7–17–02 Wednesday
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# Federal Register

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**Separate Parts In This Issue**



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**Reader Aids**

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.
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## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 02–24 of June 28, 2002**

## Presidential Determination to Authorize the Furnishing of Emergency Military Counterterrorism Assistance to the Armed Forces of the Philippines

**Memorandum for the Secretary of State [and] the Secretary of Defense**

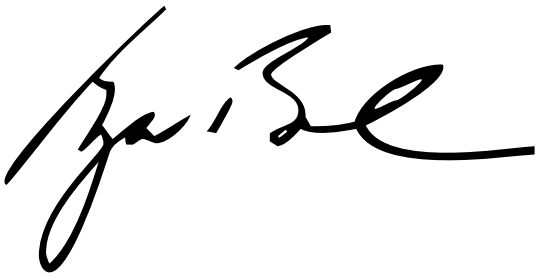
Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(1) (the ''Act''), I hereby determine that:

(1) an unforeseen emergency exists that requires immediate military counterterrorism assistance to the Armed Forces of the Philippines; and

(2) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except 506(a) of the Act.

I therefore direct the drawdown of up to $10 million of defense articles and services from the inventory and resources of the Department of Defense to the Philippines for counterterrorism assistance.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
*Washington, June 28, 2002.*

[FR Doc. 02–18162
Filed 7–16–02; 8:45 am]
Billing code 4710–10–P

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

**RIN 3206–AJ61**

### Prevailing Rate Systems; Definition of Santa Clara, CA, Nonappropriated Fund Wage Area

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule.

**SUMMARY:** The Office of Personnel Management is issuing an interim rule that will abolish the Alameda-Contra Costa, CA, nonappropriated fund (NAF) Federal Wage System wage area and establish a new Santa Clara, CA, NAF wage area. This change is necessary because the closure of the Army and Air Force Exchange Service Distribution Center in Oakland will leave the Alameda-Contra Costa wage area without a host activity to conduct a local wage survey. A full-scale survey for the Santa Clara wage area will be conducted in September 2002.

**DATES:** This interim rule is effective on August 16, 2002. The Office of Personnel Management must receive comments by August 16, 2002.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or FAX: (202) 606–4264.

**FOR FURTHER INFORMATION CONTACT:** Chenty I. Carpenter, (202) 606–2848; FAX: (202) 606–0824; or e-mail *cicarpen@opm.gov.*

**SUPPLEMENTARY INFORMATION:** The Department of Defense (DOD) requests that the Office of Personnel Management (OPM) abolish the present Alameda-Contra Costa, CA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and establish a new Santa Clara, CA, NAF wage area. This change is necessary because the closure of the Army and Air Force Exchange Service Distribution Center in Oakland will leave the Alameda-Contra Costa wage area without a host activity to conduct a local wage survey. The Santa Clara NAF wage area will consist of Santa Clara County as the survey area. The area of application for the Santa Clara, CA, wage area will include Alameda, Contra Costa, and San Mateo Counties. A full-scale survey for the Santa Clara wage area will be conducted in September 2002.

The Alameda-Contra Costa NAF wage area is presently composed of two survey area counties, Alameda and Contra Costa Counties, and two area of application counties, San Mateo and Santa Clara Counties. The Department of Defense recommended that Santa Clara County be redefined as the sole survey county and that Alameda, Contra Costa, and San Mateo Counties be defined as area of application counties. Santa Clara County meets the minimum regulatory requirements to be an NAF survey area. There are about 90 FWS NAF employees working in Santa Clara County, and Moffett Federal Airfield has the capability to conduct a local wage survey. Santa Clara also meets the regulatory requirement of having a minimum of 1,800 private enterprise employees in establishments within the survey specifications. Since Alameda, Contra Costa, and San Mateo Counties will have continuing NAF employment and do not meet the regulatory criteria under 5 CFR 532.219 to be separate survey areas, they must be areas of application. In defining counties as area of application counties, OPM considers the proximity of the largest activity in each county to the survey area; transportation facilities and commuting patterns; and similarities in overall population, private employment in the major industry categories, and the kinds and sizes of private industrial establishments.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus the abolishment of the present Alameda-Contra Costa wage area and the establishment of a new Santa Clara wage area.

**Waiver of Notice of Proposed Rulemaking and Delayed Effective Date**

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because it is necessary to abolish the present Alameda-Contra Costa wage area and establish the new Santa Clara wage area as soon as possible to allow DOD time to prepare for the Santa Clara full-scale survey that will be conducted in September 2002.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

**List of Subjects in 5 CFR Part 532**

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

**Kay Coles James,**

*Director.*

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

**Appendix B to Subpart B of Part 532—Nationwide Schedule of Nonappropriated Fund Regular Wage Surveys [Amended]**

2. Appendix B to subpart B is amended by removing, under the State of California, ''Alameda-Contra Costa,'' and adding, under the State of California, after Santa Barbara, ''Santa Clara,'' under the wage area listing with the beginning month as ''September,'' and the fiscal year of full-scale survey as ''Even.''

**Appendix D to Subpart B of Part 532 [Amended]**

3. Appendix D to subpart B is amended for the State of California by removing the two occurrences of ''Alameda-Contra Costa'' from the area of application, and adding ''Santa Clara'' as a new nonappropriated fund wage area after ''Santa Barbara'' to read as follows:

* * * * *

**SANTA CLARA**

*Survey area*

California:
Santa Clara

*Area of application. Survey area plus:*

California:
Alameda
Contra Costa
San Mateo

* * * * *

[FR Doc. 02–17900 Filed 7–16–02; 8:45 am]

**BILLING CODE 6325–39–P**

## DEPARTMENT OF THE TREASURY

### 5 CFR Part 3101

**RIN 3209–AA15**

## Supplemental Standards for Ethical Conduct for Employees of the Department of Treasury

**AGENCY:** Department of the Treasury (Department).

**ACTION:** Final rule; amendment.

**SUMMARY:** The Department of the Treasury, with the concurrence of the Office of Government Ethics, is issuing this final rule to amend the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury (Supplemental Regulations) that govern the use of national bank credit cards by employees of the Office of the Comptroller of the Currency (OCC). This final rule amends the Supplemental Regulations to follow more closely the statutory restrictions on the use of national bank credit cards by OCC employees and to increase OCC supervisors' flexibility in making work assignments.

**EFFECTIVE DATE:** July 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Virginia R. Canter, Senior Counsel (Ethics), Office of the Assistant General Counsel (General Law and Ethics), Department of the Treasury, (202) 622–0450, 1500 Pennsylvania Avenue, NW., Washington, DC 20220; Barrett Aldemeyer, OCC Ethics Counsel, (202) 874–4460, or MaryAnn Orr Nash, Counsel, OCC Legislative and Regulatory Activities Division, (202) 874–5090, 250 E St., SW. , Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The Supplemental Standards of Ethical Conduct for Employees of the Department of Treasury, at 5 CFR 3101.108, set forth rules that apply to employees of the Office of the Comptroller of the Currency (OCC). This final rule amends § 3101.108(b), which prohibits OCC employees from borrowing, including borrowing through the use of a credit card, from a national bank except under very limited circumstances.

Under 18 U.S.C. 213, a bank examiner is prohibited from accepting loans from a bank that he or she examines; 18 U.S.C. 212 correspondingly prohibits a bank from making a loan to someone who examines or has authority to examine the bank.[1] Current Supplemental Regulations implementing section 213 and expanding upon it generally prohibit examiners and the other ''covered'' OCC employees from seeking or obtaining any loan or other extension of credit from a national bank, including through the use of a credit card. 5 CFR 3101.108(b).

The existing Supplemental Regulations do contain an exception to this prohibition. A covered OCC employee [2] generally is permitted to obtain a credit card from a national bank if: (1) The credit card is obtained on terms and conditions no more favorable than those offered to the general public; (2) the employee is not assigned to examine the bank offering the credit card at the time the credit card is obtained; and (3) the employee recuses himself or herself from examining or otherwise participating in the supervision of the bank. Two issues concerning the scope of the exception have arisen since the issuance of the current rules in 1995. *See* 60 FR 22249–22255.

The first issue under the current credit card rules is that employees' credit card-related recusals have limited the flexibility of OCC supervisors to make assignments. The exception to the general prohibition on obtaining credit generally permits covered OCC employees to hold and use national bank credit cards if they recuse themselves from any work involving those banks. *See* 5 CFR 3101.108(b)(4), as adopted in 1995. In instances where covered OCC employees holding national bank credit cards are involved in OCC licensing, policy and legal staff matters directly involving the bank issuer, the OCC has found that there is little likelihood of a conflict of interest or a loss of impartiality and that the breadth of the restriction unnecessarily hinders the administration of the OCC's programs. Therefore, this final rule refines the application of the credit card rules to covered OCC employees and more closely follows the statutory prohibition.

The second issue is that the current credit card rules have significantly limited the credit card options available to employees who work in district offices and on large bank supervision teams. Under the Supplemental Regulations and the OCC ethics policies (which set forth the procedures that implement the OCC's portion of the Supplemental Regulations), covered district employees may not obtain credit cards from banks headquartered in their district. In addition, large bank team (formerly known as the ''Multinational Division'') employees [3] may not have credit cards from banks supervised by their large bank team or from banks in the district where they are located. *See* 5 CFR 3101.108(b)(4)(i), as adopted in 1995; *see also* OCC Ethics Policy at 14.

The Department originally adopted the Supplemental Regulations' credit card restrictions on covered OCC district and large bank team employees, in part, to permit the supervisors of those employees to make work assignments free from the constraints that would have otherwise arisen from employees' credit card recusals. At the time they were adopted by the Department, these restrictions did not present a serious obstacle to covered district and large bank team employees obtaining credit cards. Since the issuance of the Supplemental Regulations, industry consolidation and

[1] Under the OCC Ethics Policy, Rules, Policies and Procedures for Employees (October 1999) (OCC Ethics Policy) the term ''examiner'' does not include supervisory personnel who are not assigned to the examination of banks. The OCC Ethics Policy will be revised to reflect the changes made by this final rule and to clarify that, under 18 U.S.C. 212, ''authority to examine'' also does not include OCC supervisory personnel. A summary of the OCC Ethics Policy is available on the OCC's website at http://www.occ.treas.gov/ethics.htm.

[2] ''Covered'' OCC employees include bank examiners and all other employees designated by the Comptroller under OCC ethics policies. See 5 CFR 3101.108(b)(3). Under these policies, ''covered employee'' means any employee, except an administrative employee, who is required to file financial disclosure reports.

[3] Because they were adopted prior to the recent changes to OCC's management structure, the Supplemental Regulations refer to large bank team employees as employees of the ''Multinational Division.'' This final rule includes a technical correction to make appropriate changes to terminology.

conversions to the national bank charter have reduced sharply the credit card options available to those employees.

The Department has found that the imposition of such broad restrictions on obtaining credit cards on covered district and large bank team employees is not necessary for the administration of the OCC's supervisory activities. In situations where these covered employees are unlikely to examine a bank, the Department believes that the process of obtaining and holding a national bank credit card does not inherently present a conflict of interest or a likelihood of a loss of impartiality.

There are several changes made by these final rule amendments to address these concerns. The final rule changes the general statement of the prohibition on borrowing at 5 CFR 3101.108(b)(1) to omit the reference to credit cards as unnecessary and redundant. The import of the original provision would not be altered by this change.

The final rule also changes the Supplemental Regulations to eliminate the requirement for non-examiners (attorneys, economists, Senior Advisors, etc.) to be recused from matters involving banks from which they hold credit cards. The final rule, at § 3101.108(b)(4)(i), therefore, provides a general exception permitting non-examiners to seek or obtain credit cards from national banks on terms and conditions no more favorable than those offered to the general public. The final rule further changes the Supplemental Regulations to limit credit card recusals to examiners and to require examiners holding national bank credit cards to be recused only from bank *examinations* involving the issuing credit card banks, and not limit their participation in other matters, such as licensing or supervisory policy decisions affecting the bank. The exception in § 3101.108(b)(4)(ii) of the final rule, permitting examiners and their spouses and minor children to hold credit cards from banks the examiner is not assigned to examine, applies only to examiners and their spouses and minor children, and not any other covered OCC employees. The exception is available with respect to a credit card from a bank an examiner is not assigned to examine provided the credit card is obtained on terms and conditions no more favorable than those offered to the general public and the examiner maintains a written recusal from examinations of the bank.

An examiner is ''assigned to examine'' a bank if the examiner works either: (A) in a district, and the bank is one that he or she examines or that is assigned to his or her Assistant Deputy Comptroller (ADC) or rating official; or (B) in Large Bank Supervision, and the bank is one to which the examiner is assigned or otherwise actually examines. The term ''Large Bank Supervision'' in the final rule replaces the term ''Multinational Division'' which is used in the current regulations. This is a technical change to reflect recent changes to the OCC's management structure.

The changes to the Supplemental Regulations narrow the current prohibition on district and large bank team employees by prohibiting only examiners in districts and large banks from holding credit cards issued by banks they are assigned to examine. Because this final rule more clearly connects the credit card restriction to the examiners' actual or likely work assignments, it will provide covered OCC district and large bank team examiners greater access to credit cards without unduly restricting supervisors' flexibility in making assignments or increasing the potential for conflicts of interest.

The final rule eliminates the retail store exception in 5 CFR 3101.108(b)(4)(ii) as heretofore codified to create a uniform OCC credit card policy. With the adoption of this final rule, the need for this exception should diminish because a retail store credit card would be treated as any other national bank credit card—generally permissible for examiners who recuse themselves unless the card is issued by a national bank assigned to the examiners' ADC or by a bank they examine. The final rule also eliminates the exception for mortgage assumptions as codified until now in 5 CFR 3101.108(b)(4)(iii) because this exception arises infrequently and will be better handled by the OCC ethics staff by way of recusal or waiver pursuant to 5 CFR 3101.108(g).

**Matters of Regulatory Procedure**

*Administrative Procedure Act*

Under 5 U.S.C. 553(a)(2), rules relating to agency management or personnel are exempt from the proposed rulemaking requirements of the Administrative Procedure Act (APA). As set forth in the description of the final rule, this rule affects only the OCC and its personnel. Even if this rulemaking were subject to APA proposed rulemaking procedures, the Department finds good cause, pursuant to 5 U.S.C. 553 (b) and (d), to waive the requirements for notice and comment and 30-day delayed effective date because the rule affects only the OCC and its employees (and their immediate families) and operates to relieve a restriction that has resulted in administrative and personnel inefficiencies.

*Regulatory Flexibility Act*

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. However, this final rule will not have a significant economic impact on a substantial number of small entities in accord with the spirit and purposes of the Regulatory Flexibility Act. This rule affects the administrative operations of the OCC and it affects OCC employees. Any effect on national banks is merely incidental and creates no cost or burden for a bank.

*Executive Order 12866*

This final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

**List of Subjects in 5 CFR Part 3101**

Conflict of interests, Extensions of credit, Government employees, OCC employees.

For the reasons set forth in the preamble, the Department of the Treasury, with the concurrence of the Office of Government Ethics, amends 5 CFR part 3101 as follows:

## PART 3101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF THE TREASURY

1. The authority citation for part 3101 continues to read as follows:

**Authority:** 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 212, 213; 26 U.S.C. 7214 (b); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547; 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803, 2635.807(a) (2) (ii).

2. In § 3101.108, paragraphs (b)(1) and (b)(4) are revised to read as follows:

**§ 3101.108 Additional rules for Office of the Comptroller of the Currency employees.**

* * * * *

(b) *Prohibited borrowing*—(1) *Prohibition on employee borrowing.* Except as provided in this section, no covered OCC employee shall seek or obtain credit from any national bank or from an officer, director, employee, or subsidiary of any national bank.

* * * * *

(4) *Exceptions*—(i) *Non-examiners.* A covered OCC employee, other than an examiner, or the spouse or minor child of such a covered OCC employee, may seek or obtain a credit card from a national bank if the credit card is sought

or obtained on terms and conditions no more favorable than those offered to the general public.

(ii) *Examiners.* (A) An examiner, or the spouse or minor child of an examiner to whom the prohibition in paragraph (b)(1) of this section applies, may seek or obtain a credit card from a national bank the examiner is not assigned to examine so long as the credit card is obtained on terms and conditions no more favorable than those offered to the general public and the examiner submits to the Chief Counsel or designee a written disqualification from the examination of that bank. Such a recusal would not prevent an examiner from participating in other bank supervision matters outside the scope of an examination, such as licensing or supervisory policy decisions.

(B) For purposes of this section, examiners are assigned to examine a bank if they work:

(*1*) In a district, and the bank is one they examine or that is assigned to their Assistant Deputy Comptroller or rating official; or

(*2*) In Large Bank Supervision or Washington, D.C. Headquarters, and the bank is one to which they are regularly or otherwise assigned.

* * * * *

Dated: June 27, 2002.

**David D. Aufhauser,**

*General Counsel, Department of the Treasury.*

Approved: July 9, 2002.

**Amy L. Comstock,**

*Director, Office of Government Ethics.*

[FR Doc. 02–17918 Filed 7–16–02; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

## Office of the Comptroller of the Currency

## 12 CFR Part 25

**[Docket No. 02–09]**

**RIN 1557–AB95**

## Prohibition Against Use of Interstate Branches Primarily for Deposit Production

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC).

**ACTION:** Final rule; correction.

**SUMMARY:** On June 6, 2002, the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively the Agencies) published a final rule in the **Federal Register** that amended each Agency's regulation governing deposit production offices. This document corrects a typographical error in the OCC's regulation.

**EFFECTIVE DATE:** The correction made in this document is effective October 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Patrick T. Tierney, Attorney, Legislative and Regulatory Activities Division (202–874–5090).

**SUPPLEMENTARY INFORMATION:** The comma that appears at the end of paragraph (d)(1) of 12 CFR 25.62 should be a semicolon, and paragraph (d)(2) of § 25.62 should begin on a new line. Therefore, in the final rule FR Doc. 02–14130, published on June 6, 2002 (67 FR 38844), make the following correction:

1. On page 38847, in the third column, in § 25.62, paragraphs (d)(1) and (d)(2) are correctly revised to read as follows:

**§ 25.62 Definitions.**

* * * * *

(d) * * *

(1) With respect to a State bank, the State that chartered the bank;

(2) With respect to a national bank, the State in which the main office of the bank is located;

* * * * *

Dated: July 8, 2002.

**Julie L. Williams,**

*First Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency.*

[FR Doc. 02–17757 Filed 7–16–02; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 23

**[Docket No. CE186, Special Condition 23–119–SC]**

## Special Conditions; S–TEC on the New Piper Aircraft Corporation, PA 34–200T, Seneca V; Protection for High Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued to S–TEC, One S–TEC Way Municipal Airport, Mineral Wells, Texas 76007, for a Supplemental Type Certificate for New Piper Aircraft Corporation, PA 34–200T, Seneca V airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays Model Magic manufactured by Meggitt Avionics for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

**DATES:** The effective date of these special conditions is July 5, 2002. Comments must be received on or before August 16, 2002.

**ADDRESSES:** Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE186, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE186. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

### Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the

Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE186.'' The postcard will be date stamped and returned to the commenter.

**Background**

On November 13, 2001, S–TEC Corporation, One S–TEC Way, Mineral Wells Airport, Mineral Wells, Texas 76067, made an application to the FAA for a new Supplemental Type Certificate for the New Piper Aircraft Corporation PA 34–200T Seneca V airplanes. The Seneca V is currently approved under Type Certificate No. A7SO. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS, that is vulnerable to HIRF external to the airplane.

**Type Certification Basis**

Under the provisions of 14 CFR part 21, § 21.101, S–TEC must show that the New Piper Aircraft Company PA 34–200T Seneca V aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the change to the PA 34–200T Seneca V: The Certification Basis that is incorporated by reference for airplane model PA 34–200T Seneca V of the Type Certificate Data Sheet No. A7SO: FAR 23 August 1, 1967, through Amendment 23–6, FAR 23.1301, 1309, 1311, and 1321 as amended by Amendment 23–49, and the special conditions adopted by this rulemaking action.

**Discussion**

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101 (b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

**Novel or Unusual Design Features**

S–TEC plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

**Protection of Systems from High Intensity Radiated Fields (HIRF)**

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

| Frequency | Field strength (volts per meter) [1] | |
|---|---|---|
| | Peak | Average |
| 10 kHz–100 kHz ..... | 50 | 50 |
| 100 kHz–500 kHz ..... | 50 | 50 |
| 500 kHz–2 MHz ..... | 50 | 50 |
| 2 MHz–30 MHz ..... | 100 | 100 |
| 30 MHz–70 MHz ..... | 50 | 50 |
| 70 MHz–100 MHz ..... | 50 | 50 |
| 100 MHz–200 MHz ... | 100 | 100 |
| 200 MHz–400 MHz ... | 100 | 100 |
| 400 MHz–700 MHz ... | 700 | 50 |
| 700 MHz–1 GHz ..... | 700 | 100 |
| 1 GHz–2 GHz ..... | 2000 | 200 |
| 2 GHz–4 GHz ..... | 3000 | 200 |
| 4 GHz–6 GHz ..... | 3000 | 200 |
| 6 GHz–8 GHz ..... | 1000 | 200 |
| 8 GHz–12 GHz ..... | 3000 | 300 |
| 12 GHz–18 GHz ..... | 2000 | 200 |
| 18 GHz–40 GHz ..... | 600 | 200 |

[1] The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the

airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

**Applicability**

As discussed above, these special conditions are applicable to New Piper Aircraft Corporation PA 34–200T Seneca V airplane. Should S–TEC Corporation, apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

**Conclusion**

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

**List of Subjects in 14 CFR Part 23**

Aircraft, Aviation safety, Signs and symbols.

**Citation**

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for New Piper Aircraft Corporation PA 34–200T Seneca V airplane modified by S–TEC Corporation to add an EFIS.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on July 5, 2002.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate.*

[FR Doc. 02–18018 Filed 7–16–02; 8:45 am]

**BILLING CODE 4910–13–U**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–367–AD; Amendment 39–12821; AD 2002–14–21]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–600, –700, and –800 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737–600, –700, and –800 series airplanes, that currently requires repetitive inspections to detect discrepancies of the quick-disconnect coupling on the fuel hose located at the fan case firewall; corrective action, if necessary; and installation of a clamp shell on the coupling to prevent separation of the coupling halves. This amendment limits the applicability of the existing requirements, clarifies certain existing requirements, and requires removal of the clamp shell installed previously and replacement of the existing quick-disconnect fuel supply hose, coupling, and strut fitting with new, fixed-B-nut-type parts. Such replacement ends the requirement for repetitive inspections. The actions specified by this AD are intended to prevent major fuel leakage due to excessive wear of the quick-disconnect coupling on the fuel hose, fire in the engine nacelle, and consequent loss of thrust from the affected engine, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective August 21, 2002.

The incorporation by reference of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000, as listed in the regulations, is approved by the Director of the Federal Register as of August 21, 2002.

The incorporation by reference of Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998, as listed in the regulations, was approved previously by the Director of the Federal Register as of February 19, 1999 (64 FR 5590, February 4, 1999).

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Douglas Pegors, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1446; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–03–08, amendment 39–11022 (64 FR 5590, February 4, 1999), which is applicable

to certain Boeing Model 737–600, –700, and –800 series airplanes, was published in the **Federal Register** on April 4, 2002 (67 FR 16064). That action proposed to continue to require repetitive inspections to detect discrepancies of the quick-disconnect coupling on the fuel hose located at the fan case firewall; corrective action, if necessary; and installation of a clamp shell on the coupling to prevent separation of the coupling halves. That action also proposed to limit the applicability of the existing requirements, clarify certain existing requirements, and require removal of the clamp shell installed previously and replacement of the existing quick-disconnect fuel supply hose, coupling, and strut fitting with new, fixed-B-nut-type parts. Such replacement would end the requirement for repetitive inspections.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

**Explanation of Change Made to Proposal**

For clarification, the FAA has revised the definition of a ''general visual inspection'' in this final rule.

**Conclusion**

The FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

There are approximately 560 airplanes of the affected design in the worldwide fleet. The FAA estimates that 271 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 99–03–08 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be $16,260, or $60 per airplane, per inspection cycle.

For airplanes on which it has not already been accomplished during production, the installation of a clamp shell required by AD 99–03–08 takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts are provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the currently required installation is estimated to be $120 per airplane.

The new replacement that is required in this AD action will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $65,040, or $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–11022 (64 FR 5590, February 4, 1999), and by adding a new airworthiness directive (AD), amendment 39–12821, to read as follows:

**2002–14–21 Boeing:** Amendment 39–12821. Docket 2000–NM–367–AD. Supersedes AD 99–03–08, Amendment 39–11022.

*Applicability:* Model 737–600, –700, and –800 series airplanes, listed in Group I or II of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000; certificated in any category.

**Note 1:** This AD applies to Model 737–700 series airplanes in an increased-gross-weight configuration, as listed in the service bulletin referred to in the applicability statement of this AD.

**Note 2:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent major fuel leakage due to excessive wear of the quick-disconnect coupling on the fuel hose, fire in the engine nacelle, and consequent loss of thrust from the affected engine, which could result in reduced controllability of the airplane, accomplish the following:

**Restatement of Requirements of AD 99–03–08**

*Repetitive Inspections and Corrective Actions*

(a) For airplanes listed in Group I of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000: Within 7 days after February 19, 1999 (the effective date of AD 99–03–08, amendment 39–11022), perform a general visual inspection to detect discrepancies (i.e., fuel leakage, wear of the

lock teeth, or missing lock pins on the coupling nut) of the quick-disconnect coupling on the fuel hose located at the fan case firewall, in accordance with Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998; or Revision 2, dated July 13, 2000.

(1) If no discrepancy is detected, repeat the inspection thereafter at intervals not to exceed 500 flight hours, until the installation required by paragraph (b) of this AD is accomplished.

(2) If any discrepancy is detected, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with TABLE 1. of the Accomplishment Instructions of the alert service bulletin, and repeat the inspection thereafter at the time specified in TABLE 1. of the Accomplishment Instructions of the alert service bulletin.

*Installation of Clamp Shell and Repetitive Inspections*

(b) For airplanes listed in Group I of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000: Within 30 days after February 19, 1999, install an Aeroquip Clamp Shell, having part number (P/N) AE20074–165, on the quick-disconnect coupling on the fuel hose, which is located at the fan case firewall, in accordance with Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998; or Revision 2, dated July 13, 2000. Accomplishment of such installation terminates the repetitive inspection requirements of paragraphs (a)(1) and (a)(2) of this AD.

**New Requirements of This AD**

**Note 3:** For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

**Note 4:** Accomplishment of the requirements of paragraphs (a), (b), and (c) of this AD according to Boeing Alert Service Bulletin 737–73A1011, Revision 1, dated April 15, 1999, is acceptable for compliance with those paragraphs.

*Repetitive Inspections*

(c) For airplanes listed in Groups I and II of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000: Within 1,000 flight hours after installation of the clamp shell either per paragraph (b) of this AD (for Group I airplanes) or during production (for Group II airplanes), perform the inspection specified in paragraph (a) of this AD.

**Note 5:** The repetitive inspections required by paragraph (c) of this AD were previously required by paragraph (b) of AD 99–03–08.

(1) If no discrepancy is detected, repeat the inspection thereafter at intervals not to exceed 1,000 flight hours.

(2) If any discrepancy is detected, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with Figures 1 and 3 of the Accomplishment Instructions of the alert service bulletin, as applicable, and repeat the inspection thereafter at the time specified in TABLE 1. of the Accomplishment Instructions of the alert service bulletin.

*Replacement of Existing Parts*

(d) For airplanes listed in Groups I and II of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000: Within 3 years after the effective date of this AD, remove the clamp shell installed per paragraph (b) of this AD (for Group I airplanes) or during production (for Group II airplanes), and replace the existing quick-disconnect fuel hose, coupling, and strut fitting with new, fixed-B-nut-type parts, in accordance with Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000. Such replacement terminates the repetitive inspections required by paragraphs (a)(1), (a)(2), and (c) of this AD, as applicable.

*Spares*

(e) After the effective date of this AD, no one may install a quick-disconnect fuel supply hose, coupling, or strut fitting with a part number listed in the ''Existing Part Number'' column of the table under paragraph 2.E. of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000, on any airplane.

*Alternative Methods of Compliance*

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–03–08, amendment 39–11022, are approved as alternative methods of compliance with paragraphs (a), (b), and (c) of this AD.

**Note 6:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

*Special Flight Permits*

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

*Incorporation by Reference*

(h) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998; or Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000.

(1) The incorporation by reference of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998, was approved previously by the Director of the Federal Register as of February 19, 1999 (64 FR 5590, February 4, 1999).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

*Effective Date*

(i) This amendment becomes effective on August 21, 2002.

Issued in Renton, Washington, on July 8, 2002.

**Vi Lipski,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 02–17550 Filed 7–16–02; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 02–AEA–01]**

## Establishment of Class E Airspace; Annapolis, MD

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Annapolis, MD. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft operating into Lee Airport, Annapolis, MD under Instrument Flight Rules (FR).

**EFFECTIVE DATE:** 0901 UTC October 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

### History

On May 3, 2002, a document proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet above the surface within a 6.2-mile radius of

the Lee Airport, Annapolis, MD was published in the **Federal Register** (67 FR 22366–22367). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before June 3, 2002. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations within a 6.2 mile radius of Lee Airport, Annapolis, MD.

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. Therefore, this regulation: (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 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 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

*Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth.*

**AEA MD E5 Annapolis, MD [NEW]**

Lee Airport
(Lat. 38°56′34″ N., long. 76°34′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the Lee Airport, Annapolis, MD, excluding the portion that coincides with the Baltimore, MD, and the Mitchellville, MD Class E airspace areas.

Issued in Jamaica, New York on July 1, 2002.

**F.D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 02–17580 Filed 7–16–02; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 02–AEA–02]**

## Establishment of Class E Airspace: Aberdeen Field Airport, Smithfield, VA

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Aberdeen Field Airport (K31VA), Smithfield, VA. Development of an Area Navigation (RNAV), Standard Instrument Approach Procedure (SIAP), for Aberdeen Field Airport, Smithfield, VA has made this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to protect aircraft executing the approach to the Aberdeen Field Airport.

**EFFECTIVE DATE:** 0901 UTC October 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

**History**

On April 16, 2002 a document proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet Above Ground Level (AGL) for an RNAV, SIAP to the Aberdeen Field Airport, Smithfield, VA was published in the **Federal Register** (67 FR 18517–18518).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before May 16, 2002. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83.

Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001 and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting Instrument Flight Rules (IFR) operations at the Aberdeen Field Airport, Smithfield, VA.

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. Therefore, this regulation: (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 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 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2002, and effective September 16, 2001, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 fee or more above the surface of the earth.*

* * * * *

**AEA VA E5 Smithfield, VA [NEW]**

Aberdeen Field Airport
(Lat 37°01′15″ N., long. 76°35′19″ W.)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Aberdeen Field Airport.

* * * * *

Issued in Jamaica, New York on July 1, 2002.

**F.D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 02–17578 Filed 7–16–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No.30319; Amdt. No. 3013 ]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: PO Box 25082, Oklahoma City, OK. 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

**The Rule**

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which create the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPS effective in less than 30 days.

**Conclusions**

The FAA has determined that this regulation only inolvoles 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 Procrdures (44 FR 11034; February 26, 1979); and (3) does not warrant preparatioun of a

regulatory evluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entitis under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on July 5, 2002.

