officials knowledgeable in contingency operations and capable of providing leadership. ACPs also should identify specific areas in which volunteers can be used, such as beach surveillance, logistical support, and bird and wildlife treatment. Unless specifically requested by the OSC, volunteers generally should not be used for physical removal or remedial activities. If, in the judgment of the OSC, dangerous conditions exist, volunteers shall be restricted from on-scene operations.

(d) Nongovernmental participation must be in compliance with the requirements of subpart H of the NCP if any recovery of costs will be sought.

6.2 Natural resource trustees.

6.2.1 Federal agencies. (a) The President is required to designate in the NCP those federal officials who are to act on behalf of the public as trustees for natural resources. These designated federal officials shall act pursuant to section 1006 of the OPA. "Natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled (hereinafter referred to as "managed or controlled") by the United States, including the resources of the exclusive economic zone.

(b) The following individuals shall be the designated trustee(s) for general categories of natural resources, including their supporting ecosystems. They are authorized to act pursuant to section 1006 of the OPA when there is injury to, destruction of, loss of, or threat to natural resources, including their supporting ecosystems as a result of a discharge of oil. Notwithstanding the other designations in this section, the Secretaries of Commerce and the Interior shall act as trustees of those resources subject to their respective management or control.

(1) The Secretary of Commerce shall act as trustee for natural resources managed or controlled by DOC and for natural resources managed or controlled by other federal agencies and that are found in, under, or using waters navigable by deep draft vessels, tidally influenced waters or waters of the contiguous zone, the exclusive economic zone, and the outer continental shelf. However, before the Secretary takes an action with respect to an affected resource under the management or control of another federal agency, he shall, whenever practicable, seek to obtain concurrence of that other federal agency. Examples of the Secretary's trusteeship include the following natural resources and their supporting ecosystems: marine fishery resources; anadromous fish; endangered species and marine mammals; and the resources of National Marine Sanctuaries and National Estuarine Research Reserves.

(2) The Secretary of the Interior shall act as trustee for natural resources managed or controlled by DOI. Examples of the Secretary's trusteeship include the following natural resources and their supporting ecosystems: migratory birds; anadromous fish; endangered species and marine mammals; federally owned minerals; and certain federally managed water resources. The Secretary of the Interior shall also be trustee for those natural resources for which an Indian tribe would otherwise act as trustee in those cases where the United States acts on behalf of the Indian tribe.

(3) Secretary for the land managing agency. For natural resources located on, over, or under land administered by the United States, the trustee shall be the head of the department in which the land managing agency is found. The trustees for the principal federal land managing agencies are the Secretaries of DOI, USDA, DOD, and DOE.

(4) Head of Authorized Agencies. For natural resources located within the United States but not otherwise described in this section, the trustee is the head of the federal agency or agencies authorized to manage or control those resources.

6.2.2 State. (a) State trustees shall act on behalf of the public as trustees for natural resources, including their supporting ecosystems, within the boundary of a state or belonging to, managed by, controlled by, or appertaining to such state. For the purposes of section 6.1, the definition of the term "state" does not include Indian tribes.

(b) The Governor of a state is encouraged to designate a lead state trustee to coordinate all state trustee responsibilities with other trustee agencies and with response activities of the RRT and OSC. The state's lead trustee would designate a representative to serve as a contact with the OSC. This individual should have ready access to appropriate state officials with environmental protection, emergency response, and natural resource responsibilities. The EPA Administrator or USCG Commandant or their designees may appoint the lead state trustee as a member of the Area Committee. Response strategies should be coordinated between the state and other trustees and the OSC for specific natural resource locations in an inland or coastal zone, and should be included in the Fish and Wildlife and Sensitive Environments Plan annex of the ACP.

6.2.3 Indian tribes. The tribal chairmen (or heads of the governing bodies) of Indian tribes, as defined in section 1.5, or a person designated by the tribal officials, shall act on behalf of the Indian tribes as trustees for the natural resources, including their supporting ecosystems, belonging to, managed by, controlled by, or appertaining to such Indian tribe, or held in trust for the benefit of such Indian tribe, or belonging to a member of such Indian tribe, if such resources are subject to a trust restriction on alienation. When the tribal chairman or head of the tribal governing body designates another person as trustee, the tribal chairman or head of the tribal governing body shall notify the President of such designation.

6.2.4 Foreign trustees. Pursuant to section 1006 of the OPA, foreign trustees shall act on behalf of the head of a foreign government as trustees for natural resources belonging to, managed by, controlled by, or appertaining to such foreign government.

6.3 Federal agencies.

(a) Federal agencies listed in this appendix have duties established by statute, executive order, or Presidential directive which may apply to federal response actions following, or in prevention of, the discharge of oil. Some of these agencies also have duties relating to the restoration, rehabilitation, replacement, or acquisition of equivalent natural resources injured or lost as a result of such discharge. The NRT, RRT, and Area Committee organizational structure, and the NCP, RCPs, and ACPs provide for agencies to coordinate with each other in carrying out these duties.

(b) Federal agencies may be called upon by an OSC during response planning and implementation to provide assistance in their respective areas of expertise, consistent with the agencies' capabilities and authorities.

(c) In addition to their general responsibilities, federal agencies should:

(1) Make necessary information available to the Secretary of the NRT, RRTs, Area Committees, and OSCs;

(2) Provide representatives to the NRT and RRTs and otherwise assist RRTs and OSCs, as necessary, in formulating RCPs and ACPs; and

(3) Inform the NRT, RRTs, and Area Committees consistent with national security considerations, of changes in the availability of resources that would affect the operations implemented under the NCP.

(d) All federal agencies must report discharges of oil, as required in 40 CFR part 110, from vessels or facilities under their jurisdiction or control to the NRC.

6.4 Other Federal agencies.

6.4.1 Department of Commerce. (a) The DOC, through NOAA, provides scientific support for response and contingency planning in coastal and marine areas, including assessments of the hazards that may be involved, predictions of movement and dispersion of oil through trajectory modeling, and information on the sensitivity of coastal environments to oil and associated cleanup and mitigation methods; provides expertise on living marine resources and their habitats, including endangered species, marine mammals and National Marine Sanctuary ecosystems; and provides information on actual and predicted meteorological, hydrological, ice, and oceanographic conditions for marine, coastal, and inland waters, and tide and circulation data for coastal and territorial waters and for the Great Lakes. In addition to this expertise, NOAA provides SSCs in the coastal zone, as described under section 3.3.3 of this appendix, Special teams.

6.4.2 Department of Justice. The DOJ can provide expert advice on complicated legal questions arising from discharges, and federal agency responses. In addition, the DOJ represents the federal government, including its agencies, in litigation relating to such discharges. Other legal issues or questions shall be directed to the federal agency counsel for the agency providing the OSC for the response.

6.4.3 Department of Defense. The DOD has responsibility to take all action necessary with respect to discharges where either the discharge is on, or the sole source of a discharge is from, any facility or vessel under the jurisdiction, custody, or control of DOD. In addition to those capabilities provided by SUPSALV, DOD may also, consistent with its operational requirements and upon request of the OSC, provide locally deployed USN oil spill response equipment and provide assistance to other federal agencies upon request. The following two branches of DOD have particularly relevant expertise:

(a) The United States Army Corps of Engineers has specialized equipment and personnel for maintaining navigation channels, for removing navigation obstructions, for accomplishing structural repairs, and for performing maintenance to hydropower electric generating equipment. The Corps can also provide design services, perform construction, and provide contract writing and contract administrative services for other federal agencies.

(b) The U.S. Navy Supervisor of Salvage (SUPSLAV) is the branch of the service within DOD most knowledgeable and experienced in ship salvage, shipboard damage control, and diving. The USN has an extensive array of specialized equipment and personnel available for use in these areas as well as specialized containment, collection, and removal equipment specifically designed for salvage-related and open-sea pollution incidents.

6.4.4 Department of Health and Human Services. (a) The HHS assists with the assessment, preservation, and protection of human health and helps ensure the availability of essential human services. HHS provides technical and nontechnical assistance in the form of advice, guidance, and resources to other federal agencies as well as state and local governments.

(b) The principal HHS response comes from the U.S. Public Health Service and is coordinated from the Office of the Assistant Secretary for Health, and various Public Health Service regional offices. Within the Public Health Service, the primary response to a hazardous materials emergency comes from the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control (CDC). Both ATSDR and CDC have a 24-hour emergency response capability wherein scientific and technical personnel are available to provide technical assistance to the lead federal agency and state and local response agencies on human health threat assessment and analysis, and exposure prevention and mitigation. Such assistance is used for situations requiring evacuation of affected areas, human exposure to hazardous materials, and technical advice on mitigation and prevention. CDC takes the lead during petroleum releases regulated under the CWA and OPA while ATSDR takes the lead during chemical releases under CERCLA. Both agencies are mutually supportive.

(c) Other Public Health Service agencies involved in support during hazardous materials incidents either directly or through ATSDR/CDC include the Food and Drug Administration, the Health Resources and Services Administration, the Indian Health Service, and the National Institutes of Health.

(d) Statutory authority for HHS/National Institutes for Environmental Health Sciences (NIEHS) involvement in hazardous materials accident prevention is non-regulatory in nature and focused on two primary areas for preventing community and worker exposure to hazardous materials releases: (1) worker safety training and (2) basic research activities. Under section 126 of the SARA, NIEHS is given statutory authority for supporting development of curricula and model training programs for waste workers and chemical emergency responders. Under section 118(b) of the Hazardous Materials Transportation and Uniform Safety Act, NIEHS also administers the Hazmat Employee Training Program to prepare curricula and training for hazardous materials transportation workers. In the basic research arena, NIEHS is authorized under section 311 of SARA to conduct a hazardous substance basic research and training program to evaluate toxic effects and assess human health risks from accidental releases of hazardous materials. Under Title IX, section 901(h) of the Clean Air Act Amendments, NIEHS also is authorized to conduct basic research on air pollutants, as well as train physicians in environmental health. Federal research and training in hazardous materials release prevention represents an important non-regulatory activity and supplements ongoing private sector programs.

6.4.5 Department of the Interior. The DOI may be contacted through Regional Environmental Officers, who are the designated members of RRTs. Department land managers have jurisdiction over the national park system, national wildlife refuges and fish hatcheries, the public lands, and certain water projects in western states. In addition, bureaus and offices have relevant expertise as follows:

(a) United States Fish and Wildlife Service and other Bureaus: Anadromous and certain other fishes and wildlife, including endangered and threatened species, migratory birds, and certain marine mammals; waters and wetlands; and effects on natural resources.

(b) The National Biological Survey performs research in support of biological resource management; inventories, monitors, and reports on the status and trends in the Nation's biotic resources; and transfers the information gained in research and monitoring to resource managers and others concerned with the care, use, and conservation of the Nation's natural resources. The National Biological Survey has laboratory/research facilities.

(c) Geological Survey: Geology, hydrology (ground water and surface water), and natural hazards.

(d) Bureau of Land Management: Minerals, soils, vegetation, wildlife, habitat, archaeology, and wilderness.

(e) Minerals Management Service: Oversight of offshore oil and gas exploration and production facilities and associated pipeline facilities under the Outer Continental Shelf Lands Act and the CWA; oil spill response technology research; and establishing oil discharge contingency planning requirements for offshore facilities.

(f) Bureau of Mines: Analysis and identification of inorganic hazardous substances and technical expertise in metals and metallurgy relevant to site cleanup.

(g) Office of Surface Mining: Coal mine wastes and land reclamation.

(h) National Park Service: General biological, natural, and cultural resource managers to evaluate, measure, monitor, and contain threats to park system lands and resources; archaeological and historical expertise in protection, preservation, evaluation, impact mitigation, and restoration of cultural resources; emergency personnel.

(i) Bureau of Reclamation: Operation and maintenance of water projects in the West; engineering and hydrology; and reservoirs.

(j) Bureau of Indian Affairs: Coordination of activities affecting Indian lands; assistance in identifying Indian tribal government officials.

(k) Office of Territorial Affairs: Assistance in implementing the NCP in American Somoa, Guam, the Pacific Island Governments, the Northern Mariana Islands, and the Virgin Islands.

6.4.6 Department of Justice. The DOJ can provide expert advice on complicated legal questions arising from discharges, and federal agency responses. In addition, the DOJ represents the federal government, including its agencies, in litigation relating to such discharges. Other legal issues or questions shall be directed to the federal agency counsel for the agency providing the OSC for the response.

6.4.7 Department of Labor. The DOL, through OSHA and the states operating plans approved under section 18 of the OSH Act, has authority to conduct safety and health inspections of hazardous waste sites to assure that employees are being protected and to determine if the site is in compliance with:

(a) Safety and health standards and regulations promulgated by OSHA (or the states) in accordance with section 126 of SARA and all other applicable standards; and

(b) Regulations promulgated under the OSH Act and its general duty clause. OSHA inspections may be self-generated, consistent with its program operations and objectives, or may be conducted in response to requests from EPA or another lead agency, or in response to accidents or employee complaints. On request, OSHA shall provide advice and consultation to EPA and other NRT/RRT agencies as well as to the OSC regarding hazards to persons engaged in response activities. OSHA may also take any other action necessary to assure that employees are properly protected at such response activities. Any questions about occupational safety and health at these sites may be referred to the OSHA Regional Office.

6.4.8 Federal Emergency Management Agency. FEMA provides guidance, policy and program advice, and technical assistance in hazardous materials, chemical, and radiological emergency preparedness activities (including planning, training, and exercising). FEMA's primary point of contact for administering financial and technical assistance to state and local governments to support their efforts to develop and maintain an effective emergency management and response capability is the Preparedness, Training, and Exercises Directorate.

6.4.9 Department of Energy. The DOE generally provides designated OSCs that are responsible for taking all response actions with respect to releases where either the release is on, or the sole source of the release is from, any facility or vessel under its jurisdiction, custody, or control, including vessels bareboat-chartered and operated. In addition, under the FRERP, DOE provides advice and assistance to other OSCs/RPMs for emergency actions essential for the control of immediate radiological hazards. Incidents that qualify for DOE radiological advice and assistance are those believed to involve source, by-product, or special nuclear material or other ionizing radiation sources, including radium, and other naturally occurring radionuclides, as well as particle accelerators. Assistance is available through direct contact with the appropriate DOE Radiological Assistance Program Regional Office.

6.4.10 Department of State. The DOS will lead in the development of international joint contingency plans. It will also help to coordinate an international response when discharges or releases cross international boundaries or involve foreign flag vessels. Additionally, DOS will coordinate requests for assistance from foreign governments and U.S. proposals for conducting research at incidents that occur in waters of other countries.

6.4.11 General Services Administration. The GSA provides logistic and telecommunications support to federal agencies. During an emergency situation, GSA quickly responds to aid state and local governments as directed by other Federal Agencies. The type of support provided might include leasing and furnishing office space, setting up telecommunications and transportation services, and advisory assistance.

6.4.12 Department of Transportation. DOT provides response expertise pertaining to transportation of oil by all modes of transportation. DOT, through RSPA, establishes oil discharge contingency planning requirements for pipelines, transport by rail and containers or bulk transport of oil.

6.5 States and local participation in response.

(a) Each state Governor is requested to designate one state office/representative to represent the state on the appropriate RRT. The state's office/representative may participate fully in all activities of the appropriate RRT. Each state Governor is also requested to designate a lead state agency that shall direct state-lead response operations. This agency is responsible for designating the OSC for state-lead response actions, and coordinating/communicating with any other state agencies, as appropriate. Local governments are invited to participate in activities on the appropriate RRT as may be provided by state law or arranged by the state's representative. Indian tribes wishing to participate should assign one person or office to represent the tribal government on the appropriate RRT.

(b) Appropriate state and local officials (including Indian tribes) shall participate as part of the response structure as provided in the ACP.