**James J. Ballough,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective August 8, 2002*

Sacramento, CA, Sacramento Intl, NDB RWY 34R, Amdt 1
Sacramento, CA, Sacramento Intl, NDB RWY 34, Amdt 5
Sacramento, CA, Sacramento Intl, ILS RWY 16R, Amdt 14
Sacramento, CA, Sacramento Intl, ILS RWY 16L, Amdt 1
Sacramento, CA, Sacramento Intl, ILS RWY 34L, Amdt 6
Sacramento, CA, Sacramento Intl, RNAV (GPS) RWY 16R, Orig
Sacramento, CA, Sacramento Intl, RNAV (GPS) RWY 16L, Orig
Sacramento, CA, Sacramento Intl, RNAV (GPS) RWY 34R, Orig
Sacramento, CA, Sacramento Intl, RNAV (GPS) RWY 34L, Orig
San Jose, CA, Norman Y Mineta San Jose Intl, RNAV (GPS) RWY 11, Orig
San Jose, CA, Norman Y Mineta San Jose Intl, RNAV (GPS) RWY 29, Orig
Denver, CO, Denver Intl, ILS RWY 7, Amdt 2
Denver, CO, Denver Intl, ILS RWY 8, Amdt 3
Denver, CO, Denver Intl, ILS RWY 16, Amdt 2
Denver, CO, Denver Intl, ILS RWY 17L, Amdt 2
Denver, CO, Denver Intl, ILS RWY 17R, Amdt 2
Denver, CO, Denver Intl, ILS RWY 25, Amdt 2
Denver, CO, Denver Intl, ILS RWY 26, Amdt 2
Denver, CO, Denver Intl, ILS RWY 34, Amdt 1
Denver, CO, Denver Intl, ILS RWY 35L, Amdt 3
Denver, CO, Denver Intl, ILS RWY 35R, Amdt 1
Denver, CO, Denver Intl, RNAV (GPS) RWY 7, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 8, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 16, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 17L, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 17R, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 25, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 26, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 34, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 35L, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 35R, Orig
Jacksonville, FL, Jacksonville Intl, VOR RWY 31, Orig-D
Gainesville, FL, Gainesville Regional, LOC/DME BC RWY 10, Orig, CANCELLED
Statesboro, GA, Statesboro-Bulloch County, LOC RWY 32, Amdt 4C, CANCELLED
Statesboro, GA, Statesboro-Bulloch County, NDB RWY 32, Amdt 5
Statesboro, GA, Statesboro-Bulloch County, ILS RWY 32, Orig
Statesboro, GA, Statesboro-Bulloch County, RNAV (GPS) RWY 32, Orig
Hilo, HI, Hilo Intl, VOR–B, Orig–A
Hilo, HI, Hilo Intl, VOR/DME OR TACAN–A, Amdt 7A
Hilo, HI, Hilo Intl, VOR/DME OR TACAN RWY 26, Amdt 5A
Hilo, HI, Hilo Intl, RNAV (GPS) RWY 21, Orig
Hilo, HI, Hilo Intl, RNAV (GPS) RWY 26, Orig
Boston, MA, General Edward Lawrence Logan Intl, VOR/DME RWY 15R, Amdt 2
Boston, MA, General Edward Lawrence Logan Intl, NDB RWY 22L, Amdt 11A
Boston, MA, General Edward Lawrence Logan Intl, ILS RWY 15R, Amdt 1
Boston, MA, General Edward Lawrence Logan Intl, ILS RWY 27, Amdt 2
Boston, MA, General Edward Lawrence Logan Intl, ILS RWY 33L, Amdt 2
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 15R, Orig Amdt 1
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 22L, Orig
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 27, Orig
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 33L, Orig
Boston, MA, General Edward Lawrence Logan Intl, GPS RWY 27, Orig CANCELLED
Boston, MA, General Edward Lawrence Logan Intl, GPS RWY 33L, Orig CANCELLED
St. Ignace, MI, Mackinac County, RNAV (GPS) RWY 07, Orig
St. Ignace, MI, Mackinac County, RNAV (GPS) RWY 25, Orig
New York, NY, John F. Kennedy Intl, COPTER RHAV (GPS) 028, Orig
Newburg, NY, Stewart Intl, NDB RWY 9, Amdt 8B
Newburg, NY, Stewart Intl, NDB RWY 9, Orig
Newburg, NY, Stewart Intl, RNAV (GPS) RWY 16, Orig
Newburg, NY, Stewart Intl, GPS RWY 16, Orig, CANCELLED
Newburg, NY, Stewart Intl, RNAV (GPS) RWY 17, Orig
Newburg, NY, Stewart Intl, GPS RWY 27, Orig, CANCELLED
Newburg, NY, Stewart Intl, RNAV (GPS) RWY 34, Orig
Syacuse, NY, Syracuse Hancock Intl, ILS RWY 10, Amdt 10
Syacuse, NY, Syracuse Hancock Intl, ILS RWY 28, Amdt 33
Syacuse, NY, Syracuse Hancock Intl, RNAV (GPS) Y RWY 10, Orig
Syacuse, NY, Syracuse Hancock Intl, RNAV (GPS) Z RWY 10, Orig
Syacuse, NY, Syracuse Hancock Intl, RNAV (GPS) Y RWY 15, Orig
Syacuse, NY, Syracuse Hancock Intl, RNAV (GPS) Z RWY 15, Orig
Syacuse, NY, Syracuse Hancock Intl, RNAV (GPS) RWY 28, Orig
Syacuse, NY, Syracuse Hancock Intl, RNAV (GPS) RWY 33, Orig
Syacuse, NY, Syracuse Hancock Intl, GPS RWY 10, Orig–B, CANCELLED
Syacuse, NY, Syracuse Hancock Intl, GPS RWY 15, Orig–B, CANCELLED
Syacuse, NY, Syracuse Hancock Intl, GPS RWY 28, Orig–A, CANCELLED
Syacuse, NY, Syracuse Hancock Intl, GPS RWY 33, Orig–C, CANCELLED
Las Vegas, NV, McCarran Intl, RNAV (GPS) RWY 25R, Orig
Dayton, OH, James M. Cox Dayton Intl, ILS RWY 6L, Amdt 8
Dayton, OH, James M. Cox Dayton Intl, ILS RWY 18, Amdt 9
Dayton, OH, James M. Cox Dayton Intl, RNAV (GPS) RWY 6L, Orig
Dayton, OH, James M. Cox Dayton Intl, GPS RWY 6L, Orig, CANCELLED
Dayton, OH, James M. Cox Dayton Intl, RNAV (GPS) RWY 6R, Orig
Dayton, OH, James M. Cox Dayton Intl, RNAV (GPS) RWY 24L, Orig
Dayton, OH, James M. Cox Dayton Intl, RNAV (GPS) RWY 24R, Orig
Dayton, OH, James M. Cox Dayton Intl, VOR/DME RNAV OR GPS RWY 6R, Amdt 8A, CANCELLED
Dickson, TN, Dickson Muni, VOR/DME RWY 17, Amdt 4B
Smithville, TN, Smithville Muni, NDB RWY 24, Amdt 2, CANCELLED
Cheyenne, WY, Cheyenne, Radar-1, Orig

** * * Effective October 3, 2002*

Flora, IL, Flora Muni, LOC/DME RWY 21, Orig

Flora, IL, Flora Muni, NBD RWY 21, Amdt 5

The FAA published an Amendment in Docket No. 30313, Amdt No. 3009 to Part 97 of the Federal Aviation Regulations 67 FR 40594–40595; dated June 13, 2002) under section 97.23 effective August 8, 2002, which is hereby amended as follows:

San Juan, PR, Luis Munoz Marin Intl, VOR Rwy 26, Amdt 19

The FAA published the following procedures in Docket No. 30313; Amdt. No. 3009 to Part 97 of the Federal Aviation Regulations (67 FR 40594–40595: dated, June 13, 2002) under section 97.33 effective August 8, 2002 which are hereby rescinded:

Mammoth Lakes, CA, Mammoth Yosemite, RNAV (GPS) RWY 27, Orig

Mammoth Lakes, CA, Mammoth Yosemite, GPS RWY 27, Orig–A CANCELLED

The FAA published an Amendment in Docket No. 30316, Amdt No. 3011 to Part 97 of the Federal Aviation Regulations (67 FR 43530–43532; dated June 28, 2002) under section 97.23 effective August 8, 2002, which is hereby amended as follows:

New York, NY, John F. Kennedy Intl, COPTER RNAV (GPS) 028, Orig

The FAA published the following procedures in Docket No. 30316, Amdt No. 3011 to Part 97 of the Federal Aviation Regulations (67 FR 43530–43532; dated June 28, 2002) under section 97.23 effective August 8, 2002, which is hereby amended as follows:

Searcy, AR, Searcy Muni, RNAV (GPS) RWY 1, Orig

Searcy, AR, Searcy Muni, RNAV (GPS) RWY 19, Orig

Searcy, AR, Searcy Muni, NDB RWY 1, Amdt 4

Searcy, AR, Searcy Muni, GPS RWY 19, Amdt 1B, CANCELLED

Dallas-Fort Worth, TX, Dallas/Fort Worth International, ILS RWY 18R, Amdt 6

Dallas-Fort Worth, TX, Dallas/Fort Worth International, Converging ILS RWY 18R, Amdt 4

Dallas-Fort Worth, TX, Dallas/Fort Worth International, RNAV (GPS) RWY 18R, Orig

[FR Doc. 02–17581 Filed 7–16–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### 15 CFR Parts 700 to 799

### Title 15 CFR Parts 300 to 799; Republication

*CFR Correction*

Title 15 CFR parts 300 to 799, revised as of January 1, 2002, is being republished in its entirety. The earlier issuance inadvertently omitted and duplicated text in § 772.1 appearing on pages 553 through 575 inclusive.

[FR Doc. 02–55518 Filed 7–16–02; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 573

**[Docket No. 98F–0196]**

### Food Additives Permitted in Feed and Drinking Water of Animals; Selenium Yeast

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the regulations for food additives permitted in feed to provide for the safe use of selenium yeast as a source of selenium in animal feeds intended for turkeys and swine. This action is in response to a food additive petition filed by Alltech Biotechnology Center.

**DATES:** This rule is effective July 17, 2002. Submit written objections and request for hearing by September 16, 2002.

**ADDRESSES:** Submit written objections and requests for a hearing to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic objections to http://www.fda.gov/dockets/ecomments.

**FOR FURTHER INFORMATION CONTACT:** Sharon Benz, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6656.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In a notice published in the **Federal Register** of May 12, 1998 (63 FR 26193), FDA announced that a food additive petition (animal use) (FAP 2238) had been filed by Alltech Biotechnology Center, 3031 Catnip Hill Pike, Nicholasville, KY 40356. The petition proposed to amend the food additive regulations in § 573.920 *Selenium* (21 CFR 573.920) to provide for the safe use of selenium yeast as a source of selenium in animal feeds for poultry, swine, and cattle. Based on the information in the petition, the selenium food additive regulation was amended to include the use of selenium yeast in feed for chickens on June 6, 2000 (65 FR 35823). FDA sought additional data from the sponsor before approving use in other species. After this data was submitted, subsequent amendments to the petition provided information to extend its use in turkeys and swine.

#### II. Conclusion

FDA concludes that the data establish the safety and utility of selenium yeast, for use as proposed and that the food additive regulations should be amended as set forth in this document.

#### III. Public Disclosure

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine by appointment with the information contact person. As provided in § 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

#### IV. Environmental Impact

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### V. Objections and Hearing Requests

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (see **ADDRESSES**) written objections by September 16, 2002. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 573**

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 573 is amended as follows:

## PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

1. The authority citation for 21 CFR part 573 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348.

2. Section 573.920 is amended by revising paragraph (h) to read as follows:

**§ 573.920 Selenium.**

* * * * *

(h) The additive selenium yeast is added to complete feed for chickens, turkeys, and swine at a level not to exceed 0.3 part per million. Usage of this additive must conform to the requirements of paragraphs (d)(1), (e), and (f) of this section.

Dated: July 1, 2002.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 02–17959 Filed 7–16–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 868

**[Docket No. 00N–1457]**

## Medical Devices; Apnea Monitor; Special Controls

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final rule to create a separate classification for the apnea monitor. The device currently is included in the generic type of device called breathing frequency monitors. The apnea monitor will remain in class II, but will be subject to a special control. The special control is an FDA guidance document that identifies minimum performance, testing, and labeling recommendations for the device. Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for a ''new'' apnea monitor will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document that will serve as the special control. FDA is taking these actions because it believes that they are necessary to provide reasonable assurance of the safety and effectiveness of the apnea monitor.

**DATES:** This rule is effective October 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** Joanna H. Weithershausen, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609, ext. 164.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of September 22, 2000 (65 FR 57301), FDA published a proposed rule to create a separate classification for the apnea monitor. FDA proposed that the apnea monitor remain in class II, but be subject to a special control. The proposed special control was an FDA guidance document that identified minimum performance, testing, and labeling recommendations for the device.

In the same edition of the **Federal Register**, FDA withdrew its proposed mandatory standard for infant apnea monitors (65 FR 57303) and announced the availability of the draft guidance that FDA intended to serve as the special control for the device (65 FR 57355).

FDA invited interested persons to comment on the proposed rule by December 21, 2000. FDA received no comments. Based on a review of the available information, referenced in the preamble to the proposed rule and placed on file in FDA's Dockets Management Branch, FDA concludes that special controls, in conjunction with general controls, provide reasonable assurance of the safety and effectiveness of this device. FDA has made some revisions to the identification paragraphs in §§ 868.2375 and 868.2377 for clarity. Otherwise, FDA is finalizing the rule as proposed. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the special control guidance.

### II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### III. Analysis of Impacts

FDA has examined the impact of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for a ''new'' apnea monitor will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. In the past 10 years, the agency estimates that it has received, on average, approximately four 510(k) submissions per year for breathing frequency monitor devices. FDA estimates that only one or two of these submissions per year pertained to apnea monitor devices.

Based on its review of these 510(k) submissions, FDA believes that presently marketed apnea monitors conform to the guidance and, therefore, the manufacturers of these devices will not have to take further action because of this rule. New manufacturers of apnea monitors will only need to submit 510(k)s, as the statute now requires them to do, and demonstrate that they meet the recommendations of the guidance or in some other way provide equivalent assurances of safety and effectiveness. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this reclassification action will

not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

**IV. Federalism**

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

**V. Paperwork Reduction Act of 1995**

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

**List of Subjects in 21 CFR Part 868**

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 868 is amended to read as follows:

## PART 868—ANESTHESIOLOGY DEVICES

1. The authority citation for 21 CFR part 868 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 868.2375(a) is revised to read as follows:

**§ 868.2375 Breathing frequency monitor.**

(a) *Identification.* A breathing (ventilatory) frequency monitor is a device intended to measure or monitor a patient's respiratory rate. The device may provide an audible or visible alarm when the respiratory rate, averaged over time, is outside operator settable alarm limits. This device does not include the apnea monitor classified in § 868.2377.

* * * * *

3. Section 868.2377 is added to subpart C to read as follows:

**§ 868.2377 Apnea monitor.**

(a) *Identification.* An apnea monitor is a complete system intended to alarm primarily upon the cessation of breathing timed from the last detected breath. The apnea monitor also includes indirect methods of apnea detection such as monitoring of heart rate and other physiological parameters linked to the presence or absence of adequate respiration.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document entitled ''Class II Special Controls Guidance Document: Apnea Monitors; Guidance for Industry and FDA.''

Dated: July 5, 2002.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 02–17957 Filed 7–16–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 888

**[Docket No. 02P–0294]**

## Medical Devices; Reclassification of Polymethylmethacrylate (PMMA) Bone Cement

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that it has reclassified the polymethylmethacrylate (PMMA) bone cement intended for use in arthroplastic procedures of the hip, knee, and other joints for the fixation of polymer or metallic prosthetic implants to living bone from class III to class II (special controls). The agency is also announcing that it has issued an order in the form of a letter to the Orthopedic Surgical Manufacturers Association (OSMA) reclassifying the device. The special control for the device is a guidance document entitled ''Class II Special Controls Guidance Document: Polymethylmethacrylate (PMMA) Bone Cement.'' The agency is reclassifying this device into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls.

**DATES:** The reclassification was effective October 14, 1999. The revision of § 888.3027 is effective August 16, 2002.

**FOR FURTHER INFORMATION CONTACT:** Hany W. Demian, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et. seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (the FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

The 1976 amendments broadened the definition of ''device'' in section 201(h) of the act (21 U.S.C. 321(h)) to include certain articles that were once regulated as drugs. Under the 1976 amendments, Congress classified all transitional devices, i.e., those devices previously regulated as new drugs, including the PMMA bone cement, into class III. The legislative history of the SMDA reflects congressional concern that many transitional devices were being overregulated in class III (H. Rept. 808, 101st Cong., 2d sess. 26–27 (1990); S. Rept. 513, 101st Cong., 2d sess. 27 (1990)). Congress amended section 520(l) of the act (21 U.S.C. 360j(l)) to direct FDA to collect certain safety and effectiveness information from the manufacturers of transitional devices still remaining in class III to determine whether the devices should be reclassified into class II (special controls) or class I (general controls). Accordingly, in the **Federal Register** of November 14, 1991 (56 FR 57960), FDA issued an order under section 520(l)(5)(A) of the act, requiring manufacturers of transitional devices, including the PMMA bone cement (21 CFR 888.3027), to submit to FDA a summary of, and a citation to, any information known or otherwise available to them respecting the devices, including adverse safety or effectiveness information which had not been submitted under section 519 of the act

(21 U.S.C. 360i). Manufacturers were to submit the summaries and citations to FDA by January 13, 1992. However, because of misunderstandings and uncertainties regarding the information required by the order, and whether the order applied to certain manufacturers' devices, many transitional class III device manufacturers failed to comply with the reporting requirement by January 13, 1992. Consequently, in the **Federal Register** of March 10, 1992 (57 FR 8462), FDA extended the reporting period to March 31, 1992.

Section 520(l)(5)(B) of the act provides that, after the issuance of an order requiring manufacturers to submit a summary of, and citation to, any information known or otherwise available respecting the devices, but before December 1, 1992, FDA was to publish regulations either leaving transitional class III devices in class III or reclassifying them into class I or II. Subsequently, as permitted by section 520(l)(5)(C) of the act, in the **Federal Register** of November 30, 1992 (57 FR 56586), the agency published a notice extending the period for issuing such regulations until December 1, 1993. Due to limited resources, FDA was unable to publish the regulations before the December 1, 1993, deadline.

## II. Recommendation of the Panel

On January 21, 1998, FDA filed the reclassification petition submitted by OSMA, requesting reclassification of the PMMA bone cement from class III to class II. FDA consulted with the Orthopedic and Rehabilitation Devices Panel (the Panel) regarding reclassification of the PMMA bone cement. During an open public meeting on April 28, 1998, the Panel unanimously recommended that FDA reclassify the PMMA bone cement intended for use in arthroplastic procedures of the hip, knee, and other joints for the fixation of polymer or metallic prosthetic implants to living bone from class III to class II. The Panel also recommended that FDA guidance documents, consensus standards, and labeling be the special controls to reasonably assure the safety and effectiveness of the device.

FDA considered the Panel's recommendation and tentatively agreed that the generic type of device, the PMMA bone cement intended for use in arthroplastic procedures of the hip, knee, and other joints for the fixation of polymer or metallic prosthetic implants to living bone, be reclassified from class III into class II. FDA agreed that guidance documents, consensus standards, and labeling are appropriate special controls for the device.

After reviewing the data in the petition and presented before the Panel, and after considering the Panel's recommendation and the comments, FDA, based on the information set forth, issued an order to the petitioner on October 14, 1999, reclassifying the PMMA bone cement, and substantially equivalent devices of this generic type, from class III to class II with the implementation of special controls.

The special controls listed in the order to the petitioner were the following FDA guidance documents, consensus standards, and labeling:

*A. FDA Guidance Documents*

1. ''Use of International Organization for Standardization (ISO) 10993, 'Biological Evaluation of Medical Devices Part I: Evaluation and Testing',''
2. ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1,''
3. ''Guidance Document for Testing Orthopedic Bone Cement,'' and
4. ''Guidance Document for the Preparation of Premarket Notification (510(k)) Applications for Orthopedic Devices.''

*B. Consensus Standards*

1. American Society for Testing and Material (ASTM) F 451–95 ''Standard Specifications for Acrylic Bone Cement,''
2. ASTM D 638–91 ''Standard Test Method for Tensile Properties of Plastics,''
3. ASTM D 732–93 ''Standard Test Method for Shear Strength of Plastics by Punch Tool,''
4. ASTM D 790–98 ''Standard Test Method for Flexural Properties of Unreinforced and Reinforced Plastics and Electrical Insulating Materials,''
5. ASTM D 2990–95 ''Standard Tensile, Compressive, and Flexural Creep and Creep Rupture of Plastics,''
6. ASTM E 399–90 ''Standard Test Method for Plane-Strain Fracture Toughness of Metallic Materials,''
7. ASTM E 647–95a ''Standard Test Method for Measurement of Fatigue Crack Growth Rates,'' and
8. International Organization for Standardization (ISO) 5833:1992 ''Implants for surgery—Acrylic resin cements.''

*C. Labeling*

1. Contraindication

Do not use PMMA bone cement in the presence of active or incompletely treated infection that could involve the site where the device will be implanted.

2. Warnings

a. Adverse cardiovascular reactions, including hypotension, hypoxaemia, cardiac arrhythmia, bronchspasm, cardiac arrest, myocardical infarction, pulmonary embolism, cerebrovascular accident, and possible death: Hypotensive reactions can occur between 10 and 165 seconds after application of the PMMA bone cement and can last for 30 seconds to 5 or more minutes. Some hypotensive reactions have progressed to cardiac arrest. The blood pressure of patients should be monitored carefully during and immediately following the application of the PMMA bone cement. In addition, overpressurization of the PMMA bone cement should be avoided during insertion of the PMMA bone cement and implant in order to minimize the occurrence of pulmonary embolism.

b. Surgeon training and experience: The surgeon should be thoroughly familiar with the properties, handling characteristics and application of the PMMA bone cement. Because the handling and curing characteristics of this cement vary with temperature and mixing technique, they are best determined by the surgeon's actual experience.

c. Device volatility and flammability and electrocautery devices: The operating room should be adequately ventilated to eliminate monomer vapors. Ignition of monomer vapors caused by the use of electrocautery devices in surgical sites near freshly implanted bone cement has been reported.

d. Irritation of the respiratory tract, eyes, and the liver: Caution should be exercised during the mixing of the liquid and powder components of the PMMA bone cement to prevent excessive exposure to the concentrated vapors of liquid monomer, which may produce irritation of the respiratory tract, eyes, and possibly the liver. Personnel wearing contact lenses should not mix PMMA bone cement or be near the mixing of the PMMA bone cement.

3. Precautions

a. Contact dermatitis: The liquid monomer has caused contact dermatitis in those handling and mixing PMMA bone cement. Strict adherence to the instructions for mixing the powder and liquid components may reduce the incidence of contact dermatitis.

b. Hypersensitivity reactions: The liquid component of PMMA bone cement is a powerful lipid solvent. It should not contact rubber or latex gloves. Double gloving and strict adherence to the mixing instructions may diminish the possibility of hypersensitivity reactions. The mixed PMMA bone cement should not contact the gloved hand until the cement has

acquired the consistency of dough, about 1 to 2 minutes after mixing.

c. Inadequate postoperative fixation: Inadequate fixation or unanticipated postoperative events may affect the PMMA bone cement-bone interface and lead to micromotion of cement against the bone surface. A fibrous tissue layer may develop between the PMMA bone cement and the bone that may cause loosening of the prosthesis. Thus, continued, periodic followup is advised for all patients.

d. Exothermic reaction: Polymerization of the PMMA bone cement is an exothermic reaction that occurs while the PMMA bone cement is hardening *in situ*. The released heat may damage bone or other tissue adjacent to the implant.

e. Extrusion: Extrusion of the PMMA bone cement beyond the region of its intended application may occur resulting in the following complications: Hematuria, dysuria, bladder fistula, delayed sciatic nerve entrapment from extrusion of the bone cement beyond the region of its intended application, local neuropathy, local vascular erosion and occlusion, and intestinal obstruction because of adhesions and stricture of the ileum from the heat released during the exothermic polymerization.

f. Use in pregnant women and children: The safety and effectiveness of the PMMA bone cement in pregnant women and in children is not established.

g. Expiration dating: PMMA bone cement should not be used after the expiration date because the effectiveness of the device may be compromised.

h. Disposal: Because of the volatility and flammability of the liquid monomer of the PMMA bone cement, the liquid monomer should be evaporated in a well-ventilated hood or absorbed by an inert material and transferred into a suitable container (one that does not react with the PMMA bone cement) for disposal.

4. Adverse Events

a. Serious adverse events, some with fatal outcome, associated with the use of the PMMA bone cement include myocardial infarction, cardiac arrest, cerebrovascular accident, and pulmonary embolism.

b. The most frequent adverse reactions associated with the use of PMMA bone cement are transitory decreased blood pressure, elevated serum gamma-glutamyl-transpeptidase (GGTP) up to 10 days postoperation, thrombophlebitis, hemorrhage and hematoma, pain and/or loss of function, loosening or displacement of the prosthesis, superficial or deep wound infection, trochanteric bursitis, short-term cardiac conduction irregularities, heterotopic new bone formation, and trochanteric separation.

c. Other potential adverse events associated with the use of PMMA bone cement include allergic pyrexia, hematuria, dysuria, bladder fistula, delayed sciatic nerve entrapment from extrusion of the bone cement beyond the region of its intended application, local neuropathy, local vascular erosion and occlusion, intestinal obstruction because of adhesions and stricture of the ileum from the heat released during the exothermic polymerization.

FDA incorporated the four FDA guidance documents, eight consensus standards, and labeling into a class II special controls guidance entitled ''Class II Special Controls Guidance Document: Polymethylmethacrylate (PMMA) Bone Cement'' that issued on August 2, 2001. The guidance document also referenced updated versions of six of the eight consensus standards listed as special controls in the reclassification order. FDA has further revised the guidance document to include the risk to health of polymerization setting problems and to clarify the warnings, precautions, and adverse reactions sections of the labeling. This class II special controls guidance document, is now the special control for this generic device.

Accordingly, as required by 21 CFR 860.136(b)(6) of the regulations, FDA is announcing the reclassification of the generic the PMMA bone cement intended for use in arthroplastic procedures of the hip, knee, and other joints for the fixation of polymer or metallic prosthetic implants to living bone from class III into class II.

## III. Access to Special Controls

Persons interested in obtaining a copy of ''Class II Special Controls Guidance Document: Polymethylmethacrylate (PMMA) Bone Cement'' may do so using the Internet. The Center for Devices and Radiological Health (CDRH) maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. The CDRH home page may be accessed at http://www.fda.gov/cdrh. Guidance documents are also available from the Division of Small Manufacturers, International, and Consumer Assistance (DSMICA) (HFZ-220), Food and Drug Administration, Center for Devices and Radiological Health, 1350 Piccard Dr., Rockville, MD 20850. In order to receive the guidance document via your fax machine call the CDRH Facts-On-Demand (FOD) system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. Press 1 to enter the system and enter the document number (668) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

## IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104-121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104-4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of the device from class III to class II will relieve all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that this rule will not have a significant economic impact on a substantial number of small entities. In addition, this rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or

analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

**VI. Federalism**

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, or on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

**VII. Paperwork Reduction Act of 1995**

The premarket notification information collections addressed in the guidance have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) under OMB control number 0910–0120. The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

**List of Subjects in 21 CFR Part 888**

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 888 is amended as follows:

## PART 888—ORTHOPEDIC DEVICES

1. The authority citation for 21 CFR part 888 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 888.3027 is revised to read as follows:

**§ 888.3027 Polymethylmethacrylate (PMMA) bone cement.**

(a) *Identification.* Polymethylmethacrylate (PMMA) bone cement is a device intended to be implanted that is made from methylmethacrylate, polymethylmethacrylate, esters of methacrylic acid, or copolymers containing polymethylmethacrylate and polystyrene. The device is intended for use in arthroplastic procedures of the hip, knee, and other joints for the fixation of polymer or metallic prosthetic implants to living bone.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document entitled ''Class II Special Controls Guidance Document: Polymethylmethacrylate (PMMA) Bone Cement.''

Dated: July 5, 2002.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 02–18036 Filed 7–16–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 8999]**

**RIN 1545–AY13**

## Treaty Guidance Regarding Payments with Respect to Domestic Reverse Hybrid Entities; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains corrections to final regulations that were published in the **Federal Register** on Wednesday, June 12, 2002 (67 FR 40157) relating to the eligibility for treaty benefits of items of income paid by domestic entities.

**DATES:** This correction is effective June 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth U. Karzon (202) 622–3880 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subject of these corrections is under section 894 of the Internal Revenue Code.

**Need for Correction**

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, the publication of final regulations (TD 8999), that were the subject of FR Doc. 02–14506, is corrected as follows:

1. On page 40159, column 1, in the preamble under the paragraph heading ''III. Comments and Changes to § 1.894–1(d)(2)(ii)(B)(*3*): Definition of Related'', first paragraph, line 1, the language ''constructive ownership rules of sections'' is corrected to read ''constructive ownership rules of section''.

2. On page 40159, column 1, in the preamble under the paragraph heading ''III. Comments and Changes to § 1.894–1(d)(2)(ii)(B)(*3*): Definition of Related'', third paragraph, line 3, the language ''(d)(2)(ii)(B)(*ii*) of the final regulations'' is corrected to read ''(d)(2)(ii)(B)(*1*)(*ii*) of the final regulations''.

3. On page 40159, column 2, in the preamble the paragraph heading ''IV. Comments and Changes to § 1.894–1(d)(2)(ii)(C): Commissioner's discretion.'' is corrected to read ''IV. Comments and Changes to § 1.894–1(d)(2)(ii)(C): Commissioner's discretion''.

4. On page 40159, column 2, in the preamble under the paragraph heading ''IV. Comments and Changes to § 1.894–1(d)(2)(ii)(C): Commissioner's discretion, second paragraph, line 14, the language ''following conditions are met: (1) A'' is corrected to read ''following conditions are met: (1) a''.

5. On page 40162, column 2, second signature block, the language ''Assistant Secretary of the Treasury (Tax Policy).'' is corrected to read ''Acting Assistant Secretary of the Treasury (Tax Policy).''

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).*

[FR Doc. 02–17865 Filed 7–16–02; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### 30 CFR Part 280

**RIN 1010–AC48**

## Prospecting for Minerals Other Than Oil, Gas, and Sulphur on the Outer Continental Shelf

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule specifies how to conduct Geological and Geophysical (G&G) prospecting and research for minerals other than oil, gas, and sulphur on the Outer Continental Shelf (OCS) under a permit; requires everyone conducting G&G scientific research on the OCS without a permit to file a notice with us; informs small operators of environmental laws and regulations for safe and sound practices; and rewrites the rule in plain English. These revisions respond to changes in technology and practice.

**EFFECTIVE DATE:** The rule is effective on August 16, 2002.

**FOR FURTHER INFORMATION CONTACT:** Keith Meekins, Resource Evaluation Division, at (703) 787–1517.

**SUPPLEMENTARY INFORMATION:** On December 8, 1999, we published a Notice of Proposed Rulemaking (64 FR 68649), titled ''Prospecting for Minerals Other Than Oil, Gas, and Sulphur in the Outer Continental Shelf.'' We received several comments on the proposed rule. All comments received were considered in the formulation of the final rule. This final rule revises the regulations at 30 CFR part 280. There are no substantive changes from the proposed to the final rule. However, there were several areas that needed minor clarification.

*Clarification of Certain Aspects of the Rule*: After further analysis, we are clarifying the rule as follows:

- For consistency, we replaced ''in the OCS'' with ''on the OCS'' throughout the rule;
- The rule only applies to activities carried out in Federal waters and not to activities in State waters (*see* § 280.2(a));
- The rule does not apply to gas hydrates, which are covered by regulations in 30 CFR part 251 (*see* § 280.4(d));
- The definition of G&G prospecting activities in § 280.1 applies only to prelease activities and not to postlease activities. Postlease activities are covered in 30 CFR part 282 (see § 280.4(c));
- The definition of OCS in § 280.1 includes areas of the Exclusive Economic Zone, such as the State of Hawaii and United States possessions in the Caribbean and Pacific Ocean, which are islands and technically do not have an OCS (refer to § 280.13—filing locations table); and
- Research activities related to hard minerals require a notice, even though the activities may be federally funded (*see* § 280.11(b)).

*Comments on the Rule*: We received comments on specific issues from the New York State Department of Environmental Conservation, Division of Mineral Resources; the New York State Department of Environmental Conservation, Division of Water; and the South Carolina Department of Natural Resources. In addition, at the request of the Office of the Solicitor, we have included definitions for ''Geological Data and Information'' and ''Geophysical Data and Information.''

**Comments and Responses to Miscellaneous Issues**

*Comment*: New York has an agreement regarding access to data on offshore oil and gas resources. The commenter suggests that MMS initiate preparation of an agreement necessary to allow New York access to data under proposed § 280.73.

*Response*: The requirement that allows coastal States access to data on offshore oil and gas resources appears in the OCS Lands Act. This requirement does not apply to hard minerals. The agreement mentioned under § 280.73 is discretionary. The MMS may disclose proprietary data to State officials but is not under any obligation to do so. A statement has been added to § 280.73(a) that the permittees and third parties who submitted proprietary data, information, and samples will be notified about a proposed disclosure and may provide comments.

*Comment*: Use of core sampling to detect the presence of heavy metals and other contaminants could potentially fall into the category of G&G scientific research activities requiring an MMS-approved permit or 30-day notice. The commenter suggests that an exemption for State agencies involved in environmental monitoring, research, or remediation be included in § 280.4.

*Response*: There are no plans to exempt State agencies from this section. The agencies should contact the Regional Director (RD) and describe the sampling for a determination on whether the activity could be construed as hard minerals research. The RD will also be looking for assurance that cores or other information will not be sold to any person involved in hard minerals research or exploration.

*Comment*: One commenter could not find text in the document that stated whether the MMS had a right to disapprove a scientific exploration activity.

*Response:* Disapproval of a permit request is addressed in § 280.12(b).

*Comment*: One commenter seeks a clarification on whether research and monitoring activities related to biological resources require a permit, if ancillary data on sediment type is collected as part of those studies.

*Response*: This type of activity is not related to hard minerals research or exploration and, therefore, neither a permit nor a notice is required. However, a permit would be required if the data on sediment type were sold to a person involved in hard minerals research or exploration.

*Comment*: One commenter asserts that it would be too cumbersome if specific coordinates must be identified up front instead of a general area of study since exact sampling areas are not known until the study is in progress.

*Response*: A general area of study is sufficient until a more specific area is known, at which time the RD should be notified.

**Procedural Matters**

*Regulatory Planning and Review (Executive Order 12866)*

According to the criteria in Executive Order 12866, this rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget (OMB).

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This is due to the small amount of activity currently being experienced in offshore prospecting as well as the smaller size of the companies involved as compared to those involved in oil, gas, and sulphur exploration. We estimate that this rule will affect only one entity per year, and that the total cost to regulated entities for complying with the modification of this rule will be approximately $300 per year. For full details, *see* the information under the heading ''Regulatory Flexibility Act.''

b. This rule does not create inconsistencies with other agencies' actions because there are no changes in requirements. The notification process will allow the customer to know of the operations of other users in the area. In addition, current regulations are consistent with other agencies' actions.

c. This rule is an administrative change that will not affect entitlements, grants, user fees, loan programs, or their recipients. This rule has no effect on these programs or rights of the programs' recipients.

d. This rule does not raise any novel legal or policy issues. As previously stated, the intent of this rule is to establish consistency in all prelease activities for all minerals on the OCS.

*Regulatory Flexibility (RF) Act*

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies; and
- Fewer than 500 employees for drilling companies and for companies that extract minerals other than oil, gas, or natural gas liquids.

Under the SBA's North American Industry Classification System code

213115, Support Activities for Nonmetallic Minerals (except fuels), MMS estimates that there is a total of 127 firms that could conduct geological and/or geophysical prospecting for nonenergy minerals. According to SBA criteria, 121 companies qualify as firms with fewer than 500 employees. MMS estimates that 25 percent (30) of these companies operate offshore.

The changes to 30 CFR part 280 should not have a significant economic effect. The rulemaking may involve small businesses or small entities if they want to perform prospecting activities or scientific research on the OCS.

In many ways, we try to offer customer service at no cost to smaller companies that are active on the OCS. These services include informing customers of environmental laws and regulations, making permit applications available on the Internet, making various offshore maps and stipulations accessible, etc.

There are no changes or effects with respect to the number of people performing the activities nor is there any change with regard to technology or operating costs. Changes in this rule make it parallel to the prelease exploration regulations covering oil, gas, and sulphur (30 CFR part 251). In applying for a permit, we will not require a prospecting plan. Information previously required for a prospecting plan will be submitted as a part of the permit itself. Operators will need to submit a notice for all scientific research not requiring a permit. The rule also breaks out, for clarification, procedures for submission, inspection, and selection of G&G data and information, as well as clarifying the responsibilities of third parties. It also requires us to reimburse permittees or third parties for reasonable costs for reproducing data and information that we request.

We expect that either one company may apply for a prospecting permit or one institution may file a notice of intent to conduct scientific research per year, based on MMS receiving six applications for a prospecting permit in the last 10 years. Previous activities in these areas indicate that most of these entities would be considered small.

The primary economic effect on small businesses is the cost associated with information collection activities. The only major change in reporting requirements would represent a small increase, not for those engaged in the mineral industry but, rather, for those involved in scientific research. This increased reporting requirement relates to the filing of a notice for all scientific research activities not requiring a permit. The current regulations are silent on this issue. We estimate that the new requirements may result in filing one notice per year. Each notice would require 6 hours to prepare, at a cost of $50 per hour, for a total cost of $300 per notice.

In addition, because of the small numbers of entities expected to engage in these activities at this time, the number of small businesses that would experience a significant economic effect is not substantial. As a result, this rule will not have a significant economic effect on a substantial number of small entities.

We should note that this rule only applies to preliminary prelease prospecting activities. As long as sufficient sources for economically recoverable mineral resources exist onshore, the higher costs of offshore development will constrain industry. To develop and produce even the relatively easier minerals (sand and gravel), large investments of up to $15 to $25 million will be necessary for technology and establishing both land-based processing and marketing facilities. Currently, sand and gravel are being dredged from the OCS to support large-scale public works projects to nourish beaches. These projects are authorized and funded by Federal, State, and local governments and, to date, there have been only two or three commercial aggregate producers who have expressed an interest in future OCS development.

Locating and delineating offshore mineral resources can be expensive, depending on how much is already known about an offshore area. A prospecting program to collect seismic information and to collect a number of 20-foot cores of sediment can cost approximately $100,000 to $400,000. Compared to the magnitude of these costs, the costs associated with the requirements of this rule are relatively small. Given the high costs of mineral prospecting, we expect an applicant's time and expense to comply with information collection on a prelease prospecting permit to represent only a small fraction of the total costs of locating, assessing, and developing offshore strategic minerals.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under the (5 U.S.C. 804(2)), SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or ability of United States-based enterprises to compete with foreign-based enterprises. This is based upon the small amount of activity currently being experienced in offshore prospecting, as well as the smaller size of the companies involved as compared with those involved in oil, gas, and sulphur exploration.

*Paperwork Reduction Act (PRA) of 1995*

We examined the proposed rule and these final regulations under section 3507(d) of the PRA. Because of the changes proposed to the current 30 CFR part280 regulations, we submitted the information collection requirements to OMB for approval as part of the proposed rulemaking process. The information collection requirements in the final regulations remain unchanged from the proposed rule and a submission to OMB is not required.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. OMB approved the requirements to collect information in 30 CFR part 280 under OMB control number 1010–0072, current expiration date of January 31, 2003.

The title of this collection of information is ''30 CFR part 280, Prospecting for Minerals other than Oil, Gas, and Sulphur on the OCS.'' The frequency of response is generally ''on occasion'' or established in the permit approval. We estimate approximately one or two respondents each year.

We use the collection of information required by these regulations to ensure there is no environmental degradation, personal harm, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned drilling

activities; to monitor progress and activities on the OCS; to acquire G&G data and information; and to determine eligibility for reimbursement.

Responses are mandatory or required to obtain or retain a benefit. We protect proprietary information under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and under regulations at 30 CFR 280.70 and applicable sections of 30 CFR parts 250 and 252. No items of a sensitive nature are collected.

*Reporting and Recordkeeping ''Hour'' Burden:* The approved annual burden of this collection of information is 88 hours.

*Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* There are no ''non-hour cost'' burdens in the final regulations.

*Federalism (Executive Order 13132)*

According to Executive Order 13132, the rule does not have significant Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. The proposed rule does not change, in any way, the role or responsibilities between the Federal, State, and local governmental entities. The rule does not relate to the structure and role of the States and will not have a direct, substantive, or significant effect on States. The rule does not impose costs on States or localities. The proposed rule will not materially alter the budgetary impact of entitlements, grants, user fees, loan programs or raise legal or policy issues.

*Takings Implications Assessment (Executive Order 12630)*

According to Executive Order 12630, the rule does not have significant Takings implications. A Takings Implication Assessment is not required because the rule would not take away or restrict an operator's right to collect data and information under the permit terms.

*Energy Supply, Distribution, or Use (Executive Order)*

This rule is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866. The rule does not have a significant effect on energy supply, distribution, or use because it is a modification of an already existing rule and the major modification has to do with notification of scientific research activities not exploration or energy.

*Civil Justice Reform (Executive Order 12988)*

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the Order.

*National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

*Unfunded Mandate Reform Act (UMRA) of 1995*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

**List of Subjects in 30 CFR Part 280**

Continental shelf, Freedom of information, Prospecting, Public lands-mineral resources, Reporting and recordkeeping requirements, Research.

Dated: July 2, 2002.

**Rebecca W. Watson,**

*Assistant Secretary, Land and Minerals Management.*

For the reasons stated in the preamble, MMS revises 30 CFR part 280 as follows:

## PART 280—PROSPECTING FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR ON THE OUTER CONTINENTAL SHELF

### Subpart A—General Information

Sec.



### Subpart B—How to Apply for a Permit or File a Notice



### Subpart C—Obligations Under this Part

**Prohibitions and Requirements**



**Interrupted Activities**



**Environmental Issues**



**Penalties and Appeals**



### Subpart D—Data Requirements

**Geological Data and Information**



**Geophysical Data and Information**



**Reimbursement**



**Protections**



### Subpart E—Information Collection



**Authority:** 43 U.S.C. 1331 *et seq.*, 42 U.S.C. 4332 *et seq.*

## Subpart A—General Information

### § 280.1 What definitions apply to this part?

Definitions in this part have the following meaning:

*Act* means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*).

*Adjacent State* means with respect to any activity proposed, conducted, or approved under this part, any coastal State(s):

(l) That is used, or is scheduled to be used, as a support base for geological and geophysical (G&G) prospecting or scientific research activities; or

(2) In which there is a reasonable probability of significant effect on land or water uses from such activity.

*Analyzed geological information* means data collected under a permit or a lease that have been analyzed. Some examples of analysis include, but are not limited to, identification of lithologic and fossil content, core analyses, laboratory analyses of physical and chemical properties, well logs or charts, results from formation fluid tests, and descriptions of mineral occurrences or hazardous conditions.

*Archaeological interest* means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques, such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation.

*Archaeological resource* means any material remains of human life or activities that are at least 50 years of age and are of archaeological interest.

*Coastal environment* means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

*Coastal zone* means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder) that are strongly influenced by each other and in proximity to the shorelands of the several coastal States. The coastal zone includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, under the authority in section 305(b)(1) of the Coastal Zone Management Act of 1972.

*Coastal Zone Management Act* means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*).

*Data* means facts and statistics, measurements, or samples that have not been analyzed, processed, or interpreted.

*Deep stratigraphic test* means drilling that involves the penetration into the sea bottom of more than 500 feet (152 meters).

*Director* means the Director of the Minerals Management Service, U.S. Department of the Interior, or an official authorized to act on the Director's behalf.

*Geological data and information* means data and information gathered through or derived from geological and geochemical techniques, e.g., coring and test drilling, well logging, bottom sampling, or other physical sampling or chemical testing process.

*Geological and geophysical (G&G) prospecting activities* means the commercial search for mineral resources other than oil, gas, or sulphur. Activities classified as prospecting include, but are not limited to:

(1) Geological and geophysical marine and airborne surveys where magnetic, gravity, seismic reflection, seismic refraction, or the gathering through coring or other geological samples are used to detect or imply the presence of hard minerals; and

(2) Any drilling, whether on or off a geological structure.

*Geological and geophysical (G&G) scientific research activities* means any investigations related to hard minerals that are conducted on the OCS for academic or scientific research. These investigations would involve gathering and analyzing geological, geochemical, or geophysical data and information that are made available to the public for inspection and reproduction at the earliest practical time. The term does not include commercial G&G exploration or commercial G&G prospecting activities.

*Geological sample* means a collected portion of the seabed, the subseabed, or the overlying waters acquired while conducting prospecting or scientific research activities.

*Geophysical data and information* means any data or information gathered through or derived from geophysical measurement or sensing techniques (*e.g.,* gravity, magnetic, or seismic).

*Governor* means the Governor of a State or the person or entity lawfully designated by or under State law to exercise the powers granted to a Governor under the Act.

*Hard minerals* means any minerals found on or below the surface of the seabed except for oil, gas, or sulphur.

*Interpreted geological information* means the knowledge, often in the form of schematic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of geological data and analyzed and processed geologic information.

*Interpreted geophysical information* means knowledge, often in the form of seismic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of geophysical data and processed geophysical information.

*Lease* means, depending upon the requirements of the context, either:

(1) An agreement issued under section 8 or maintained under section 6 of the Act that authorizes mineral exploration, development and production; or

(2) The area covered by an agreement specified in paragraph (1) of this definition.

*Material remains* means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which evidence is situated.

*Minerals* means all minerals authorized by an Act of Congress to be produced from ''public lands'' as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702). The term includes oil, gas, sulphur, geopressured-geothermal and associated resources.

*Notice* means a written statement of intent to conduct G&G scientific research that is:

(1) Related to hard minerals on the OCS; and

(2) Not covered under a permit.

*Oil, gas, and sulphur* means oil, gas, and sulphur, geopressured-geothermal and associated resources, including gas hydrates.

*Outer Continental Shelf (OCS)* means all submerged lands:

(1) That lie seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301); and

(2) Whose subsoil and seabed belong to the United States and are subject to its jurisdiction and control.

*Permit* means the contract or agreement, other than a lease, issued under this part. The permit gives a person the right, under appropriate statutes, regulations, and stipulations, to conduct on the OCS:

(1) Geological prospecting for hard minerals;

(2) Geophysical prospecting for hard minerals;

(3) Geological scientific research; or

(4) Geophysical scientific research.

*Permittee* means the person authorized by a permit issued under this part to conduct activities on the OCS.

*Person* means:

(1) A citizen or national of the United States;

(2) An alien lawfully admitted for permanent residence in the United States as defined in section 8 U.S.C. 1101(a)(20);

(3) A private, public, or municipal corporation organized under the laws of the United States or of any State or territory thereof, and association of such citizens, nationals, resident aliens or private, public, or municipal corporations, States, or political subdivisions of States; or

(4) Anyone operating in a manner provided for by treaty or other applicable international agreements. The term does not include Federal agencies.

*Processed geological or geophysical information* means data collected under a permit and later processed or reprocessed.

(1) Processing involves changing the form of data as to facilitate interpretation. Some examples of processing operations may include, but are not limited to:

(i) Applying corrections for known perturbing causes;

(ii) Rearranging or filtering data; and

(iii) Combining or transforming data elements.

(2) Reprocessing is the additional processing other than ordinary processing used in the general course of evaluation. Reprocessing operations may include varying identified parameters for the detailed study of a specific problem area.

*Secretary* means the Secretary of the Interior or a subordinate authorized to act on the Secretary's behalf.

*Shallow test drilling* means drilling into the sea bottom to depths less than those specified in the definition of a deep stratigraphic test.

*Significant archaeological resource* means those archaeological resources that meet the criteria of significance for eligibility of the National Register of Historic Places as defined in 36 CFR 60.4, or its successor.

*Third party* means any person other than the permittee or a representative of the United States, including all persons who obtain data or information acquired under a permit from the permittee, or from another third party, by sale, trade, license agreement, or other means.

*You* means a person who applies for and/or obtains a permit, or files a notice to conduct G&G prospecting or scientific research related to hard minerals on the OCS.

#### § 280.2 What is the purpose of this part?

The purpose of this part is to:

(a) Allow you to conduct prospecting activities or scientific research activities on the OCS in Federal waters related to hard minerals on unleased lands or on lands under lease to a third party.

(b) Ensure that you carry out prospecting activities or scientific research activities in a safe and environmentally sound manner so as to prevent harm or damage to, or waste of, any natural resources (including any hard minerals in areas leased or not leased), any life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

(c) Inform you and third parties of your legal and contractual obligations.

(d) Inform you and third parties of:

(1) The U.S. Government's rights to access G&G data and information collected under permit on the OCS;

(2) Reimbursement we will make for data and information that are submitted; and

(3) The proprietary terms of data and information that we retain.

#### § 280.3 What requirements must I follow when I conduct prospecting or research activities?

You must conduct G&G prospecting activities or scientific research activities under this part according to:

(a) The Act;

(b) The regulations in this part;

(c) Orders of the Director/Regional Director (RD); and

(d) Other applicable statutes, regulations, and amendments.

#### § 280.4 What activities are not covered by this part?

This part does not apply to:

(a) G&G prospecting activities conducted by, or on behalf of, the lessee on a lease on the OCS;

(b) Federal agencies;

(c) Postlease activities for mineral resources other than oil, gas, and sulphur, which are covered by regulations at 30 CFR part 282; and

(d) G&G exploration or G&G scientific research activities related to oil, gas, and sulphur, including gas hydrates, which are covered by regulations at 30 CFR part 251.

### Subpart B—How to Apply for a Permit or File a Notice

#### § 280.10 What must I do before I may conduct prospecting activities?

You must have an MMS-approved permit to conduct G&G prospecting activities, including deep stratigraphic tests, for hard minerals. If you conduct both G&G prospecting activities, you must have a separate permit for each.

#### § 280.11 What must I do before I may conduct scientific research?

You may conduct G&G scientific research activities related to hard minerals on the OCS only after you obtain an MMS-approved permit or file a notice.

(a) *Permit.* You must obtain a permit if the research activities you want to conduct involve:

(1) Using solid or liquid explosives;

(2) Drilling a deep stratigraphic test; or

(3) Developing data and information for proprietary use or sale.

(b) *Notice.* If you conduct research activities (including federally-funded research) not covered by paragraph (a) of this section, you must file a notice with the regional director at least 30 days before you begin. If you cannot file a 30-day notice, you must provide oral notification before you begin and follow up in writing. You must also inform MMS in writing when you conclude your work.

#### § 280.12 What must I include in my application or notification?

(a) *Permits.* You must submit to the RD a signed original and three copies of the permit application (form MMS–134) at least 30 days before the startup date for activities in the permit area. If unusual circumstances prevent you from meeting this deadline, you must immediately contact the RD to arrange an acceptable deadline. The form includes names of persons, type, location, purpose, and dates of activity, as well as environmental and other information.

(b) *Disapproval of permit application.* If we disapprove your application for a permit, the RD will explain the reasons for the disapproval and what you must do to obtain approval.

(c) *Notices.* You must sign and date a notice that includes:

(1) The name(s) of the person(s) who will conduct the proposed research;

(2) The name(s) of any other person(s) participating in the proposed research, including the sponsor;

(3) The type of research and a brief description of how you will conduct it;

(4) A map, plat, or chart, that shows the location where you will conduct research;

(5) The proposed projected starting and ending dates for your research activity;

(6) The name, registry number, registered owner, and port of registry of vessels used in the operation;

(7) The earliest practical time you expect to make the data and information resulting from your research activity available to the public;

(8) Your plan of how you will make the data and information you collect available to the public;

(9) A statement that you and others involved will not sell or withhold the data and information resulting from your research; and

(10) At your option, the nonexclusive use agreement for scientific research attachment to form MMS–134. (If you submit this agreement, you do not have to submit the material required in paragraphs (c)(7), (c)(8), and (c)(9) of this section.)

#### § 280.13 Where must I send my application or notification?

You must apply for a permit or file a notice at one of the following locations:

| For the OCS off the * * * | Apply to * * * |
|---|---|
| (1) State of Alaska | Regional Supervisor for Resource Evaluation, Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Anchorage, AK 99508–4363. |
| (2) Atlantic Coast, Gulf of Mexico, Puerto Rico, or U.S. territories in the Caribbean Sea. | Regional Supervisor for Resource Evaluation, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, LA 70123–2394. |
| (3) States of California, Oregon, Washington, Hawaii, or U.S. territories in the Pacific Ocean. | Regional Supervisor for Resource Evaluation, Minerals Management Service, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, CA 93010–6064. |

## Subpart C—Obligations Under this Part

### Prohibitions and Requirements

#### § 280.20 What must I not do in conducting Geological and Geophysical (G&G) prospecting or scientific research?

While conducting G&G prospecting or scientific research activities under a permit or notice, you must not:

(a) Interfere with or endanger operations under any lease, right-of-way, easement, right-of-use, notice, or permit issued or maintained under the Act;

(b) Cause harm or damage to life (including fish and other aquatic life), property, or the marine, coastal, or human environment;

(c) Cause harm or damage to any mineral resources (in areas leased or not leased);

(d) Cause pollution;

(e) Disturb archaeological resources;

(f) Create hazardous or unsafe conditions;

(g) Unreasonably interfere with or cause harm to other uses of the area; or

(h) Claim any oil, gas, sulphur, or other minerals you discover while conducting operations under a permit or notice.

#### § 280.21 What must I do in conducting G&G prospecting or scientific research?

While conducting G&G prospecting or scientific research activities under a permit or notice, you must:

(a) Immediately report to the RD if you:

(1) Detect hydrocarbon or any other mineral occurrences;

(2) Detect environmental hazards that imminently threaten life and property; or

(3) Adversely affect the environment, aquatic life, archaeological resources, or other uses of the area where you are prospecting or conducting scientific research activities.

(b) Consult and coordinate your G&G activities with other users of the area for navigation and safety purposes.

(c) If you conduct shallow test drilling or deep stratigraphic test drilling activities, you must use the best available and safest technologies that the RD considers economically feasible.

#### § 280.22 What must I do when seeking approval for modifications?

Before you begin modified operations, you must submit a written request describing the modifications and receive the RD's oral or written approval. If circumstances preclude a written request, you must make an oral request and follow up in writing.

#### § 280.23 How must I cooperate with inspection activities?

(a) You must allow our representatives to inspect your G&G prospecting or any scientific research activities that are being conducted under a permit. They will determine whether operations are adversely affecting the environment, aquatic life, archaeological resources, or other uses of the area.

(b) MMS will reimburse you for food, quarters, and transportation that you provide for our representatives if you send in your reimbursement request to the region that issued the permit within 90 days of the inspection.

#### § 280.24 What reports must I file?

(a) You must submit status reports on a schedule specified in the permit and include a daily log of operations.

(b) You must submit a final report of G&G prospecting or scientific research activities under a permit within 30 days after you complete acquisition activities under the permit. You may combine the final report with the last status report and must include each of the following:

(1) A description of the work performed.

(2) Charts, maps, plats and digital navigation data in a format specified by the RD, showing the areas and blocks in which any G&G prospecting or permitted scientific research activities were conducted. Identify the lines of geophysical traverses and their locations including a reference sufficient to identify the data produced during each activity.

(3) The dates on which you conducted the actual prospecting or scientific research activities.

(4) A summary of any:

(i) Hard mineral, hydrocarbon, or sulphur occurrences encountered;

(ii) Environmental hazards; and

(iii) Adverse effects of the G&G prospecting or scientific research activities on the environment, aquatic life, archaeological resources, or other uses of the area in which the activities were conducted.

(5) Other descriptions of the activities conducted as specified by the RD.

### Interrupted Activities

#### § 280.25 When may MMS require me to stop activities under this part?

(a) We may temporarily stop prospecting or scientific research activities under a permit when the RD determines that:

(1) Activities pose a threat of serious, irreparable, or immediate harm. This includes damage to life (including fish and other aquatic life), property, and any minerals (in areas leased or not leased), to the marine, coastal, or human environment, or to an archaeological resource;

(2) You failed to comply with any applicable law, regulation, order or provision of the permit. This would include our required submission of reports, well records or logs, and G&G data and information within the time specified; or

(3) Stopping the activities is in the interest of national security or defense.

(b) The RD will advise you either orally or in writing of the procedures to temporarily stop activities. We will confirm an oral notification in writing and deliver all written notifications by courier or certified/registered mail. You must stop all activities under a permit as soon as you receive an oral or written notification.

#### § 280.26 When may I resume activities?

The RD will advise you when you may start your permit activities again.

#### § 280.27 When may MMS cancel my permit?

The RD may cancel a permit at any time.

(a) If we cancel your permit, the RD will advise you by certified or registered mail 30 days before the cancellation date and will state the reason.

(b) After we cancel your permit, you are still responsible for proper abandonment of any drill site according to the requirements of 30 CFR 251.7(b)(8). You must comply with all other obligations specified in this part or in the permit.

#### § 280.28 May I relinquish my permit?

(a) You may relinquish your permit at any time by advising the RD by certified or registered mail 30 days in advance.

(b) After you relinquish your permit, you are still responsible for proper abandonment of any drill sites according to the requirements of 30 CFR 251.7(b)(8). You must also comply with all other obligations specified in this part or in the permit.

### Environmental Issues

#### § 280.29 Will MMS monitor the environmental effects of my activity?

We will evaluate the potential of proposed prospecting or scientific research activities for adverse impact on the environment to determine the need for mitigation measures.

#### § 280.30 What activities will not require environmental analysis?

We anticipate that activities of the type listed below typically will not cause significant environmental impact and will normally be categorically excluded from additional environmental analysis. The types of activities include:

(a) Gravity and magnetometric observations and measurements;

(b) Bottom and subbottom acoustic profiling or imaging without the use of explosives;

(c) Hard minerals sampling of a limited nature such as shallow test drilling;

(d) Water and biotic sampling, if the sampling does not adversely affect shellfish beds, marine mammals, or an endangered species or if permitted by the National Marine Fisheries Service or another Federal agency;

(e) Meteorological observations and measurements, including the setting of instruments;

(f) Hydrographic and oceanographic observations and measurements, including the setting of instruments;

(g) Sampling by box core or grab sampler to determine seabed geological or geotechnical properties;

(h) Television and still photographic observation and measurements;

(i) Shipboard hard mineral assaying and analysis; and

(j) Placement of positioning systems, including bottom transponders and surface and subsurface buoys reported in Notices to Mariners.

#### § 280.31 Whom will MMS notify about environmental issues?

(a) In cases where Coastal Zone Management Act consistency review is required, the Director will notify the Governor of each adjacent State with a copy of the application for a permit immediately upon the submission for approval.

(b) In cases where an environmental assessment is to be prepared, the Director will invite the Governor of each adjacent State to review and provide comments regarding the proposed activities. The Director's invitation to provide comments will allow the Governor a specified period of time to comment.

(c) When a permit is issued, the Director will notify affected parties including each affected coastal State, Federal agency, local government, and special interest organization that has expressed an interest.

### Penalties and Appeals

#### § 280.32 What penalties may I be subject to?

(a) *Penalties for noncompliance under a permit.* You are subject to the penalty provisions of section 24 of the Act (43 U.S.C. 1350) and the procedures contained in 30 CFR part 250, subpart N for noncompliance with:

(1) Any provision of the Act;

(2) Any provisions of a G&G or drilling permit; or

(3) Any regulation or order issued under the Act.

(b) *Penalties under other laws and regulations.* The penalties prescribed in this section are in addition to any other penalty imposed by any other law or regulation.

#### § 280.33 How can I appeal a penalty?

*See* 30 CFR § 250.1409 and 30 CFR part 290, subpart A, for instructions on how to appeal any decision assessing a civil penalty under 43 U.S.C. 1350 and 30 CFR part 250, subpart A.

#### § 280.34 How can I appeal an order or decision?

*See* 30 CFR part 290, subpart A, for instructions on how to appeal an order or decision.

## Subpart D—Data Requirements

### Geological Data and Information

#### § 280.40 When do I notify MMS that geological data and information are available for submission, inspection, and selection?

(a) You must notify the RD, in writing, when you complete the initial analysis, processing, or interpretation of any geological data and information. Initial analysis and processing are the stages of analysis or processing where the data and information first become available for in-house interpretation by the permittee or become available commercially to third parties via sale, trade, license agreement, or other means.

(b) The RD may ask if you have further analyzed, processed, or interpreted any geological data and information. When asked, you must respond to us in writing within 30 days.

(c) The RD may ask you or a third party to submit the analyzed, processed, or interpreted geologic data and information for us to inspect or permanently retain. You must submit the data and information within 30 days after such a request.

#### § 280.41 What types of geological data and information must I submit to MMS?

Unless the RD specifies otherwise, you must submit geological data and information that include:

(a) An accurate and complete record of all geological (including geochemical) data and information describing each operation of analysis, processing, and interpretation;

(b) Paleontological reports identifying by depth any microscopic fossils collected, including the reference datum to which paleontological sample depths are related and, if the RD requests, washed samples, that you maintain for paleontological determinations;

(c) Copies of well logs or charts in a digital format, if available;

(d) Results and data obtained from formation fluid tests;

(e) Analyses of core or bottom samples and/or a representative cut or split of the core or bottom sample;

(f) Detailed descriptions of any hydrocarbons or other minerals or hazardous conditions encountered during operations, including near losses of well control, abnormal geopressures, and losses of circulation; and

(g) Other geological data and information that the RD may specify.

**§ 280.42 When geological data and information are obtained by a third party, what must we both do?**

A third party may obtain geological data and information from a permittee, or from another third party, by sale, trade, license agreement, or other means. If this happens:

(a) The third-party recipient of the data and information assumes the obligations under this part, except for the notification provisions of § 280.40(a) and is subject to the penalty provisions of § 280.32(a)(1) and 30 CFR part 250, subpart N; and

(b) A permittee or third party that sells, trades, licenses, or otherwise provides data and information to a third party must advise the recipient, in writing, that accepting these obligations is a condition precedent of the sale, trade, license, or other agreement; and

(c) Except for license agreements, a permittee or third party that sells, trades, or otherwise provides data and information to a third party must advise the RD in writing within 30 days of the sale, trade, or other agreement, including the identity of the recipient of the data and information; or

(d) For license agreements, a permittee or third party that licenses data and information to a third party must, within 30 days of a request by the RD, advise the RD, in writing, of the license agreement, including the identity of the recipient of the data and information.

## Geophysical Data and Information

**§ 280.50 When do I notify MMS that geophysical data and information are available for submission, inspection, and selection?**

(a) You must notify the RD in writing when you complete the initial processing and interpretation of any geophysical data and information. Initial processing is the stage of processing where the data and information become available for in-house interpretation by the permittee, or become available commercially to third parties via sale, trade, license agreement, or other means.

(b) The RD may ask whether you have further processed or interpreted any geophysical data and information. When asked, you must respond to us in writing within 30 days.

(c) The RD may request that the permittee or third party submit geophysical data and information before making a final selection for retention. Our representatives may inspect and select the data and information on your premises, or the RD can request delivery of the data and information to the appropriate regional office for review.

(d) You must submit the geophysical data and information within 30 days of receiving the request, unless the RD extends the delivery time.

(e) At any time before final selection, the RD may review and return any or all geophysical data and information. We will notify you in writing of any data the RD decides to retain.

**§ 280.51 What types of geophysical data and information must I submit to MMS?**

Unless the RD specifies otherwise, you must include:

(a) An accurate and complete record of each geophysical survey conducted under the permit, including digital navigational data and final location maps;

(b) All seismic data collected under a permit presented in a format and of a quality suitable for processing;

(c) Processed geophysical information derived from seismic data with extraneous signals and interference removed, presented in a quality format suitable for interpretive evaluation, reflecting state-of-the-art processing techniques; and

(d) Other geophysical data, processed geophysical information, and interpreted geophysical information including, but not limited to, shallow and deep subbottom profiles, bathymetry, sidescan sonar, gravity and magnetic surveys, and special studies such as refraction and velocity surveys.