(c) In addition to meeting the requirements for local emergency plans under SARA section 303, state and local government agencies are encouraged to include contingency planning for responses, consistent with the NCP, RCP, and ACP in all emergency and disaster planning.

(d) For facilities not addressed under the CWA for oil discharges, states are encouraged to undertake response actions themselves or to use their authorities to compel potentially responsible parties to undertake response actions.

(e) Because state and local public safety organizations would normally be the first government representatives at the scene of a discharge or release, they are expected to initiate public safety measures that are necessary to protect the public health and welfare and that are consistent with containment and cleanup requirements in the NCP, and are responsible for directing evacuations pursuant to existing state or local procedures.

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Part III

Department of Interior

Bureau of Indian Affairs

Environmental Statements; Availability, etc.; Yellowstone Pipeline, Flathead Indian Reservation, Montana; Notice

DEPARTMENT OF INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Renewal of Rights-of-Way Grants and Easements for the Yellowstone Pipeline, Flathead Indian Reservation, MT

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Intent.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs, Flathead Agency intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for the renewal of the rights-of-way (ROW) grants and easements for the Yellowstone Pipeline across trust and allotted lands situated on the Flathead Indian Reservation, Montana. This notice is to be published in accordance with the National Environmental Policy Act (NEPA) regulations. The purpose of this notice is to obtain suggestions and information from other agencies and the public on the scope of the issues to be addressed in the EIS. Comments and participation in this scoping process are encouraged.

DATES: Comments should be received before October 14, 1994. A Public Scoping Meeting will be held on September 29, 1994, at the Tribal Council Chambers, Pablo, MT, from 6 to 9 pm. Additional public scoping meetings may be held in Reservation or affected communities, as appropriate.

ADDRESSES: Comments should be addressed to Jim Beyer, NEPA Coordinator, Bureau of Indian Affairs, Flathead Agency, Forestry Division, Box A, Pablo, MT 59855.

FOR FURTHER INFORMATION CONTACT: Jim Beyer, BIA, (406) 675–7201 ext. 260.

SUPPLEMENTARY INFORMATION: *Proposed action:* to renew the right-of-way (ROW) easement grant to Yellowstone Pipeline Company for certain portions of approximately 21 miles in aggregate length of an existing petroleum products pipeline under and across, and over and across trustee lands situated in Missoula, Lake, and Sanders Counties, State of Montana, within the Flathead Indian Reservation.

Background: the pipeline was constructed in 1954 and has operated continuously since that date under previous ROW easements granted by the Bureau of Indian Affairs. The present easement was granted on April 21, 1975 and expires on April 21, 1995. The EIS is being prepared to comply with the procedural requirements of the National Environmental Policy Act (NEPA). The BIA will use the EIS to determine if the proposed action should be modified in any manner.

Purpose and need: Renewal of the ROW is necessary to allow continued operation of the pipeline to serve the needs of the public. The Yellowstone pipeline is an interstate common-carrier pipeline which transports refined petroleum products from refineries in Billings, Montana, to markets in western Montana and eastern Washington. The segment of the pipeline which crosses the Flathead Reservation is the primary source of supply of refined petroleum products to the greater Spokane, Washington area; population approximately 750,000 persons. The pipeline supplies gasoline, diesel fuel, and jet fuel for consumers as well as commercial and industrial customers over a large area of eastern Washington, including the supply of military jet fuel to the United States Air Force for national defense purposes.

Potential alternatives: (1) no change to the existing condition; (2) consideration of alternative routes outside of the Flathead Reservation; (3) other reasonable alternatives identified as a result of public input.

Dated: September 8, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–22796 Filed 9–14–94; 8:45 am]

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September 15, 1994

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Community Development Block Grants: Small Cities Program and Related Amendments; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R–94–1591; FR–2879–P–02]

RIN 2506–AB11

Community Development Block Grants: Small Cities Program and Related Amendments

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise HUD regulations in 24 CFR part 570, subpart F, which govern the administration of the Community Development Block Grant (CDBG) Small Cities Program. The purpose of subpart F is to set forth the procedures by which CDBG funds are provided to non-entitled units of general local government in those States which have *not* elected to assume administration of the CDBG formula allocations for use in non-entitled units of general local government within such States. The proposed rule would amend subpart F to incorporate the statutory changes made to the Small Cities Program since the subpart F regulations were issued in 1982, and to streamline the operation and administration of the program. In addition, the proposed rule makes additional changes to subpart F, and various changes to subparts I and M which are necessary to permit use of the section 108 loan guarantee authority by non-entitled units of general local government in States which have not elected to assume administration of the CDBG formula allocations for nonentitlement areas of such States.

DATES: Comments Due Date: October 17, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Stephen M. Rhodeside, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–1322 (voice) or (202) 708–2565 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

This proposed rule does not propose to add information collection requirements to the regulations in 24 CFR part 570, subparts F, I, or M.

II. Background

Title I of the Housing and Community Development Act of 1974 (Title I) establishes the Community Development Block Grant (CDBG) Program. Seventy percent of the annual appropriation for the CDBG Program is awarded as formula-based grants to entitlement jurisdictions with the remaining thirty percent available for non-entitled units of general local government, based upon formula allocations by State. CDBG funds for non-entitled jurisdictions are made available through one of two methods: the State CDBG Program or the HUD-administered Small Cities Program (Small Cities Program). These programs both serve smaller communities, including those located in rural areas.

The regulations governing the CDBG Program are set forth in 24 CFR part 570. The regulations governing the Small Cities Program are set forth in 24 CFR part 570, subpart F (§§ 570.420–570.438).

The purpose of subpart F is to set forth the procedures by which CDBG funds are provided to non-entitled units of general local government in those States which have not elected to assume administration of the CDBG Program for non-entitled units of general local government within their jurisdiction.

Prior to the enactment of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Pub. L. 97–35, approved August 13, 1981), HUD administered the CDBG Small Cities Program in all States. However, OBRA contained a provision which afforded States the opportunity to assume administrative responsibility for the Small Cities Program, thereby creating the State CDBG Program (i.e., State administration of CDBG nonentitlement funds). Thirty-eight (38) States elected to administer the non-entitled CDBG Program in Fiscal Year 1982 with an additional nine making the election beginning with Fiscal Year 1983. Currently, forty-nine (49) "States" (as defined in § 570.3, which includes Puerto Rico) administer the CDBG Program for non-entitled units of general local government.

If a State that currently administers the CDBG Program declines to continue its administration, under existing law CDBG funds would not be available to non-entitled units of general local government in that State during the Fiscal Year for which the State did not administer the program. Any CDBG funds not allocated in a Fiscal Year for this reason would be reallocated among all States in the succeeding Fiscal Year. Only two States, Hawaii and New York, have not exercised their option to assume administration of the CDBG Program for non-entitled units of general local government. Accordingly, for some time, the regulations in subpart F have been applicable only to Hawaii and New York.

The existing subpart F regulations were promulgated in 1982 and remain essentially unchanged from the original language despite substantial statutory amendments to Title I, and several changes to the nature of the Small Cities Program subsequent to 1982.

This proposed rule would amend subpart F to specifically address HUD's administration of the Small Cities Program in the States of Hawaii and New York. Additionally, the proposed rule would incorporate the amendment made by section 902 of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (NAHA) which requires an overall low- and moderate-income benefit of not less than 70 percent in the use of grant funds. HUD emphasizes that this requirement applies to each grant made through the Small Cities Program. Individual activities are still required to provide at least 51 percent low- and moderate-income benefit in order to meet the national objective standard of benefit for low- and moderate-income persons.

HUD is considering aggregating the 70 percent requirement for grants in the New York Small Cities Program to include grants received over a one, two, or three year period as well as section 108 loan guarantees received during the period chosen by the grantee. The Department is also considering aggregating guaranteed loan funds in Hawaii with Small Cities Funds received over a one, two or three year period. The Department specifically requests comments on this proposal, including specifics on how it would work.

The majority of the other statutory changes since 1982 which affect the CDBG Program, including the Small Cities Program, are proposed to be incorporated in subpart F by reference

to other subparts within part 570, which already have implemented these statutory changes. These statutory changes are not specifically addressed in the proposed rule and, as a result, will not be discussed in this preamble.

The most significant change that is proposed to be made to subpart F by this rule is the elimination of the sections setting forth the selection system for Single Purpose and Comprehensive Small Cities Grants. As a result of this change, the grant process for New York State will be more flexible for the small communities of New York State, and the Small Cities Program will be able to more readily respond to changing priorities. The specific requirements for the process of awarding grants to particular grantees will be contained in a Notice of Funding Availability (NOFA) which will be promulgated for each Fiscal Year's funding. The NOFA will contain the specific guidelines for all competition(s) that HUD will hold during a fiscal year. If it is decided to hold a competition among the three eligible entities in Hawaii, a separate NOFA may be issued for the Hawaii competition.

In addition, two non-competitive uses of funds are proposed by the regulation; the use of funds to eliminate imminent threats to health and safety, and the use of funds to make payments on Section 108 loan guarantees to non-entitlement units of general local government in New York or Hawaii. These are more fully described below. Other non-competitive uses of funds may be added by a NOFA.

HUD specifically invites comments from the public on these changes. The new program flexibility will allow HUD to consider taking such actions as having one or several Economic Development set asides with an emphasis on providing funding for high impact Economic Development activities that are oriented to helping the very low income families (families whose income does not exceed 50 percent of median income). This could possibly include microenterprises. A microenterprise is defined by section 807(c)(2) of the Housing and Community Development Act of 1992 as a "commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise."

Other possibilities include providing funding to support communities that have been designated as being part of an Empowerment Zone or Enterprise Community, and providing support to communities that have suffered base closures. HUD is considering having more than one competition in each fiscal year.

The Department is also considering developing a selection system for grants to fund projects with multiyear comprehensive strategies and funding for projects to be done in stages. The Department is trying to structure this in a manner that will be consistent with the requirements of the Anti-Deficiency Act (31 U.S.C. 1241(a)(1)). If actions such as these are to be taken, they will be described in the NOFA.

The provisions governing the program in the State of Hawaii have been changed. Unless the NOFA provides otherwise, the three eligible entities in Hawaii will be treated in these regulations as much like entitlement grantees as is possible under the statute. This includes using the Grantee Performance Report for all grants received after FY 1994, and the elimination of the closeout requirement for all grants received after FY 1994. Starting in FY 1995, the 20 percent planning and administrative cost limitation will be based on 20 percent of the grant amount plus the program income received from post FY 1994 grants during the program year. Starting in FY 1996, the 15 percent public service limitation will be based on 15 percent of the grant amount plus 15 percent of the program income received in the previous program year. This is a change from the existing policy which tracks administrative costs and public service expenditures on a grant by grant basis. Starting in FY 1996 the counties in Hawaii will be covered by the requirements of § 570.902(a) which requires grantees to have less than 1.5 times their grant outstanding 60 days prior to the beginning of their next program year. If a grantee does not meet this threshold, it will be up to the Honolulu Office to make a finding and negotiate a resolution with the Hawaii grantees which could include adjusting the size of the grant.

Section 570.432 of the proposed rule permits the Secretary to make grants to pay the amounts due on Section 108 obligations, if necessary to prevent default. This proposed change would support the proposed change to the regulations in 24 CFR part 570, subpart M, which would expand the Section 108 program to non-entitled units of general local government in New York and Hawaii.

Making grants under § 570.432 would be the first priority use of funds during any fiscal year, and would be demand-based rather than competitive. The Department expects that most loan guarantees for non-entitled units of local government in New York and Hawaii will be for economic development activities which will generate program income sufficient to repay the section 108-guaranteed loan. However, if a default were about to occur because the economic development activity did not generate the anticipated program income, or in those limited instances in which the applicant's repayment plan anticipates the use of CDBG grant funds to make repayments, the noncompetitive authority in § 570.432 is necessary to permit HUD to make a grant to the unit of local government to cover the payment due, since non-entitled units of local government do not receive a continuing stream of grants that are available to make payments on section 108 loan guarantees as entitlement CDBG recipients do. The related changes to subpart M and subpart I are discussed in Section V of this preamble.

Section 570.424 would replace current § 570.432 to provide grants for imminent threats. Under the proposed section, fifteen percent of the funds allocated to New York State would be reserved to alleviate imminent threats to public health and safety unless a lower amount was specified in a NOFA. These funds would be made available on a non-competitive basis to alleviate imminent threats to public health and safety that require an immediate resolution. HUD shall verify the urgency and immediacy of the threat with an authority other than the grantee.

Section 570.426 would be added to the regulations to address the subject of program income. This section would state that if a unit of local government has no open CDBG grants at the time of project closeout, program income of the unit of general local government or its subrecipients which amounts to less than $25,000 per year will not be considered program income.

For clarity during review of this rule by the public, the rule sets out all the regulations in subpart F, including those that are not proposed to be revised by this rule. The following highlights the most significant of the changes that are proposed to be made to subpart F by this rule.

III. Summary of Significant Changes Proposed to Subpart F

Section 570.420 General

Paragraphs (c) *Eligible applicants,* (d) *Types of grants,* (e) *Distribution of funds between Comprehensive Grants and Single Purpose Grants,* (f) *Size of grants,* (g) *Restrictions on applying for grants,* (h) *Method of selecting grantees,* (i) *Data used for the needs factors.,* and (j) *Previous audit findings and outstanding monetary obligations* are proposed to be removed from § 570.420.

Section 570.421 New York Small Cities Program Design

A new § 570.421 would replace existing § 570.421 (existing § 570.421 would become § 570.422, as discussed below). Section 570.421 would be titled "New York Small Cities Program Design." Paragraph (a) would set forth who has responsibility for administration of the program. Paragraph (b) would provide that a NOFA, which will be issued at least once per Federal Fiscal Year, will indicate the selection criteria, rating factors for competitive grants, amount of funds available, grants limits, and application requirements. Paragraph (c) would define eligible applicants. Paragraph (d) would allow 100 percent public service grants to be made as long as the 15 percent statewide cap is not exceeded.

Section 570.422 Applications from Joint Applicants

New section § 570.422 (currently a reserved section) would contain the provisions currently in existing section § 570.421, as noted above, with the exception that existing paragraph (b) of § 570.421, which addresses data requirements, would be removed. Data requirements will be addressed in the NOFA to be issued each Fiscal Year.

Section 570.423 Application for the HUD-administered New York Small Cities Grants

New § 570.423 would replace existing § 570.423 ("Comprehensive Grant Program, General Requirements") and would address the application requirements for the New York Small Cities Program, and indicate that threshold requirements will be stated in the NOFA that governs the distribution of funds.

Section 570.424 Grants for Imminent Threats to Public Health and Safety

New § 570.424 would replace existing § 570.424 ("Selection System for Comprehensive Grants"), and would address grants for imminent threats to public health and safety as discussed in Section II of this preamble.

Section 570.425 HUD Review and Actions on Applications for New York State Applicants

New § 570.425 (currently a reserved section) would incorporate the requirements of existing § 570.433 ("HUD Review and Actions on Final Applications for Single Purpose and Comprehensive Applicants"), with the exception that paragraphs (b)(2) *Fundable applications*, and (b)(4) *Non-fundable applications* of existing § 570.433 would be removed. Additionally, the enumerated criteria for conditional grants in paragraph (b)(3) of existing § 570.433 also would be removed.

Section 570.426 Program Income

New § 570.426 would replace existing § 570.426 ("Application for Comprehensive Grants") and address program income, as discussed in Section II of this preamble.

Section 570.427 Program Amendments

New § 570.427 would replace existing § 570.427 (Single Purpose Grant Program General Requirements) and incorporate the requirements of existing § 570.434 which addresses program amendments. Section 570.427 (a)(3) would address amendments for grants received on a non-competitive basis.