**§ 280.52 When geophysical data and information are obtained by a third party, what must we both do?**

A third party may obtain geophysical data, processed geophysical information, or interpreted geophysical information from a permittee, or from another third party, by sale, trade, license agreement, or other means. If this happens:

(a) The third-party recipient of the data and information assumes the obligations under this part, except for the notification provisions of § 280.50(a) and is subject to the penalty provisions of § 280.32(a)(1) and 30 CFR 250, subpart N; and

(b) A permittee or third party that sells, trades, licenses, or otherwise provides data and information to a third party must advise the recipient, in writing, that accepting these obligations is a condition precedent of the sale, trade, license, or other agreement; and

(c) Except for license agreements, a permittee or third party that sells, trades, or otherwise provides data and information to a third party must advise the RD, in writing within 30 days of the sale, trade, or other agreements, including the identity of the recipient of the data and information; or

(d) For license agreements, a permittee or third party that licenses data and information to a third party must, within 30 days of a request by the RD, advise the RD, in writing, of the license agreement, including the identity of the recipient of the data and information.

## Reimbursement

**§ 280.60 Which of my costs will be reimbursed?**

(a) We will reimburse you or a third party for reasonable costs of reproducing data and information that the RD requests if:

(1) You deliver G&G data and information to us for the RD to inspect or select and retain (according to §§ 280.40 and 280.50);

(2) We receive your request for reimbursement and the RD determines that the requested reimbursement is proper; and

(3) The cost is at your lowest rate (or a third party's) or at the lowest commercial rate established in the area, whichever is less.

(b) We will reimburse you or the third party for the reasonable costs of processing geophysical information (which does not include cost of data acquisition) if, at the request of the RD, you processed the geophysical data or information in a form or manner other than that used in the normal conduct of business.

**§ 280.61 Which of my costs will not be reimbursed?**

(a) When you request reimbursement, you must identify reproduction and processing costs separately from acquisition costs.

(b) We will not reimburse you or a third party for data acquisition costs or for the costs of analyzing or processing geological information or interpreting geological or geophysical information.

## Protections

**§ 280.70 What data and information will be protected from public disclosure?**

In making data and information available to the public, the RD will follow the applicable requirements of:

(a) The Freedom of Information Act (5 U.S.C. 552);

(b) The implementing regulations at 43 CFR part 2;

(c) The Act; and

(d) The regulations at 30 CFR parts 250 and 252.

(1) If the RD determines that any data or information is exempt from disclosure under the Freedom of Information Act, we will not disclose the data and information unless either:

(i) You and all third parties agree to the disclosure; or

(ii) A provision of 30 CFR parts 250 and 252 allows us to make the disclosure.

(2) We will keep confidential the identity of third-party recipients of data and information collected under a permit. We will not release the identity unless you and the third parties agree to the disclosure.

(3) When you detect any significant hydrocarbon occurrences or environmental hazards on unleased lands during drilling operations, the RD will immediately issue a public announcement. The announcement must further the national interest without unduly damaging your competitive position.

### § 280.71 What is the timetable for release of data and information?

We will release data and information that you or a third party submits and we retain according to paragraphs (a) and (b) of this section.

(a) If the data and information are not related to a deep stratigraphic test, we will release them to the public according to items (1), (2), and (3) in the following table:

| If you or a third party submits and we retain * * * | The Regional Director will disclose them to the public * * * |
|---|---|
| (1) Geological data and information | 10 years after issuing the permit. |
| (2) Geophysical data | 50 years after you or a third party submit the data. |
| (3) Geophysical information | 25 years after you or a third party submit the information |
| (4) Data and information related to a deep stratigraphic test. | 25 years after you complete the test, unless the provisions of paragraph (b) of this section apply. |

(b) This paragraph applies if you are covered by paragraph (a)(4) of this section and a lease sale is held or a noncompetitive agreement is negotiated after you complete a test well. We will release the data and information related to the deep stratigraphic test at the earlier of the following times:

(1) Twenty-five years after you complete the test; or

(2) Sixty calendar days after we issue a lease, located partly or totally within 50 geographic miles (92.7 kilometers) of the test.

### § 280.72 What procedure will MMS follow to disclose acquired data and information to a contractor for reproduction, processing, and interpretation?

(a) When practical, the RD will advise the person who submitted data and information under §§ 280.40 or 280.50 of the intent to provide the data or information to an independent contractor or agent for reproduction, processing, and interpretation.

(b) The person notified will have at least five working days to comment on the action.

(c) When the RD advises the person who submitted the data and information, all other owners of the data or information will be considered to have been notified.

(d) The independent contractor or agent must sign a written commitment not to sell, trade, license, or disclose data or information to anyone without the RD's consent.

### § 280.73 Will MMS share data and information with coastal States?

(a) We can disclose proprietary data, information, and samples submitted to us by permittees or third parties that we receive under this part to the Governor of any adjacent State that requests it according to paragraphs (b), (c), and (d) of this section. The permittee or third parties who submitted proprietary data, information, and samples will be notified about the disclosure and will have at least five working days to comment on the action.

(b) We will make a disclosure under this section only after the Governor and the Secretary have entered into an agreement containing all of the following provisions:

(1) The confidentiality of the information will be maintained.

(2) In any action taken for failure to protect the confidentiality of proprietary information, neither the Federal Government nor the State may raise as a defense:

(i) Any claim of sovereign immunity; or

(ii) Any claim that the employee who revealed the proprietary information was acting outside the scope of his/her employment in revealing the information.

(iii) The State agrees to hold the Federal Government harmless for any violation by the State or its employees or contractors of the agreement to protect the confidentiality of proprietary data and information and samples.

(iv) The materials containing the proprietary data, information, and samples will remain the property of the Federal Government.

(c) The data, information, and samples available for reproduction to the State(s) under an agreement must be related to leased lands. Data and information on unleased lands may be viewed but not copied or reproduced.

(d) The State must return to us the materials containing the proprietary data, information, and samples when we ask for them or when the State no longer needs them.

(e) Information received and knowledge gained by a State official under paragraph (d) of this section is subject to confidentiality requirements of:

(1) The Act; and

(2) The regulations at 30 CFR parts 280, 281, and 282.

## Subpart E—Information Collection

### § 280.80 Paperwork Reduction Act statement—information collection.

(a) The Office of Management and Budget (OMB) has approved the information collection requirements in this part under 44 U.S.C. 3501 *et seq.* and assigned OMB control number 1010–0072. The title of this information collection is ''30 CFR Part 280, Prospecting for Minerals other than Oil, Gas, and Sulphur on the Outer Continental Shelf.''

(b) We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(c) We use the information collected under this part to:

(1) Evaluate permit applications and monitor scientific research activities for environmental and safety reasons.

(2) Determine that prospecting does not harm resources, result in pollution, create hazardous or unsafe conditions, or interfere with other users in the area.

(3) Approve reimbursement of certain expenses.

(4) Monitor the progress and activities carried out under an OCS prospecting permit.

(5) Inspect and select G&G data and information collected under an OCS prospecting permit.

(d) Respondents are Federal OCS permittees and notice filers. Responses are mandatory or are required to obtain or retain a benefit. We will protect information considered proprietary under applicable law and under regulations at § 280.70 and 30 CFR part 281.

(e) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, NW., Washington, DC 20240.

[FR Doc. 02–17879 Filed 7–16–02; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD07–01–037]**

**RIN 2115–AE84**

## Regulated Navigation Area; Savannah River, Georgia

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a Regulated Navigation Area on a portion of the Savannah River to regulate waterway traffic when vessels carrying Liquefied Natural Gas (LNG) are transiting or moored on the Savannah River. This action is necessary because of the size, draft, and volatile cargo of LNG tankships. This rule enhances public and maritime safety by minimizing the risk of collision, allision or grounding and the possible release of LNG.

**DATES:** This rule is effective on August 16, 2002.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–01–037], and are available for inspection or copying at Marine Safety Office Savannah, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander James Hanzalik at the Marine Safety Office Savannah; phone (912) 652–4353 extension 205.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On June 19, 2001 we published a notice of proposed rulemaking (NPRM) in the **Federal Register** entitled ''Regulated Navigation Area; Savannah River, Georgia'' (66 FR 32915). The Coast Guard received twenty-two letters commenting on the proposed rule. No public hearing was requested, and none was held.

Since immediate action was necessary to protect the public from the dangers associated with transporting LNG, on October 10, 2001 and May 10, 2002, we published two temporary final rules in the **Federal Register** entitled ''Regulated Navigation Area: Savannah River, Georgia'' (66 FR 51562 and 67 FR 31730, respectively) creating temporary rules while we published a Supplemental Notice of Proposed Rulemaking (SNPRM), received comments and prepared the final rule.

Due in part to the comments we received and changes to the initial NPRM, on December 14, 2001, we published a SNPRM in the **Federal Register** entitled ''Regulated Navigation Area; Savannah River, Georgia'' (66 FR 64778), offering the public the opportunity to comment on our revised proposal. The Coast Guard received three letters commenting on the supplemental proposed rule. No public hearing was requested, and none was held.

### Background and Purpose

The Savannah River has a narrow and restricted channel with many bends. The Liquefied Natural Gas (LNG) facility is located at one of these bends on Elba Island. The LNG tankship berth is located adjacent to and parallel with the toe of the shipping channel. Because of these factors, the hazardous nature of LNG and the substantial volume of deep draft vessel traffic in Savannah (approximately 5000 annual transits), the risk of collision or allision involving an LNG tankship must be addressed.

The Elba Island LNG facility has been struck by passing vessels twice in the past 20 years. In both instances the facility was inactive. However, damage to both the facility and vessels was extensive. The potential consequences from this type of allision would be significantly more severe with an LNG tankship moored at the Elba Island dock.

The current temporary final rule expired on June 30, 2002. This final rule is needed to prevent incidents involving LNG tankships while in transit, and while moored at the facility, and is necessary to protect the safety of life and property on the navigable waters from hazards associated with LNG activities.

### Discussion of Comments and Changes

The Coast Guard received twenty-two comment letters addressing the original notice of proposed rulemaking. These comments and our responses can be found in the SNPRM in the **Federal Register** (66 FR 64778) and the temporary final rule published on October 10, 2001 (66 FR 51562). The Coast Guard incorporated some of the comments and made content changes and other administrative and numbering corrections in the SNPRM published on December 14, 2001.

We received a total of three comment letters to the SNPRM published on December 14, 2001, that restated the same concerns addressed in the NPRM. The Coast Guard stands by its previous position and comments and has not modified this final rule. In addition to the comments restated, two of these comment letters requested that the Coast Guard extend the temporary final rule for one year ''to document the cost of delays and make a reasonable determination of the impact of these proposed regulations.'' As stated in the comments section of the SNPRM and the regulatory evaluation section of this final rule, the Coast Guard maintains our position that the costs associated with this rule will be minimal and we do not agree that an extension of the temporary rule is necessary. If however, as experience with this rule is gained and costs are documented which warrant a reassessment of this rule, the Coast Guard may review the cost and benefits of the final rule and may revise it.

A third comment letter received in response to the SNPRM suggested that the ''Captain of the Port be given the authority to waive portions of the final rule which operational experience has shown to be unnecessary.'' The final rule allows the Captain of the Port to waive any requirements imposed by this rule, if the Captain of the Port finds that it is in the best interest of safety or in the interest of national security.

### Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of

the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Only an estimated one percent of the annual transits on the Savannah River will be LNG tankships. Further, all LNG transits will be coordinated and scheduled with the pilots and the Coast Guard Captain of the Port to minimize port disruption and delays for other commercial traffic and the LNG tankships themselves. Finally, requests to enter the Regulated Navigation Area (RNA) may be granted on a case-by-case basis by the Coast Guard Captain of the Port.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because LNG vessels will comprise an estimated one percent of the large commercial vessel transits on the Savannah River. Further, the tug escort requirements of this rule for vessels transiting past a moored LNG vessel will only affect an estimated 12 percent of all large commercial vessel transits on the River and are provided by the LNG facility. Delays, if any, will be minimal because vessel speeds would be reduced regardless of tug requirements. Delays for inbound and outbound traffic due to LNG transits will be minimized through pre-transit conferences with the pilots and the Coast Guard Captain of the Port. Finally, the RNA requirements are less burdensome for smaller vessels, which are more likely to be small entities, because of the lower risk associated with these vessels.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pubic Law 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. Small businesses may also send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in the preamble.

**Taking of Private Property**

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 165**

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

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 reads as follows:

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

2. A new § 165.756 is added to read as follows:

**§ 165.756 Regulated Navigation Area; Savannah River, Georgia.**

(a) *Regulated Navigation Area (RNA).* The Savannah River between Fort Jackson (32°04.93′ N, 081°02.19′ W) and the Savannah River Channel Entrance Sea Buoy is a regulated navigation area. All coordinates are North American Datum 1983.

(b) *Definitions.* The following definitions are used in this section:

*Bollard pull* is an industry standard used for rating tug capabilities and is the pulling force imparted by the tug to the towline. It means the power that an escort tug can apply to its working line(s) when operating in a direct mode.

*Direct Mode* is a towing technique which is defined as a method of operation by which a towing vessel generates towline forces by thrust alone at an angle equal to or nearly equal to the towline, or thrust forces applied directly to the escorted vessel's hull.

*Indirect Mode* is a towing technique that, for the purpose of this section, is defined as a method of operation by which an escorting towing vessel generates towline forces by a combination of thrust and hydrodynamic forces resulting from a presentation of the underwater body of the towing vessel at an oblique angle to the towline. This method increases the resultant bollard pull, thereby arresting and controlling the motion of an escorted vessel.

*LNG tankship* means a vessel as described in 46 CFR 154.

*Made-up* means physically attached by cable, towline, or other secure means in such a way as to be immediately ready to exert force on a vessel being escorted.

*Make-up* means the act of, or preparations for becoming made-up.

*Operator* means the person who owns, operates, or is responsible for the operation of a facility or vessel.

*Savannah River Channel Entrance Sea Buoy* means the aid to navigation labeled R W ''T'' Mo (A) WHIS on the National Oceanic and Atmospheric Administration's (NOAA) Nautical Chart 11512.

*Standby* means immediately available, ready, and equipped to conduct operations.

*Underway* means that a vessel is not at anchor, not made fast to the shore, or not aground.

(c) *Applicability.* This section applies to all vessels operating within the RNA, including naval and other public vessels, except vessels that are engaged in the following operations:

(1) Law enforcement or search and rescue operations;

(2) Servicing aids to navigation;

(3) Surveying, maintenance, or improvement of waters in the RNA; or

(4) Actively engaged in escort, maneuvering or support duties for the LNG tankship.

(d) *Regulations.*

(1) *Requirements for vessel operations while a LNG tankship is underway within the RNA:*

(i) Except for a vessel that is moored at a marina, wharf, or pier, and remains moored, no vessel 1600 gross tons or greater is permitted within the RNA without the permission of the Captain of the Port (COTP).

(ii) All vessels under 1600 gross tons shall keep clear of transiting LNG tankships.

(iii) The owner, master, or operator of a vessel carrying liquefied natural gas (LNG) shall:

(A) Comply with the notice requirements of 33 CFR 160. Updates are encouraged at least 12 hours before arrival at the RNA boundaries. The COTP may delay the vessel's entry into the RNA to accommodate other commercial traffic. LNG tankships are further encouraged to include in their notice a report of the vessel's propulsion and machinery status and any outstanding recommendations or deficiencies identified by the vessel's classification society and, for foreign flag vessels, any outstanding deficiencies identified by the vessel's flag state.

(B) Obtain permission from the COTP before commencing the transit into the RNA.

(C) While transiting, make security broadcasts every 15 minutes as recommended by the U.S. Coast Pilot 4 Atlantic Coast. The person directing the vessel must also notify the COTP telephonically or by radio on channel 13 or 16 when the vessel is at the following locations: Sea Buoy, Savannah Jetties, and Fields Cut.

(D) Not enter or get underway within the RNA if visibility during the transit is not sufficient to safely navigate the channel, and/or wind speed is, or is expected to be, greater than 25 knots.

(E) While transiting the RNA, the LNG tankship shall have sufficient towing vessel escorts.

(2) *Requirements for LNG facilities:*

(i) The operator of a facility where a LNG tankship is moored shall station and provide a minimum of two escort towing vessels each with a minimum of 100,000 pounds of bollard pull, 4,000 horsepower and capable of safely operating in the indirect mode, to escort transiting vessels 1600 gross tons or greater past the moored LNG tankship.

(ii) In addition to the two towing vessels required by paragraph (d)(2)(i) of this section, the operator of the facility where the LNG tankship is moored shall provide at least one standby towing vessel of sufficient capacity to take appropriate actions in an emergency as directed by the LNG vessel bridge watch.

(3) *Requirements for vessel operations while a LNG tankship is moored:*

(i) While moored within the RNA, LNG tankships shall maintain a bridge watch of appropriate personnel to monitor vessels passing under escort and to coordinate the actions of the standby-towing vessel required in paragraph (d)(2)(ii) of this section in the event of emergency.

(ii) Transiting vessels 1600 gross tons or greater, when passing a moored LNG tankship, shall have a minimum of two towing vessels, each with a minimum capacity of 100,000 pounds of bollard pull, 4,000 horsepower, and the ability to operate safely in the indirect mode, made-up in such a way as to be immediately available to arrest and control the motion of an escorted vessel in the event of steering, propulsion or other casualty. While it is anticipated that vessels will utilize the facility provided towing vessel services required in paragraph (d)(2)(i) of this section, this regulation does not preclude escorted vessel operators from providing their own towing vessel escorts, provided they meet the requirements of this part.

(A) Outbound vessels shall be made-up and escorted from Bight Channel Light 46 until the vessel is safely past the LNG dock.

(B) Inbound vessels shall be made-up and escorted from Elba Island Light 37 until the vessel is safely past the LNG dock.

(iii) All vessels of less than 1600 gross tons shall not approach within 70 yards of an LNG tankship.

(e) *LNG Schedule.* The Captain of the Port will issue a Broadcast Notice to Mariners to inform the marine community of scheduled LNG tankship activities during which the restrictions imposed by this section are in effect.

(f) *Waivers.* (1) The COTP may waive any requirement in this section, if the COTP finds that it is in the best interest of safety or in the interest of national security.

(2) An application for a waiver of these requirements must state the compelling need for the waiver and describe the proposed operation and

methods by which adequate levels of safety are to be obtained.

(g) *Enforcement.* Violations of this section should be reported to the Captain of the Port, Savannah, at (912) 652–4353. In accordance with the general regulations in § 165.13 of this part, no person may cause or authorize the operation of a vessel in the regulated navigation area contrary to the provisions of this section.

Dated: July 3, 2002.

**J.S. Carmichael,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 02–18010 Filed 7–16–02; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 3 and 13

**RIN 2900–AL10**

### Adjudication; Fiduciary Activities—Nomenclature Changes

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) regulations by making nonsubstantive changes. VA is amending its adjudication and fiduciary regulations to replace the titles of Adjudication Division, Adjudication Officer, Veterans Services Division, and Veterans Services Officer, with Veterans Service Center, and Veterans Service Center Manager. Other, nonsubstantive changes are also made. These changes are made for clarity and accuracy.

**DATES:** *Effective Date:* July 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Randy A. McKevitt, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7138.

**SUPPLEMENTARY INFORMATION:** VA is amending its adjudication and fiduciary regulations to reflect the reorganization of the Adjudication and Veterans Services Divisions into Veterans Service Centers and to reflect the elimination of the positions of the Adjudication Officer and the Veterans Services Officer and the creation of the position of the Veterans Service Center Manager. Other nonsubstantive changes are made for clarity.

**Administrative Procedure Act**

This final rule consists of nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

**Unfunded Mandates**

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This final rule would have no consequential effect on State, local, or tribal governments.

**Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This rule merely consists of nonsubstantive changes. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

**List of Subjects**

*38 CFR Part 3*

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, and Vietnam.

*38 CFR Part 13*

Surety bonds, Trusts and trustees, Veterans.

Approved: July 3, 2002.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR parts 3 and 13 are amended as follows:

## PART 3—ADJUDICATION

### Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

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

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

## PART 3—[AMENDED]

2. Part 3 is amended by:

A. Revising all references to ''Adjudication Officer'', except for in § 3.2600(a), or all references to ''Veterans Services Officer'' or ''Veterans' Services Officer'' to read ''Veterans Service Center Manager''.

B. Revising all references to ''Adjudication Division'' to read ''Veterans Service Center''.

3. Section 3.353(b)(2) is revised to read as follows:

**§ 3.353 Determinations of incompetency and competency.**

* * * * *

(b) * * *

(2) Where the beneficiary is rated incompetent, the Veterans Service Center Manager will develop information as to the beneficiary's social, economic and industrial adjustment; appoint (or recommend appointment of) a fiduciary as provided in § 13.55 of this chapter; select a method of disbursing payment as provided in § 13.56 of this chapter, or in the case of a married beneficiary, appoint the beneficiary's spouse to receive payments as provided in § 13.57 of this chapter; and authorize disbursement of the benefit.

* * * * *

**§ 3.850 [Amended]**

4. Section 3.850(d), is amended by removing misspelled word ''Goverment'', and adding, in its place, ''Government''.

**§ 3.2600 [Amended]**

5. Section 3.2600(a) is amended by removing ''an Adjudication Officer, Veterans Service Center Manager,'', and adding, in its place, ''a Veterans Service Center Manager''.

## PART 13—VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES

6. The authority citation for part 13 continues to read as follows:

**Authority:** 72 Stat. 1114, 1232, as amended, 1237; 38 U.S.C. 501, 5502, 5503, 5711, unless otherwise noted.

## PART 13—[AMENDED]

7. Part 13 is amended by:

A. Revising all references to ''Adjudication Officer'', or all references to ''Veterans Services Officer'' to read ''Veterans Service Center Manager''.

B. Revising all references to ''Veterans Services Officers'' to read ''Veterans Service Center Managers''.

C. Revising all references to ''Veterans Services Officer's'' to read ''Veterans Service Center Manager's''.

D. In § 13.2(a), removing ''Office of the Veterans Services Division'', and adding, in its place, ''Veterans Service Center''.

E. In § 13.56(b), removing misspelled word ''mange'', and adding, in its place, ''manage''.

F. In § 13.71(a)(3) and (b), removing ''to the Adjudication Division'' wherever it appears.

G. Revising § 13.108.

The revision reads as follows:

**§ 13.108 Estate equals or exceeds statutory limit; 38 U.S.C. 5503(b)(1).**

(a) *Discontinuance of payments.* When a veteran, who is rated incompetent by VA and has no spouse or child, is receiving hospital treatment, or domiciliary care, or institutional care by the United States or any political subdivision, with or without charge, and the veteran's estate equals or exceeds the amount specified in § 3.557(b)(4) of this chapter, the Veterans Service Center Manager will discontinue VA payments, other than insurance, under the provision of § 3.557 of this chapter. In those cases in which the payments have been discontinued, the Veterans Service Center Manager will resume payments when the estate has been reduced to one half the amount specified in § 3.557(b)(4) of this chapter.

(b) *Waiver of discontinuance of payments.* The Veterans Service Center Manager will determine when discontinuance should be waived. Waiver of discontinuance of payments under this paragraph may be granted more than once in any calendar year, but will not exceed a total of 60 days in any calendar year.

(1) The Veterans Service Center Manager may authorize waiver of discontinuance of payments when necessary to avoid hardship.

(2) Hardship will not be considered present when assets are readily available to meet current liabilities.

(Authority:) 38 U.S.C. 5503(b)(1)(A))

(c) *Apportionment award to dependent parent for care and maintenance.* In any case in which a veteran, without spouse or child, is institutionalized by the United States or a political subdivision thereof and his or her award of compensation, pension or emergency officers' retirement pay has been discontinued because his or her estate equals or exceeds the amount specified in § 3.557(b)(4) of this chapter, an apportionment of the award otherwise payable may be made to a dependent parent based on actual need as determined by the Veterans Service Center Manager. So much of any monthly remainder of the discontinued payments as equals the amount charged for his or her current care and maintenance in the institution in which treatment or care is furnished may be paid to the institution. This amount may not be more than the amount determined by the Veterans Service Center Manager to be the proper charge as fixed by statute or administrative regulation. The Veterans Service Center Manager will determine the amount of either award.

(Authority: 38 U.S.C. 5503(b)(2))

(d) *Death of veteran; personal funds of patient.* In the event of the incompetent veteran's death in other than a VA institution, the Veterans Services Officer should make certain that the provisions of the pertinent laws are applied as to the gratuitous benefits in Personal Funds of Patients.

(Authority: 38 U.S.C. 501)

[FR Doc. 02–17911 Filed 7–16–02; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 20

**RIN 2900–AK74**

## Board of Veterans' Appeals: Rules of Practice—Effect of Procedural Defects in Motions for Revision of Decisions on the Grounds of Clear and Unmistakable Error

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document affirms an amendment to the Rules of Practice of the Board of Veterans' Appeals (Board) to provide that, when a motion to revise a Board decision on the grounds of clear and unmistakable error (CUE) fails to provide specific allegations of error, the Board will dismiss the motion without prejudice to refiling. This amendment was made necessary by a decision of the United States Court of Appeals for the Federal Circuit.

**DATES:** *Effective Date:* July 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

**SUPPLEMENTARY INFORMATION:** The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denial of claims for veterans' benefits. Among other remedies, appellants may challenge final Board decisions on the grounds that they were the product of clear and unmistakable error (CUE). 38 U.S.C. 7111; 38 CFR 20.1400–20.1411.

On July 10, 2001, VA published in the **Federal Register** at 66 FR 35902 an interim final rule relating to CUE motions. Essentially, that rule modified 38 CFR 20.1404 to provide that, where the motion does not meet the pleading requirements set forth in VA rules, the motion will be dismissed without prejudice to refiling.

We provided a 60-day comment period that ended on September 10, 2000. We received no comments. Based on the rationale set forth in the interim final rule, we adopt those changes as a final rule.

**Administrative Procedure Act**

This document without any changes affirm amendments made by an interim final rule that is already in effect. Accordingly, we have concluded under 5 U.S.C. 553 that there is good cause for dispensing with a delayed effective date based on the conclusion that such procedure is impracticable, unnecessary, and contrary to the public interest.

**Unfunded Mandates**

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This final rule would have no consequential effect on State, local, or tribal governments.

**Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**List of Subjects in 38 CFR Part 20**

Administrative practice and procedure, Claims, Veterans.

Approved: July 3, 2002.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

## PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

Accordingly, the interim final amending 38 CFR part 20 which was published at 66 FR 35902 on July 10, 2001, is adopted as a final rule without change.

[FR Doc. 02–17910 Filed 7–16–02; 8:45 am]

**BILLING CODE 8320–01–P**

## POSTAL SERVICE

## 39 CFR Part 111

## Domestic Mail Manual; Miscellaneous Amendments

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This document describes the numerous amendments consolidated in the Transmittal Letter for Issue 57 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations; see 39 CFR 111.1. These amendments reflect changes in mail preparation requirements and other rules and regulations.

**EFFECTIVE DATE:** June 30, 2002.

**FOR FURTHER INFORMATION CONTACT:** Anne Emmerth, (703) 292–3641.

**SUPPLEMENTARY INFORMATION:** The Domestic Mail Manual (DMM), incorporated by reference in title 39, Code of Federal Regulations, part 111, contains the basic standards of the U.S. Postal Service governing its domestic mail services, descriptions of the mail classes and special services and conditions governing their use, and standards for rate eligibility and mail preparation. The document is amended and republished periodically, with each issue sequentially numbered. Interim updates of the DMM are posted monthly on the USPS Postal Explorer Web site (*http://pe.usps.gov*). DMM Issue 57, the next printed edition, is dated June 30, 2002. Issue 57 contains all changes previously published in the **Federal Register** (including the changes to implement the R2001–1 Omnibus Rate Case, published in 67 FR 18684) and all other changes listed below. Announcements were first published in the **Federal Register** and/or various issues of the Postal Bulletin, an official biweekly document published by the Postal Service.

In addition, the revised table of contents of DMM Issue 57 is presented.

**Domestic Mail Manual Issue 57**

*Summary of Rate Case Changes*

The following changes were adopted as part of the R2001–1 Omnibus Rate Case. These changes are effective June 30, 2002.

A ADDRESSING

A010 is amended to remove references to upgradable mail and to include a preferred location for addresses on letter-size pieces.

The title of A800 is changed to show the standards apply to all automation-compatible mail, not just mail claimed at automation rates.

A950 is revised to clarify that the mailer's signature on a postage statement certifies the mail meets the requirements for the rates claimed and to change the requirements for filing Form 3553, *Coding Accuracy Support System (CASS) Summary Report.* Mailers are no longer required to submit Form 3553 with each mailing.

C CHARACTERISTICS AND CONTENT

C010 is amended to show that Standard Mail Enhanced Carrier Route (ECR) letters are subject to the standards for mailpiece dimensions and to remove information about the First-Class Mail nonstandard surcharge. C050 is amended to add the nonmachinable characteristics for letters.

C100.2.7 is amended to clarify the guidelines for perforations and tearing guides on cards. C100.4.0 is revised to reflect changes to the nonmachinable surcharge (formerly the ''nonstandard surcharge'') for some First-Class Mail letters and flats.

C700 is amended to note that mailpieces meeting any of the characteristics listed in C700.2.0 and that are mailed at the DSCF Parcel Select rate are subject to the nonmachinable surcharge.

C810 is amended to remove references to upgradable First-Class Mail and Standard Mail, to increase the weight limit for Standard Mail automation and ECR letters to 3.5 ounces, and to clarify that signing a postage statement certifies the mail meets the requirements for the rates claimed.

C820 is amended to add a weight limit for Bound Printed Matter flats claimed at automation rates.

C830 is deleted. C830 contained standards for upgradable mail, including address placement, OCR read area, fonts, and reflectance. The upgradable preparation for letters is replaced with a machinable preparation; the machinable preparation has no requirements for address placement, OCR read area, etc.

C840 is amended to remove references to upgradable mail.

D DEPOSIT, COLLECTION, AND DELIVERY

D210.3.4 is amended to show that the destination sectional center facility (DSCF) rate will apply to eligible mail entered at the DSCF under exceptional dispatch. D210.4.0 is revised to show that the DSCF rate will not apply to mail entered at airport mail facilities (AMFs).

D230.2.2 and 4.6 are deleted to remove the standards for Periodicals contingency entries.

D500 is amended to include additional circumstances that affect postage refund requests for Express Mail when the service guarantee is not met.

E ELIGIBILITY

E110.3.0 is amended to clarify the eligibility for pieces mailed at First-Class Mail card rates.

E120.2.2 is amended to change the Priority Mail flat rate from the 2-pound rate to the 1-pound rate. E120.2.4 reflects changes to show that keys and identification devices that weigh more than 13 ounces but not more than 1 pound are returned at the 1-pound Priority Mail rate plus the fee shown in R100.10.0. Keys and identification devices that weigh more than 1 pound but not more than 2 pounds are charged the 2-pound Priority Mail rate for zone 4 plus the fee in R100.10.0.

E130 is amended to show that the nonmachinable surcharge will apply to keys and identification devices, certain letter-size and flat-size pieces mailed at single-piece and Presorted rates, and all pieces where the mailer chooses the manual only (''do not automate'') preparation option. It also is amended to clarify that signing a postage statement certifies the mail meets the requirements for the rates claimed.

E140 is amended to reorganize the information about rate application into two separate sections: one for cards and letter-size mail (2.0) and one for flat-size mail (3.0). E140.2.0 is amended to replace the basic rate with the new AADC and mixed AADC rates. E140.3.0 is amended to replace the basic rate with the new ADC and mixed ADC rates and to clarify the definition of a piece that is subject to the nonmachinable surcharge. E140 is amended to clarify that signing a postage statement certifies the mail meets the requirements for the rates claimed.

E217.1.0 and 3.0 are amended to reflect references to the new destination area distribution center (DADC) rates and discounts for Outside-County and Outside-County Science-of-Agriculture rates. E217.5.0 is restructured for clarity

and amended to include standards for the new per piece pallet and per piece destination entry pallet discounts.

The standards for combining multiple publications or editions in E220.3.0 and E230.4.0 are consolidated into new M230. E220 and E240 are amended to clarify that signing a postage statement certifies the mail meets the requirements for the rates claimed.

E250 is revised in its entirety to clarify standards for all destination entry Periodicals mailings; to include the new destination area distribution center (DADC) entry rates and discounts; and to reflect that for rate eligibility DSCF pieces must be deposited at the DSCF or a USPS-designated facility. E250.1.1 clarifies that for rate eligibility an individual package, tray, sack, or pallet may contain pieces claimed at different destination entry rates and discounts.

New E260 (former G094) describes the standards for the Periodicals Ride-Along classification and rate, which is now a permanent classification. All of G094 is moved except for 2.0 and 3.0. Former 2.0, which contains the rate information, appears in R200. Former 3.0 is deleted, as publishers are no longer required to submit additional documentation with Ride-Along mailings.

E500 is amended to change the Express Mail flat rate from the 2-pound rate to the 1/2-pound rate.

E610.8.0 is amended to remove references to upgradable Standard Mail.

E620 is amended to remove references to upgradable mail and to show that the nonmachinable surcharge may apply to letter-size pieces that weigh 3.3 ounces or less and to all pieces where the mailer chooses the manual only (''do not automate'') option. E620.1.2 is amended to remove the requirement that residual volumes must appear on the same postage statement.

E630 is reorganized for clarity. Standards are added to show that ECR letter-size pieces mailed at saturation and high density letter rates must be automation-compatible and must have a delivery point barcode. New language is added to explain the discount for automation-compatible pieces that weigh between 3.3 and 3.5 ounces.

E640 is amended to replace the basic automation letter rate with the new AADC and mixed AADC rates and to add the discount for automation letters that weigh between 3.3 and 3.5 ounces. E640.2.0 is amended to add the discount for ECR basic automation letters that weigh between 3.3 and 3.5 ounces.

E620 and E640 are amended to clarify that signing a postage statement certifies the mail meets the requirements for the rates claimed.

E712.1.1b is revised to add a weight limit for BPM flats claiming the barcoded discount. E712.1.4, which excluded BPM flats from eligibility to receive an automation rate, is removed. E712.2.0 is amended to add a new standard for BPM automation flats. E712.2.0e is added to include a barcoded discount for automation flats. E712.3.0 is amended to clarify that the mailer's signature on the postage statement certifies the mail meets the requirements for the rates claimed.

E713 and E714 are revised in their entirety to reflect the format used for BPM in E712. E713 and E714 are amended to show the new basic rate and to reduce the mailing minimum from 500 pieces to 300 pieces.

E751.1.1 is amended to add provisions to require mail on pallets for 3-digit ZIP Code prefixes to be entered at the SCF. E751.1.4 is amended to clarify that nonmachinable parcels sorted to 3-digit ZIP Code prefixes must be entered at a designated SCF. In E751.2.2 references are added to allow the preparation of 3-digit sacks and 3-digit pallets. E751.5.0 and E753 are amended to change the references from ''BMC rate'' to ''basic rate.''

F FORWARDING AND RELATED SERVICES

F010.4.0 is amended to remove references to nonstandard mail. F010.5.2 is amended to show that the nonmachinable surcharge can be charged on Periodicals returned at First-Class Mail single-piece rates. F010.5.3 is amended to show that the First-Class Mail single-piece nonmachinable surcharge is included in the calculation of the weighted fee for returned pieces and is charged on some returned Standard Mail pieces. F010.6.0 is amended to include these same changes.

F030.1.1 is amended to clarify the circumstances under which address notices are not provided by the Postal Service.

G GENERAL INFORMATION

G091.4.0 is revised to clarify that some pieces using NetPost Mailing Online are eligible for the mixed ADC or mixed AADC rate.

L LABELING LISTS

The titles and summaries of labeling lists L001, L800, L802, and L803 are amended to reflect new mail preparation options.

M MAIL PREPARATION AND SORTATION

M011.1.3 is amended to show that a full letter tray is defined as one that is between 75% and 100% full. M011.1.4 is amended to remove references to upgradable mailings, to show that machinable and nonmachinable pieces cannot be part of the same mailing, and to show that ECR letter rate pieces cannot be part of the same mailing as nonletter rate pieces. M012.2.0 is revised to update information about multiline optical character reader (MLOCR) markings. M012.3.3 is revised to include additional rate markings for BPM Presorted barcoded flats and BPM carrier route flats. M012.4.5 is deleted to remove references to upgradable mail.

M020.1.6 is amended to include Media Mail and Library Mail in the requirements for package size. In addition, the maximum weight for packages in sacks is 20 pounds unless otherwise noted, and packages of BPM automation flats must meet the preparation requirements in M820. M020.2.0 is amended to include additional standards for packaging Media Mail and Library Mail. M020.2.1 is amended to remove references to the upgradable preparation for First-Class Mail and Standard Mail and to show that nonmachinable and manual-only pieces must be packaged. M020.2.2 is amended to require that Media Mail and Library Mail pieces meet specific weight limits when placed in sacks or on pallets.

The container labeling requirements in M031.5.0 are amended to revise the Line 2 codes for ''carrier routes,'' ''letters,'' and ''machinable'' and to add a new Line 2 code for ''manual.'' M032 Exhibit 1.3a is amended to change the content identifier number (CIN) codes for the new machinable and nonmachinable preparation for First-Class Mail and Standard Mail letter-size pieces. The exhibit also is amended to add new CIN codes for Standard Mail ECR letters and designate CIN codes for certain Package Services flat-size pieces. M033.2.0 is amended to clarify standards for filling letter trays.

M041.5.0 is amended to show that the minimum volume for letter trays on pallets can be measured in linear feet or by the number of layers of trays on the pallet. M041.5.5 is amended to clarify the maximum load of a pallet. M045.3.2 is amended to add that pallets with carrier route mail must show whether the mail is barcoded, machinable, or manual. M045.3.3 through 3.5 show revised titles that include Media Mail and Library Mail. M050.4.1 is amended to show that signing a postage statement

certifies the mail meets the requirements for the rates claimed.

M130 is revised to show the packaging, traying, and labeling standards for machinable, nonmachinable, and ''manual only'' letter-size mail.

The standards for combining multiple publications or editions in M210.6.0 and M220.6.0 are consolidated and relocated in new M230.

M610 is revised to show the packaging, traying, and labeling standards for machinable, nonmachinable, and manual only letter-size mail. M630 is revised to show the new Line 2 labeling for trays of ECR letter-size pieces.

M710.2.1 is revised to add provisions for a 3-digit sort level for nonmachinable parcels claiming DSCF rates. M730 and M740 are amended to change references from ''BMC rate'' to ''basic rate'' and to include separate preparation standards for Media Mail and Library Mail flats, irregular parcels, and machinable parcels. The option to prepare sacks based on a minimum of 1,000 cubic inches of mail is added for Media Mail and Library Mail.

M810.1.0 is amended to replace references to the automation basic rate for letter-size pieces with the new AADC and mixed AADC rates. M810.2.0 is amended to show the new Line 2 labeling format for First-Class Mail and Standard Mail carrier route automation letters.

M820.1.0 is amended to replace references to the automation basic rate for flat-size pieces with the new ADC and mixed ADC rates. M820.6.1 is revised to provide packaging and sacking standards for flat-size pieces eligible for the Bound Printed Matter automation rates.

P POSTAGE AND PAYMENT METHODS

P011.1.0 is amended to reflect that the nonstandard surcharge is replaced with the new nonmachinable surcharge.

P012.2.0 is amended to require standardized documentation for Bound Printed Matter flats entered at automation rates and to add new rate level abbreviations for the AADC, ADC, mixed AADC, and mixed ADC rates. P012.3.0 is amended to reflect references to the new DADC rate for Periodicals. P012.4.0 is amended to clarify the standards for facsimile postage statements.

P013.1.0 is amended to clarify the rate calculation and computation standards. P013.2.0 is amended to reflect the zoning of Priority Mail rates affecting all pieces over 1 pound. This section also is amended to reflect that each Express Mail or Priority Mail flat-rate envelope is charged the Express Mail ½-pound rate or the Priority Mail 1-pound rate. P013.8.0 is amended to show how to calculate postage for Standard Mail automation rate letter-size pieces and ECR automation-compatible letter-size pieces that weigh more than 3.3 ounces.

P014.5.0 is amended to expand the circumstances under which the Postal Service may deny Express Mail postage refund requests when the service guarantee is not met.

P021.3.1 is amended to note the availability of stamped cards.

P100.4.0 and 5.0 are amended to change ''nonstandard surcharge'' to ''nonmachinable surcharge.''

P200.1.5 is amended to include requirements for separating DADC entry pieces if the mailing is not presented with mailing documentation at the time of postal verification. New P200.1.8 contains the standards relocated from P200.2.4 for waiving nonadvertising rates.

P600.2.0 is amended to include standards for the new nonmachinable surcharge for Standard Mail and to add calculations for automation and ECR heavy letters.

P910 is amended to add new rate category abbreviations for the AADC, ADC, mixed AADC, and mixed ADC rates for First-Class Mail and Standard Mail.

P950 is revised in its entirety to clarify the standards that apply to plant-verified drop shipment (PVDS).

P960 is amended to clarify when MLOCR markings must appear on mailpieces and to add new markings for the AADC, ADC, mixed AADC, and mixed ADC rates for First-Class Mail and Standard Mail.

R RATES AND FEES

Module R is revised in its entirety to reflect the new rates and fees for all classes of mail and special services.

S SPECIAL SERVICES

S010 and S500 are amended to reduce the indemnity included in the base price of Express Mail service from $500 to $100.

S020 is amended to increase the maximum amount of a single money order from $700 to $1,000.

S911 and S912 are amended to include the new service enhancement for registered mail and certified mail. This enhancement will allow mailers to obtain delivery information at www.usps.com by entering the article number shown on the mailing receipt.

S918 and S919 are amended to extend Delivery Confirmation and Signature Confirmation to First-Class Mail parcels, and also to limit this service for Package Services mail to parcels. S918 and S919 also specify that for the purposes of adding Delivery Confirmation or Signature Confirmation service, a parcel is required to meet the definition in C100.5.0 or C700.1.0.

*Summary of Other Changes by DMM Module*

A ADDRESSING

A010.1.2, A010.3.2, and A010.5.3 are revised to reflect changes in mail delivery procedures to commercial mail receiving agencies. Effective 9–7–00.

A010.4.3 is revised to remove the requirement that a return address appear on Bound Printed Matter pieces with no ancillary service endorsement or special service. Effective 9–6–01.

A920 is revised to reflect a new option for mailing list owners to have their address lists sequenced electronically. Effective 7–1–01.

A930 is revised to fully describe mail sequencing product options. Effective 9–6–01.

C CHARACTERISTICS AND CONTENT

C010.6.5 is revised to allow more flexibility in designing and producing reusable envelopes. Effective 5–2–02.

C010.8.3 and C050.4.2 are amended to clarify that soft goods weighing more than 5 pounds may be mailed as machinable parcels. Effective 3–8–01.

C023.11.5 is revised to amend the standards for the mailability of magnetized materials. This amendment aligns the postal standards for magnetized materials with the U.S. Department of Transportation (DOT) regulations in Title 49, *Code of Federal Regulations* (49 CFR). Effective 6–14–01.

C200.1.4b is revised to amend the standard for loose enclosures at Periodicals rates. The revised standard allows as permissible enclosures receipts, requests, orders for a subscription, and printed matter (which is part of or accompanied by and related exclusively to a request or order for a subscription) for any Periodicals publication (including publications pending Periodicals authorization), provided other products or services are not advertised, promoted, or offered. Effective 6–14–01.

C200.1.10 is revised to amend the standard for label carriers for Periodicals. This revision allows mailers to put information about any Periodicals publication on the label carrier. Effective 1–10–02.

C700.2.0 is amended to clarify that the nonmachinable surcharge for Parcel Post does not apply to parcels that contain perishable items. Effective 5–3–01.

C820 is revised to include standards for automation flats for the Automation Flat Sorting Machine (AFSM) 100. Effective 6–30–02.

D DEPOSIT, COLLECTION, AND DELIVERY

D010.1.5 is amended and D010.1.8 is added to reflect changes made to Form 5541, *Pickup Service Statement*, and to include the availability of pickup service for international mail. Effective 11–1–01.

D042.2.5, D042.2.6, and D042.2.7 are revised to reflect changes in mail delivery procedures to commercial mail receiving agencies. Effective 9–7–00.

D042.2.8 is added to provide procedures to identify when an office business center is considered a commercial mail receiving agency for postal purposes. Effective 12–14–01.

D042.2.6 is revised to reflect changes in mail delivery procedures to commercial mail receiving agencies. Effective 3–8–01.

D230 is revised to allow the Postal Service to cancel a Periodicals publication's additional entry authorization when the additional entry is not used for an entire calendar year. Effective 6–14–01.

D500.2.3 is revised to include information about Express Mail Manifesting. Effective 5–2–02.

D910 is revised to clarify the application procedure for post office box service. Effective 8–23–01.

E ELIGIBILITY

E120.1.4 is revised and Exhibit E120.1.4 is added to reflect the standard guidelines for creating package shipping labels. Effective 4–5–01.

E213.3.6 is revised to allow refunds for Periodicals mailings paid at First-Class Mail rates under certain circumstances. Effective 12–13–01.

E260.1.3 is revised to include standards for automation flats for the Automation Flat Sorting Machine (AFSM) 100. Effective 6–30–02.

E500.1.0 is updated to include information on Express Mail delivery and waiver of signature. Effective 7–1–01.

E500.1.8 and E500.1.9 are revised to include information about Express Mail Manifesting. Effective 5–2–02.

E610, E620, E713, E714, E751, E752, and E753 are revised for the new optional 5-digit scheme preparation for Standard Mail machinable and irregular parcels and for Package Services machinable and nonmachinable parcels. Effective 7–12–01.

E610 and E752 are revised to implement mail preparation changes for First-Class Mail, Standard Mail, and Bound Printed Matter flats. Effective 9–1–01.

E620.2.0 is amended to clarify that commingled Standard Mail machinable and irregular parcels are eligible for 3/5 rates. Effective 10–4–01.

E650.6.1 and E752.3.0 are revised to allow a new optional level of pallet sort for a limited number of sectional center facility (SCF) service areas. This option is available for Periodicals nonletters (flats and irregular parcels), Standard Mail flats, and Bound Printed Matter flats prepared on pallets. Effective 3–31–02.

E670.5.11 is revised to reflect an increase for low-cost products mailable at Nonprofit Standard Mail rates. Effective 1–1–01 and 1–1–02.

E670.8.1 is revised to introduce an option to mail at Nonprofit Standard Mail rates via the NetPost Mailing Online experiment. Effective 4–5–01.

E710.3.1 is revised to remove the requirement that a return address appear on Bound Printed Matter pieces with no ancillary service endorsement or special service. Effective 9–6–01.

E712.1.2 is revised to rescind provisions concerning merchandise samples as enclosures with Bound Printed Matter. In its place, E712.1.2b provides for the inclusion of ''nonprint'' attachments and enclosures so long as such attachments and enclosures are incidental to the qualifying Bound Printed Matter material and have minimal commercial value. Effective 6–14–01.

E751 Exhibits 6.0, 7.0, and 8.0 are amended to add, delete, and change ZIP Codes for Parcel Select destination entry. Effective 2–8–01, 2–22–01, 4–19–01, 5–28–01, 6–28–01, 7–12–01, 7–26–01, 8–23–01, 9–20–01.

F FORWARDING AND RELATED SERVICES

Exhibit F010.4.1 is revised to reflect changes in mail delivery procedures to commercial mail receiving agencies. Effective 9–7–00.

F010.4.7 is added to clarify that undeliverable-as-addressed Mailgrams are treated as First-Class Mail. Effective 10–4–01.

G GENERAL INFORMATION

G030 is amended to clarify the method used to determine postal zones and to update postal zone information. Effective 6–30–02.

G091.2.1, G091.2.2, G091.3.0, and G091.4.1 are revised to introduce an option to mail at Nonprofit Standard Mail rates via the NetPost Mailing Online experiment. Effective 4–5–01.

G095 is added to describe the eligibility, standards, physical characteristics, markings, and rates that apply to the experimental presorted Priority Mail classification. Effective 7–15–01.

L LABELING LISTS

Labeling lists are periodically updated to reflect changes in mail processing operations. Please see individual lists.

M MAIL PREPARATION AND SORTATION

M011.1.0, M031.4.9, M041.5.0, M045.3.0, M920, M930, and M940 are revised to allow a new optional level of pallet sort for a limited number of sectional center facility (SCF) service areas. This option is available for Periodicals nonletters (flats and irregular parcels), Standard Mail flats, and Bound Printed Matter flats prepared on pallets. Effective 3–31–02.

M011.1.3, M011.1.4, M045.2.2, M130.1.7, M210.1.0, M220.1.0, M610.1.0, M620.1.0, M820.1.0, M910, M920, M930, and M940 are revised and M950 is added to provide a new preparation option that allows mailers to combine flat-size automation rate pieces and flat-size Presorted rate pieces of the same mail class within the same package. This new preparation option is called ''co-packaging'' and is available for First-Class Mail, Periodicals, and Standard Mail. Effective 3–31–02.

M011.1.3 and M013.1.1 are revised and M210.5.0 and M220.5.0 are deleted to remove the option that allows mailers to bedload bundles of Periodicals flats. Effective 3–31–02.

M011, M032, M041, M045, M073, M610, M710, M722, M723, M730, and M740 are revised for the new optional 5-digit scheme preparation for Standard Mail machinable and irregular parcels and for Package Services machinable and nonmachinable parcels. Effective 7–12–01.

M011, M041, M045, M130, M610, M620, M723, M820, M910, M920, M930, and M940 are revised to implement mail preparation changes for First-Class Mail, Standard Mail, and Bound Printed Matter flats. Effective 9–1–01.

M012 is revised to discontinue the use of old markings on Bound Printed Matter, Media Mail, and Library Mail. These markings were changed on January 7, 2001, in conjunction with the R2000–1 Omnibus Rate Case. Mailers were given until January 1, 2002, to change over to the new markings and use any preprinted stationery and packaging. Effective 1–1–02.

M012.3.1 is revised and Exhibit M012.3.1 is added to reflect the standard guidelines for creating package shipping labels. Effective 4–5–01.

M013 is revised to provide mailers with two new optional endorsement lines (OEL). These new format options allow mailers to list carrier route line-of-travel (LOT) information for Periodicals and Standard Mail within an OEL. Effective 6–14–01.

M020 is revised to improve package integrity for Periodicals and Standard Mail by prescribing basic standards for preparing and securing all packages and incorporating standards that pertain individually to packages on pallets, packages in sacks, and packages in trays. Effective 7–1–01.

M031, M045, M920, M930, and M940 are revised to require pallets of Periodicals and Standard Mail containing carrier route mail and/or Presorted rate mail to show ''NONBARCODED'' or ''NBC'' in the pallet label. These pallet label standards were originally revised effective January 7, 2001, in conjunction with implementation of the R2000–1 omnibus rate case. Mailers were given until July 15, 2001, to comply. Effective 7–15–01.

M031.3.1 is amended to clarify label holder placement on letter and flat trays. Effective 10–4–01.

M031.4.0 is amended to clarify the required information that must appear on a pallet label. This revision provides descriptions of what should appear on the destination line (Line 1), content line (Line 2), and office of mailing or mailer information line (Line 3) of pallet labels. Effective 6–14–01.

M031.4.7 is amended to correct information about the mailer information line on pallet labels. Effective 7–12–01.

M032.2.3 is revised to show that zebra codes (the series of diagonal or vertical marks on barcoded tray labels) are required only on trays of automation letters and flats. Effective 11–1–01.

M041.5.3 is revised to remove the minimum weight requirement for pallets of Periodicals, Standard Mail, and Package Services mail dropped at a destination delivery unit by the mailer or mailer's agent. Effective 6–14–01.

M050 is revised to change the documentation requirements for Periodicals and Standard Mail mailings sequenced in line-of-travel (LOT) order. Effective 9–6–01.

M500.2.2 is revised to show that the waiver of signature option is not available for Express Mail Custom Designed Service. Effective 12–27–01.

M500.2.2 and M500.3.3 are updated to include information on Express Mail delivery and waiver of signature. Effective 7–1–01.

M500.3.0 is revised to include information about Express Mail Manifesting. Effective 5–2–02.

M820.1.0 is revised to include standards for automation flats for the Automation Flat Sorting Machine (AFSM) 100. Effective 6–30–02.

P POSTAGE AND PAYMENT METHODS

P012.2.4 is revised to allow a new optional level of pallet sort for a limited number of sectional center facility (SCF) service areas. This option is available for Periodicals nonletters (flats and irregular parcels), Standard Mail flats, and Bound Printed Matter flats prepared on pallets. Effective 3–31–02.

P013.6.0, P500.1.1, and P910.4.1 are revised and P910.6.0, P910.7.0, and P910.8.0 are added to include information about Express Mail Manifesting. Effective 5–2–02.

P013.7.1, P013.7.2, and P200.1.2 are revised and P200.4.0 is added to add references to the new Periodicals Accuracy, Grading, and Evaluation (PAGE) Program. PAGE can be used to determine per-copy weights and to substantiate the advertising percentage in Periodicals. Effective 3–7–02.

P014 is revised to clarify the refund policy for metered postage. Effective 1–1–02.

P014 and P022 are revised to reflect changes in the pricing of semipostal stamps and to add a new semipostal stamp. Effective 3–7–02.

P030 is revised in its entirety to include policies and regulations pertaining to more secure postage evidencing systems, such as those digitally printing meters that use a Postal Security Device (PSD), those digitally printing meters that generate information-based indicia (IBI), and PC Postage systems. Effective 1–1–02.

P030 is revised to allow the use of information-based indicia (IBI) to show evidence of postage in the same manner as letterpress and digital meter stamps. This extends the use of IBI to all mail classes except Periodicals. Effective 7–17–01.

P030 is revised to allow zoned-rate metered Priority Mail to be deposited in collection boxes. Effective 10–4–01.

P030.8.3 is deleted because the restrictions on mixed forms of postage evidencing are no longer necessary. Effective 5–2–02.

P030.11.4 is revised to clarify the locations at which metered mail can be deposited. Effective 3–7–02.

P040.2.4 is revised to allow more flexibility in designing and producing reusable envelopes. Effective 5–2–02.

P910 is revised to reflect minor revisions to procedures for manifest mailings. Effective 1–1–02.

P920 is revised to clarify the standards for entry of mail under optional procedures. Changes include reorganization of the standards and clarification of record keeping and quality control requirements as well as procedures for applying to mail under an OP Mailing System. Effective 3–7–02.

R RATES AND FEES

R000 is revised to reflect changes in the pricing of semipostal stamps and to add a new semipostal stamp. Effective 3–7–02.

R200 is revised to include standards for automation flats for the Automation Flat Sorting Machine (AFSM) 100. Effective 6–30–02.

S SPECIAL SERVICES

S010.2.5 and S500.1.1 are revised to include information about Express Mail Manifesting. Effective 5–2–02.

S500.1.4, S500.1.5, and S921.1.9 are revised to show that the waiver of signature option is not available for Express Mail Custom Designed Service and to update the language for the availability of COD service with Express Mail service. Effective 12–27–01.

S913.2.5 is revised to reflect the updated Publication 91, *Confirmation Services Technical Guide*. S919.2.1c, S919.3.3a, and Exhibit S919.2.1c are revised and Exhibit S919.3.3 is added to reflect standard guidelines for mailers designing and printing their own shipping labels. Effective 7–1–01.

S916.3.3 is revised to update authorized agent information to support the revised Form 3849, *Delivery Notice/Reminder/Receipt*, and the electronic record management program. Effective 7–1–01.

I INDEX INFORMATION

I022, Subject Index, is revised and reorganized with new key words and concepts. Effective 9–6–01.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

In consideration of the foregoing, 39 CFR part 111 is amended as set forth below:

## PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. The table at the end of § 111.3(f) is amended by adding at the end thereof a new entry to read as follows:

**§ 111.3 Amendments to the Domestic Mail Manual.**

* * * * *

(f) * * *

| Transmittal letter for issue | Dated | FEDERAL REGISTER publication |
|---|---|---|
| * * | * | * * |
| 57 ..... | June 30, 2002. | [INSERT CITATION FOR THIS FINAL RULE] |

3. Section 111.5 is revised to read as follows:

**§ 111.5 Contents of the Domestic Mail Manual.**

A ADDRESSING

A000 Basic Addressing
A010 General Addressing Standards
A040 Alternative Addressing Formats
A060 Detached Address Labels (DALs)
A800 Addressing for Barcoding
A900 Customer Support
A910 Mailing List Services
A920 Address Sequencing Services
A930 Other Services
A950 Coding Accuracy Support System (CASS)

C CHARACTERISTICS AND CONTENT

C000 General Information
C010 General Mailability Standards
C020 Restricted or Nonmailable Articles and Substances
C021 Articles and Substances Generally
C022 Perishables
C023 Hazardous Materials
C024 Other Restricted or Nonmailable Matter
C030 Nonmailable Written, Printed, and Graphic Matter
C031 Written, Printed, and Graphic Matter Generally
C032 Sexually Oriented Advertisements
C033 Pandering Advertisements
C050 Mail Processing Categories
C100 First-Class Mail
C200 Periodicals
C500 Express Mail
C600 Standard Mail
C700 Package Services
C800 Automation-Compatible and Machinable Mail
C810 Letters and Cards
C820 Flats
C840 Barcoding Standards for Letters and Flats
C850 Barcoding Standards for Parcels

D DEPOSIT, COLLECTION, AND DELIVERY

D000 Basic Information
D010 Pickup Service
D020 Plant Load
D030 Recall of Mail
D040 Delivery of Mail
D041 Customer Mail Receptacles
D042 Conditions of Delivery
D070 Drop Shipment
D071 Express Mail and Priority Mail
D072 Metered Mail
D100 First-Class Mail
D200 Periodicals
D210 Basic Information
D230 Additional Entry
D500 Express Mail
D600 Standard Mail
D700 Package Services
D900 Other Delivery Services
D910 Post Office Box Service
D920 Caller Service
D930 General Delivery and Firm Holdout

E ELIGIBILITY

E000 Special Eligibility Standards
E010 Overseas Military Mail
E020 Department of State Mail
E030 Mail Sent by U.S. Armed Forces
E040 Free Matter for the Blind and Other Handicapped Persons
E050 Official Mail (Franked)
E060 Official Mail (Penalty)
E070 Mixed Classes
E080 Absentee Balloting Materials
E100 First-Class Mail
E110 Basic Standards
E120 Priority Mail
E130 Nonautomation Rates
E140 Automation Rates
E150 Qualified Business Reply Mail (QBRM)
E200 Periodicals
E210 Basic Standards
E211 All Periodicals
E212 Qualification Categories
E213 Periodicals Mailing Privileges
E214 Reentry
E215 Copies Not Paid or Requested by Addressee
E216 Publisher Records
E217 Basic Rate Eligibility
E220 Presorted Rates
E230 Carrier Route Rates
E240 Automation Rates
E250 Destination Entry
E260 Ride Along
E270 Preferred Periodicals
E500 Express Mail
E600 Standard Mail
E610 Basic Standards
E620 Presorted Rates
E630 Enhanced Carrier Route Rates
E640 Automation Rates
E650 Destination Entry
E670 Nonprofit Standard Mail
E700 Package Services
E710 Basic Standards
E711 Parcel Post
E712 Bound Printed Matter
E713 Media Mail
E714 Library Mail
E750 Destination Entry
E751 Parcel Select
E752 Bound Printed Matter
E753 Combining Package Services Parcels

F FORWARDING AND RELATED SERVICES

F000 Basic Services
F010 Basic Information
F020 Forwarding
F030 Address Correction, Address Change, FASTforward, and Return Services

G GENERAL INFORMATION

G000 The USPS and Mailing Standards
G010 Basic Business Information
G011 Post Offices and Postal Services
G013 Trademarks and Copyrights
G020 Mailing Standards
G030 Postal Zones
G040 Information Resources
G042 Rates and Classification Service Centers
G043 Address List for Correspondence
G090 Experimental Classifications and Rates
G091 NetPost Mailing Online
G095 Presorted Priority Mail
G900 Philatelic Services

L LABELING LISTS

L000 General Use
L001 5-Digit Scheme—Periodicals Flats and Irregular Parcels, Standard Mail Flats, and BPM Flats
L002 3-Digit ZIP Code Prefix Matrix
L003 3-Digit ZIP Code Prefix Groups—3-Digit Scheme Sortation
L004 3-Digit ZIP Code Prefix Groups—ADC Sortation
L005 3-Digit ZIP Code Prefix Groups—SCF Sortation
L006 5-Digit Metro Scheme
L600 Standard Mail and Package Services
L601 BMCs
L602 ASFs
L603 ADCs—Irregular Standard Mail Parcels
L604 Originating ADCs—Standard Mail Irregular Parcels
L605 BMCs/ASFs—Nonmachinable Parcel Post BMC Presort and OBMC Presort
L606 5-Digit Scheme—Standard Mail and Package Services Parcels
L800 Automation Rate Mailings
L801 AADCs—Letter-Size Mailings
L802 BMC/ASF Entry—Periodicals, Standard Mail, and BPM
L803 Non-BMC/ASF Entry—Periodicals, Standard Mail, and BPM

M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards
M010 Mailpieces
M011 Basic Standards
M012 Markings and Endorsements
M013 Optional Endorsement Lines
M014 Carrier Route Information Lines
M020 Packages
M030 Containers
M031 Labels
M032 Barcoded Labels
M033 Sacks and Trays
M040 Pallets
M041 General Standards
M045 Palletized Mailings
M050 Delivery Sequence
M070 Mixed Classes
M071 Basic Information
M072 Express Mail and Priority Mail Drop Shipment
M073 Combined Mailings of Standard Mail and Package Services Parcels
M074 Plant Load Mailings
M100 First-Class Mail (Nonautomation)
M110 Single-Piece First-Class Mail
M120 Priority Mail
M130 Presorted First-Class Mail
M200 Periodicals (Nonautomation)

M210 Presorted Rates
M220 Carrier Route Rates
M230 Combining Multiple Editions or Publications of the Same Publisher
M500 Express Mail
M600 Standard Mail (Nonautomation)
M610 Presorted Standard Mail
M620 Enhanced Carrier Route Standard Mail
M700 Package Services
M710 Parcel Post
M720 Bound Printed Matter
M721 Single-Piece Bound Printed Matter
M722 Presorted Bound Printed Matter
M723 Carrier Route Bound Printed Matter
M730 Media Mail
M740 Library Mail
M800 All Automation Mail
M810 Letter-Size Mail
M820 Flat-Size Mail
M900 Advanced Preparation Options for Flats
M910 Co-Traying and Co-Sacking Package of Automation and Presorted Mailings
M920 Merged Containerization of Packages Using the City State Product
M930 Merged Palletization of Packages Using a 5% Threshold
M940 Merged Palletization of Packages Using the City State Product and a 5% Threshold
M950 Co-Packaging Automation Rate and Presorted Rate Pieces

P POSTAGE AND PAYMENT METHODS

P000 Basic Information
P010 General Standards
P011 Payment
P012 Documentation
P013 Rate Application and Computation
P014 Refunds and Exchanges
P020 Postage Stamps and Stationery
P021 Stamped Stationery
P022 Postage Stamps
P023 Precanceled Stamps
P030 Postage Meters (Postage Evidencing Systems)
P040 Permit Imprints
P070 Mixed Classes
P100 First-Class Mail
P200 Periodicals
P500 Express Mail
P600 Standard Mail
P700 Package Services
P900 Special Postage Payment Systems
P910 Manifest Mailing System (MMS)
P920 Optional Procedure (OP) Mailing System
P930 Alternate Mailing Systems (AMS)
P950 Plant-Verified Drop Shipment (PVDS)
P960 First-Class or Standard Mail Mailings With Different Payment Methods

R RATES AND FEES

R000 Stamps and Stationery
R100 First-Class Mail
R200 Periodicals
R500 Express Mail
R600 Standard Mail
R700 Package Services
R900 Services

S SPECIAL SERVICES

S000 Miscellaneous Services
S010 Indemnity Claims
S020 Money Orders and Other Services
S070 Mixed Classes
S500 Special Services for Express Mail
S900 Special Postal Services
S910 Security and Accountability
S911 Registered Mail
S912 Certified Mail
S913 Insured Mail
S914 Certificate of Mailing
S915 Return Receipt
S916 Restricted Delivery
S917 Return Receipt for Merchandise
S918 Delivery Confirmation
S919 Signature Confirmation
S920 Convenience
S921 Collect on Delivery (COD) Mail
S922 Business Reply Mail (BRM)
S923 Merchandise Return Service
S924 Bulk Parcel Return Service
S930 Handling

I INDEX INFORMATION

I000 Information
I010 Summary of Changes
I020 References
I021 Forms Glossary
I022 Subject Index

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 02–17890 Filed 7–16–02; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 247–0347a; FRL–7220–6]**

### Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District and South Coast Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent cleaning operations and dry cleaners using solvent other than perchloroethylene. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on September 16, 2002 without further notice, unless EPA receives adverse comments by August 16, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814
Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536
South Coast Air Quality Management District, 21865 E. Copley Dr. Diamond Bar, CA 91765–4182

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Allen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4120.