Section 570.428 Reallocated Funds

New § 570.428 would replace existing § 570.428 (Selection System for Single Purpose Grants) and would incorporate the requirements of existing§ 570.438 which addresses reallocated funds.

Section 570.429 Hawaii General and Grant Requirements

New § 570.429 (currently a reserved section) would address the general and grant requirements applicable to the State of Hawaii Small Cities Program as discussed in Section II of the preamble.

Section 570.430 Hawaii Program Operation Requirements

New § 570.430 would replace existing § 570.430 (Application for Single Purpose Grants) and address program operation requirements for the State of Hawaii as discussed in Section II of the preamble.

Section 570.431 Citizen Participation

Existing § 570.431 which pertains to citizen participation would be revised to incorporate statutory changes made to the citizen participation requirements by the Housing and Community Development Act of 1988.

Section 570.432 Repayment of Section 108 Loans

New § 570.432 would replace existing § 570.432 (Single Purpose Grants for Imminent Threat to Public Health or Safety), and would address the repayment of Section 108 loans as discussed in Sections II and V of the preamble.

IV. Conforming Amendments Proposed by this Rule

In addition to the changes to be made to 24 CFR part 570, subpart F, this proposed rule would make a conforming amendment to 24 CFR 570.507(a)(2)(ii)(A). Section 570.507(a)(2)(ii)(A) sets forth the submission dates for the performance and evaluation report for the Small Cities Program. Currently grantees are required to submit reports 12 months after grant award and annually thereafter. This requirement means that reports are submitted over a wide time frame, and that one community could be required to submit its reports for multiple projects at different times. Standardizing the reporting date will ease the burden on grantees by allowing them to do all of their reports at the same time. Standardized submission dates will help the field office complete its annual performance review at one time for all of a grantee's projects.

V. Summary of Significant Changes Proposed to Subpart M and Subpart I

Because there are numerous small clarifying changes to subpart M in the proposed rule, it is also being repeated in its entirety for the convenience of the reader. Only the substantive changes are described in this Section V of the preamble.

The most important change proposed to subpart M would allow non-entitled jurisdictions in New York and Hawaii (3 counties) to participate in the section 108 program for the first time. With the increasing emphasis on the use of section 108 loan guarantees in general and for economic development activities in particular, the Department believes it would be unfair to continue to deny the use of section 108 to non-entitled communities in New York and Hawaii. This decision necessitates a series of related changes in subpart F, subpart I and subpart M of the CDBG regulations in 24 CFR 570.

In subpart M, a new section 570.702(c) is added to expressly make nonentitlement "public entities" (the term used in subpart M to refer to units of general local government) eligible to apply for assistance under subpart F (Small Cities Program, now covering only New York and Hawaii) also eligible to apply for section 108 assistance under subpart M. To simplify reference in the rest of subpart M to nonentitlement public entities in the States' Program, a new definition of "State-assisted public entity" is added in § 570.702(c). Generally, nonentitlement public entities in New York and Hawaii are referred to in proposed subpart M as "nonentitlement public entities eligible under subpart F." Most related changes in subpart M amount to nothing more than use of

these new terms and will not be further discussed here.

The other principal change in subpart M which affects nonentitlement public entities in New York and Hawaii is the limitation on loan guarantee amounts in § 570.705(a)(2)(iii). The limit for nonentitlement public entities in Hawaii is five times the most recent grant made to the public entity, similar to that for entitlement public entities. For non-entitlement public entities in New York the limit on loan guarantee amounts is five times the larger of (i) the most recent grant made to the public entity, (ii) the average of the most recent three grants made to the public entity, or (iii) the average of all the grants made in New York State in the previous fiscal year.

It should be noted that two other changes are being made that affect State-assisted public entities. In § 570.704(b)(3), all public entities will now be required to certify that they possess the legal authority necessary to pledge their CDBG grants as required by § 570.705(b)(2). Since all public entities are statutorily required to make this pledge as a condition of receiving a section 108 loan guarantee, there is little reason to limit this certification to entitlement recipients only. Also, in § 570.710 misleading language requiring the State to administer "guaranteed loan funds in the same manner as it administers" CDBG grants is being deleted, since the State is not initially required to receive guaranteed loan proceeds at all, and may or may not have a direct role in supervising the carrying out of the guaranteed loan activity. The extent of the State's role in handling the guaranteed loan proceeds is a matter for negotiation between the State and the public entity involved in a particular guarantee, although the State can deny the public entity the necessary pledge of its grants in support of the guarantee if it is not satisfied with the arrangements for handling the proceeds and carrying out the activity.

The related change in subpart F, adding a new section § 570.432 to permit HUD to make grants in accordance with section 106(d)(3)(B) of Title I to nonentitlement units of general local government where necessary to make payments on section 108 guaranteed loans, has already been alluded to in Sections II and III of this preamble.

Finally, the last change to part 570 necessary to make section 108 loan guarantees available in New York and Hawaii is to provide that should such States later elect to administer the CDBG formula allocations for use in nonentitlement areas of such States, they must agree (pledge) to use such allocations to make any necessary payments on loan guarantees previously approved in such States. Since HUD will no longer be administering the CDBG allocations for non-entitlement areas of such a State if the State elects to do so itself, HUD will no longer have the ability to assure that CDBG grant funds are available to make the necessary payments, and the applicable State must do so. The regulatory change necessary to accomplish this is in new § 570.497 of subpart I, as set forth in the text of the proposed rule below.

In addition, the proposed rule would clarify subpart M by expressly including two new eligibility provisions added by the 1994 Act. Section 231 of the 1994 Act expanded the activities eligible for loan guarantee assistance under section 108 to make acquisition, construction, reconstruction, rehabilitation and installation of public facilities eligible for all applicants, and in the case of activities benefitting colonias, such activities with respect to public works and site or other improvements were made eligible. Although HUD views these statutory eligibility amendments as self-executing and is implementing them in advance of publication of this rule, conforming changes are included in §§ 570.703(l) and (m) of the proposed rule. As an editorial change, § 570.703(h)(3) has been deleted and § 570.703(f)(2) modified to retain eligibility of site preparation, as further described therein, which is undertaken for an economic development purpose.

Section 233 of the 1994 Act also permitted HUD to guarantee trust certificates or other obligations backed by section 108-guaranteed obligations, a technical change which should simplify the section 108 public offering process and slightly lower interest rates. While the new authority in section 233 will be implemented internally by HUD, by changes in the section 108 loan documents and other revisions to the public offering process without the need for new regulations, the proposed rule contains a new, expanded definition of "debt obligation" and other limited revisions which will clarify the regulations and incorporate new statutory language in §§ 570.705(h) and 570.706.

Additional Note Concerning Review of Proposed Rule

In the proposed rule that follows, the term "Act" in the rule refers to Title I of the Housing and Community Development Act of 1974. The term "Act" is defined in 24 CFR 570.3, and is not redefined in subparts F or M.

VI. Justification for Reduced Comment Period

It is the Department's general policy to provide a 60-day public comment period on proposed rules. For this proposed rule, however, the Department is providing a 30-day period. The purpose of the reduced public comment period is to expedite the publication of updated and streamlined regulations for the Small Cities Program.

Non-entitled units of general local government in the States of New York and Hawaii are well familiar with the unwieldy notice of funding availability (NOFA) that is issued each year for the Small Cities Program. Each fiscal year's NOFA for the Small Cities Program becomes lengthier and lengthier because the NOFA, for all intents and purposes, serves as the revised rule. As stated earlier in this preamble, the regulations for the Small Cities Program have not been revised since 1982 even though several statutory changes and administrative changes have been made to the program since that date. Thus, each fiscal year's NOFA must incorporate all the statutory and administrative changes to the program that the existing regulations fail to include. Accordingly, by having updated and streamlined Small Cities Program regulations issued as quickly as possible, the Department anticipates that one significant benefit to non-entitled units of general local government in the States of New York and Hawaii is that the FY 95 funding round for the Small Cities Program will produce a considerably less cumbersome NOFA process.

Additionally, because each fiscal year's NOFA has incorporated the statutory and administrative changes to the Small Cities Program, many of the revisions proposed to be made by this rule are well familiar to the non-entitled units of general local government in the States of New York and Hawaii, and thus, extensive review is not necessary. However, to ensure that these affected entities have sufficient opportunity to review the proposed rule, the Department's New York, Buffalo and Honolulu Offices will have copies of the proposed rule available on the date of publication and ready to be distributed to these entities.

The Department believes that it is in the interest of the non-entitled units of general local government in the States of New York and Hawaii to have revised final regulations in place as quickly as possible.

VII. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), has reviewed this proposed rule before publication, and by approving it certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The rule proposes to modify, simplify and update the administration and procedural requirements of the CDBG Small Cities Program to conform with legislation applicable to this program. Accordingly, the proposed rule is anticipated to have some beneficial impact on small entities. However, the number of small entities that may be affected by this rule would not be substantial and the economic impact would not be significant.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this proposed rule does not have Federalism implications and therefore is not subject to review under the Order. No programmatic or policy changes would result from this rule's promulgation which would have a substantial direct effect on the States, or on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have the potential for significant impact on family formation, maintenance and general well-being, and thus is not subject to review under the Order. No significant changes in existing HUD policies or programs will result from promulgation of this rule.

Regulatory Agenda

This proposed rule was listed as sequence number 1635 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20458) pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance program number is 14.219, Community Development Block Grants—Small Cities Program.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Grant programs—education, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, 24 CFR part 570 would be amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 would be revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

2. Subpart F would be revised to read as follows:

Subpart F—Small Cities Program

Sec.

570.420 General.
570.421 New York Small Cities Program Design.
570.422 Applications from joint applicants.
570.423 Application for the HUD-administered New York Small Cities Grants.
570.424 Grants for imminent threats to public health and safety.
570.425 HUD review and actions on applications for New York State applicants.
570.426 Program income.
570.427 Program amendments.
570.428 Reallocated funds.
570.429 Hawaii general and grant requirements.
570.430 Hawaii program operation requirements.
570.431 Citizen participation.
570.432 Repayment of section 108 loans.

Subpart F—Small Cities Program

§ 570.420 General.

(a) *HUD administration of nonentitlement CDBG funds.* Title I of the Housing and Community Development Act of 1974 permits each State to elect to administer all aspects of the Community Development Block Grant (CDBG) Program annual fund allocation for the nonentitlement areas within its jurisdiction. This subpart sets forth policies and procedures applicable to grants for nonentitlement areas in States that elect not to administer the CDBG Program. States that elected to administer the program after the close of fiscal year 1984 cannot return administration of the program to HUD. A decision by a State to discontinue administration of the program would result in the loss of CDBG funds for nonentitled areas in that State and the reallocation of those funds to all States in the succeeding fiscal year.

(b) *Scope and applicability.* (1) This subpart describes the policies and procedures of the Small Cities Program which apply to nonentitlement areas in States where HUD administers the CDBG Program. HUD currently administers the Small Cities Program in only two States—New York and Hawaii. This subpart addresses the requirements for New York, and § 570.429–30 identifies special procedures applicable to Hawaii.

(2) The allocation of formula CDBG funds for use in non-entitled areas of Hawaii and New York is as provided in subpart A of this part. The policies and procedures set forth in the following identified subparts of this part 570 apply to the HUD-administered Small Cities Program, except as modified or limited under the provisions thereof or this subpart:

(i) Subpart A—General Provisions;
(ii) Subpart C—Eligible Activities;
(iii) Subpart J—Grant Administration;
(iv) Subpart K—Other Program Requirements; and
(v) Subpart O—Performance Reviews.

(c) *Public notification requirements.* (1) Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department. All competitive grants in the HUD-administered Small Cities Program in New York are affected by this legislation, and the requirements identified at 24 CFR part 12 apply to them. Imminent threat grants under § 570.424 and section 108 repayment

grants under § 570.432 are not affected by section 102 as they are not competitive grants.

(2) Unless a NOFA provides for competition, the Hawaii HUD-administered Small Cities Program is not subject to section 102, since the funds are not distributed in a competitive manner.

(d) *Comprehensive Housing Affordability Strategy.* Applications for the HUD-administered Small Cities Program which contain housing activities must include a certification that the proposed housing activities are consistent with the applicant's Comprehensive Housing Affordability Strategy as described at 24 CFR part 91.

(e) *National and primary objectives.* (1) Each activity funded through the Small Cities Program must meet one of the following national objectives as defined under the criteria in § 570.208. Each activity must either:

(i) Benefit low- and moderate-income families;

(ii) Aid in the prevention or elimination of slums or blight; or

(iii) Be an activity which the grantee certifies is designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs.

(2) In addition to the objectives described in paragraph (e)(1) of this section, with respect to each grant made through the Small Cities Program, not less than 70 percent of the grant funds must be expended for activities which benefit low- and moderate-income persons under the criteria of § 570.208(a). In determining the percentage of funds expended for such activity, the provisions of § 570.200(a)(3)(i), (iv) and (v) shall apply.

(Approved by the Office of Management and Budget under control number 2506–0060)

§ 570.421 New York Small Cities Program Design.

(a) *Program administration.* Administrative responsibility for the HUD-administered Small Cities Program in New York is divided between HUD's New York City and Buffalo Offices. For purposes of this subpart, the term "HUD Office" refers to both the New York City and Buffalo Offices.

(b) *Notice of funding availability.* The Department will issue one or more Notice(s) of Funding Availability (NOFA) each fiscal year which will indicate the amount of funds available and set forth the grant limits, type of grants available and the application requirements. The NOFA will set forth the selection criteria for all grants, as well as the rating factors that will be used for those grants which are competitive.

(c) *Eligible applicants.* (1) Eligible applicants in New York are units of general local government, excluding: Metropolitan cities, urban counties, units of general local government which are participating in urban counties or metropolitan cities, even if only part of the participating unit of government is located in the urban county or metropolitan city, and Indian tribes eligible for assistance under section 106 of the Act. An application may be submitted individually or jointly by eligible applicants.

(2) Counties, cities, towns, and villages may apply and receive funding for separate projects to be done in the same jurisdiction. Only one grant will be made under each funding round for the same type of project to be located within the jurisdiction of a unit of general local government. (e.g. both the county and village cannot receive funding for a sewer system to be located in the same village, but the county can receive funding for a sewer system that is located in the same village as a rehabilitation project that the village receives funding for.) The NOFA will contain additional information on applicant eligibility.

(d) *Public service activities cap.* Public service activities may be funded up to a maximum of fifteen (15) percent of a State's nonentitlement allocation for any fiscal year. HUD may award a grant to a unit of general local government for public service activities with up to 100 percent of the funds intended for public service activities. HUD will apply the 15 percent statewide cap to public service activities by funding public service activities in the highest rated applications in each NOFA until the cap is reached.

(e) *Activities outside an applicant's boundaries.* An applicant may conduct eligible CDBG activities outside its boundaries. These activities must be demonstrated to be appropriate to meeting the applicant's needs and objectives, and must be consistent with State and local law. This provision includes using funds provided under this subpart in a metropolitan city or an urban county.

§ 570.422 Applications from joint applicants.

Units of general local government may submit a joint application which addresses common problems faced by the jurisdictions, to the extent permitted by the NOFA. A joint application must be pursuant to a written cooperation agreement submitted with the application. The cooperation agreement must authorize one of the participating units of government to act as the lead applicant which will submit the application to HUD, and must delineate the responsibilities of each participating unit of government with respect to the Small Cities Program. The lead applicant is responsible for ensuring compliance with all laws, regulations, and Executive Orders applicable to the CDBG Program. HUD will deal exclusively with the lead applicant with respect to issues of program administration and performance, including remedial actions.

§ 570.423 Application for the HUD-administered New York Small Cities Grants.

(a) *Proposed application.* The applicant shall prepare and publish a proposed application, and comply with citizen participation requirements as described in § 570.431.