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

**Table of Contents**



## I. The State's Submittal

### *A. What rules did the State submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

| Local agency | Rule # | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| MBUAPCD | 416 | Solvents | 01/17/01 | 05/08/01 |
| SCAQMD | 1102 | Dry Cleaners Using Solvents Other Than Perchloroethylene | 11/17/00 | 05/08/01 |

On July 20, 2001, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

*B. Are There Other Versions of These Rules?*

MBUAPCD adopted a version of Rule 416 on April 20, 1994, which EPA approved into the SIP on February 12, 1996. SCAQMD adopted a version of Rule 1102 on December 7, 1990, which EPA approved into the SIP on March 24, 1992. MBUAPCD adopted revisions to Rule 416 on January 17, 2001 and SCAQMD adopted revisions to Rule 1102 on November 17, 2000. Both rules were submitted to EPA for SIP approval on May 8, 2001.

*C. What is the Purpose of the Submitted Rule Revisions?*

MBUAPCD Rule 416 has been revised to identify all VOCs as being ozone precursors and subject all emission units to 40 lb/day emission limit unless they are granted a higher limit based upon historical operations or upon Best Available Control Technology or New Source Review requirements.

SCAQMD Rule 1102 has been revised to achieve VOC reductions by phasing out transfer machines that use solvents containing VOC and requiring closed-loop machines instead. The amendments exempt all types of dry cleaning machines that use solvents containing Group II exempt compounds other than perchloroethylene except for certain recordkeeping and reporting requirements.

Other minor changes are made to improve clarity and enhance enforceability.

The TSDs have more information about these rules.

**II. EPA's Evaluation and Action**

*A. How Is EPA Evaluating the Rules?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The MBUAPCD and SCAQMD regulate ozone nonattainment areas (see 40 CFR part 81), so Rules 416 and 1102 must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Document,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. U.S. EPA Region IX—Guidance Document for Correcting Common VOC & Other Rule Deficiencies, Revised August 21, 2001, (A.K.A., ''The Little Blue Book'').

*B. Do the Rules Meet the Evaluation Criteria?*

We believe these rules improve the SIP and are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

*C. Public Comment and Final Action.*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by August 16, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 16, 2002. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**III. Background Information**

Why were these rules submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2—OZONE NONATTAINMENT MILESTONES

| Date | Event |
|---|---|
| March 3, 1978 | EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305. |
| May 26, 1988 | EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act. |
| November 15, 1990 | Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. |
| May 15, 1991 | Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date. |

## IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 16, 2002. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 9, 2002.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

Accordingly, 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 *et seq.*

### Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(284)(i)(A)(*3*) and (c)(284)(i)(B)(*4*) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(284) * * *

(i) * * *

(A) * * *

(*3*) Rule 416, adopted on September 1, 1974 and amended on January 17, 2001.

(B) * * *

(*4*) Rule 1102, adopted on January 6, 1978 and amended on November 17, 2000.

* * * * *

[FR Doc. 02–17702 Filed 7–16–02; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[OPP–2002–0112; FRL–7183–6]**

### Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION**. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

**DATES:** This regulation is effective July 17, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0112, must be received by EPA on or before August 16, 2002.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please

follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0112 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** See the listing below for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505C) Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9366; e-mail address: Sec-18-Mailbox@epamail.epa.gov.

| Contact person | Pesticide |
|---|---|
| Barbara Madden | Bifenazate<br>Coumaphos<br>Dimethenamid<br>Myclobutanil<br>Sulfentrazone |
| Dan Rosenblatt | Diuron<br>Fenbuconazole<br>Fluroxypyr 1-methylheptyl ester<br>Tebuconazole |
| Libby Pemberton | Hexythiazox<br>Pendimethalin |
| Andrew Ertman | Imidacloprid<br>Metolachlor |
| Andrea Conrath | Emamectin Benzoate<br>Thiabendazole |

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS Codes | Examples of Potentially Affected Entities |
|---|---|---|
| Industry | 111<br>112<br>311<br><br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0112. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

EPA published final rules in the **Federal Register** for each chemical/commodity listed below. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was establishing time-limited tolerances.

EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year's growing season. After having reviewed

these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical/commodity. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and discussed in the final rule originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended until the date listed below. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that was authorized by the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

1. *Bifenazate.* EPA has authorized under FIFRA section 18 the use of bifenazate on greenhouse grown tomatoes for control of spider mites in Texas and Virginia. This regulation extends a time-limited tolerance for combined residues of bifenazate (hydrazine carboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl-, 1-methylethyl ester) and diazenecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl-, 1-methylethyl ester)) in or on tomato at 0.70 parts per million (ppm) for an additional 2–year period. This tolerance will expire and is revoked on June 30, 2005. A time-limited tolerance was originally published in the **Federal Register** of June 29, 2001 (66 FR 34561) (FRL–6788–5) (40 CFR 180.572).

Recently, EPA has received objections to a tolerance it established for bifenazate on a different food commodity. The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. Similar objections were filed by NRDC concerning a tolerance for imidacloprid, another pesticide addressed in this notice. Although these objections concern separate rulemaking proceedings under the FFDCA, EPA has considered whether it is appropriate to extend the emergency exemption tolerances for bifenazate and imidacloprid while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised frivolous issues, and extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support extending these tolerances at this time. First, the objections proceeding is not near to conclusion. NRDC's objections raise complex legal, scientific, policy, and factual matters and EPA has just initiated a 60–day public comment period on them in the **Federal Register** of June 19, 2002 (67 FR 41628) (FRL–7167–7). Second, the nature of the current actions are extremely time-sensitive as they address emergency situations. Third, the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders. Accordingly, EPA is proceeding with extending the tolerances for bifenazate and imidacloprid.

2. *Coumaphos.* EPA has authorized under FIFRA section 18 the use of coumaphos in beehives for control of varroa mites and small hive beetles in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. This regulation extends time-limited tolerances for the combined residues of the insecticide coumaphos (*O,O*-diethyl *O*-3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl phosphorothioate) and its oxygen analog, coumaphoxon (*O,O*-diethyl *O*-3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl phosphate in or on honey at 0.1 ppm and beeswax at 100 ppm for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2004. Time-limited tolerances were originally published in the **Federal Register** of August 16, 2000 (65 FR 49927) (FRL–6738–3) (40 CFR 180.189).

3. *Dimethenamid.* EPA has authorized under FIFRA section 18 the use of dimethenamid on dry bulb onion for control of yellow nutsedge and other broadleaf weeds in New York and Wisconsin. This regulation extends a time-limited tolerance for residues of the herbicide dimethenamid, 2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide in or on dry bulb onion at 0.01 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2004.

EPA has authorized under FIFRA section 18 the use of dimethenamid on sugar beets for control of weeds in Colorado, Minnesota, Nebraska, North Dakota, and Wyoming. This regulation extends the time-limited tolerances for residues of the herbicide dimethenamid, 2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide in or on beet, sugar at 0.01 ppm; beet, sugar, dried pulp at 0.05 ppm; beet, sugar, molasses at 0.05 ppm; and beet, sugar, tops at 0.01 ppm for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2004. Time-limited tolerances were originally published in the **Federal Register** of August 24, 2000 (65 FR 51544) (FRL–6738–1) (40 CFR 180.464).

4. *Diuron.* EPA has authorized under FIFRA section 18 the use of diuron in commercial catfish ponds for control of blue-green algae (*Oscillatoria chalybea*) in Alabama and Mississippi. This regulation extends a time-limited tolerance for residues of the herbicide diuron (3-(3,4-dichlorophenyl)-1,1-dimethylurea) in or on catfish fillets at 2.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on June 30, 2005. The time-limited tolerance was originally published in the **Federal Register** of July 30, 1999 (64 FR 41297) (FRL–6087–2) (40 CFR 180.106).

5. *Emamectin benzoate.* EPA has authorized under FIFRA section 18 the use of emamectin benzoate on cotton for control of beet armyworm in New Mexico, Oklahoma, and Texas. This regulation extends the time-limited tolerances for residues of the insecticide emamectin benzoate in or on cotton, gin

by-product at 0.025 ppm; cotton, hulls at 0.004 ppm; cotton, meal at 0.002 ppm; cottonseed at 0.002 ppm; cottonseed oil at 0.006 ppm; meat, fat, and meat by-product of cattle, goats, hogs, and sheep at 0.002 ppm; and milk at 0.002 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2004. Time-limited tolerances were originally published in the **Federal Register** of January 12, 2000 (65 FR 1796) (FRL–6398–5) (40 CFR 180.505).

6. *Fenbuconazole.* EPA has authorized under FIFRA section 18 the use of fenbuconazole on blueberries for control of mummy berry disease in Georgia. This regulation extends a time-limited tolerance for combined residues of the fungicide fenbuconazole alpha-[2-(4-chlorophenyl)-ethyl]-alpha-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites cis-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone and trans-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-2-3*H*-furanone expressed as fenbuconazole in or on blueberries at 1.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2004. The time-limited tolerance was originally published in the **Federal Register** of June 10, 1998 (63 FR 31633) (FRL–5791–5) (40 CFR 180.480).

7. *Fluroxypyr 1-methylheptyl ester.* EPA has authorized under FIFRA section 18 the use of fluroxypyr 1-methylheptyl ester on grass pasture and rangeland for control of sericea lespedeza (*Lespedeza cuneata*) in Kansas. This regulation extends time-limited tolerances for combined residues of the herbicide fluroxypyr 1-methylheptyl ester 1-methylheptyl ((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetate and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid in or on grass, forage at 120 ppm; grass hay at 160 ppm; kidney, cattle at 1.5 ppm; kidney, goat at 1.5 ppm; kidney, hog at 1.5 ppm; kidney, horse at 1.5 ppm; kidney, sheep at 1.5 ppm; and milk at 0.30 ppm for an additional 1½year period. These tolerances will expire and are revoked on December 31, 2004. Time-limited tolerances were originally published in the **Federal Register** of September 17, 2001 (66 FR 47964) (FRL–6798–5) (40 CFR 180.535).

8. *Hexythiazox.* EPA has authorized under FIFRA section 18 the use of hexythiazox on dates for control of Banks grass mite in California. This regulation extends a time-limited tolerance for combined residues of the miticide hexythiazox, trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety (expressed as ppm of the parent compound) in or on dates at 0.1 ppm for an additional 2–year and 2–month period. This tolerance will expire and is revoked on December 31, 2004. The time-limited tolerance was originally published in the **Federal Register** of October 13, 1998 (63 FR 54594) (FRL–6030–3) (40 CFR 180.448).

9. *Imidacloprid.* EPA has authorized under FIFRA section 18 the use of imidacloprid on strawberries for control of white grubs in Connecticut. This regulation extends a time-limited tolerance for combined residues of the insecticide 1-[6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on strawberries at 0.1 ppm for an additional 2–year and 6–month period. This tolerance will expire and is revoked on December 31, 2004. A time-limited tolerance was originally published in the **Federal Register** of January 20, 1999 (64 FR 3037) (FRL–6051–6) (40 CFR 180.472).

10. *Metolachlor.* EPA has authorized under FIFRA section 18 the use of s-metolachlor on spincah for control of weeds in Colorado, Delaware, New Jersey, Oklahoma, Pennsylvania, Texas, and Virginia. This regulation extends a time-limited tolerance for combined residues (free and bound) of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide] and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on spinach at 0.3 ppm for an additional 2–year and 6–month period. This tolerance will expire and is revoked on December 31, 2004. The time-limited tolerance was originally published in the **Federal Register** of November 29, 1996 (61 FR 60617) (FRL–5574–7) (40 CFR 180.368).

EPA has authorized under FIFRA section 18 the use of s-metolachlor on tomatoes for control of weeds in California, Indiana, Maryland, Michigan, New Jersey, Ohio, Pennsylvania, and Virginia. This regulation extends time-limited tolerances for combined residues (free and bound) of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide] and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2- hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on tomato paste at 0.6 ppm, tomato puree at 0.3 ppm and tomatoes at 0.1 ppm for an additional 2–year and 6–month period. These tolerances will expire and are revoked on December 31, 2004. The time-limited tolerance was originally published in the **Federal Register** of March 10, 1999 (64 FR 11782) (FRL–6062–5) (40 CFR 180.368).

11. *Myclobutanil.* EPA has authorized under FIFRA section 18 the use of myclobutanil on sugar beets for control of powdery mildew in Utah. This regulation extends a time-limited tolerance for combined residues of the fungicide myclobutanil alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile and its alcohol metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound) in or on dried pulp of sugar beets at 1.0 ppm, sugar beet molassess at 1.0 ppm, refined sugar from sugar beets at 0.70 ppm, sugar beet roots at 0.05 pmm, and sugar beet tops at 1.0 ppm for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2004. The time-limited tolerance was originally published in the **Federal Register** of January 3, 2001 (66 FR 298) (FRL–6757–9) (40 CFR 180.443).

EPA has authorized under FIFRA section 18 the use of myclobutanil on artichokes for control of powdery mildew in California. This regulation extends a time-limited tolerance for combined residues of the fungicide myclobutanil, alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile and its alcohol metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound), in or on atichokes at 1.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on June 30, 2005. The time-limited tolerance was originally published in the **Federal Register** of September 16, 1998 (63 FR 49472) (FRL–6025–1) (40 CFR 180.443).

12. *Pendimethalin.* EPA has authorized under FIFRA section 18 the use of pendimethalin on mint for control of kochia and redroot pigweed in Idaho, Oregon, and Washington. This regulation extends a time-limited tolerance for combined residues of the herbicide pendimethalin and its 3,5-dinitrobenzyl alcohol metabolite in or on fresh mint hay and mint oil at 0.1 and 5.0 ppm for an additional 2½ year period. This tolerance will expire and is

revoked on June 30, 2005. The time-limited tolerance was originally published in the **Federal Register** of May 23, 1997 (62 FR 28355) (FRL–5718–5) (40 CFR 180.361).

13. *Sulfentrazone.* EPA has authorized under FIFRA section 18 the use of sulfentrazone on lima beans and cowpeas for control of Hophornbeam Copperleaf in Tennessee. This regulation extends a time-limited tolerance for combined residues of the herbicide sulfentrazone and the metabolites 3-hydroxymethyl sulfentrazone and 3-desmethyl sulfentrazone in or on succulent bean seed without pod at 0.1 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2004. The time-limited tolerance was originally published in the **Federal Register** of September 21, 1999 (64 FR 51060) (FRL–6097–8) (40 CFR 180.498).

14. *Tebuconazole.* EPA has authorized under FIFRA section 18 the use of tebuconazole on sunflowers for control of rust (*Puccinia helianthi*) in North Dakota. This regulation extends time-limited tolerances for residues of the fungicide tebuconazole (alpha-[2-4-chlorophenyl)-ethyl]-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on sunflower oil at 0.4 ppm and sunflower seed at 0.2 ppm for an additional 2½ year period. This tolerance will expire and is revoked on December 31, 2005. The time-limited tolerance was originally published in the **Federal Register** of October 29, 1997 (62 FR 56089) (FRL–5752–4) (40 CFR 180.474).

15. *Thiabendazole.* EPA has authorized under FIFRA section 18 the use of thiabendazole on lentils for control of Ascochyta blight in Idaho, Montana, North Dakota, Oregon, and Washington. This regulation extends a time-limited tolerance for residues of the fungicide thiabendazole in or on lentils at 0.1 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2004. The time-limited tolerance was originally published in the **Federal Register** of February 25, 1998 (63 FR 9435) (FRL–5767–6) (40 CFR 180.242).

## III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0112 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 16, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27).

Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0112; to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve

one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

**IV. Regulatory Assessment Requirements**

This final rule establishes time-limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established under FFDCA section 408(l)(6) in response to an exemption under FIFRA section 18, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

**V. Submission to Congress and the Comptroller General**

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

**List of Subjects in 40 CFR Part 180**

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

Dated: June 27, 2002,

**Debra Edwards,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

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

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

**§ 180.106 [Amended]**

2. In § 180.106, in the table to paragraph (b), amend the entry for ''Catfish fillets'' by revising the expiration/revocation date ''6/30/03'' to read ''6/30/05.''

**§ 180.189 [Amended]**

3. In § 180.189, in the table to paragraph (b), amend the entries for ''Beeswax'' and ''Honey'' by revising the expiration/revocation date ''12/31/02'' to read ''12/31/04.''

**§ 180.242 [Amended]**

4. In § 180.242, in the table to paragraph (b), amend the entry for ''Lentils'' by revising the expiration/revocation date ''12/31/02'' to read ''12/31/04.''

**§ 180.361 [Amended]**

5. In § 180.361, in the table to paragraph (b), amend the entries for ''Mint hay, fresh'' and ''Mint oil'' by revising the expiration/revocation date ''12/31/02'' to read ''6/30/05.''

**§ 180.368 [Amended]**

6. In § 180.368, in the table to paragraph (b), amend the entries for ''Spinach,'' ''Tomato, paste,'' ''Tomato, puree,'' and ''Tomato'' by revising the expiration/revocation date ''6/30/02'' to read ''12/31/04.''

**§ 180.443 [Amended]**

7. In § 180.443, in the table to paragraph (b), amend the entries for

''Beet, sugar, dried pulp''; ''Beet, sugar, molasses''; ''Beet, sugar, refined sugar''; ''Beet, sugar, roots''; and ''Beet, sugar, tops'' by revising the expiration/revocation date ''12/31/02'' to read ''12/31/04'' and amend the entry for ''Artichoke, globe'' by revising the expiration/revocation date ''6/30/03'' to read ''6/30/05.''

**§ 180.448 [Amended]**

8. In § 180.448, in the table to paragraph (b), amend the entry for ''Dates'' by revising the expiration/revocation date ''10/31/02'' to read ''12/31/04.''

**§ 180.464 [Amended]**

9. In § 180.464, in the table to paragraph (b), amend the entries for ''Beet, sugar''; ''Beet, sugar, dried pulp''; ''Beet, sugar, molasses''; ''Beet, sugar, tops''; and ''Onion, dry bulb'' by revising the expiration/revocation date ''12/31/02'' to read ''12/31/04.''

**§ 180.472 [Amended]**

10. In § 180.472, in the table to paragraph (b), amend the entry for ''Strawberry'' by revising the expiration/revocation date ''6/30/02'' to read ''12/31/04.''

**§ 180.474 [Amended]**

11. In § 180.474, in the table to paragraph (b), amend the entries for ''Sunflower, oil'' and ''Sunflower, seed'' by revising the expiration/revocation date ''12/31/03'' to read ''12/31/05.''

**§ 180.480 [Amended]**

12. In § 180.480, in the table to paragraph (b), amend the entry for ''Blueberry'' by revising the expiration/revocation date ''12/31/02'' to read ''12/31/04.''

**§ 180.498 [Amended]**

13. In § 180.498, in the table to paragraph (b), amend the entry for ''Bean, succulent seed without pod (lima bean, cowpea)'' by revising the expiration/revocation date ''12/31/02'' to read ''12/31/04.''

**§ 180.505 [Amended]**

14. In § 180.505, in the table to paragraph (b), amend the entries for ''Cattle, fat''; ''Cattle, meat''; ''Cattle, meat byproducts''; ''Cotton gin byproducts''; ''Cotton, hulls''; ''Cotton, meal''; ''Cottonseed''; ''Cotton, oil''; ''Goat, fat''; ''Goat, meat''; ''Goat, meat byproducts''; ''Hog, fat''; ''Hog, meat''; ''Hog, meat byproducts''; ''Milk''; ''Sheep, fat''; ''Sheep, meat''; and ''Sheep, meat byproducts'' by revising the expiration/revocation date ''12/31/02'' to read ''12/31/04.''

**§ 180.535 [Amended]**

15. In § 180.535, in the table to paragraph (b), amend the entries for ''Cattle, kidney''; ''Goat, kidney''; ''Grass, forage''; ''Grass, hay''; ''Hog, kidney''; ''Horse, kidney''; ''Milk''; and ''Sheep, kidney '' by revising the expiration/revocation date ''06/30/03'' to read ''12/31/04.''

**§ 180.572 [Amended]**

16. In § 180.572, in the table to paragraph (b), amend the entry for ''Tomato'' by revising the expiration/revocation date ''06/30/03'' to read ''06/30/05.''

[FR Doc. 02–17187 Filed 7–16–02; 8:45 am]
**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[OPP–2002–0093; FRL–7185–4]**

**RIN 2070**

## Aspergillus flavus AF36; Amendment, Temporary Exemption From the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation amends an existing temporary exemption from the requirement of a tolerance for residues of the atoxigenic microbial pesticide, *Aspergillus flavus* AF36 on cotton consistent with the Experimental Use Permit 69224–EUP–1, which will now allow for application to cotton in certain counties in Arizona and Texas. Interregional Research Project Number 4 (IR-4), on behalf of the USDA/ARS Southern Regional Research Center, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996, requesting the temporary tolerance exemption amendment. This regulation eliminates the need to establish a maximum permissible level for residues of *Aspergillus flavus* AF36. The temporary tolerance exemption will expire on December 30, 2004.

**DATES:** This regulation is effective July 17, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0093, must be received by EPA on or before September 16, 2002.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0093 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Shanaz Bacchus, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8097; e-mail address: bacchus.shanaz@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this

document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register—**Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title _40/40cfr180 _00.html, a beta site currently under development.

2. *In person.* The Agency has established an official docket for this action under docket ID number OPP–2002–0093. The official docket consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). Interested parties should consult both the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official docket does not include any information claimed as CBI. The public version of the official docket, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Authority

### *A. Statutory Authority*

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, section 408(b)(2)(D) requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

### *B. Factual Background*

This extension of the temporary exemption from the requirement of a tolerance is associated with an extension of an Experimental Use Permit (69224–EUP–1), which was granted in May 1996 to the Southern Regional Research Center, United States Department of Agriculture, Agricultural Research Service (USDA ARS), 1100 Robert E. Lee Blvd., New Orleans, LA 70179–0687. Both the temporary exemption from tolerance and the Experimental Use Permit in Arizona expire December 30, 2003.

In the **Federal Register** of (March 25 2002, 57 FR 13628) (FRL–6827–8), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of an amended pesticide tolerance petition (PP 5E4575) by Interregional Research Project Number 4 (IR–4), New Jersey Agricultural Experiment Station, Technology Center of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 on behalf of the USDA/ARS Southern Regional Research Center, 1100 Robert E. Lee Blvd., P.O. Box 19687, New Orleans, LA 70179. This notice included a summary of the petition prepared by the petitioner, Dr. Michael Braverman. It referred to data previously evaluated and summarized by the Agency as published in the **Federal Register** of May 26 1999 (64 FR 28371) (FRL–6081–2), and the extension of the temporary tolerance exemption as published in the **Federal Register** of May 23 2001 (66 FR 28383) (FRL–6781–7). The petition requested that 40 CFR part 180.1206 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of *Aspergillus flavus* AF36 on cotton in certain counties in Texas in addition to the current exemption from temporary tolerance on cotton in Arizona. This petition also, requested that this temporary exemption from a tolerance be extended to December 30, 2005.

Several comments were received in favor of the amendment to allow use of the microbial pesticide in Texas. The growers were of the opinion that the use of this active ingredient is likely to reduce the high levels of naturally occurring aflatoxin-producing strain. *Aspergillus flavus* AF36 has been found at a range of less than 1 to approximately 5% in certain regions of Texas.

One comment was received requesting the Agency to re-evaluate the science of the proposed program and that the risks associated with the use of the active ingredient be considered before a permanent exemption from a tolerance is issued. The main concerns in this comment were the requirement for uniform standards in the expression of aflatoxin levels found in the crop; the practical significance of the proposed treatment method in reducing aflatoxin contamination; and the significance of the host stress in the expression of pathogenicity by *Aspergillus flavus.*

Considering each of these points, first, the commenter referred to the mixing of units used to measure aflatoxin contamination. This comment specifically referred to the experimental researcher's reports, which include measurement of aflatoxin levels as micrograms per gram of cottonseed rather than the typical expression of micrograms per kilogram of cottonseed. In data submitted to the Agency, there is no indication that the company was in error or misrepresenting the aflatoxin values. In all cases, EPA is careful to pay close scrutiny to the units of measure in data they review and the implications made from the stated values.

Secondly, the efficacy of the pesticidal product to reduce the level of aflatoxin in commercial crops was questioned in the comments. The Agency requires that the company present data to confirm their claim to control a public health hazard. The submitted data are available in the public docket and have been reviewed. These data indicate that when *Aspergillus flavus* AF36 is used, a higher percentage of the treated commodity meets, or is less than, the standards of aflatoxin required by the Food and Drug Administration (FDA), and the aflatoxin contamination in the experimental region is lowered. The growers ultimately decide if the reduced aflatoxin contamination is worth the treatment cost, but all cotton and its by-products sold for food/feed must meet the FDA aflatoxin standard.

Regarding testing of the atoxigenic fungus, *Aspergillus flavus* AF36, on stressed or immunosuppressed species to detect any pathogenic potential in plants, insects, or mammals, EPA's guideline requirements are designed to address the normal immune response to microbial exposure. These tests include non-self/foreign recognition and response or clearance by the immune system over time. EPA is examining new methods that may address the potential of a microbe to infect stressed or immunocompromised hosts. In the interim, special measures have been included in the experimental treatments to reduce exposure to *Aspergillus flavus* AF36 outside of the designated treatment areas. The experimental plan also requires extensive data collection to examine the fate and persistence of *Aspergillus flavus* AF36 as a component of the local fungal population.

Exposure to *Aspergillus flavus* is inevitable, because the fungus normally occurs in the environment. Given the ubiquitous nature of various strains of *Aspergillus flavus,* the precautions associated with this experimental program, data indicating no undue adverse health effects to test rodent species by oral ingestion of *Aspergillus flavus* AF36, as well as the current FDA monitoring of aflatoxin levels, there is a reasonable certainty of no harm resulting from the use of the non-aflatoxin-producing fungus, *Aspergillus flavus* AF36.

## III. Toxicological Profile and Risk Assessment

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Based on the data and analyses outlined in the **Federal Register** of May 26 1999 (66 FR 28371), and summarized below, EPA has concluded that there is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of *Aspergillus flavus* AF36 arising from the limited use pattern of the experimental use permit. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

1. *Food.* The cultural practice allows application of the microbial pesticide prebloom to cotton. This precludes the potential for direct residues of *Aspergillus flavus* AF36 *per se* to remain on the treated cotton. Only the seed of the treated commodity, cotton, is likely to be processed as food for cottonseed oil. Residues of *Aspergillus flavus* AF36 or its metabolites are likely to be removed from cotton seed oil during this processing.

In addition, the data submitted demonstrate that the proposed strain of *Aspergillus flavus* AF36, has a low toxicity potential, and, therefore, is likely to pose a minimal to non-existent hazard if used as labeled. The acute oral $LD_{50}$ of rats treated by gavage for 14 days is greater than 5,000 mg/kg. Further, the proposed strain of *Aspergillus flavus,* AF36, does not produce aflatoxin. Aflatoxin is regulated on the by-products of cotton by the Food and Drug Administration. The May 23 2001 **Federal Register** Notice also, discusses that no adverse effects were reported in the annual reports of the Experimental Use Permit 69224–EUP–1, and, in some instances, aflatoxin levels of cotton seed were reduced in treated cotton (May 23, 2001, 66 FR 28383).

2. *Dermal exposure.* Non-occupational dermal exposure and risk to adults, infants and children are not likely if the pesticide is used as labeled. If the microbe exhibits dermal sensitizing properties which is associated with this genus of fungi, the boundaries are likely to maintain distribution near treated areas thus protecting nearby at-risk populations. To further minimize exposure to immunocompromised or sensitive populations, infants and children, the Agency continues to require that the pesticide must not be applied within a boundary of 400 feet of schools, daycare and health care facilities and hospitals.

3. *Inhalation exposure.* Based on the method of application to the soil of cultivated cotton fields, prebloom with set boundaries, non-occupational inhalation exposure and risk to human adults, children and infants are likely to be minimal.

4. *Determination of safety for U.S. population, infants and children.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. In this instance, based on the above findings, EPA believes there are reliable data to support the conclusion that there are no threshold effects of concern to infants, children, and adults when *Aspergillus flavus* AF36 is used as labeled, and that no additional margin of exposure is necessary.

5. *Cumulative effects.* This is the only microbe in the genus *Aspergillus* which is in an experimental use program at this time. *Aspergillus* species are naturally occurring ubiquitous fungi, such that exposure to various species is normal. The data submitted to the Agency support the claim that *Aspergillus flavus* AF36 is non-aflatoxin producing. When applied prior to flowering, *Aspergillus flavus* has been shown to exclude aflatoxin-producing fungi competitively from the developing crop and to reduce aflatoxin contamination of cottonseed. Data show that the proposed use will not result in appreciable increases in the long-term populaton of *Aspergillus flavus* on the crop beyond naturally occurring levels. Furthermore, there is no expectation of cumulative effects with other pesticides.

## IV. Other considerations

1. *Endocrine disruptors.* EPA does not have any information regarding endocrine effects of this microbial pesticide at this time.

2. *Analytical methods.* Starter cultures are screened on the basis of vegetative incompatibility with the toxigenic strain. *Aspergillus flavus* AF 36 does not demonstrate vegetative compatibility with the aflatoxin-producing S strain. Aflatoxin production is monitored by standard thin layer chromatography (tlc) procedures and visualization via scanning fluorescence densitometry and there is a zero tolerance for aflatoxin. Human pathogens are reported to be within regulatory levels (May 26 1999, 64 FR 28371). Treated cotton and its by-products are screened for aflatoxin prior to introduction into the channels of commerce. FDA does not allow cotton seed products containing aflatoxin above 20 parts per billion (ppb) to be used in dairy rations or above 300 ppb to be used for feeding beef cattle.

3. *Codex maximum residue level.* There is no codex maximum residue level for *Aspergillus flavus* AF36.

## V. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the

FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

*A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0093 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 16, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0093, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## VI. Regulatory Assessment Requirements

This final rule establishes an amended exemption from the temporary tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (October 4 1993, 58 FR 51735). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (May 22 2001, 66 FR 28355). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 16 1994, 59 FR 7629); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (April 23 1997, 62 FR 19885). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the amended temporary tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601*et seq.)* do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (August 10 1999, 64 FR 43255). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000, 65 FR 67249). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

### VII. Submission to Congress and the Comptroller General

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

### List of Subjects in 40 CFR Part 180

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

Dated: June 27, 2002.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

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

**Authority:** 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.1206 is revised to read as follows:

### § 180.1206 Aspergillus flavus AF36.

*Aspergillus flavus* AF36 is temporarily exempt from the requirement of a tolerance in or on cotton. The temporary exemption from a tolerance will expire on December 30, 2004, consistent with the Experimental Use Permit 69224–EUP–1.