(b) *Final application.* The applicant shall submit to HUD a final application containing its community development objectives and activities. This final application shall be submitted, in a form prescribed by HUD, to the appropriate HUD Office.

(c) *Certifications.* (1) The certifications shall be submitted in a form prescribed by HUD. If the application contains any housing activities, the applicant shall certify that the proposed housing activities are consistent with its Comprehensive Housing Affordability Strategy as described at 24 CFR part 91.

(2) In the absence of evidence (which may, but need not, be derived from performance reviews or other sources) which tends to challenge in a substantial manner the certifications made by the applicant, the certifications will be accepted by HUD. However, if HUD does have available independent evidence, HUD may require the submission of additional information or assurances before determining whether an applicant's certifications are satisfactory.

(d) *Thresholds.* The HUD Office may use any information available to it to make the threshold judgments required by the applicable NOFA, including information related to the applicant's performance with respect to any previous assistance under this subpart. The annual performance and evaluation report required under § 570.507(a)(2)(ii) is the primary source of this information. The HUD Office may request additional information in cases

where it is essential to make the required performance judgments.

(Approved by the Office of Management and Budget under control number 2506–0060)

§ 570.424 Grants for imminent threats to public health and safety.

(a) *Criteria.* The following criteria apply for an imminent threat to public health or safety:

(1) The Director of Community Planning and Development of the HUD office may, at any time, invite an application for funds available under this subpart in response to a request for assistance to alleviate an imminent threat to public health or safety that requires immediate resolution. HUD shall verify the urgency and the immediacy of the threat with an appropriate authority other than the applicant prior to acceptance of the application, and the Director of Community Planning and Development of the HUD office shall review the claim to determine if, in fact, an imminent threat to public health or safety does exist. For example, an applicant with documented cases of disease resulting from a contaminated drinking water supply has an imminent threat to public health, while an applicant ordered to improve the quality of its drinking water supply over the next two years does not have an imminent threat within the definition of this paragraph (a). These funds are to be used to deal with those threats which represent a unique and unusual circumstance, not for the type of threat that occurs with frequency in a number of communities within the State of New York.

(2) The applicant does not have sufficient local resources, and other Federal or State resources are unavailable to alleviate the imminent threat.

(3) All imminent threat projects must meet the requirement of § 570.420(e).

(b) *HUD action.* (1) Fifteen percent of the funds allocated to New York State in the Small Cities Program will be reserved to alleviate imminent threats to the public health or safety unless a lesser amount is specified in a NOFA. Applications shall be submitted in accordance with § 570.423.

(2) Applications which meet the requirements of this section may be approved by the Director of Community Planning and Development of the HUD Office without competition.

(3) The only funds reserved for imminent threats to the public health or safety are those specified by this section as modified by the NOFA. After the funds have been depleted, HUD shall not consider further requests for grants relating to imminent threats during that fiscal year.

(c) *Letter to proceed.* Notwithstanding § 570.425(a)(3), after a determination has been made that an imminent threat exists, HUD may issue the applicant a letter to proceed to incur costs to alleviate the imminent threat. Reimbursement of such costs is dependent upon HUD approval of the final application.

(d) *Environmental review.* Pursuant to 24 CFR 58.34(a)(8), grants for imminent threat to public health or safety are excluded from some or all of the environmental review requirements of 24 CFR part 58, to the extent provided therein.

§ 570.425 HUD review and actions on applications for New York State applicants.

(a) *Final application submission.* (1) *Submission deadline.* HUD will establish a time period during which final applications must be submitted to the appropriate office. The dates for this period will be published in a notice in the **Federal Register.**

(2) *Incomplete applications.* Applications must contain the information required by HUD. Information relative to the application will not be accepted or considered if received after the submission deadline, unless the information is specifically requested in writing by HUD.

(3) *Costs incurred by the applicant.* (i) HUD will not reimburse or recognize any costs incurred before submission of the final application.

(ii) HUD will not normally reimburse or recognize costs incurred before HUD approval of the final application. However, under unusual circumstances, the Director of Community Planning and Development of the HUD office may consider and approve written requests to recognize and reimburse costs otherwise incurred in accordance with this part, after the submission of the application, where failure to do so would impose undue or unreasonable hardship on the applicant. The described authorization will be made only where the conditions for the release of funds under the provisions for environmental review have been met to HUD's satisfaction, in accordance with 24 CFR part 58, and with the understanding that HUD has no obligation to approve the application.

(b) *HUD action on final application.* (1) *Review and notification.* Following the review of the applications, HUD will promptly notify each applicant of the action taken with regard to its application. Documentation which supports HUD's decisions on applications will be available to the public.

(2) *Conditional approval.* HUD may make a conditional approval, in which case the grant will be approved but the obligation and utilization of funds will be restricted. The reasons for the conditional approval and the actions necessary to remove the condition will be specified. Failure to satisfy the condition may result in a termination of the grant.

§ 570.426 Program income.

(a) The provisions of § 570.504(b) apply to all program income generated by a specific grant and received prior to grant closeout.

(b) If the unit of general local government has another ongoing CDBG grant at the time of closeout, the program income will be considered to be program income of the ongoing grant. The grantee can choose which grant to credit the program income to if it has multiple open CDBG grants.

(c) If the unit of general local government has no open ongoing CDBG grant at the time of closeout, program income of the unit of general local government or its subrecipients which amounts to less than $25,000 per year will not be considered to be program income. When more than $25,000 of program income is generated from one or more closed out grants in a year after closeout, the entire amount of the program income is subject to the requirements of this part.

§ 570.427 Program amendments.

(a) *HUD approval of certain program amendments.* Grantees shall request prior HUD approval for all program amendments involving new activities or alteration of existing activities that will significantly change the scope, location, or objectives of the approved activities or beneficiaries. Approval is subject to the following:

(1) Programs or projects that include new or significantly altered activities are rated in accordance with the criteria for selection applicable at the time the original preapplication or application (whichever is applicable) was rated. The rating of the program or projects proposed which include the new or altered activities proposed by the amendment must be equal to or greater than the lowest rating received by a funded project or program during that cycle of ratings.

(2) Consideration shall be given to whether any new activity proposed can be completed promptly.

(3) If the grant was received on a non-competitive basis, the proposed amended project must be able to be

completed promptly, and must meet all of the threshold requirements that were required for the original project. If the proposal is to amend the project to a type of project that was rated competitively in the Fiscal Year that the non-competitive project was funded, the new or altered activities proposed by the amendment must receive a rating equal to or greater than the lowest rating received by a funded project or program during that cycle of ratings.

(b) *Documentation of program amendments.* Any program amendments that do not require HUD approval must be fully documented in the grantee's records.

(c) *Citizen participation requirements.* Whenever an amendment requires HUD approval, the requirements for citizen participation in § 570.431 must be met.

§ 570.428 Reallocated funds.

(a) *General.* This section governs reallocated funds originally allocated for use under 24 CFR part 570, subpart F (Small Cities Program).

(b) *Assignment of funds to be reallocated.* Reallocated funds may be:

(1) Used at any time necessary for a section 108 repayment grant under § 570.432;

(2) Added to the next Small Cities Program competition;

(3) Used to fund any application not selected for funding in the most recent Small Cities competition, because of a procedural error made by HUD; or

(4) Used to fund the most highly ranked unfunded application or applications from the most recent Small Cities Program competition.

(c) *Timing.* Funds which become available shall be used as soon as practicable.

§ 570.429 Hawaii general and grant requirements.

(a) *General.* This section shall apply to the HUD-administered Small Cities Program in the State of Hawaii.

(b) *Scope and applicability.* Except as otherwise provided in this section, the policies and procedures outlined in subparts A, C, J, K, O of this part, and in §§ 570.420 and 570.430 through 570.432 of this subpart, shall apply to the HUD-administered Small Cities Program in the State of Hawaii.

(c) *Grant amounts.* (1) Unless a NOFA for a specific fiscal year provides for a different method of distribution for eligible Hawaii units of general local government, which could include competition, or a set aside, grants will be distributed as follows: For each eligible unit of general local government, a formula grant amount will be determined which bears the same ratio to the total amount available for the nonentitlement area of the State as the weighted average of the ratios between:

(i) The population of that eligible unit of general local government and the population of all eligible units of general local government in the nonentitlement areas of the State;

(ii) The extent of poverty in that eligible unit of general local government and the extent of poverty in all the eligible units of general local government in the nonentitled areas of the State; and

(iii) The extent of housing overcrowding in that eligible unit of general local government and the extent of housing overcrowding in all the eligible units of general local government in the nonentitled areas of the State.

(2) In determining the average of the ratios under this paragraph (c), the ratio involving the extent of poverty shall be counted twice and each of the other ratios shall be counted once. (0.25+0.50+0.25=1.00).

(d) *Adjustments to grants.* Grant amounts under this section may be adjusted where an applicant's performance is judged inadequate, considering:

(1) Capacity to utilize the grant amount effectively and efficiently;

(2) Compliance with the requirements of § 570.902(a) for timely expenditure of funds beginning with grants made in FY 1996. In making this calculation, all outstanding grants will be considered. For the FY 1995 grant the requirement is substantial compliance with the applicant's schedule or schedules submitted in each previously funded application;

(3) Compliance with other program requirements based on monitoring visits and audits.

(e) *Reallocation.* (1) Any amounts that become available as a result of adjustments under paragraph (d) of this section, or any reductions under subpart O of this part, shall be reallocated in the same fiscal year to any remaining eligible applicants on a pro rata basis.

(2) Any formula grant amounts reserved for an applicant that chooses not to submit an application shall be reallocated to any remaining eligible applicants on a pro rata basis.

(3) No amounts shall be reallocated under paragraph (e) of this section in any fiscal year to any applicant whose grant amount was adjusted under paragraph (d) of this section or reduced under subpart O of this part.

(4) This section may be superseded by requirements promulgated in a NOFA.

(f) *Applications.* (1) *Presubmission.* The applicant will follow the requirements of § 570.301(a) and (c), as well as the requirements of this section, unless these requirements are superseded by instructions in a published NOFA.

(2) *Submission.* (i) HUD will require all applicants to submit an application for the amount established under paragraphs (c) through (e) of this section by a date established by HUD, and to follow the requirements of § 570.302(a)(1) and (2) unless these requirements are superseded by instructions in a published NOFA.

(ii) *Certifications.* The certifications shall be submitted in a form prescribed by HUD. If the application contains any housing activities, the applicant shall certify that the proposed housing activities are consistent with its Comprehensive Housing Affordability Strategy as described at 24 CFR part 91.

(g) *Application Approval.* HUD will approve the application and certifications unless it is determined that one or more of the following requirements have not been met, or unless this process is superseded by instructions in a published NOFA.

(1) *Completeness.* The submission shall include all of the components required in paragraph (f) of this section.

(2) *Timeliness.* The submission must be received within the time period established in paragraph (f) of this section.

(3) *Certifications.* The certifications made by the grantee will be satisfactory to the Secretary if made in conformance with the requirements of paragraph (f) of this section, unless the Secretary has determined pursuant to subpart O of this part that the grantee has not complied with the requirements of this part or has failed to carry out its Comprehensive Housing Affordability Strategy in a timely manner, or determined that there is evidence, not directly involving the grantee's past performance under this program, which tends to challenge in a substantial manner the grantee's certification of future performance. If the Secretary makes any such determination, however, further assurances may be required to be submitted by the grantee as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.

(h) *Grant agreement.* The grant will be made by means of a grant agreement executed by both HUD and the grantee.

(i) *Conditional grant.* The Secretary may make a conditional grant in which case the obligation and use of grant funds for activities may be restricted. Conditional grants may be made where

there is substantial evidence that there has been, or there will be, a failure to meet the performance requirements or criteria described in subpart O of this part. In such case, the conditional grant will be made by means of a grant agreement, executed by HUD, which includes the terms of the condition specifying the reason for the conditional grant, the actions necessary to remove the condition and the deadline for taking those actions. The grantee shall execute and return such an agreement to HUD within 60 days of the date of its transmittal. Failure of the grantee to execute and return the grant agreement within 60 days may be deemed by HUD to constitute rejection of the grant by the grantee and shall be cause for HUD to determine that the funds provided in the grant agreement are available for reallocation in accordance with section 106(c) of the Act. Failure to satisfy the condition may result in a reduction in the grant amount pursuant to § 570.911. (Approved by the Office of Management and Budget under control number 2506–0060)

§ 570.430 Hawaii program operation requirements.

(a) *Limitation on planning and administrative costs.* For grants made prior to FY 1995, no more than 20 percent of the sum of the grant plus program income received during the grant period shall be expended for planning and program administrative costs. For grants received in FY 1995 and thereafter, a grantee will be considered to be in conformance with the requirements of § 570.200(g) if expenditures for planning and administration during the most recently completed program year do not exceed 20 percent of the sum of the grant made for that program year and the program income received from post FY 1994 grants during that program year.

(b) *Performance and evaluation reports.* Grantees will follow the requirements of § 570.507(a) for entitlement grant recipients for all grants received in FY 1995 and thereafter. Grantees will continue following the requirements of § 570.507(a) for HUD-administered small cities grants for grants received prior to FY 1995 until those grants are closed out.

(c) *Grant closeouts.* Grants received prior to FY 1995 shall be closed out in accordance with the procedures in § 570.509. Grants received in FY 1995 and thereafter shall not be closed out individually. A grantee's entire program shall be closed upon program completion if a grantee ceases its participation in the Small Cities Program.

(d) *Public Services.* Starting with the FY 1996 grant, grantees may follow the provisions of § 570.201(e)(1) that refer to entitlement grantees, allowing grantees to use 15 percent of the program income received in the previous program year in addition to 15 percent of the grant amount for public services.

(e) *Compliance with the primary objective.* Starting with the FY 1995 grant, grantees may select a time period of one, two or three years in which to meet the requirement that not less than 70 percent of the aggregate of CDBG fund expenditures be for activities benefitting low-and moderate-income persons. Grants made prior to FY 1995 will be considered individually for meeting the primary objective, and expenditures for pre FY 1995 grants made during and after FY 1995 will not be considered in determining whether the primary objective has been met for post 1994 grants. If the State of Hawaii decides to administer the Community Development Block Grant Program for non-entitled units of general local government in Hawaii, the State will be bound by the time period for meeting the primary objective that was chosen by each non-entitled grantee within the State until those time periods have expired.

(f) *Amendments.* (1) The grantee shall amend its application whenever it decides not to carry out an activity described in its application, to carry out an activity not previously described, or to substantially change the purpose, scope, location, or beneficiaries of an activity. Prior to the submission of its FY 1995 application, each grantee shall develop and make public its criteria for what constitutes a substantial change for this purpose.

(2) Prior to amending its application, a grantee shall follow the citizen participation requirements of § 570.431 except that HUD is not required to approve the amendment.

§ 570.431 Citizen participation.

(a) *General.* An applicant that is located in a nonentitlement area of a State that has not elected to distribute funds shall comply with the citizen participation requirements described in this section, including requirements for the preparation of the proposed application and the final application. The requirements for citizen participation do not restrict the responsibility or authority of the applicant for the development and execution of its community development program.

(b) *Citizen participation plan.* The applicant must develop and follow a detailed citizen participation plan and must make the plan public. The plan must be completed and available before the application for assistance is submitted to HUD, and the applicant must certify that it is following the plan. The plan must set forth the applicant's policies and procedures for:

(1) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings, information, and records relating to the grantee's proposed and actual use of CDBG funds including, but not limited to:

(i) The amount of CDBG funds expected to be made available for the coming year, including the grant and anticipated program income;

(ii) The range of activities that may be undertaken with those funds;

(iii) The estimated amount of those funds proposed to be used for activities that will benefit low and moderate income persons;

(iv) The proposed CDBG activities likely to result in displacement and the applicant's plans, consistent with the policies developed under § 570.606(b), for minimizing displacement of persons as a result of its proposed activities; and

(v) The types and levels of assistance the applicant plans to make available (or to require others to make available) to persons displaced by CDBG-funded activities, even if the applicant expects no displacement to occur;

(2) Providing technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals. The level and type of assistance to be provided is at the discretion of the applicant. The assistance need not include the provision of funds to the groups;

(3) Holding a minimum of two public hearings, for the purpose of obtaining citizen's views and formulating or responding to proposals and questions. Each public hearing must be conducted at a different stage of the CDBG program. Together, the hearings must address community development and housing needs, development of proposed activities and review of program performance. There must be reasonable notice of the hearings and the hearings must be held at times and accessible locations convenient to potential or actual beneficiaries, with reasonable accommodations including material in accessible formats for persons with disabilities. The applicant must specify in its plan how it will meet the requirement for hearings at times

and locations convenient to potential or actual beneficiaries;

(4) Meeting the needs of non-English speaking residents in the case of public hearings where a significant number of non-English speaking residents can reasonably be expected to participate;

(5) Responding to citizen complaints and grievances, including the procedures that citizens must follow when submitting complaints and grievances. The applicant's policies and procedures must provide for timely written answers to written complaints and grievances within 15 working days of the receipt of the complaint, where practicable; and

(6) Encouraging citizen participation, particularly by low- and moderate-income persons who reside in slum or blighted areas, and in other areas in which CDBG funds are proposed to be used.

(c) *Publication of proposed application.* The applicant shall publish a proposed application consisting of the proposed community development activities and community development objectives in order to afford affected citizens an opportunity to:

(1) Examine the application's contents to determine the degree to which they may be affected;

(2) Submit comments on the proposed application; and

(3) Submit comments on the performance of the applicant.

(d) *Preparation of a final application.* An applicant must prepare a final application. In the preparation of the final application, the applicant shall consider comments and views received related to the proposed application and may, if appropriate, modify the final application. The final application shall be made available to the public and shall include the community development objectives and use of funds, and the community development activities.

(e) *Amendments.* To assure citizen participation on amendments to final applications that require HUD approval under § 570.427, the grantee shall:

(1) Furnish citizens information concerning the amendment;

(2) Hold one or more public hearings to obtain the views of citizens on the proposed amendment;

(3) Develop and publish the proposed amendment in such a manner as to afford affected citizens an opportunity to examine the contents, and to submit comments on the proposed amendment;

(4) Consider any comments and views expressed by citizens on the proposed amendment and, if the grantee finds it appropriate, modify the final amendment accordingly; and

(5) Make the final amendment to the community development program available to the public before its submission to HUD.

§ 570.432 Repayment of section 108 loans.

Notwithstanding any other provision of this subpart, a unit of general local government in a nonentitlement area where the State has not elected to administer the CDBG program shall be eligible for Small Cities Grant assistance hereunder for the sole purpose of paying any amounts due on debt obligations issued by such unit of general local government (or its designated public agency) and guaranteed by the Secretary pursuant to section 108 of the Act (see subpart M of this part). The award of grant assistance for such purpose shall be consistent with section 106(d)(3)(B) of the Act, in such amount, and subject to such conditions as the Secretary may determine. Since guaranteed loan funds (as defined in § 570.701) are required to be used in accordance with national and primary objective requirements, and other applicable requirements of this part, any grant made to make payments on the debt obligations evidencing the guaranteed loan shall be presumed to meet such requirements, unless HUD determines that the guaranteed loan funds were not used in accordance with such requirements. Any such determination by HUD shall not prevent the making of the grant in amount of the payment due, but it may be grounds for HUD to take appropriate action under subpart O based on the original noncompliance.

3. In 24 CFR part 570, subpart I, a new § 570.497 would be added to read as follows:

§ 570.497 Condition of State election to administer State CDBG Program.

Pursuant to section 106(d)(2)(A)(i) of the Act, a State has the right to elect, in such manner and at such time as the Secretary may prescribe, to administer funds allocated under subpart A of this part for use in nonentitlement areas of the State. After [insert effective date of final rule], any State which elects to administer the allocation of CDBG funds for use in nonentitlement areas of the State in any year must, in addition to all other requirements of this subpart, submit a pledge by the State in accordance with section 108(d)(2) of the Act, and in a form acceptable to HUD, of any future CDBG grants it may receive under subpart A and this subpart. Such pledge shall be for the purpose of assuring repayment of any debt obligations (as defined in § 570.701 of this part), in accordance with their terms, that HUD may have guaranteed in the respective State on behalf of any nonentitlement public entity (as defined in § 570.701) or its designated public agency prior to the State's election.

4. In § 570.507, paragraph (a)(2)(ii)(A) would be revised to read as follows:

§ 570.507 Reports.

(a) * * *

(2) * * *

(ii) * * *

(A) The first report on a small cities grant should be submitted no later than fifteen working days after September 30 for all grants executed prior to April 1 of the same calendar year. The first report should cover the period from the execution of the grant until September 30. Reports on grants made after March 31 of a calendar year will be due fifteen working days after September 30 of the following calendar year and the reports will cover the period of time from the execution of the grant until September 30 of the calendar year following grant execution. After the initial submission, the performance and evaluation report will be submitted annually on the fifteenth working day after September 30 until completion of the activities funded under the grant; and

* * * * *

5. In 24 part 570, subpart M, consisting of §§ 570.700 through 570.710, would be revised in its entirety, to read as follows:

Subpart M—Loan Guarantees

Sec.

570.700 Purpose.
570.701 Definitions.
570.702 Eligible applicants.
570.703 Eligible activities.
570.704 Application requirements.
570.705 Loan requirements.
570.706 Federal guarantee; subrogation.
570.707 Applicability of rules and regulations.
570.708 Sanctions.
570.709 Allocation of loan guarantee assistance.
570.710 State responsibilities.

§ 570.700 Purpose.

This subpart contains requirements governing the guarantee under section 108 of the Act of debt obligations as defined in § 570.701.

§ 570.701 Definitions.

Borrower means the public entity or its designated public agency that issues debt obligations under this subpart.

Debt obligation means a promissory note or other obligation issued by a public entity or its designated public agency and guaranteed by HUD under this subpart, or a trust certificate or other obligation offered by HUD or any other offeror approved for purpose of this subpart by HUD which is

guaranteed by HUD under this subpart and is based on and backed by a trust or pool composed of notes or other obligations issued by public entities or their designated public agencies and guaranteed or eligible for guarantee by HUD under this subpart.

Designated public agency means a public agency designated by a public entity to issue debt obligations as borrower under this subpart.

Entitlement public entity means a metropolitan city or an urban county receiving a grant under subpart D of this part.

Guaranteed loan funds means the proceeds payable to the borrower from the issuance of debt obligations under this subpart.

Nonentitlement public entity means any unit of general local government in a nonentitlement area.

Public entity means any unit of general local government, including units of general local government in a nonentitlement area.

State-assisted public entity means a unit of general local government in a nonentitlement area which is assisted by a State as required in § 570.704(b)(9) and § 570.705(b)(2).

§ 570.702 Eligible applicants.

The following public entities may apply for loan guarantee assistance under this subpart.

(a) Entitlement public entities.

(b) Nonentitlement public entities that are assisted in the submission of applications by States that administer the CDBG program (under subpart I of this part). Such assistance shall consist, at a minimum, of the certifications required under § 570.704(b)(9) (and actions pursuant thereto).

(c) Nonentitlement public entities eligible to apply for grant assistance under subpart F of this part.

§ 570.703 Eligible activities.

Guaranteed loan funds may be used for the following activities, provided such activities meet the requirements of § 570.200. However, guaranteed loan funds may not be used to reimburse the CDBG program account or line of credit for costs incurred by the public entity or designated public agency and paid with CDBG grant funds or program income.

(a) Acquisition of improved or unimproved real property in fee or by long-term lease, including acquisition for economic development purposes.

(b) Rehabilitation of real property owned or acquired by the public entity or its designated public agency.

(c) Payment of interest on obligations guaranteed under this subpart.

(d) Relocation payments and other relocation assistance for individuals, families, businesses, nonprofit organizations, and farm operations who must relocate permanently or temporarily as a result of an activity financed with guaranteed loan funds, where the assistance is:

(1) Required under the provisions of §§ 570.488 (b) or (c) or 570.606 (b) or (c); or

(2) Determined by the public entity to be appropriate under the provisions of §§ 570.488(d) or 570.606(d).

(e) Clearance, demolition and removal, including movement of structures to other sites, of buildings and improvements on real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section.

(f) Site preparation, including construction, reconstruction, or installation of public and other site improvements, utilities, or facilities (other than buildings), which is:

(1) Related to the redevelopment or use of the real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section, or

(2) For an economic development purpose.

(g) Payment of issuance, underwriting, servicing, and other costs associated with private sector financing of debt obligations under this subpart.

(h) Housing rehabilitation eligible under § 570.202.

(i) The following economic development activities:

(1) Activities eligible under § 570.203; and

(2) Community economic development projects eligible under § 570.204.

(j) Construction of housing by nonprofit organizations for homeownership under section 17(d) of the United States Housing Act of 1937 (Housing Development Grants Program, 24 CFR part 850) or title VI of the Housing and Community Development Act of 1987 (Nehemiah Housing Opportunity Grants Program, 24 CFR part 280).

(k) A debt service reserve to be used in accordance with requirements specified in the contract entered into pursuant to § 570.705(b)(1).

(l) Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities (except for buildings for the general conduct of government).

(m) In the case of applications by public entities which are, or which contain, "colonias" as defined in section 916 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 5306 note), as amended by section 810 of the Housing and Community Development Act of 1992, acquisition, construction, reconstruction, rehabilitation or installation of public works and site or other improvements which serve the colonia.

§ 570.704 Application requirements.

(a) *Presubmission and citizen participation requirements.*

(1) Before submission of an application for loan guarantee assistance to HUD, the public entity must:

(i) Develop a proposed application that includes the following items:

(A) The community development objectives the public entity proposes to pursue with the guaranteed loan funds.

(B) The activities the public entity proposes to carry out with the guaranteed loan funds. Each activity must be described in sufficient detail, including the specific provision of § 570.703 under which it is eligible and the national objective to be met, amount of guaranteed loan funds expected to be used, and location, to allow citizens to determine the degree to which they will be affected. The proposed application must indicate which activities are expected to generate program income. The application must also describe where citizens may obtain additional information about proposed activities.

(C) A description of the pledge of grants required under § 570.705(b)(2). In the case of applications by State-assisted public entities, the description shall note that pledges of grants will be made by the State and by the public entity.

(ii) Fulfill the applicable requirements in its citizen participation plan developed in accordance with § 570.704(a)(2).

(iii) Publish community-wide its proposed application so as to afford affected citizens an opportunity to examine the application's contents and to provide comments on the proposed application.

(iv) Prepare its final application. Once the public entity has held the public hearing and published the proposed application as required by paragraphs (a)(1) (ii) and (iii) of this section, respectively, the public entity must consider any such comments and views received and if the public entity deems appropriate, modify the proposed application. Upon completion, the public entity must make the final application available to the public. The final application must describe each activity in sufficient detail to permit a clear understanding of the nature of each activity, as well as identify the specific provision of § 570.703 under which it is eligible, the national objective to be met, and the amount of guaranteed loan funds to be used. The

final application must also indicate which activities are expected to generate program income.

(v) If an application for loan guarantee assistance is to be submitted by an entitlement public entity simultaneously with the public entity's submission for its entitlement grant, the public entity shall include and identify in its proposed and final statements of community development objectives and projected use of funds prepared for its annual grant pursuant to § 570.301 the activities to be undertaken with the guaranteed loan funds, the national objective to be met by each of these activities, the amount of any program income expected to be received during the program year, and the amount of guaranteed loan funds to be used; the public entity shall also include in these statements a description of the pledge of grants required under § 570.705(b)(2). In such cases the proposed and final application requirements of paragraphs (i), (iii), and (iv) of this section will be deemed to have been met.

(2) *Citizen participation plan.* The public entity must develop and follow a detailed citizen participation plan and make the plan public. The plan must be completed and available before the application is submitted to HUD. The plan may be the plan required for the CDBG program, modified to include guaranteed loan funds. The public entity is not required to hold a separate public hearing for its CDBG program and for the guaranteed loan funds to obtain citizens' views on community development and housing needs. The plan must set forth the public entity's policies and procedures for:

(i) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings, information, and records relating to the public entity's proposed and actual use of guaranteed loan funds, including, but not limited to:

(A) The amount of guaranteed loan funds expected to be made available for the coming year, including program income anticipated to be generated by the activities carried out with guaranteed loan funds;

(B) The range of activities that may be undertaken with guaranteed loan funds;

(C) The estimated amount of guaranteed loan funds (including program income derived therefrom) proposed to be used for activities that will benefit low and moderate income persons;

(D) The proposed activities likely to result in displacement and the public entity's plans, consistent with the policies developed under § 570.606 or § 570.488 for minimizing displacement of persons as a result of its proposed activities.

(ii) Providing technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals. The level and type of assistance to be provided is at the discretion of the public entity. Such assistance need not include the provision of funds to such groups.

(iii) Holding a minimum of two public hearings, each at a different stage of the public entity's program, for the purpose of obtaining the views of citizens and formulating or responding to proposals and questions. Together the hearings must address community development and housing needs, development of proposed activities and review of program performance. At least one of these hearings must be held before submission of the application to obtain the views of citizens on community development and housing needs. Reasonable notice of the hearing must be provided and the hearing must be held at times and locations convenient to potential or actual beneficiaries, with accommodation for the handicapped. The public entity must specify in its plan how it will meet the requirement for a hearing at times and locations convenient to potential or actual beneficiaries.

(iv) Meeting the needs of non-English speaking residents in the case of public hearings where a significant number of non-English speaking residents can reasonably be expected to participate.

(v) Providing affected citizens with reasonable advance notice of, and opportunity to comment on, proposed activities not previously included in an application and activities which are proposed to be deleted or substantially changed in terms of purpose, scope, location, or beneficiaries. The criteria the public entity will use to determine what constitutes a substantial change for this purpose must be described in the citizen participation plan.

(vi) Responding to citizens' complaints and grievances, including the procedures that citizens must follow when submitting complaints and grievances. The public entity's policies and procedures must provide for timely written answers to written complaints and grievances within 15 working days of the receipt of the complaint, where practicable.

(vii) Encouraging citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas, and other areas in which guaranteed loan funds are proposed to be used.

(b) *Submission requirements.* An application for loan guarantee assistance may be submitted at any time. The application (or final statement) shall be submitted to the appropriate HUD Office and shall be accompanied by the following:

(1) A description of how each of the activities to be carried out with the guaranteed loan funds meets one of the criteria in § 570.208.

(2) A schedule for repayment of the loan which identifies the sources of repayment, together with a statement identifying the entity that will act as borrower and issue the debt obligations.

(3) A certification providing assurance that the public entity possesses the legal authority to make the pledge of grants required under § 570.705(b)(2).

(4) A certification providing assurance that the public entity has made efforts to obtain financing for activities described in the application without the use of the loan guarantee, the public entity will maintain documentation of such efforts for the term of the loan guarantee, and the public entity cannot complete such financing consistent with the timely execution of the program plans without such guarantee.

(5) The drug-free workplace certification required under 24 CFR part 24 (Appendix C).

(6) The certification regarding debarment and suspension required under 24 CFR part 24 (Appendix A).

(7) The anti-lobbying statement required under 24 CFR part 87 (Appendix A).

(8) Certifications by the public entity that:

(i) It possesses the legal authority to submit the application for assistance under this subpart and to use the guaranteed loan funds in accordance with the requirements of this subpart.

(ii) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the person identified as the official representative of the public entity to submit the application and amendments thereto and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the public entity to act in connection with the application to provide such additional information as may be required.