[FR Doc. 02–17869 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–2002–0085; FRL–7182–5]**

## Atrazine, Bensulide, Diphenamid, Imazalil, 6-Methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one, Phosphamidon S-Propyl dipropylthiocarbamate, and Trimethacarb; Tolerance Revocations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document revokes specific tolerances for residues of the insecticides phosphamidon and trimethacarb; the herbicides atrazine, *S*-(*O,O*-diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl) benzenesulfonamide, known as bensulide, *S*-propyl dipropylthiocarbamate, known as vernolate, and diphenamid; the fungicide imazalil; and the fungicide/insecticide 6-methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one (oxythioquinox) because these pesticides are no longer registered on certain food uses in the United States. The regulatory actions in this final rule contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the revocation of 75 tolerances which are counted among tolerance/exemption reassessments made toward the August 2002 review deadline.

**DATES:** This regulation is effective October 15, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0085, must be received by EPA on or before September 16, 2002.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0085 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8037; e-mail address: nevola.joseph@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112 | Crop production<br>Animal production |

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0085. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background

*A. What Action is the Agency Taking?*

In the **Federal Register** of August 1, 2001 (66 FR 39709) (FRL–6787–3), EPA issued a proposed rule to revoke the tolerances listed in this final rule. Also, the August 1, 2001 proposal invited public comment for consideration and for support of tolerance retention under FFDCA standards.

This final rule revokes certain FFDCA tolerances for residues of the insecticides phosphamidon and trimethacarb; the herbicides atrazine, bensulide, diphenamid, and vernolate; the fungicide imazalil; and the fungicide/insecticide oxythioquinox in or on specified commodities listed in the regulatory text because these pesticides are not registered under FIFRA for uses on those commodities. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on certain domestically treated commodities or commodities treated outside but imported into the United States. These pesticides are no longer used on those specified commodities within the United States. No one commented that there was a need for EPA to retain these tolerances to cover residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed above if: (1) Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained; (2) EPA independently verifies that the tolerance is no longer needed, or (3); the tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

This final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of August 1, 2001 (66 FR 39709), EPA did receive comment regarding the need to retain carbofuran tolerances and fumaric acid tolerance exemptions, as follows:

1. *Carbofuran.* EPA received a comment from FMC Corporation, who expressed opposition to the proposed revocation of the rice and rice, straw tolerances on the basis of a 1991 settlement agreement reached between FMC and EPA. Also, FMC cited use of carbofuran for control of rice pests in numerous countries and stated that the rice tolerances should be retained to allow importation of carbofuran-treated rice.

*Agency response.* In 1999, EPA notified FMC Corporation that the Agency would not authorize any further production of granular carbofuran for rice in the 1999 season and beyond. Distribution, sale, and use of existing stocks of granular carbofuran on rice after August 31, 1999, were prohibited except in California, where due to unique transition issues, rice growers in California were permitted to use existing stocks of carbofuran on rice until August 2000. On August 1, 2001 (66 FR 39709), EPA proposed to revoke the tolerances for residues of the insecticide carbofuran and its metabolites in or on rice and rice, straw with an expiration/revocation date of August 31, 2002 to allow treated commodities to pass through the channels of trade. Because in a comment to the proposed rule, FMC Corporation expressed a need for the retention of these tolerances for import purposes and because FMC agreed to support these tolerances according to EPA's guidance on pesticide import tolerances and residue data for imported food published in the **Federal Register** of June 1, 2000 (65 FR 35069) (FRL–6559–3), EPA will not revoke the tolerances in 40 CFR 180.254 for rice and rice, straw at this time. When the submitted data have been reviewed, EPA will re-evaluate these tolerances under FFDCA. If these data requirements are not met, EPA will finalize the revocation of the carbofuran rice tolerances.

Concerning fumaric acid, the following comment was received:

2. *Fumaric acid.* EPA received a comment from Keller and Heckman LLP, who on behalf of a client, requested the retention of the current

exemptions for fumaric acid in 40 CFR 180.2. The commenter stated that a client will, in the near future, submit an application for the registration of a pesticide containing fumaric acid. Also, the commenter claimed that since fumaric acid had been reassessed and determined to be safe by EPA and that additional data to support the exemptions need not be required. In addition, the commenter asked that his comments be considered a petition to establish an inert tolerance exemption in 40 CFR 180.1001(d) as a reinstatement for an exemption revoked in a final rule published in the **Federal Register** of October 26, 1998 (63 FR 57062) (FRL–6035–8).

*Agency response.* EPA is still evaluating the issues described in the comment. Therefore, at this time, EPA will not take final action on the tolerance exemptions in 40 CFR 180.2 for residues of the fungicide fumaric acid on raw agricultural commodities and on animal products or in 40 CFR 180.1001(d) on the tolerance exemption for the inert use of fumaric acid-isophthalic acid-styrene-ethylene/propylene glycol copolymer in pesticide formulations applied to growing crops only.

No comments were received by the Agency concerning the following.

3. *Atrazine*. The Agency is revoking the tolerances in 40 CFR 180.220 for use of atrazine and its metabolites on orchardgrass and orchardgrass hay because atrazine is no longer registered for these uses. EPA proposed these tolerance revocations in the **Federal Register** of August 1, 2001 (66 FR 39709) and also previously on February 5, 1998 (63 FR 5907) (FRL–5743–9). In response to a comment in 1998 from the Washington State Department of Agriculture that active registrations for atrazine use on grass existed, EPA did not take final action on the tolerances in 40 CFR 180.220 for use of atrazine on grass, range; orchardgrass; and orchardgrass, hay as published in the **Federal Register** (63 FR 57067, October 26, 1998) (FRL–6035–6). However, the orchardgrass use for atrazine was canceled in 1989 due to non-payment of maintenance fees and therefore the tolerances should be revoked. EPA believes that sufficient time has passed for exhaustion of stocks for those labeled uses and for treated commodities to have cleared channels of trade. Also, in 40 CFR 180.220, EPA is removing the ''(N)'' designation from all entries to conform to current Agency administrative practice (''N'' designation means negligible residues).

At this time, EPA will not take final action on the tolerance in 40 CFR 180.220 for use of atrazine and its metabolites on ''grass, range'' because there are existing 24(c) food-use registrations.

4. *Bensulide*. EPA is revoking the tolerance for residues of the herbicide *S*-(*O*,*O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl) benzenesulfonamide, known as bensulide, and its oxygen analog in or on cottonseed in 40 CFR 180.241 because bensulide is not registered under FIFRA for use on cotton. On September 30, 1994, a 6(f)(1) notice of receipt of the voluntary use deletion request by the registrant was published in the **Federal Register** (59 FR 34065) (FRL–4912–1). EPA believes that existing stocks have been used and any treated commodity has passed through the channels of trade.

5. *Diphenamid*. Diphenamid has not had active registrations under FIFRA since 1991. EPA believes that existing stocks have been used and any treated commodity has passed through the channels of trade. EPA is revoking the tolerances in 40 CFR 180.230 for residues of the herbicide diphenamid and its metabolite in or on apples; cattle, fat; cattle, mbyp; cattle, meat; cotton forage; cottonseed; fruiting vegetables; goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; milk; okra; peaches; peanut forage; peanut hay; peanuts; potatoes; sheep, fat; sheep, mbyp; sheep, meat; raspberries; soybean forage; soybean hay; soybeans; strawberries; and sweet potatoes. Therefore, the Agency is removing 40 CFR 180.230 in its entirety.

6. *Imazalil*. On May 24, 2000 (65 FR 33703) (FRL–6041–9), the tolerance for cottonseed, formerly codified in 40 CFR 180.413(a) was recodified in 40 CFR 180.413(a)(1). EPA is revoking the tolerance in 40 CFR 180.413(a)(1) for the combined residues of the fungicide imazalil and its metabolite in or on cottonseed because imazalil is not registered under FIFRA for use on cotton. There have been no active registrations for imazalil use on cotton commodities since December 1991.

7. *6-Methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one*. Because the fungicide/insecticide 6-methyl-1,3-dithiolo[4,5-b] quinoxalin-2-one (oxythioquinox) has no registered uses under FIFRA, EPA is revoking the tolerances in 40 CFR 180.338 for residues of oxythioquinox in or on apples; apricots; cattle, fat; cattle, mbyp; cattle, meat; citrus fruits; goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; macadamia nuts; milk; pears; sheep, fat; sheep, mbyp; sheep, meat; and walnuts. In the **Federal Register** of March 17, 1999 (64 FR 13191) (FRL–6067–8), EPA announced receipt of a request for voluntary cancellation of oxythioquinox, also known as chinomethionate. The Agency permitted distribution and sale for 18 months after the effective date of cancellation on October 27, 1999, and end users were permitted an additional year for use of existing stocks.

On August 1, 2001 (66 FR 39709), EPA proposed an expiration/revocation date of August 1, 2002, for the 22 tolerances for oxythioquinox in 40 CFR 180.338, to allow any treated commodities to pass through the channels of trade. No comment was received on oxythioquinox. The Agency is revoking these oxythioquinox tolerances effective 90 days following publication of this final rule in the **Federal Register**, which is October 15, 2002.

8. *Phosphamidon*. EPA is revoking the tolerance in 40 CFR 180.239 for residues of the insecticide phosphamidon including all of its related cholinesterase-inhibiting compounds in or on apples with an expiration/revocation date of December 31, 2002, to allow any treated commodities to pass through the channels of trade.

EPA proposed this tolerance revocation for phosphamidon in the **Federal Register** of August 1, 2001 (66 FR 39709) and also, previously on January 21, 1998 (63 FR 3057) (FRL–5743–8). In 1998, comments were received from the Washington State Department of Agriculture and Northwest Wholesale, Inc. which requested that EPA not revoke the tolerance for phosphamidon on apples due to concerns about existing stocks. The Agency did not revoke the tolerance for phosphamidon on apples at that time (63 FR 57062, October 26, 1998) (FRL–6035–8). Subsequently, the Agency was informed by the Washington State Department of Agriculture that based on review of the pests controlled by phosphamidon, efficacy of registered alternatives, estimates of remaining stocks of phosphamidon, and use/disposal of remaining unused stocks, retention of the tolerance for phosphamidon on apples until December 31, 2002, would allow growers to use up existing stocks and allow treated apples to pass through the channels of trade.

Therefore, EPA is revoking the tolerance in 40 CFR 180.239 for residues of phosphamidon including all of its related cholinesterase-inhibiting compounds in or on apples with an

expiration/revocation date of December 31, 2002. Because the tolerance with its revocation date will remain in 40 CFR 180.239, EPA is also revising the commodity name from ''apples'' to ''apple'' in order to conform to current Agency administrative practice.

9. *S-Propyl dipropylthiocarbamate*. Because there are no registered uses for *S*-Propyl dipropylthiocarbamate (vernolate), EPA is revoking the tolerances in 40 CFR 180.240 for vernolate residues in or on corn, fodder; corn, forage; corn, fresh (inc. sweet)(K+CWHR); corn, grain; peanuts; peanut, forage; peanut, hay; potatoes; soybeans; soybean, forage; soybean, hay; and sweet potatoes. In the notice of receipt of the request for voluntary cancellation of vernolate, EPA agreed that registrants were permitted to sell and distribute existing stocks of vernolate until February 1, 2000; that distributors were permitted to sell and distribute existing stocks of vernolate until February 1, 2001; and that end users are permitted to use existing stocks until February 1, 2002 (March 3, 1999, 64 FR 10296) (FRL–6061–9).

On August 1, 2001 (66 FR 39709), EPA proposed an expiration/revocation date of May 1, 2002 for all vernolate tolerances in 40 CFR 180.240. No comment was received on vernolate. Because that date has passed, the Agency is revoking these vernolate tolerances effective 90 days following publication of this final rule in the **Federal Register,** which is October 15, 2002, to ensure that all affected parties receive notice of EPA's actions.

10. *Trimethacarb*. EPA is revoking the tolerance for residues of the insecticide 3,4,5-trimethylphenyl methylcarbamate and 2,3,5-trimethylphenyl methylcarbamate, known as trimethacarb, in or on corn, field, grain; corn, fodder; corn, forage; and corn, pop, grain in 40 CFR 180.305 because trimethacarb is no longer registered under FIFRA for use on corn. Therefore, the Agency is removing 40 CFR 180.305 in its entirety.

EPA proposed these tolerance revocations for trimethacarb in the **Federal Register** of August 1, 2001 (66 FR 39709) and also previously on January 21, 1998 (63 FR 3057). In 1998, a comment was received from Drexel Chemical Company which requested that EPA not revoke the tolerances for trimethacarb until Drexel determined the state of existing stocks. As a result of that comment, the Agency did not take action on trimethacarb at that time (October 26, 1998, 63 FR 57062). Subsequently, the Agency was informed by Drexel that end-users would exhaust existing stocks of trimethacarb by mid-May 1999. Therefore, the Agency is making the revocations as given in the regulatory text.

*B. What is the Agency's Authority for Taking this Action?*

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

*C. When Do These Actions Become Effective?*

The tolerance for phosphamidon on apples expires on December 31, 2002. With the exception of the aforementioned pesticide tolerance revocation, the remaining tolerance revocations for atrazine, bensulide, diphenamid, imazalil, 6-methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one (oxythioquinox), *S*-propyl dipropylthiocarbamate (vernolate), and trimethacarb are effective 90 days following publication of this final rule in the **Federal Register,** which is October 15, 2002, to ensure that all affected parties receive notice of EPA's actions. For this final rule, tolerances that were revoked because registered uses did not exist concerned uses which have been canceled for more than a year. Therefore, commodities containing these pesticide residues should have cleared the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

*D. What is the Contribution to Tolerance Reassessment?*

By law, EPA is required by August 2002 to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996. EPA is also required to assess the remaining tolerances by August 2006. As of July 1, 2002, EPA has reassessed over 5,400 tolerances. In this final rule, EPA is revoking a total of 75 tolerances which count as reassessments toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

## III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decisions. EPA has developed guidance concerning submissions for import tolerance support (June 1, 2000, 65 FR 35069) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' then select Regulations and Proposed Rules,'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

## IV. Objections and Hearing Requests

*A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0085 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 16, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Objection/hearing fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0085, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## V. Regulatory Assessment Requirements

This final rule will revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled

pesticides. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis.

In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

## VI. Submission to Congress and the Comptroller General

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

## List of Subjects in 40 CFR Part 180

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

Dated: June 26, 2002.

**James Jones,**

*Acting Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

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

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

### § 180.220 [Amended]

2. Section 180. 220 is amended by removing the ''(N)'' designation wherever it appears in the ''Parts per million'' column in the table under paragraph (a)(1), and by removing the entries for ''Orchardgrass'' and ''Orchardgrass, hay'' from the table in paragraph (a)(2).

### § 180.230 [Removed]

3. Section 180.230 is removed.

4. Section 180.239 is revised to read as follows:

### § 180.239 Phosphamidon; tolerances for residues.

(a) *General*. Tolerances (expressed as phosphamidon) for residues of the insecticide phosphamidon (2-chloro-2-diethylcarbamoyl-1-methylvinyl dimethyl phosphate) including all of its related cholinesterase-inhibiting compounds in or on raw agricultural commodities are established as follows:

| Commodity | Parts per million | Expiration/Revocation Date |
|---|---|---|
| Apple | 1.0 | 12/31/02 |

(b) *Section 18 emergency exemptions*. [Reserved]

(c) *Tolerances with regional registrations*. [Reserved]

(d) *Indirect or inadvertent residues*. [Reserved]

### § 180.240 [Removed]

5. Section 180.240 is removed.

### § 180.241 [Amended]

6. Section 180.241 is amended by removing the word ''cottonseed.''

### § 180.305 [Removed]

7. Section 180.305 is removed.

### § 180.338 [Removed]

8. Section 180.338 is removed.

### § 180.413 [Amended]

9. Section 180.413 is amended by removing the entry for ''cottonseed'' from the table in paragraph (a)(1).

[FR Doc. 02–17870 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–2002–0129; FRL–7185–7]**

**RIN 2070–XXXX**

## Clethodim; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for the residues of clethodim in or on alfalfa forage; alfalfa hay; dry bean; Brassica, leafy greens, subgroup

5B; peanut; peanut hay; peanut meal; peppermint tops; spearmint tops; spinach; and turnip greens. The Interregional Research Project Number 4 (IR4) and Valent U.S.A. Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

**DATES:** This regulation is effective July 17, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0129, must be received on or before September 16, 2002.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the**SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0129 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'', ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the**Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00 .html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0129. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

In the **Federal Register** of April 17, 2002 (67 FR 18890) (FRL–6830–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of pesticide petitions (PP 1E6351, 2E6394, and 2E6396) by IR4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390, and pesticide petitions (PP 5F4440 and 5F4572) by Valent U.S.A. Corporation, 1333 North California Boulevard, Suite 600, Walnut Creek, CA 94596–8025. This notice included a summary of the petitions prepared by Valent U.S.A. Corporation, the registrant. There were no comments received in response to the notice of filing. The petitions requested that 40 CFR 180.458 be amended by establishing tolerances for residues of the herbicide clethodim, (E)-(±)-2-1-(3-chloro-2-propenyl)oxyiminopropyl-5-2-(ethylthio)propyl-3-hydroxy-2-cycloh exen-1-one and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexen-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexen-3-one moieties and their sulphoxides and sulphones, in or on Brassica, leafy greens, subgroup 5B at 3.0 part per million (ppm), turnip greens at 3.0 ppm, peppermint and spearmint tops at 5.0 ppm, and spinach at 2.0 ppm.

The petitions also requested that 40 CFR 180.458 be amended by replacing existing timelimited tolerances, with permanent tolerances for residues of the herbicide clethodim, (E)-(±)-2-1-(3-chloro-2-propenyl)oxyiminopropyl-5-2-(ethylthio)propyl-3-hydroxy-2-cycloh exen-1-one and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexen-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexen-3-one moieties and their sulphoxides and sulphones, in or on alfalfa forage at 6.0 ppm, alfalfa hay at 10 ppm, dry bean at 2.0 ppm, peanut at 3.0 ppm, peanut hay at 3.0 ppm, and peanut meal at 5.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that '' there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate

exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

## III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of clethodim on alfalfa forage at 6.0 ppm, alfalfa hay at 10 ppm, dry bean at 2.5 ppm, Brassica, leafy greens, subgroup at 3.0, peanut at 3.0 ppm, peanut hay at 3.0, peanut meal at 5.0, and turnip tops at 3.0 ppm, peppermint and spearmint tops at 5.0 ppm, and spinach at 2.0 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follow.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by clethodim is discussed in Unit III.A. of the **Federal Register** of March 14, 2001 (66 FR 14829) (FRL–6770–8).

### *B. Toxicological Endpoints*

A summary of the toxicological endpoints for clethodim used for human risk assessment is discussed in Unit III.B of the **Federal Register** of March 14, 2001 (66 FR 14829) (FRL–6770–8). Chronic, and short-term, intermediate-term, and long-term aggregate risk assessments are appropriate for clethodim and were performed by EPA.

### *C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.458) for the residues of clethodim, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from clethodim in food as follows:

i. *Acute Exposure*. Acute dietary risk assessments are performed for a fooduse pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An endpoint was not identified for acute dietary exposure and risk assessment because no effects were observed in oral toxicity studies including developmental toxicity studies in rats or rabbits that could be attributable to a single dose (exposure). Therefore, an acute dietary exposure assessment was not performed.

ii. *Chronic Exposure*. In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Chronic analysis used tolerance level residues for all crops and livestock commodities. The projected % crop treated data (2% for lettuce, broccoli and cauliflower, 15% cabbage, and 1% for brussels sprouts), and the weighted average % crop treated data (3% for cotton, 8% for onions, 3% for peanuts 4% for soybeans, 15% for sugar beets, and 1% for tomatoes) were used for the analysis; 100% crop treated (CT) data were assumed for the leafy Brassica greens, turnip greens, dry bean, peanuts, and the other crops for the analysis. DEEM default concentration factors were used for all commodities. The analysis is considered Tier 2 because percent of crop treated information was used.

iii. *Cancer*. Clethodim has been classified as a group E carcinogen. Therefore, a cancer risk assessment was not performed.

iv. *Anticipated residue and percent crop treated information*.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant sub- population group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used percent crop treated (PCT) information as follows.

2% for lettuce, broccoli and cauliflower; 15% cabbage, and 1% for brussels sprouts; (weighted average PCT) 3% for cotton, 8% for onions, 3% for peanuts, 4% for soybeans, 15% for sugar beets, and 1% for tomatoes.

The Agency believes that the three conditions listed III.C.1.iv have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant sub-populations is taken into account through EPA's computer-based model for evaluating the exposure of significant sub-populations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant sub-population group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not

have available information on the regional consumption of food to which clethodim may be applied in a particular area.

2. *Dietary exposure from drinking water.*

The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for clethodim in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of clethodim.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCIGROW model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a % RfD or % PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to clethodim they are further discussed in the aggregate risk sections III.E.

*Summary:* Surface and ground water contamination may occur from the sulfoxide and sulfone degradates of clethodim, as well as from parent clethodim. However, the risk of water contamination is primarily associated with clethodim sulfone and clethodim sulfoxide rather than parent clethodim based on greater persistence and mobility for the degradates. The drinking water estimates are based on a maximum application rate of 0.5 pounds of active ingredient per acre per year.

*Surface Water:* Parent clethodim may move from the treated field to surface water or ground water through run-off or leaching which occurs shortly after application (e.g. rainfall). Also, the sulfoxide and sulfone degradates may migrate by runoff or leaching for longer periods of time since they are more persistent. All residues of clethodim (parent and degradates) are very mobile in soil. Tier 1 surface water concentrations for parent clethodim and total toxic residues (parent + sulfoxide + sulfone) estimations are as follows:

Based on the FIRST model, the estimated environmental concentrations (EECs) of clethodim for acute exposure are estimated to be 38.9 parts per billion (ppb), and for chronic exposure the EECs are estimated to be 7.6 ppb for surface water.

*Ground Water:* Parent clethodim is mobile, but has a short metabolic half-life in soil under aerobic conditions. Therefore, parent compound should not be a ground water concern in most environments. While it is expected that parent clethodim be transformed to sulfoxide or sulfoxone products quickly by soil metabolism (t½ = 1 to 3 days), it may be more persistent since it is leached below the more biologically active top soil. In such instances (i.e., leaching rainfall shortly after application) parent clethodim concentrations may be higher than estimated. In the event that parent clethodim did reach ground water, the available routes of disappearance would be dilution, some metabolism to persistent degradates, and slow hydrolysis with the rate depending on the pH of the ground water. The estimation for both parent clethodim and total toxic clethodim (parent + sulfoxide+sulfone) is as follows: Based on the SCIGROW model, the EEC for ground water is 0.49 ppb.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Clethodim is currently registered for use on the following noncrop sites: rights of way such as railroads, highways, roads, dividers, medians, pipelines, public utility lines, pumping stations, transformer stations and substations, around airports, electric utilities, commercial buildings, manufacturing plants, storage yards, rail yards, fence lines, parkways, greenhouse benches, and around golf courses (not on golf courses). It is possible that the public could be exposed to clethodim residues in these noncrop areas.

Homeowner use of clethodim is not prohibited on the label, therefore the Agency assumes clethodim products are available for use by untrained applicators. A residential handler assessment was performed to determine the risk potential to homeowners. The following assumptions were made in conducting the assessment: clethodim would be applied by low pressure handwand (spot treatment); the highest label rate of 1.3 ounces per gallon was used; five gallons of spray are used; applicators mix, load and apply; and short sleeved shirt and short pants are worn by homeowners.

Clethodim is typically used to control unwanted weeds of all types (grass and broadleaf) through spot treatment, usually resulting in a small treated area. Broadcast treatment is not expected. It is unlikely that adults and children would be exposed to treated areas which would most likely consist of a single spot. Therefore, a non-occupational post-application exposure assessment was not performed.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether clethodim has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, clethodim does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not

assumed that clethodim has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

*D. Safety Factor for Infants and Children*

1.*In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. The oral perinatal and prenatal data demonstrated no indication of increased sensitivity of rats or rabbits to in utero exposure to clethodim.

3. *Conclusion*. There is a complete toxicity data base for clethodim and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be removed. The FQPA factor is removed because there is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to in utero and/or postnatal exposure; a developmental neurotoxicity study is not required; and the dietary (food and drinking water) and non-dietary (residential) exposure assessments will not underestimate the potential exposures for infants and children.

*E. Aggregate Risks and Determination of Safety*

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, shortterm, intermediateterm, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. An endpoint was not identified for acute dietary exposure and risk assessment because no effects were observed in oral toxicity studies including developmental toxicity studies in rats or rabbits that could be attributable to a single dose (exposure). Therefore, clethodim is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to clethodim from food will utilize 33% of the cPAD for the U.S. population, 26% of the cPAD for females 1350 years old and 66% of the cPAD for children (16 years old). Based the use pattern, chronic residential exposure to residues of clethodim is not expected. In addition, there is potential for chronic dietary exposure to clethodim in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 1:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NONCANCER) EXPOSURE TO CLETHODIM

| Population Subgroup | cPAD mg/kg/day | % cPAD (Food) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Chronic DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. Population 0.01 33 7.6 0.49 201 | Females (13-50 years old) 0.01 26 7.6 0.49 220 | Children (1-6 years old) 0.01 66 7.6 0.49 34 | | | |

3. *Short-term risk*. Shortterm aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Clethodim is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for clethodim.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated resulted in an aggregate MOE of 29,000 for males (13 to 19 years old). The dietary exposure of all adult population subgroups is comparable to that of the subgroup with the highest exposure (males 13 to 19 years old). This

aggregate MOE does not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of clethodim in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown below in Table 2. Additionally, no incidental oral exposure is anticipated for infants and children, since postapplication exposure is not expected.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO CLETHODIM

| Population Subgroup | Aggregate MOE (Food + Residential) | Aggregate Level of Concern (LOC) | Surface Water EEC (ppb) Ground Water EEC (ppb) | ShortTerm DWLOC (ppb) | |
|---|---|---|---|---|---|
| US Population | 29,000 | 100 | 7.6 | 0.49 | 30,000 |

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Intermediate-term oral, dermal and inhalation aggregate risks are made up of exposures from these routes of exposure.

Although, clethodim is currently registered for use(s) that could result in intermediateterm residential exposure dermal, inhalation and incidental oral exposures were not calculated because neither handler nor post-application intermediate-term exposure for these routes of exposure are expected. Therefore, no intermediate-term risk is expected from these routes of exposure.

5. *Aggregate cancer risk for U.S. population.* Clethodim was negative for carcinogenicity in feeding studies in rats and mice and is classified as ''not likely%rdquo; to be a human carcinogen.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to clethodim residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate methods are available for enforcement of tolerances for clethodim and its metabolites in/on Brassica, leafy greens, subgroup, turnip greens, and other commodities (including livestock). Analytical Method RM26B3 (a modification of RM26B2) has been successfully validated for use with many commodities including livestock commodities and has been submitted to the FDA for publication in PAM II.

Adequate enforcement methodology (example—gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Francis Griffith, Analytical Chemistry Branch, Environmental Science Center, Environmental Protection Agency, 701 Mapes Road, Fort George G. Mead, MD 20755–5350; telephone number (410) 305–2905; griffith.francis@epa.gov.

### *B. International Residue Limits*

There are no established Codex, Canadian, or Mexican maximum residue limits (MRLs) or tolerance for residues of clethodim in/on the commodities discussed in the subject petition; therefore, there are no questions with respect to Codex/U.S. tolerance compatibility.

## V. Conclusion

Therefore, these tolerances are established for residues of clethodim, (E)-(±)-2-1-(3-chloro-2-propenyl)oxyiminopropyl-5-2-(ethylthio)propyl-3-hydroxy-2-cyclohexe n-1-one and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexen-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexen-3-one moieties and their sulphoxides and sulphones, in or on alfalfa forage at 6.0 ppm, alfalfa hay at 10 ppm, dry bean at 2.5 ppm, Brassica, leafy greens, subgroup at 3.0 ppm, peanut at 3.0 ppm, peanut hay at 3.0 ppm, peanut meal at 5.0 ppm, and turnip greens at 3.0 ppm, peppermint and spearmint tops at 5.0 ppm, and spinach at 2.0 ppm.

## VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object''to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0129 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 16, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by email at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0129, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low–Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the

distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

### VIII. Submission to Congress and the Comptroller General

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

### List of Subjects in 40 CFR Part 180

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

Dated: July 2, 2002.

**Debra Edwards,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

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

**Authority:** 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.458 is amended by removing the entries for ''Alfalfa, forage''; ''Alfalfa, hay''; ''Dry beans''; ''Peanuts''; ''Peanut, hay''; and ''Peanut, meal'' from the table in paragraph (a)(2) and alphabetically adding the following commodities to the table in paragraph (a)(3) to read as follows:

**§ 180.458 Clethodim, tolerances for residues.**

(a) * * *

(3) * * *

| Commodity | Parts per million |
|---|---|
| Alfalfa, forage | 6.0 |
| Alfalfa, hay | 10 |
| Bean, dry | 2.5 |
| * * * * * | |
| Brassica, leafy greens, subgroup | 3.0 |
| * * * * * | |
| Peanut | 3.0 |
| Peanut, hay | 3.0 |
| Peanut, meal | 5.0 |
| Peppermint, tops | 5.0 |
| * * * * * | |
| Spearmint, tops | 5.0 |
| Spinach | 2.0 |
| * * * * * | |
| Turnip, greens | 3.0 |
| * * * * * | |

[FR Doc. 02–17871 Filed 7–16–02; 8:45 am]
**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–2002–0068; FRL–7177–7]**

## Benomyl; Tolerance Revocations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document revokes all tolerances for residues of the fungicide benomyl because this pesticide active ingredient is no longer registered for food uses in the United States. The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the revocation of 100 tolerances which are counted among tolerance/exemption reassessments made toward the August, 2002 review deadline.

**DATES:** This regulation is effective October 15, 2002; however, certain regulatory actions will not occur until the date specified in the regulatory text. Objections and requests for hearings, identified by docket control number OPP–2002–0068, must be received by EPA on or before September 16, 2002.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–2002–0068 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–8037; e-mail address: nevola.joseph@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of Potentially Affected Entities |
|---|---|---|
| Industry | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |

| Categories | NAICS codes | Examples of Potentially Affected Entities |
|---|---|---|
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **SUPPLEMENTARY INFORMATION.**

*B. How can I Get Additional Information, Including Copies of this Document?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'', ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register** —Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–2002–0068. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background

*A. What Action is the Agency Taking?*

This final rule revokes the FFDCA tolerances for residues of the fungicide benomyl in or on specified commodities listed in the regulatory text because benomyl is no longer registered under FIFRA for use on those commodities. The tolerances revoked by this final rule are no longer necessary to cover residues of benomyl in or on domestically treated commodities or commodities treated outside but imported into the United States. Benomyl is no longer used on those specified commodities within the United States, and no comments were received indicating that there was a need for EPA to retain any of the tolerances to cover benomyl residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

In the **Federal Register** of January 15, 2002 (67 FR 1917) (FRL–6816–6), EPA issued a proposed rule to revoke the tolerances listed in this final rule. Also, the January 15, 2002 proposal provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under FFDCA standards. If, during the 60–day public comment period, EPA receives comments indicating a need for the tolerance to be retained, EPA will not proceed with the revocation unless: (1) Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained, (2) EPA independently verifies that the tolerance is no longer needed, or (3) the tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

In response to the document published in the **Federal Register** of January 15, 2002, EPA received comment from a private citizen that stated agreement with the revocation of benomyl tolerances and also received comments as follows:

1. *Michigan Blueberry Growers Association (MBG)*. A comment letter was received from MBG Marketing—Michigan Blueberry Growers Association (MBG). MBG stated that 70% of the Michigan blueberry crop is frozen after harvest and may be stored for several years before it is sold, further processed or consumed. MBG requested that the tolerance for use of benomyl on blueberry be retained until January 1, 2008, to allow time for existing stocks of benomyl to be used and benomyl-treated blueberries to clear channels of trade.