(iii) Before submission of its application to HUD, the public entity has:

(A) Furnished citizens with information required by § 570.704(a)(2)(i);

(B) Held at least one public hearing to obtain the views of citizens on

community development and housing needs; and

(C) Prepared its application in accordance with § 570.704(a)(1)(iv) and made the application available to the public.

(iv) It is following a detailed citizen participation plan which meets the requirements described in § 570.704(a)(2).

(v) The public entity will affirmatively further fair housing, and the guaranteed loan funds will be administered in compliance with:

(A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); and

(B) The Fair Housing Act (42 U.S.C. 3601–20).

(vi) (A) (For entitlement public entities only.) In the aggregate, at least 70 percent of all CDBG funds, as defined at § 570.3, to be expended during the one, two, or three consecutive years specified by the public entity for its CDBG program will be for activities which benefit low and moderate income persons, as described in criteria at § 570.208(a).

(B) (For nonentitlement public entities eligible under subpart F of this part only) It will comply with national objectives requirements, as applicable under subpart F of this part.

(vii) It will comply with the requirements governing displacement, relocation, real property acquisition, and the replacement of low and moderate income housing described in § 570.488 or § 570.606.

(viii) It will comply with the requirements of § 570.200(c)(2) with regard to the use of special assessments to recover the capital costs of activities assisted with guaranteed loan funds.

(ix) (Where applicable, the public entity may also include the following additional certification.) It lacks sufficient resources from funds provided under this subpart or program income to allow it to comply with the provisions of § 570.200(c)(2), and it must therefore assess properties owned and occupied by moderate income persons, to recover the guaranteed loan funded portion of the capital cost without paying such assessments in their behalf from guaranteed loan funds.

(x) It will comply with the other provisions of the Act and with other applicable laws.

(9) In the case of an application submitted by a State-assisted public entity, certifications by the State that:

(i) It agrees to make the pledge of grants required under § 570.705(b)(2).

(ii) It possesses the legal authority to make such pledge.

(iii) At least 70 percent of the aggregate use of CDBG grant funds received by the State, guaranteed loan funds, and program income during the one, two, or three consecutive years specified by the State for its CDBG program will be for activities that benefit low and moderate income persons.

(iv) It agrees to assume the responsibilities described in § 570.710.

(c) *HUD review and approval of applications.* (1) HUD will normally accept the certifications submitted with the application. HUD may, however, consider relevant information which challenges the certifications and require additional information or assurances from the public entity or State as warranted by such information.

(2) The HUD Office shall review the application for compliance with requirements specified in this subpart and forward the application together with its recommendation for approval or disapproval of the requested loan guarantee to HUD Headquarters.

(3) HUD may disapprove an application, or may approve loan guarantee assistance for an amount less than requested, for any of the following reasons:

(i) HUD determines that the guarantee constitutes an unacceptable financial risk. Factors that will be considered in assessing financial risk shall include, but not be limited to, the following:

(A) The length of the proposed repayment period;

(B) The ratio of expected annual debt service requirements to expected annual grant amount;

(C) The likelihood that the public entity or State will continue to receive grant assistance under this part during the proposed repayment period;

(D) The public entity's ability to furnish adequate security pursuant to § 570.705(b), and

(E) The amount of program income the proposed activities are reasonably estimated to contribute toward repayment of the guaranteed loan.

(ii) The requested loan amount exceeds any of the limitations specified under § 570.705(a).

(iii) Funds are not available in the amount requested.

(iv) The performance of the public entity, its designated public agency or State under this part is unacceptable.

(v) Activities to be undertaken with the guaranteed loan funds are not eligible under § 570.703.

(vi) Activities to be undertaken with the guaranteed loan funds do not meet the criteria in § 570.208 for compliance with one of the national objectives of the Act.

(4) HUD will notify the public entity in writing that the loan guarantee request has either been approved, reduced or disapproved. If the request is reduced or disapproved, the public entity shall be informed of the specific reasons for reduction or disapproval. If the request is approved, HUD shall issue an offer of commitment to guarantee debt obligations of the borrower identified in the application subject to compliance with the requirements authorized by § 570.705 (b), (d), (g) and (h) for securing and issuing debt obligations, the conditions for release of funds described in paragraph (d) of this section, and such other conditions as HUD may specify in the commitment documents in a particular case.

(5) *Amendments.* If the public entity wishes to carry out an activity not previously described in its application or to substantially change the purpose, scope, location, or beneficiaries of an activity, the amendment must be approved by HUD. Amendments by State-assisted public entities must also be approved by the State. The public entity shall follow the citizen participation requirements for amendments in § 570.704(a)(2).

(d) *Environmental review.* The public entity shall comply with HUD environmental review procedures (24 CFR part 58) for the release of funds for each project carried out with loan guarantee assistance. These procedures set forth the regulations, policies, responsibilities and procedures governing the carrying out of environmental review responsibilities of public entities. All public entities, including nonentitlement public entities, shall submit the request for release of funds and related certification for each project to be assisted with guaranteed loan funds to the appropriate HUD Field Office.

(e) *Displacement, relocation, acquisition, and replacement of housing.* The public entity (or the designated public agency) shall comply with the displacement, relocation, acquisition and replacement of low/moderate-income housing requirements in §§ 570.488 or 570.606 in connection with any activity financed in whole or in part with guaranteed loan funds.

§ 570.705 Loan requirements.

(a) *Limitations on commitments.* (1) If loan guarantee commitments have been issued in any fiscal year in an aggregate amount equal to 50 percent of the amount approved in an appropriation act for that fiscal year, HUD may limit the amount of commitments any one public entity may receive during such fiscal year as follows (except that HUD will not decrease commitments already issued):

(i) The amount any one entitlement public entity may receive may be limited to $35,000,000.

(ii) The amount any one nonentitlement public entity may receive may be limited to $7,000,000.

(iii) The amount any one public entity may receive may be limited to such amount as is necessary to allow HUD to give priority to applications containing activities to be carried out in areas designated as empowerment zones/enterprise communities by the Federal Government or by any State.

(2) In addition to the limitations specified in paragraph (a)(1) of this section, the following limitations shall apply.

(i) *Entitlement public entities.* No commitment to guarantee shall be made if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under § 570.705(b)(1)) on behalf of the public entity would thereby exceed an amount equal to five times the amount of the most recent grant made pursuant to § 570.304 to the public entity.

(ii) *State-assisted public entities.* No commitment to guarantee shall be made if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under § 570.705(b)(1)) on behalf of the public entity and all other State-assisted public entities in the State would thereby exceed an amount equal to five times the amount of the most recent grant received by such State under subpart I.

(iii) *Nonentitlement public entities eligible under subpart F of this part.* No commitment to guarantee shall be made with respect to a nonentitlement public entity in the State of Hawaii if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under § 570.705(b)(1)) on behalf of the public entity would thereby exceed an amount equal to five times the amount of the most recent grant made pursuant to § 570.429 to the public entity. No commitment to guarantee shall be made with respect to a nonentitlement public entity in the State of New York if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under § 570.705(b)(1)) on behalf of the public entity would thereby exceed the greater of five times:

(A) The most recent grant approved for the public entity pursuant to subpart F of this part,

(B) The average of the most recent three grants approved for the public entity pursuant subpart F of this part, excluding any grant in the same fiscal year as the commitment, or

(C) The average amount of grants made under subpart F of this part to units of general local government in New York State in the previous fiscal year.

(b) *Security requirements.* To assure the repayment of debt obligations and the charges incurred under paragraph (g) of this section and as a condition for receiving loan guarantee assistance, the public entity (and State and/or designated public agency, as applicable) shall:

(1) Enter into a contract for loan guarantee assistance with HUD, in a form acceptable to HUD, including provisions for repayment of debt obligations guaranteed hereunder;

(2) Pledge all grants made or for which the public entity or State may become eligible under this part; and

(3) Furnish, at the discretion of HUD, such other security as may be deemed appropriate by HUD in making such guarantees. Other security shall be required for all loans with repayment periods of ten years or longer. Such other security shall be specified in the contract entered into pursuant to § 570.705(b)(1). Examples of other security HUD may require are:

(i) Program income as defined in § 570.500(a);

(ii) Liens on real and personal property;

(iii) Debt service reserves; and

(iv) Increments in local tax receipts generated by activities carried out with the guaranteed loan funds.

(c) *Use of grants for loan repayment.* Notwithstanding any other provision of this part:

(1) Community Development Block Grants allocated pursuant to section 106 of the Act (including program income derived therefrom) may be used for:

(i) Paying principal and interest due (including such issuance, servicing, underwriting, or other costs as may be incurred under paragraph (g) of this section) on the debt obligations guaranteed under this subpart;

(ii) Defeasing such debt obligations; and

(iii) Establishing debt service reserves as additional security pursuant to paragraph (b)(3) of this section.

(2) HUD may apply grants pledged pursuant to paragraph (b)(2) of this section to any amounts due under the debt obligations, the payment of costs incurred under paragraph (g) of this section, or to the purchase or defeasance of such debt obligations, in accordance with the terms of the contract required by paragraph (b)(1) of this section.

(d) *Debt obligations.* Debt obligations guaranteed under this subpart shall be in the form and denominations prescribed by HUD. Such debt obligations may be issued and sold only under such terms and conditions as may be prescribed by HUD. HUD may prescribe the terms and conditions of debt obligations, or of their issuance and sale, by regulation or by contractual arrangements authorized by section 108(r)(4) of the Act and paragraph (h) of this section. Unless specifically provided otherwise in the contract for loan guarantee assistance required under paragraph (b) of this section, debt obligations shall not constitute general obligations of any public entity or State secured by its full faith and credit.

(e) *Taxable obligations.* Interest earned on debt obligations under this subpart shall be subject to Federal taxation as provided in section 108(j) of the Act.

(f) *Loan repayment period.* The term of debt obligations under this subpart shall not exceed twenty years.

(g) *Issuance, underwriting, servicing, and other costs.* Each public entity or its designated public agency issuing debt obligations under this subpart must pay the issuance, underwriting, servicing, and other costs associated with the private sector financing of the debt obligations. Such costs are payable out of the guaranteed loan funds.

(h) *Contracting with respect to issuance and sale of debt obligations, effect of other laws.* No State or local law, and no Federal law, shall preclude or limit HUD's exercise of:

(1) The power to contract with respect to public offerings and other sales of debt obligations under this subpart upon such terms and conditions as HUD deems appropriate;

(2) The right to enforce any such contract by any means deemed appropriate by HUD;

(3) Any ownership rights of HUD, as applicable, in debt obligations under this subpart.

§ 570.706 Federal guarantee; subrogation.

The full faith and credit of the United States is pledged to the payment of all guarantees made under this subpart. Any such guarantee made by HUD shall be conclusive evidence of the eligibility of the debt obligations for such guarantee with respect to principal and interest, and the validity of such guarantee so made shall be incontestable in the hands of a holder of the guaranteed debt obligations. If HUD pays a claim under a guarantee made under section 108 of the Act, HUD shall

be fully subrogated for all the rights of the holder of the guaranteed debt obligation with respect to such obligation.

§ 570.707 Applicability of rules and regulations.

(a) *Entitlement public entities.* The provisions of subparts A, C, J, K and O of this part applicable to entitlement grants shall apply equally to guaranteed loan funds and other CDBG funds, except to the extent they are specifically modified or augmented by the provisions of this subpart.

(b) *State-assisted public entities.* The provisions of subpart I of this part, and the requirements the State imposes on units of general local government receiving Community Development Block Grants or program income to the extent applicable, shall apply equally to guaranteed loan funds and Community Development Block Grants (including program income derived therefrom) administered by the State under the CDBG program, except to the extent they are specifically modified or augmented by the provisions of this subpart.

(c) *Nonentitlement public entities eligible under subpart F.* The provisions of subpart F of this part shall apply equally to guaranteed loan funds and other CDBG funds, except to the extent they are specifically modified or augmented by the provisions of this subpart.

§ 570.708 Sanctions.

(a) *Non-State Assisted Public Entities.* The performance review procedures described in subpart O of this part apply to all public entities receiving guaranteed loan funds other than State-assisted public entities. Performance deficiencies in the use of guaranteed loan funds made available to such public entities (or program income derived therefrom) or violations of the contract entered into pursuant to § 570.705(b)(1) may result in the imposition of a sanction authorized pursuant to § 570.900(b)(7) against pledged CDBG grants. In addition, upon a finding by HUD that the public entity has failed to comply substantially with any provision of the Act with respect to either the pledged grants or the guaranteed loan funds or program income, HUD may take action against the pledged grants as provided in § 570.913 and/or may take action as provided in the contract for loan guarantee assistance.

(b) *State-assisted public entities.* Performance deficiencies in the use of guaranteed loan funds (or program income derived therefrom) or violations of the contract entered into pursuant to § 570.705(b)(1) may result in an action authorized pursuant to §§ 570.495 or 570.496. In addition, upon a finding by HUD that the State or public entity has failed to comply substantially with any provision of the Act with respect to the pledged CDBG nonentitlement funds, the guaranteed loan funds, or program income, HUD may take action against the pledged funds as provided in § 570.496 and/or may take action as provided in the contract.

§ 570.709 Allocation of loan guarantee assistance.

Of the amount approved in any appropriation act for guarantees under this subpart in any fiscal year, 70 percent shall be allocated for entitlement public entities and 30 percent shall be allocated for nonentitlement public entities. HUD need not comply with these percentage requirements in any fiscal year to the extent that there is an absence of applications approvable under this subpart from entitlement or nonentitlement public entities.

§ 570.710 State responsibilities.

The State is responsible for choosing public entities that it will assist under this subpart. States are free to develop procedures and requirements for determining which activities will be assisted, subject to the requirements of this subpart. Upon approval by HUD of an application from a State-assisted public entity, the State will be principally responsible, subject to HUD oversight under subpart I of this part, for ensuring that the public entity complies with all applicable requirements governing the use of the guaranteed loan funds. Notwithstanding the State's responsibilities described above, HUD may take any action necessary for ensuring compliance with requirements affecting the security interests of HUD with respect to the guaranteed loan.

Dated: September 12, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 94–22798 Filed 9–14–94; 8:45 am]

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federal register

Thursday
September 15, 1994

Part V

Department of Commerce

Economic Development Administration

Economic Development Financial Restructuring Assistance Program for Businesses Affected by the Southern California Earthquake; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 940830-4230]

Economic Development Financial Restructuring Assistance Program for Businesses Affected by the Southern California Earthquake

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Notice.

SUMMARY: The Economic Development Administration (EDA) announces the policies and the application procedures for funds available to support disaster relief programs designed to assist affected businesses located in communities impacted by the California Northridge earthquake, under the Presidential declaration of disaster of January 17, 1994.

DATES: This announcement is effective September 15, 1994. An Intermediary Worksheet, with instructional guidelines (Appendix A), will serve as the initial proposal for EDA review. This information is available from EDA's Pasadena office. The completed worksheets will be received for 30 days from the date of this notice. Due to the exigency of the Financial Restructuring Assistance Program, EDA may commence with grant awards prior to the 30 day deadline for receipt of the worksheets.

ADDRESSES: To establish merits of project proposals, interested parties should contact the EDA Disaster Field Office, 150 East Colorado Boulevard, Suite 101, Pasadena, California 91105; telephone (818) 583-6831.

FOR FURTHER INFORMATION CONTACT: Potential applicants should contact the Economic Development Representatives (EDRs), Charles Oaks or James Lavery, at the EDA Disaster Field Office, 150 East Colorado Boulevard, Suite 101, Pasadena, California 91105; telephone (818) 583-6831.

SUPPLEMENTARY INFORMATION: *Buy American-Made Equipment or Products*—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103-121, Sections 606 (a) and (b).

Refer to the Notice published on March 30, 1994, in the **Federal Register** (59 FR 14996) for information on EDA's general policies and other requirements.

Authority

Support for this program is authorized under the contingency fund provided to the President under Public Law 103-211, the Emergency Supplemental Appropriations Act of 1994.

Catalog of Federal Domestic Assistance (CFDA)

The Special Economic Development and Adjustment Assistance Program—Long-Term Economic Deterioration (LTED) and Sudden and Severe Economic Dislocation (SSED) is listed under CFDA 11.307.

Program Description

Assistance will be provided in the form of grants to eligible intermediaries to capitalize or recapitalize a revolving loan fund program. The primary purpose and focus of the initial lending phase of the program will be to provide funds to assist in the financial restructuring of businesses denied assistance by the Small Business Administration (SBA). Businesses that receive loans from EDA grantees under this program must demonstrate to grantees that financial viability existed before the effects of the disaster on the capital structure of the business.

Upon completion of an initial lending phase, intermediaries will be eligible to apply program funds to assist other targeted businesses after submittal of an Administrative Plan which addresses a longer-term recovery strategy.

Funding Availability

Funds in the amount of $30 million are available for this disaster recovery program and shall remain available until expended.

Funding Instrument

Funds will be awarded through grants under the Sudden and Severe Economic Dislocation (SSED) program under Title IX of the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89-136, 42 U.S.C. 3241 et seq.) (PWEDA), as described in the **Federal Register** of March 30, 1994 (59 FR 15005), that announces EDA's FY 1994 Notice of Availability of Funds, or such subsequent annual Notices of the Availability of Funds.

Eligible Applicants

Priority consideration for selection of intermediaries will be given to Community Development Corporations as defined in the Community Economic Development Act (42 U.S.C. 9802), and to nonprofit organizations determined by EDA to be representative of a redevelopment area. To meet this requirement, nonprofit organizations shall obtain a written endorsement from the city or county in which the nonprofit operates.

All nonprofit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Grantee Responsibilities

Grantees selected for this program shall agree to administer these funds in accordance with applicable EDA published directives. To implement the intent of the program, substantial deviation from the above-mentioned directives may be required. EDA will work with the grantees and provide individual or blanket waivers from the established directives, when appropriate.

Since the nature of the loans contemplated under this program involve substantial risk compared to loans traditionally made with funds available to grantees under Title IX of the Public Works and Economic Development Act of 1965 (PWEDA), as amended, grantees must agree to participate in special efforts as announced from time to time by EDA to assure prudent management of these funds. Additionally, grantees will be expected to participate in EDA-sponsored initiatives to leverage the impact of these funds through such mechanisms as securitization.

Proposal Submission Procedures

Proposals for assistance authorized under the contingency fund provided to the President under Public Law 103-211, the Emergency Supplemental Appropriations Act of 1994, shall be submitted to EDA's Pasadena Disaster Field Office, as noted in the **ADDRESSES** section of this Notice.

Intermediaries must clearly demonstrate how the EDA assistance will help businesses recover from the economic hardship and other problems caused by the Northridge Earthquake, and that such assistance has been preceded by sound planning. Interested parties should contact EDA's Pasadena Disaster Field Office for a proposal package.

Grant Rates

Local share requirements are discussed in the **Federal Register** of

March 30, 1994, (59 FR 15006) announcing the policies and application procedures for EDA's Fiscal Year 1994 programs. Due to the critical nature of this program, the Assistant Secretary for Economic Development has determined that a higher than normal grant rate will be considered. Grants will be awarded at the level not to exceed 90 percent of the project cost. Grant funds may be awarded for revolving loan fund assistance, and for administrative support not to exceed two years. In extenuating circumstances, EDA may waive the local share requirement where permitted by the PWEDA and its implementing regulations at 13 CFR Chapter III.

Application Procedures

Following the review of the Intermediary Worksheet (Appendix A), EDA will invite those entities whose projects are selected for consideration to submit full applications. Except as modified herein, application procedures, evaluation criteria, and post-approval project implementation information for the Title IX assistance are described in the **Federal Register** of March 30, 1994, (59 FR 15005) announcing EDA's Notice of Availability of Funds for FY 1994.

The form associated with this notice has been approved by OMB under Control Number 0610–0058.

Dated: September 9, 1994.

William W. Ginsberg,

Assistant Secretary for Economic Development.

Appendix A—Intermediary Worksheet, EDA's Financial Restructuring Assistance Program

Interested parties should submit a concise response to each of the following items, preferably no more than ten pages total. Provide a cover sheet signed by the preparer or executive officer.

1. Describe the nature of your overall organization and the sources of administrative and program funding. Provide an organization chart and a copy of the most recent, audited financial statements for your organization.

2. Describe your organization's involvement in economic development lending, including a description of the programs which you provide business technical assistance, loan packaging services, loan portfolio administration, loan servicing, workouts, and/or foreclosure actions. Provide a summary of the loan activity for each program for which your organization has a primary role.

3. Provide the status of loans which your organization was responsible for approving and servicing; discuss or provide data showing the repayment and default status of these loans. Indicate the # and $ amount of loans presently being serviced and the historical default rate of managed portfolios.

4. Describe your organization's loan administration capabilities, including the number of people directly involved in lending activities, and the degree to which your organization has been or is involved in negotiating or restructuring debt obligations. Provide resumes of key loan personnel directly involved in lending functions, and list loan board membership by occupation and employer name, if applicable.

5. Briefly describe your lending and servicing procedures and systems for delivery and servicing of loan programs for which your organization is responsible.

6. Explain how your organization relates to the community at large and set forth the reasons you believe your organization is (or will be) recognized as a leading institution for economic and entrepreneurial development in your present service area (and expanded service area, if applicable). Describe your present service area (and expanded service area, if applicable).

7. Describe the amount of the grant funds under this program which your organization would request, and could realistically and successfully lend within two years, based upon your stated assumptions. Indicate how you would market this program relative to existing and (proposed) expanded service areas. Indicate how this would be accomplished with existing and/or additional lending staff, including a brief discussion or present staff capacity and experience regarding debt restructuring, and dollar requirements to administer the proposed program over an initial three-year period. (Note that interest earnings may be used for program administrative expenses.) Provide suggestions how the program could or should be operated.

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Thursday
September 15, 1994

Part VI

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Office of Justice Programs; Missing Children's Assistance Act; Fiscal Year 1994 Competitive Discretionary Grant Program: Second National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children (NISMART II); Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Office of Justice Programs; Missing Children's Assistance Act; Fiscal Year 1994 Competitive Discretionary Grant Program: Second National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children (NISMART II)

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Issuance of solicitation for applications for the Second National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children (NISMART II).

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing this Notice of a Competitive Discretionary Grant Program and announcing the availability of the OJJDP application kit under section 404(b)(2)(D) of the Juvenile Justice and Delinquency Act of 1974, as amended (the Act), 42 U.S.C. 5773(b)(2)(D). An OJJDP Application Kit containing a copy of the Guidelines, application form (Standard Form 424), standard and special conditions, the OJJDP Peer Review Guidelines, OJJDP Competition and Peer Review Procedures, and other supplemental information relevant to the application process can be obtained by calling the Juvenile Justice Clearinghouse, toll-free, 24 hours a day, (800) 638–8736.

DATES: All applications must be received by 5 p.m. e.s.t., October 30, 1994. Applications received after the deadline date will not be considered.

ADDRESSES: Applications must be mailed or delivered to: NISMART II, Research and Program Development Division, OJJDP, Room 782, 633 Indiana Avenue, NW, Washington, D.C., 20531. (202) 307–0586.

FOR FURTHER INFORMATION CONTACT: Pam Cammarata, Research and Program Development Division, OJJDP, Room 782, 633 Indiana Avenue, NW, Washington, D.C., 20531. (202) 307–0586.

SUPPLEMENTARY INFORMATION:

Purpose

Pursuant to the Missing Children's Assistance Act, Title IV, section 404(b)(3) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5773(b)(3), OJJDP is required to conduct periodic studies of the incidence of missing children. The first such study was published in May 1990, providing national estimates of the numbers of children who were abducted by family or non-family members, runaway, thrownaway, lost or otherwise missing during 1988. OJJDP is now conducting the second National Incidence Studies of Missing, Abducted, Runaway & Thrownaway Children (NISMART II). The purpose of NISMART II is to develop reliable and valid statistics on the incidence of children who are missing, abducted, runaways or thrownaway.

Background

"Missing, Abducted, Runaway and Thrownaway Children in America, First Report: Numbers and Characteristics," (NISMART I) published in May 1990, was developed in response to the statutory mandate, section 404(b)(3) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5773, which requires OJJDP to conduct periodic national incidence studies to determine for a given year the actual number of children reported missing, the number of children who are victims of abduction by strangers, the number of children who are victims of parental kidnappings and the number of children who are recovered each year. The studies funded by OJJDP had two primary objectives: (1) To develop valid and reliable national estimates of the numbers of children reported and/or known to be missing in the course of a given year as well as the number of these children who are recovered; and (2) To establish profiles of missing children and characteristics of the episodes.

NISMART I developed a comprehensive strategy to respond to the specific requirements of the legislation and to the unique problems of defining and counting these children. Five distinct categories of problems that children experience were examined in the study in order to seek evidence of missing children. Each involved certain situations in which children were missing or displaced in some manner that appeared to put them at risk of harm. The five populations include:

(1) Family Abductions (children abducted by parents or other family members)
(2) Non-Family Abductions (children abducted by strangers and other non-family members)
(3) Runaways
(4) Thrownaways
(5) Lost or Otherwise Missing Children

The NISMART I studies included:

(1) A Household Telephone Survey
(2) A Juvenile Facilities Survey
(3) A Returned Runaway Study
(4) A Network Study
(5) A Police Records Study
(6) An FBI Data Reanalysis Study
(7) A Community Professionals Study

Subsequent to the NISMART I project, OJJDP funded a planning effort to support methodological and conceptual activities in preparation for the second national study of the incidence of missing children. The major purposes of the planning effort were to examine conceptual, methodological, policy, cost, and other factors in connection with NISMART II, and to make recommendations for the design of this second study. Major planning activities included:

(1) An assessment of NISMART I;

(2) A Key Informants Survey to identify NISMART II information needs and sources of information;

(3) A Planning Symposium which brought together knowledgeable individuals to comment and make recommendations for NISMART II;

(4) An exploration of additional data sources and methodologies that may improve NISMART I;

(5) Development of draft definitions, and draft screening and survey questions for a household survey;

(6) An analysis of the Police Records Study conducted in NISMART I; and

(7) Recommendations for NISMART II.

The results of the planning effort are presented in the report entitled "Planning the Second National Incidence Studies of Missing, Abducted, Runaway & Thrownaway Children," which is available at the Juvenile Justice Clearinghouse (1–800–638–8736), along with related references cited later in this announcement.

Goals

OJJDP undertakes this project to provide crucial information to parents, legislators, judges, police, social workers, and many other related professionals. The project will build upon the conceptual and methodological experiences of NISMART I, and will build upon the activities of the NISMART II planning effort in order to conduct a sound, valuable, cost-effective study focusing on the classification and estimation of missing children incidents.

The project will allow for a better understanding of the extent of missing, abducted, runaway, and thrownaway youth, and other victimizations of children, by focusing more sharply than NISMART I on the incidence of missing children.

Objectives

- To develop valid and reliable national estimates of the numbers and characteristics of the incidents and children who are missing, abducted, runaway or thrownaway, and the number reported to the police and/or known to be missing in the course of a given year as well as the number of these children who are recovered;
- To develop valid and reliable national estimates of the incidence of sexual assault and exploitation of children and youth by non-family members;
- To improve the validity and reliability of incidence estimation regarding the number of children who are missing, abducted, runaway, or thrownaway;
- To improve identification of eligible incidents, and to accommodate recommended changes in the definition of case types;
- To respond to the legislative requirements, the strengths and weaknesses of NISMART I, the comparability between NISMART I and II, and the recommendations of the planning effort for the conduct of NISMART II;
- To develop a single estimate of missing children that is methodologically sound and meaningful for interpretive and policy making purposes; and
- To refine survey methods for interviewing youth about victimization and other high-risk experiences.

Program Strategy

The organization selected to conduct this research project will be responsible for all aspects of the project, whether carried out directly or contracted to other organizations or individuals.

Applicants should familiarize themselves with all relevant NISMART materials listed in the Reference Section.

The following discussion of program strategy summarizes some of the recommendations from the planning process. Applicants are expected to describe in their application how the recommended strategy may or may not result in achievement of the stated objectives. Furthermore, applicants are also invited and encouraged to submit alternative methods for carrying out the goals and objectives of this research project. Regardless, applicants are expected to expand upon their strategy by providing a discussion of the issues and more detail regarding the methodology.

The proposed program strategy includes seven components:

(1) A project advisory board
(2) A household survey
(3) A police records study
(4) A juvenile facilities study
(5) An analysis of the community professionals study conducted under NIS–3
(6) The development of a single estimate of missing children
(7) A project implementation plan

Project Advisory Board

A core program advisory board of at least three outside experts and three Federal agency representatives will be selected to provide substantive and technical advice to this program. OJJDP also encourages seeking input from additional scholars, practitioners, educators and policy makers. The board will provide advice, guidance and overall direction of the project, and to review project plans, and draft and final reports of the grantee.

Household Survey

A nationally representative household survey consisting of interviews regarding 40,000 children will be conducted for the major purpose of collecting data to support incidence estimates for non-family and family abductions, runaways, thrownaways and lost, injured or otherwise missing children. The study will focus on the classification and estimation of incidents; however, the study will retain sufficient detail about the cases, children, and perpetrators in order to provide useful information for prevention, policy and program development.

The NISMART II household survey would differ from NISMART I in the following areas:

(1) Greater focus on the classification and estimation of incidents;

(2) An increase in child sample size to at least 40,000;

(3) Interviews with 12–17 year old youth for all categories of children;

(4) More extensive screening questions;

(5) Use of a standard incident report form integrated for all child case types; and

(6) National estimates of the incidence of sexual assault and exploitation of children and youth by non-family members.

NISMART II will consist of a telephone survey yielding 40,000 interviews with youth age 12–17 as the primary respondents. Parents/caretakers will serve as proxies, as appropriate, and for children under age 12.

Discussions among researchers and practitioners indicate that definitions of missing, abducted, runaway, and thrownaway children need to be reviewed and revised accordingly. Several suggestions and alternative definitions are provided in the referenced material. Also, NISMART I provided two estimates for each of the five categories based on study definitions for "broad scope" (broad definition) and "policy focal" (more serious) cases. Alternative definitions for policy focal runaway and thrownaway youth are also provided in the referenced material.

Additional screening questions are needed to identify missing events. Screening questions for all case types will be revised and enhanced to improve respondent recall, i.e., more direct cues about places or situations. Screening questions will also be developed that use different terminology for children to associate with and understand.

Additional screening questions will also cue for non-family abductions involving sex offenses. Research indicates that abductions involving sex offenses appear to be a relatively frequent occurrence, and therefore, may be better identified through a household survey rather than police records which have been documented as lacking the necessary information to classify such events.

Police Records Study

Experiences of NISMART I confirmed that the original sample size and methods of the household survey would not identify enough cases of non-family abduction to produce a reliable estimate. The police records study was conducted to accommodate this problem; but not without its drawbacks. A significant amount of information on key criteria necessary for classifying and counting a case as a non-family abduction was not available in police records on homicide, abductions, and sex offenses. Although a number of non-family abduction cases were identified in the police records study, the study was labor intensive and expensive, and offered little information about the details of the incident.

However, a police records study may offer a source of information on stereotypical kidnappings and stranger abduction homicides. A police records study may also be used to validate pre-testing activities, i.e., seeding a sample for pre-testing a new survey instrument.

Applicants are requested to describe how a police records study may assist in developing estimates on stereotypical kidnapping and stranger abduction homicides, in validating pre-test

activities, or in achieving other stated objectives of this project.

Juvenile Facilities Study

The NISMART I study also included a juvenile facilities study which identified juvenile runaways from nonhousehold settings. This subpopulation is believed to be substantial in size and different in characteristics from other runaway populations. Failure to include this subpopulation will result in undercoverage, particularly of the population that has frequent encounters with the juvenile justice system. Consequently, NISMART II will include a juvenile facilities study to capture the portion of the target population comprised of runaways from facilities. Facilities will include: shelters, juvenile correctional facilities, group homes, boarding schools, and residential mental health facilities. The study should include:

(1) A sample of 30 counties
(2) A sample of 75 facilities within the counties
(3) Survey on all children running away from the facilities in the previous 12 months.

Facility officials will serve as survey respondents and will be asked for information about the institution, number of children in residence, type of facility, and the number of children who have runaway from the facility in the previous 12 months. Detailed information about specific recent runaway episodes will be gathered on a specified number of children.

Analysis of the Community Professionals Study

The thrownaways who are most difficult to identify are abandoned children, whose parents or caretakers have gone off and left them. NISMART I identified thrownaway children by capitalizing on the availability of national data from the National Incidence Study of Child Abuse and Neglect (NIS–2) study. The NIS–2 study surveyed professionals in agencies likely to come into contact with such children in a nationally representative sample of 29 counties. A NIS–3 study is planned for 1994, and therefore the data will be available in 1995 to provide thrownaway incidence information in a manner timely for NISMART II, using a methodology similar to that used in NISMART I. The NIS–3 data will provide a thrownaway incidence estimate to augment the data collected by the household survey on thrownaways.

A Single Estimate of Missing Children

The NISMART I incidence estimates for abducted, runaway, thrownaway, and lost or injured or otherwise missing children were not aggregated to produce a single estimate of missing children. The different case types were not summed for a variety of reasons: they represent very different phenomena, many of the children were not really missing, and the various NISMART I methodologies produced estimates that were not appropriate to aggregate. However, the legislation requires that OJJDP attempt to develop a single estimate of missing children.

The applicant must discuss the legislative requirement, and develop procedure and criteria for arriving at a single estimate of missing children that is methodologically sound and meaningful for interpretive and policymaking purposes.

Project Implementation Plan

The applicant must develop and provide a detailed time-task plan that covers all activities and includes expected dates for the delivery of products to OJJDP. The time-task plan should clearly identify major milestones related to each activity.

Project Activities

The major activities to be undertaken for this project are outlined below:

- Refine definitions and measures for all NISMART case types, taking into consideration all the suggestions and alternatives provided in the referenced material.
- Develop survey/screening questions for interviewing both children age 12–17 years old and parents/caretakers. This activity includes developmental pre-testing to ensure that questions elicit reliable and valid answers from the appropriate respondents, and to ensure that questions are appropriate for the mode of interviewing.
- Develop and pre-test an integrated incident report instrument for all case types.
- In accordance with legislative mandates, develop criteria for arriving at a single estimate of missing children.
- Establish and convene advisory board meetings.
- Establish methods of quality control of the data.
- Prepare the information collection package for submission to the Office of Management and Budget for clearance.
- Recruit, hire, and train data collectors.
- Collect data and assure its quality.
- Perform data cleaning and processing tasks.
- Analyze data and compare to NISMART I, as appropriate.
- Write draft and final reports.
- Develop a marketing, product, and dissemination strategy for both the study results and the data set.

References

Juvenile Justice and Delinquency Prevention Act, Section 404(b)(3), as amended, 42 U.S.C. 5773 (b)(3).

Finkelhor, D., Hotaling, G., & Sedlak, A. (1990). "Missing, Abducted, Runaway & Thrownaway Children in America, First Report: Numbers & Characteristics, National Incidence Studies," OJJDP, Washington, DC.

Collins, J., Messerschmidt, P., McCalla, M., Iachan, R., & Hubbard, M. (March 1994). "Planning the Second National Incidence Studies of Missing, Abducted, Runaway & Thrownaway Children. Final Report. OJJDP Grant 92–MC–CX–0018.

Plass, P. (June 1993). "Distinguishing Between Keepings and Takings in the Definition of Family Abductions: Lessons from NISMART I and Advice for NISMART II." Paper presented following planning symposium in Washington, DC.

Mead, K. (February, 1993). "NISMART II Planning Grant Literature Review". Research Triangle Institute: North Carolina.

Dietz, P. (June 1993). "Assessment of the Definitions of Runaway and Thrownaway Episodes used in NISMART I, and Recommendations for NISMART II". Paper presented following planning symposium in Washington, DC.

Dietz, P. (June 1993). "Summary of the Discussion Regarding Runaway and Thrownaway Definitions for NISMART II". Paper presented following planning symposium in Washington, DC.

* References are available from the Juvenile Justice Clearinghouse, 1–800–638–8736.

Eligibility Requirements

Pursuant to the provisions of title IV (The Missing Children's Assistance Act) of the 1974 Juvenile Justice and Delinquency Prevention Act, as amended, 42 U.S.C. 5775, applications will not be accepted from for-profit agencies. In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each

organization must agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF 424 and indicate its acceptance of the conditions of joint and several responsibility with the other co-applicant.

Applications which include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $25,000. The contractor may not be involved in the development of the statement of work. The applicant must provide sufficient justification of not offering for competition the portion of work proposed to be contracted.

Applicants must demonstrate sufficient experience in conducting research and data analysis to complete this project. Extensive knowledge of survey research methods is essential. The successful applicant must have experience in designing and carrying out research that presents difficult challenges for conceptualizing the research, defining and measuring the phenomenon, administering the study and conducting data analysis. The organization must have personnel with the necessary communications skills and organizational ability to carry out this project effectively and in a competent and timely manner. Further, applicants must demonstrate adequate substantive knowledge in the areas of missing children and child victimization, which require special study methods to produce reliable, valid data. Applicants must also have an understanding of related law enforcement and social services operations.

Applicants must demonstrate the management capability, fiscal integrity, and financial responsibility to carry out this project. This includes but is not limited to having an acceptable accounting system with sufficient internal controls, compliance with grant fiscal requirements, and the capability to implement a project of this nature.

Selection Criteria

1. Statement of the Problem. (10 Points)

Each applicant must describe the problem addressed in this program in a clear problem statement. The applicant must demonstrate an understanding of the substantive and technical issues related to NISMART II and for future periodic studies.

2. Definition of Objectives. (10 Points)

The applicant should provide a clear and definitive statement of the applicant's understanding of the goals and overall objectives of the project.

3. Project Design. (35 Points)

The overall program design must be appropriate, methodologically sound, and constitute an effective approach to meet the goals and objectives of this project. The applicant must provide adequate justification for research strategy, and demonstrate the appropriateness of the methods for achieving the project's objectives and goals.

4. Management Structure. (15 Points)

The management of the project must be consistent with the project goals and tasks described in the application. The project implementation plan will be evaluated to determine: the adequacy and appropriateness of the project management structure and activities specified in the project implementation plan; the extent to which the applicant has demonstrated in the time-task plan and program design that it will complete the major milestones of the project on time; and evidence of commitment or collaboration and cooperation with other related research projects.

5. Organizational Capability. (25 Points)

Both the personnel of the organization as well as the technical capabilities of the organization must be sufficient to accomplish the tasks of the project. Staff members must demonstrate that they have sufficient substantive and technical experience. The clarity and appropriateness of position descriptions, required qualifications and staff selection criteria relative to the specific functions set out in the project implementation plan must also be demonstrated. The organization must demonstrate, based on its past experience and current capabilities, that it has adequate management and personnel resources to ensure the successful completion of the project.

6. Reasonableness of Costs. (5 Points)

Budgeted costs are reasonable, allowable, and cost effective for the activities proposed, and are directly related to the achievement of the project objectives. All costs must be fully justified in a budget narrative.

Award Period

Funding will be for 2 years of this 3-year project.

Award Amount

The award amount will not exceed $1,500,000 for the first 24 months.

Due Date

Applications must be received by mail or delivered to OJJDP by October 30, 1994, at Room 782, 633 Indiana Avenue, NW, Washington, DC, 20531.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

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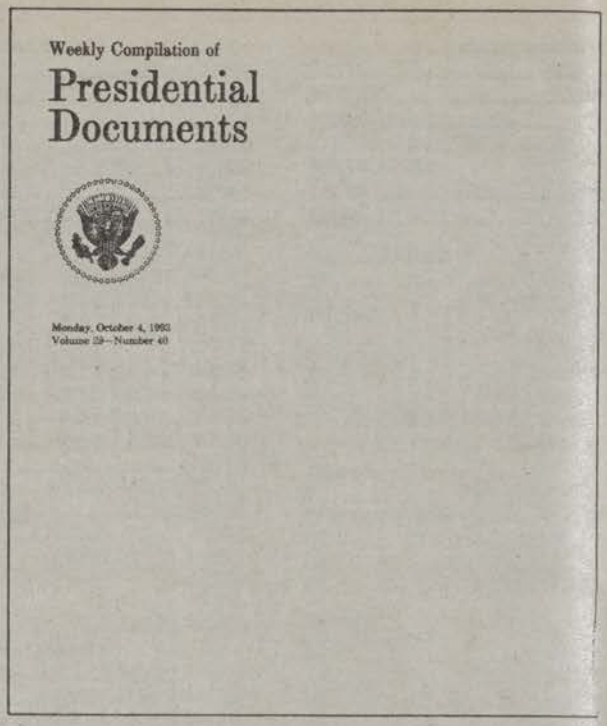
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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List September 14, 1994

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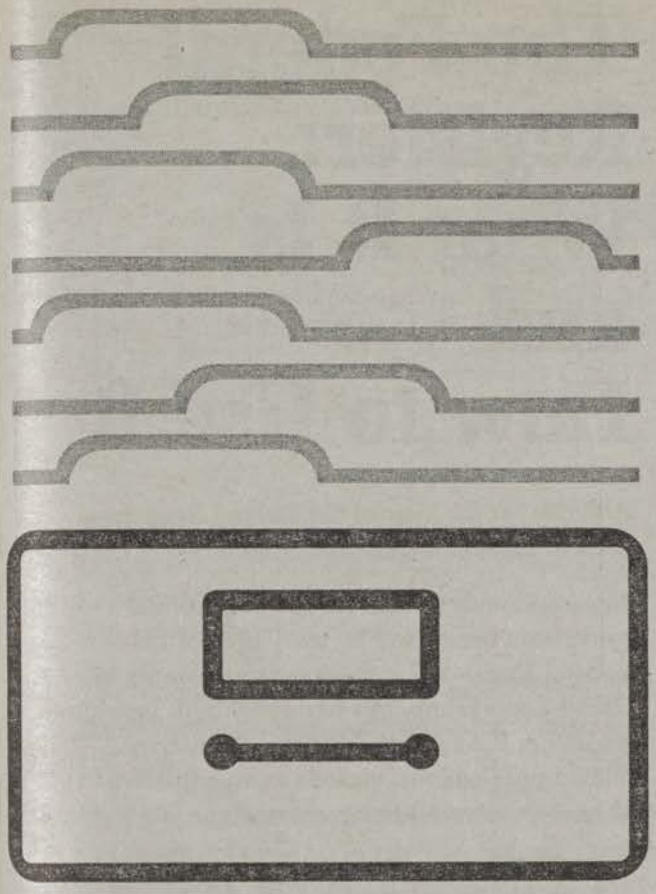
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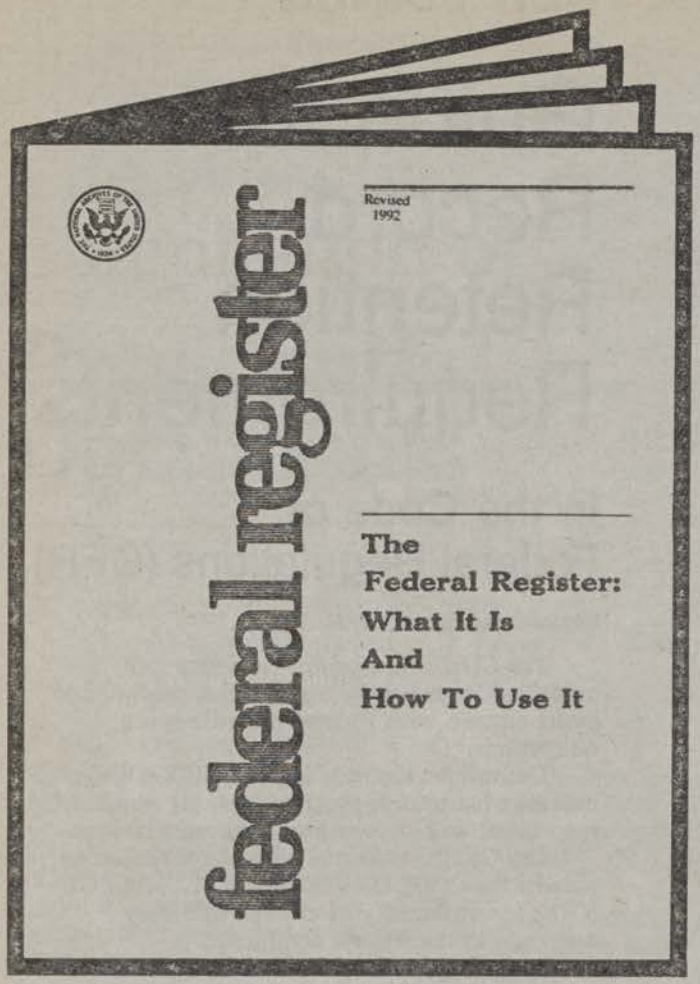
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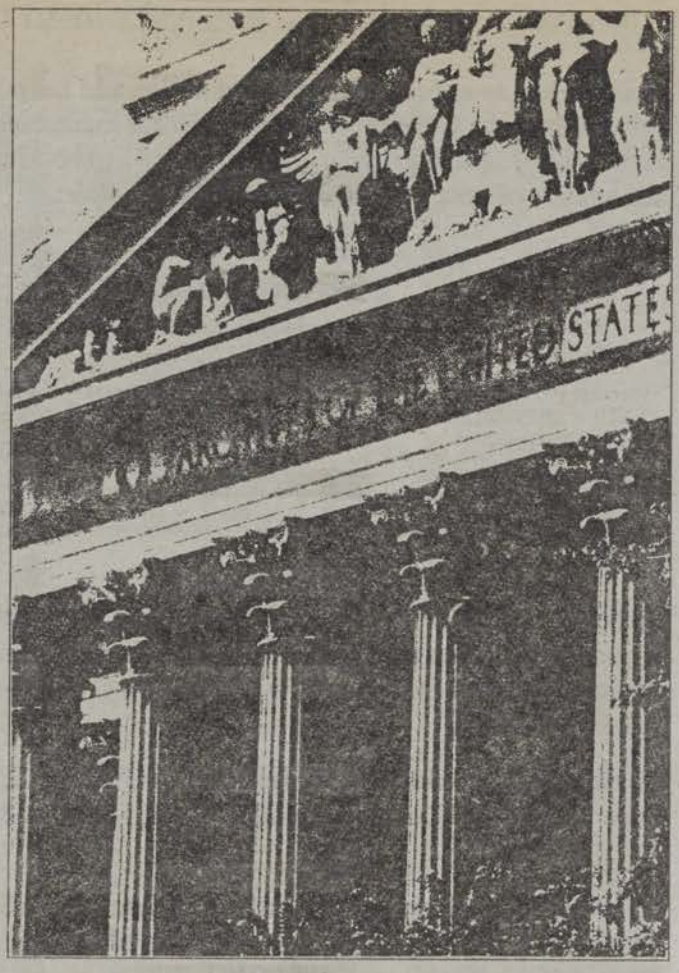
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