*Agency response*. The time frame which MBG has requested regarding the benomyl tolerance for blueberry is in agreement with what was proposed by the Agency on January 15, 2002. Therefore, EPA is revoking the tolerance in 40 CFR 180.294 for blueberry with an expiration/revocation date of January 1, 2008.

2. *Gowan Company*. A comment letter was received from the Gowan Company. Gowan stated that it had applied in June 2001 for registration of products containing the active ingredient benomyl and amended the application twice in January 2002. Gowan requested that, except for the ''bean vine forage'' tolerance, all tolerances for benomyl not be revoked. Also, Gowan stated its belief that no satisfactory substitutes for benomyl are available at the present time. In addition, Gowan agreed that the terminology for a large number of commodities requires updating.

*Agency response*. On June 12, 2001, EPA received applications from Gowan Company to register four products containing the active ingredient benomyl. Gowan applied for registration under the ''me-too'' provisions in FIFRA. On September 21, 2001, the Agency identified several deficiencies in Gowan's applications. Although Gowan submitted a response to these deficiencies in January 2002, their response is incomplete. Furthermore, because benomyl is no longer registered, for purposes of registration under FIFRA, benomyl is a ''new chemical'' and the ''me-too'' provisions outlined in section 3 of FIFRA are no longer applicable to an application for registration of benomyl. And so long as there are no registered uses, and no indication that commodities containing residues of the pesticide are being imported, there is no need for the tolerances to be maintained.

In this regard, Gowan's claim that there are no satisfactory substitutes for benomyl is irrelevant. Moreover, if the

commenter is correct that there are no satisfactory alternatives, the continued existence of the tolerance would merely encourage the use of an unregistered pesticide. At any rate, the Agency disagrees with this claim and believes that, for the most part, acceptable alternatives exist. In fact, to facilitate the registration of benomyl alternatives, EPA has expedited the registration review for several new uses of the fungicide thiophanate-methyl, including grapes, pistachios, potatoes (foliar application), pears, canola, and celery. The Agency hopes to make a decision on these pending uses in the very near future. The Agency will continue to work with affected parties, including growers, the U.S. Department of Agriculture, and other registrants, to identify emerging alternatives to benomyl. Where emergency conditions, as defined under section 18 of FIFRA, exist, the Agency will work with States, growers, and registrants to try to make benomyl alternatives available prior to registration.

No comment was received which expressed a need for the retention of specific tolerances for import purposes. On August 8, 2001 (66 FR 41589) (FRL–6794–9), EPA published in the **Federal Register** a cancellation order for all benomyl product registrations effective August 8, 2001. The Agency allowed the registrant to sell and distribute benomyl stocks until June 30, 2001 and is allowing those other than the registrant to sell and distribute benomyl stocks until December 31, 2002. The Agency expects existing stocks to be exhausted by December 31, 2003. However, because no active registrations exist and because no commenters expressed a need to retain these tolerances for import purposes, EPA is revoking 100 benomyl tolerances.

Because bean vine forage is no longer a significant livestock feed item and the tolerance is no longer needed, EPA is revoking the tolerance for bean vine forage to become effective 90 days following publication of this final rule to ensure that all affected parties receive notice of EPA's actions. Also, to conform to current Agency practice, EPA is revising the commodity terminology for peanut forage (at 15.0 ppm) to peanut, hay. However, because a tolerance currently exists for peanut hay (at 15.0 ppm), the peanut forage tolerance is no longer needed. Therefore, EPA is also revoking the tolerance for peanut forage to become effective 90 days following publication of this final rule.

EPA is revoking all other benomyl tolerances in 40 CFR 180.294 with expiration/revocation dates from 3 to 6 years beyond the last date which EPA allowed those other than the registrant to sell and distribute existing stocks of benomyl product in order to allow sufficient time for the passage of benomyl-treated food in channels of trade. (The dates are 2 to 5 years beyond the time when EPA expects benomyl stocks to be exhausted). These dates were determined using available Agency data, U.S. Food and Drug Administration (FDA) data, and food industry data as follows:

| Commodity Crop Group | Tolerances | Maximum Years in Trade Channels | Expiration/revocation date |
|---|---|---|---|
| Bulb Vegetables | Garlic | 2 | 1/1/06 |
| Brassica (Cole) Leafy Vegetables | Broccoli; Brussels sprouts; Cabbage; Cabbage, chinese, bok choy; Cabbage, chinese, napa; Cauliflower; Collards; Kale; Kohlrabi; Mustard greens | 2 | 1/1/06 |
| Root and Tuber Vegetables | Beet, sugar, roots; Beet, sugar, tops; Carrot, roots; Rutabaga; Sweet potato, roots; Turnip, roots; Turnip, greens | 3 | 1/1/07 |
| Leafy Vegetables (exc. Brassica) | Celery; Spinach; Dandelion, leaves; Watercress | 3 | 1/1/07 |
| Legume Vegetables | Bean; Soybean | 3 | 1/1/07 |
| Cucurbit Vegetables | Cucumber; Melon; Pumpkin; Squash, summer; Squash, winter | 3 | 1/1/07 |
| Tree Nuts | Almond, hulls; Nut; Pistachio[a] | 3 | 1/1/07 |
| Citrus Fruits | Citrus, dried pulp; Fruit, citrus, postharvest | 4 | 1/1/08 |
| Pome Fruits | Apple, postharvest; Pear, postharvest | 4 | 1/1/08 |
| Stone Fruits | Apricot, postharvest; Cherry, postharvest; Nectarine, postharvest; Peach, postharvest; Plum, postharvest; Plum, prune, fresh, postharvest | 4 | 1/1/08 |
| Berries | Blackberry; Blueberry; Boysenberry; Currant; Dewberry; Loganberry; Raspberry | 4 | 1/1/08 |
| Cereal Grains and Forage, Fodder and Straw of Cereal Grains | Barley, grain; Barley, straw; Corn, sweet, kernel plus cob with husks removed; Corn, sweet, forage; Corn, sweet, stover; Oat, grain; Oat, straw; Rice; Rice, hulls; Rice, straw; Rye, grain; Rye, straw; Wheat, grain; Wheat, straw | 4 | 1/1/08 |
| No group association- Plant commodities | Avocado; Banana, postharvest, not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded; Grape; Grape, raisin; Mango; Mushroom, postharvest; Papaya; Peanut; Peanut, hay; Pineapple, postharvest; Strawberry | 4 | 1/1/08 |
| No group association- Animal commodities | Cattle, fat; Cattle, meat; Cattle, meat byproducts; Egg; Goat, fat; Goat, meat; Goat, meat byproducts; Hog, fat; Hog, meat; Hog, meat byproducts; Horse, fat; Horse, meat; Horse, meat byproducts; Milk; Poultry, fat; Poultry, liver; Poultry, meat; Poultry, meat byproducts, except liver; Sheep, fat; Sheep, meat; Sheep, meat byproducts | 4 | 1/1/08 |
| Fruiting Vegetables | Eggplant; Pepper; Tomato; Tomato, concentrated products | 5 | 1/1/09 |

[a] Please note that for FQPA reassessment purposes, while there are tolerances for pistachio in 40 CFR 180.294(a) and (c), EPA is counting the pistachio tolerance once; therefore, a total of 100 tolerances will be counted as reassessed.

In the interim, before the tolerance expires and to conform to current Agency practice, EPA is revising tolerance commodity terminology names where necessary in § 180.294(a) and (c) as follows:

| Old terminology | New terminology |
|---|---|
| almond hulls | almond, hulls |
| apples (PRE- and POST-H) | apple, postharvest |
| apricots (PRE- and POST-H) | apricot, postharvest |
| bananas (PRE- and POST-H) (NMT 0.2 ppm shall be present in the pulp after peel is removed and discarded) | banana, postharvest, not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded |
| beans | bean |
| beets, sugar, roots | beet, sugar, roots |
| beets, sugar, tops | beet, sugar, tops |
| blackberries | blackberry |
| blueberries | blueberry |
| boysenberries | boysenberry |
| carrots | carrot, roots |
| cattle, mbyp | cattle, meat byproducts |
| cherries (PRE- and POST-H) | cherry, postharvest |
| Chinese cabbage | cabbage, chinese, napa and cabbage, chinese, bok choy |
| citrus fruit (PRE- and POST-H) | fruit, citrus, postharvest |
| corn, fresh (inc. sweet K +CWHR) | corn, sweet, kernel plus cob with husks removed |
| corn, sweet, fodder and forage | corn, sweet, forage and corn, sweet, stover |
| cucumbers | cucumber |
| currants | currant |
| dewberries | dewberry |
| eggplants | eggplant |
| eggs | egg |
| goats, fat | goat, fat |
| goats, meat | goat, meat |
| goats, mbyp | goat, meat byproducts |
| grapes | grape |
| hogs, fat | hog, fat |
| hogs, meat | hog, meat |
| hogs, mbyp | hog, meat byproducts |
| horses, fat | horse, fat |
| horses, meat | horse, meat |
| horses, mbyp | horse, meat byproducts |
| loganberries | loganberry |
| mangoes | mango |
| melons | melon |
| mushrooms (PRE-and POST-H) | mushroom, postharvest |
| nectarines (PRE- and POST-H) | nectarine, postharvest |
| nuts | nut |
| oats, grain | oat, grain |
| oats, straw | oat, straw |
| peaches (PRE- and POST-H) | peach, postharvest |
| peanuts | peanut |
| peanut hay | peanut, hay |
| pears (PRE- and POST-H) | pear, postharvest |
| peppers | pepper |
| pineapples (POST-H) | pineapple, postharvest |
| pistachios | pistachio |
| plums (including fresh prunes)(PRE- and POST-H) | plum, postharvest and plum, prune, fresh, postharvest |
| poultry, mbyp | poultry, meat byproducts, except liver |
| pumpkins | pumpkin |
| raisins | grape, raisin |
| raspberries | raspberry |
| rice straw | rice, straw |
| rutabagas | rutabaga |
| sheep, mbyp | sheep, meat byproducts |
| soybeans | soybean |
| strawberries | strawberry |
| sweet potatoes | sweet potato, roots |
| tomatoes | tomato |
| tomato products, concentrated | tomato, concentrated products |
| turnips, roots | turnip, roots |
| avocados | avocado |
| dandelions | dandelion, leaves |
| papayas | papaya |
| pistachios | pistachio |
| turnip greens | turnip, greens |

*B. What is the Agency's Authority for Taking this Action?*

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

*C. When Do These Actions Become Effective?*

EPA is delaying the effective date of the revocations for bean vine forage and peanut forage for 90 days following publication of a final rule in the **Federal Register** to ensure that all affected parties receive notice of EPA's actions. Consequently, revocation of the tolerances for bean vine forage and peanut forage is effective October 15, 2002. EPA is revoking all other benomyl tolerances with expiration dates which range from January 1, 2006 to January 1, 2009 as previously detailed. EPA believes that by December 31, 2003 all existing stocks of pesticide products labeled for the uses associated with the tolerances revoked in this final rule will have been exhausted, giving ample time, from 2 to 5 years, for any treated fresh commodity and processed food to clear trade channels. Therefore, EPA believes the effective dates in this document are reasonable.

Any commodities listed in the regulatory text of this document that are treated with the pesticide subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by the FQPA. Under this section, any residue of this pesticide in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the

application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

*D. What is the Contribution to Tolerance Reassessment?*

By law, EPA is required by August 2002 to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996. EPA is also required to assess the remaining tolerances by August, 2006. As of July 5, 2002, EPA has reassessed over 5,450 tolerances. In this rule, EPA is revoking 100 tolerances which count as reassessments toward the August, 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

**III. Are There Any International Trade Issues Raised by this Final Action?**

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Regster**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

**IV. Objections and Hearing Requests**

*A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–2002–0068 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 16, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Objection/hearing fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–2002–0068, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

**V. Regulatory Assessment Requirements**

This final rule will revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive

Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticide listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with benomyl. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis.

In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

## VI. Submission to Congress and the Comptroller General

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

### List of Subjects in 40 CFR Part 180

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

Dated: June 28, 2002.

**Marcia E. Mulkey,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

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

**Authority:** 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.294 is amended by revising the tables to paragraphs (a) and (c), to read as follows:

### § 180.294 Benomyl; tolerances for residues.

(a) * * *

| Commodity | Parts per million | Expiration/Revocation Date |
|---|---|---|
| Almond, hulls | 1.0 | 1/1/07 |
| Apple, postharvest | 7.0 | 1/1/08 |
| Apricot, postharvest | 15.0 | 1/1/08 |
| Banana, postharvest, not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded | 1.0 | 1/1/08 |
| Barley, grain | 0.2 | 1/1/08 |
| Barley, straw | 0.2 | 1/1/08 |
| Bean | 2.0 | 1/1/07 |
| Beet, sugar, roots | 0.2 | 1/1/07 |
| Beet, sugar, tops | 15.0 | 1/1/07 |
| Blackberry | 7.0 | 1/1/08 |
| Blueberry | 7.0 | 1/1/08 |
| Boysenberry | 7.0 | 1/1/08 |
| Broccoli | 0.2 | 1/1/06 |
| Brussels sprouts | 15.0 | 1/1/06 |
| Cabbage | 0.2 | 1/1/06 |
| Cabbage, chinese, bok choy | 10.0 | 1/1/06 |
| Cabbage, chinese, napa | 10.0 | 1/1/06 |

| Commodity | Parts per million | Expiration/Revocation Date |
|---|---|---|
| Carrot, roots | 0.2 | 1/1/07 |
| Cattle, fat | 0.1 | 1/1/08 |
| Cattle, meat | 0.1 | 1/1/08 |
| Cattle, meat by-products | 0.1 | 1/1/08 |
| Cauliflower | 0.2 | 1/1/06 |
| Celery | 3.0 | 1/1/07 |
| Cherry, postharvest | 15.0 | 1/1/08 |
| Citrus, dried pulp | 50.0 | 1/1/08 |
| Collards | 0.2 | 1/1/06 |
| Corn, sweet, forage | 0.2 | 1/1/08 |
| Corn, sweet, kernel plus cob with husks removed | 0.2 | 1/1/08 |
| Corn, sweet, stover | 0.2 | 1/1/08 |
| Cucumber | 1.0 | 1/1/07 |
| Currant | 7.0 | 1/1/08 |
| Dewberry | 7.0 | 1/1/08 |
| Egg | 0.1 | 1/1/08 |
| Eggplant | 0.2 | 1/1/09 |
| Fruit, citrus, postharvest | 10.0 | 1/1/08 |
| Garlic | 0.2 | 1/1/06 |
| Goat, fat | 0.1 | 1/1/08 |
| Goat, meat | 0.1 | 1/1/08 |
| Goat, meat by-products | 0.1 | 1/1/08 |
| Grape | 10.0 | 1/1/08 |
| Grape, raisin | 50.0 | 1/1/08 |
| Hog, fat | 0.1 | 1/1/08 |
| Hog, meat | 0.1 | 1/1/08 |
| Hog, meat by-products | 0.1 | 1/1/08 |
| Horse, fat | 0.1 | 1/1/08 |
| Horse, meat | 0.1 | 1/1/08 |
| Horse, meat by-products | 0.1 | 1/1/08 |
| Kale | 0.2 | 1/1/06 |
| Kohlrabi | 0.2 | 1/1/06 |
| Loganberry | 7.0 | 1/1/08 |
| Mango | 3.0 | 1/1/08 |
| Melon | 1.0 | 1/1/07 |
| Milk | 0.1 | 1/1/08 |
| Mushroom, postharvest | 10.0 | 1/1/08 |
| Mustard greens | 0.2 | 1/1/06 |
| Nectarine, postharvest | 15.0 | 1/1/08 |
| Nut | 0.2 | 1/1/07 |
| Oat, grain | 0.2 | 1/1/08 |
| Oat, straw | 0.2 | 1/1/08 |
| Peach, postharvest | 15.0 | 1/1/08 |
| Peanut | 0.2 | 1/1/08 |
| Peanut, hay | 15.0 | 1/1/08 |
| Pear, postharvest | 7.0 | 1/1/08 |
| Pepper | 0.2 | 1/1/09 |
| Pineapple, postharvest | 35.0 | 1/1/08 |
| Pistachio | 0.2 | 1/1/07 |
| Plum, postharvest | 15.0 | 1/1/08 |
| Plum, prune, fresh, postharvest | 15.0 | 1/1/08 |
| Poultry, fat | 0.1 | 1/1/08 |
| Poultry, liver | 0.2 | 1/1/08 |
| Poultry, meat | 0.1 | 1/1/08 |
| Poultry, meat by-products, except liver | 0.1 | 1/1/08 |
| Pumpkin | 1.0 | 1/1/07 |
| Raspberry | 7.0 | 1/1/08 |
| Rice | 5.0 | 1/1/08 |
| Rice, hulls | 20.0 | 1/1/08 |
| Rice, straw | 15.0 | 1/1/08 |
| Rutabaga | 0.2 | 1/1/07 |
| Rye, grain | 0.2 | 1/1/08 |
| Rye, straw | 0.2 | 1/1/08 |
| Sheep, fat | 0.1 | 1/1/08 |
| Sheep, meat | 0.1 | 1/1/08 |
| Sheep, meat by-products | 0.1 | 1/1/08 |
| Soybean | 0.2 | 1/1/07 |
| Spinach | 0.2 | 1/1/07 |
| Squash, summer | 1.0 | 1/1/07 |
| Squash, winter | 1.0 | 1/1/07 |
| Strawberry | 5.0 | 1/1/08 |
| Sweet potato, roots | 0.2 | 1/1/07 |
| Tomato | 5.0 | 1/1/09 |
| Tomato, concentrated products | 50.0 | 1/1/09 |
| Turnip, roots | 0.2 | 1/1/07 |
| Wheat, grain | 0.2 | 1/1/08 |
| Wheat, straw | 15.0 | 1/1/08 |

* * * * *

(c) * * *

| Commodity | Parts per million | Expiration/Revocation Date |
|---|---|---|
| Avocado | 3.0 | 1/1/08 |
| Dandelion, leaves | 10.0 | 1/1/07 |
| Papaya | 3.0 | 1/1/08 |
| Pistachio | 0.2 | 1/1/07 |
| Turnip, greens | 6.0 | 1/1/07 |
| Watercress | 10.0 | 1/1/07 |

* * * * *

[FR Doc. 02–17872 Filed 7–16–02; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[OPP–2002–0118; FRL–7184–4]**

**RIN 2070–AB78**

## Methoxychlor; Tolerance Revocations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document revokes all tolerances for residues of methoxychlor because all registrations of pesticides containing methoxychlor are suspended or canceled, and there are insufficient data to find the pesticide safe in accordance with section 4(b)(2)(A) of the Federal Food, Drug, and Cosmetic Act (FFDCA). The primary registrant of methoxychlor (Kincaid Enterprises, Inc.) has failed to submit the necessary data required to support continued registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of pesticide products containing methoxychlor. As a result, all methoxychlor products are currently suspended. The regulatory actions specified in this document contribute toward the Agency's tolerance reassessment requirements of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002, to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the revocation of 79 tolerances and exemptions which are counted among tolerance/exemption reassessments made toward the August 2002 review deadline.

**DATES:** This regulation is effective October 15, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0118, must be received by EPA on or before September 16, 2002.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0118 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Beth Edwards, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5400; e-mail address: edwards.beth@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br><br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions

regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0118. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background

*A. What Action is the Agency Taking?*

This final rule revokes all tolerances for residues of methoxychlor. In the **Federal Register** of April 4, 2002 (67 FR 16073) (FRL–6828–8), EPA issued a proposed rule to revoke all methoxychlor tolerances because all registrations of pesticides containing methoxychlor are suspended or canceled, and there are insufficient data to find the pesticide safe in accordance with section 4(b)(2)(A) of FFDCA. The primary registrant of methoxychlor (Kincaid Enterprises, Inc.) has failed to submit the necessary data required to support continued registration of pesticide products containing methoxychlor. As a result, all methoxychlor products are currently suspended. The April 4, 2002 proposal invited public comment for consideration and for support of tolerance retention under FFDCA standards, but no comments were received during the 60–day comment period that changed the Agency's position concerning methoxychlor.

*B. What is the Agency's Authority for Taking this Action?*

It is EPA's general practice to revoke tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

*C. When Do These Actions Become Effective?*

These actions become effective 90 days following publication of this final rule in the **Federal Register.** EPA has delayed the effectiveness of these revocations for 90 days following publication of this final rule to ensure that all affected parties receive notice of EPA's actions. Consequently, the effective date is October 15, 2002. For this final rule, EPA believes that all existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation have already been exhausted since such products have been suspended since June 26, 2000. Similarly, the Agency believes that commodities legally treated with methoxychlor have by this time cleared the channels of trade.

Any commodities listed in 40 CFR 180.120 that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

*D. What is the Contribution to Tolerance Reassessment?*

By law, EPA is required by August 2002 to reassess 66% or about 6,400 of the tolerances in existence on August 2 1996. EPA is also required to assess the remaining tolerances by August 2006. As of April 29 2002, EPA has reassessed over 4,140 tolerances. In this rule, EPA is revoking a total of 79 tolerances which count as reassessments toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

## III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decisions. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up

the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

## IV. Objections and Hearing Requests

*A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0118 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 16, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Objection/hearing fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0118, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## V. Regulatory Assessment Requirements

This final rule will revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial

number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis.

In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

### VI. Submission to Congress and the Comptroller General

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

### List of Subjects in 40 CFR Part 180

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

Dated: June 28, 2002.

**Marcia E. Mulkey,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

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

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

### § 180.120 [Removed]

2. Section 180.120 is removed.

[FR Doc. 02–17873 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–S

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 20

**[CC Docket No. 94–102; DA 02–1575]**

## Enhanced 911 Emergency Calling; Use of Non-Initialized Wireless Phones

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; request for comments on petitions for reconsideration and delay of effective date.

**SUMMARY:** This document invites comment on a Emergency Services Interconnection Forum's (ESIF) Petition for Reconsideration (Reconsideration Petition) of the Commission's previous decision in this proceeding and a separately filed Request for Stay (Stay Request) of the effective date of the rules adopted in that decision. That decision considered the problems associated with the inability of a public safety answering point to call back an emergency caller for further critical information when that caller is dialing 911 using a non-service initialized wireless telephone. The Commission now seeks comment on ESIF's Reconsideration Petition in order to establish a record on which to base a final determination on the Petition.

**DATES:** Comments are due on or before August 2, 2002, and reply comments are due on August 19, 2002.

**ADDRESSES:** All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission 445 12th Street, SW., Washington, DC 20554. Comments may also be filed through the Commission's Electronic Comment Filing System via the Internet to *http://www.fcc.gov/e-file/ecfs.html.*

**FOR FURTHER INFORMATION CONTACT:** David Siehl, Attorney-Advisor, Wireless Telecommunications Bureau, 202–418–1310.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document in CC Docket No. 94–102, DA 02–1575; released July 3, 2002. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.* Alternative formats (computer diskette, large print, audio cassettes, and Braille) are available to persons with disabilities by contacting Brian Millin at 202–418–7426, TTY 202–418–7365, or at *bmillin@fcc.gov.*

### Synopsis

1. The Commission invites comment on a Petition for Reconsideration (Reconsideration Petition) of the Report and Order (R&O) in this proceeding in

which the Commission addressed the issues associated with the inability of a Public Safety Answering Point (PSAP) to call back a 911 caller who is disconnected prematurely when that caller is using a non-service initialized wireless telephone (non-initialized phone). Non-initialized phones are handsets that are not registered for service with any Commercial Mobile Radio Service carrier and thus lack a dialable number. The R&O may be found at 67 FR 36112, May 23, 2002. The Reconsideration Petition was filed by the Emergency Services Interconnection Forum (ESIF), which also separately filed a Request for Stay (Stay Request) of the effective date (October 1, 2002) for 47 CFR 20.18(l)(1)(i) and (l)(2)(i), adopted in the R&O. The Commission also solicits comment on the Stay Request.

2. Section 20.18(l)(1)(i), requires that licensees donating non-service initialized handsets through carrier-sponsored efforts program those handsets with the code 123–456–7890 as the telephone number/mobile identification number to alert PSAPs that a 911 call is being made from a wireless phone that lacks call-back capability. Further, section 20.18(l)(2)(i) requires that all manufacturers of ''911-only'' handsets manufactured on or after October 1, 2002, program each handset with the same code.

3. The Reconsideration Petition notes a solution not raised in the record to address the lack of call-back capability. The proposed solution is based on a technical standard published jointly by the Telecommunications Industry Association (TIA) and ATIS. The standard suggests the use of a wireless handset's Electronic Serial Number (ESN) or International Mobile Station Equipment Identity (IMEI) to create a surrogate number: ''911'' plus the last seven digits of the ESN or IMEI expressed as a decimal number. According to the Reconsideration Petition, using this surrogate number provides easier identification of the specific phone used in placing a wireless 911 call. Moreover, the surrogate number allegedly permits (1) the PSAP to prevent the misuse of the 9–1–1 system due to repeated harassing calls made on non-initialized phones, and (2) the identification of legitimate emergency callers making multiple calls.

4. The Reconsideration Petition also asserts that ESIF has identified a problem that was not addressed in the record of this proceeding. According to ESIF, the number requirement, 123–456–7890, in the Commission's new rules also serves as a valid International Roaming MIN (Mobile Identification Number) (''IRM'') range. As a result, the potential impact of the 123–456–7890 code is to remove one million numbers the IRM assignment pool, when IRMs are a finite numbering resource where the first number must be a zero (0) or a one (1).

**Administrative Matters**

5. The Commission seeks comment on the issues raised by the Petition and Request. Pursuant to 47 CFR 1.1200(a), this proceeding is designated a ''permit but disclose'' proceedings and subject to § 1.1206. *Ex parte* presentations that are made will be allowed but must be disclosed in accordance with the requirements of 47 CFR 1.1206(b).

6. Pursuant to 47 CFR 1.415, 1.419, interested parties may file oppositions to the Request for Stay on or before August 2, 2002. Replies are due August 19, 2002.

7. Pursuant to § 1.429 of the Commission's rules, interested parties may file comments to the Petition for Reconsideration on or before August 2, 2002. Reply comments are due August 19, 2002.

8. Pleadings may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filing parties should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, parties should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary,

9. Federal Communications Commission. In addition, a diskette copy should be sent to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail to *qualexint@aol.com.*

**List of Subjects in 47 CFR Part 20**

Communications common carrier, Communications equipment, Radio.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–18047 Filed 7–16–02; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 25 and 101

**[FCC 01–323]**

### Redesignation of the 18 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the Ka-band, and the Allocation of Additional Spectrum for Broadcast Satellite-Service Use; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Commission adopted an order granting in part and denying in part the petitions for reconsideration of the 18 GHz Order filed by various parties. The Commission, among other things, affirmed its basic findings in the 18 GHz Order and addressed a number of issues raised by parties in their reconsideration petitions. Because an error was made in the publication of the final rule, this document contains a correction to the final rule document which was published in the **Federal Register** on December 7, 2001 (66 FR 63512).

**DATES:** Effective July 17, 2002.

**ADDRESSES:** Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW–B204F, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Peggy Reitzel, Policy Division, International Bureau, (202) 418–1449.

**SUPPLEMENTARY INFORMATION:** On December 7, 2001 (66 FR 63512), the **Federal Register** published a summary of the final rule in the above captioned proceeding. Instruction 5 of the rules amended § 25.208 by revising paragraph (c), removing paragraph (d), and redesignating paragraph (e) as paragraph (d) and paragraph (f) as paragraph (e). In redesignating paragraph (e) as paragraph (d), the instructions neglected to revise paragraph (d) of § 25.208(d). This document corrects § 25.208(d).

On page 63515, in the third column, instruction 5 is corrected to read as follows:

5. Section 25.208 is amended by removing paragraph (d), redesignating paragraphs (e) and (f) as paragraphs (d) and (e) and by revising paragraph (c) and newly designated paragraph (d) to read as follows:

**§ 25.208 Power flux-density limits.**

* * * * *

(c) In the 18.3–18.8 GHz, 19.3–19.7 GHz, 22.55–23.00 GHz, 23.00–23.55 GHz, and 24.45–24.75 GHz frequency bands, the power flux-density at the Earth's surface produced by emissions from a space station for all conditions for all methods of modulation shall not exceed the following values:

(1) $-115$ dB (W/m$^2$) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane.

(2) $-115 + 0.5$ (d–5) dB (W/m$^2$) in any 1 MHz band for angles of arrival d (in degrees) between 5 and 25 degrees above the horizontal plane.

(3) $-105$ dB (W/m$^2$) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane.

(d) In addition to the limits specified in paragraph (c) of this section, the power flux-density across the 200 MHz band 18.6–18.8 GHz produced at the Earth's surface by emissions from a space station under assumed free-space propagation conditions shall not exceed $-95$ dB (W/m$^2$) for all angles of arrival. This limit may be exceeded by up to 3 dB for no more than 5% of the time.

* * * * *

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–17993 Filed 7–16–02; 8:45 am]

**BILLING CODE 6712–01–U**

## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## 49 CFR Part 195

**[Docket No. RSPA–97–2762; Amdt. 195–76]**

**RIN 2137–AD24**

## Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Hazardous Liquid Operators With Less Than 500 Miles of Pipelines)

**AGENCY:** Research and Special Programs Administration (RSPA), U.S. Department of Transportation (DOT).

**ACTION:** Final rule; correction.

**SUMMARY:** In the **Federal Register** of January 16, 2002, (67 FR 2136) we published a Final Rule extending the regulations on managing the integrity of hazardous liquid and carbon dioxide pipelines that affect high consequence areas to operators with less than 500 miles of regulated pipelines. Inadvertently, the date after which prior integrity assessments may qualify for use was incorrectly stated. This document corrects that error.

**DATES:** This correction takes effect February 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** L. M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, or by E-mail at *buck.furrow@rspa.dot.gov.*

**SUPPLEMENTARY INFORMATION:** We published a Final Rule document in the **Federal Register** of January 16, 2002, (67 FR 2136), extending the regulations on managing the integrity of hazardous liquid and carbon dioxide pipelines that affect high consequence areas to operators with less than 500 miles of regulated pipelines. In § 195.452(d)(2), the date after which prior assessments may qualify for use was incorrectly published as December 18, 2006. The correct date is February 15, 1997.

In FR Doc. 01–31655, published January 16, 2002, (67 FR 2136), make the following correction: On page 2144, correct the table in the second column by removing the date ''December 18, 2006'' and adding ''February 15, 1997'', in its place.

Issued in Washington, D.C. on July 12, 2002.

**Ellen G. Engleman,**

*Administrator.*

[FR Doc. 02–18033 Filed 7–16–02; 8:45 am]

**BILLING CODE 4910–60–P**

# Proposed Rules

Federal Register
Vol. 67, No. 137
Wednesday, July 17, 2002

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 ENERGY

### 10 CFR Parts 710, 711, and 712

**[Docket No. SO–RM–00–HRP]**

**RIN 1992–AA29**

### Human Reliability Program

**AGENCY:** Office of Security, Department of Energy.

**ACTION:** Notice of proposed rulemaking and public hearings.

**SUMMARY:** The Department of Energy (DOE) proposes to establish a Human Reliability Program that would consolidate its Personnel Security Assurance Program (PSAP) and Personnel Assurance Program (PAP). The PSAP is an access authorization program for individuals who apply for or occupy certain positions that are critical to the national security. The PSAP requires an initial and annual supervisory review, a medical assessment, management evaluation, and DOE personnel security review of all applicants or incumbents. The PAP is a nuclear explosive safety program using many of the same evaluations of the PSAP to ensure that employees assigned to nuclear explosive duties do not have emotional, mental, or physical conditions that could result in an accidental or unauthorized detonation of nuclear explosives. DOE has established many common elements for the administration of the PSAP and PAP. Accordingly, this proposed regulation would consolidate both programs into a single program, incorporating all the important facets of each into an understandable, comprehensive, and concise regulation.

**DATES:** The comment period for this proposed rule will end on October 15, 2002. Public hearings will be held on September 5, 2002, in Albuquerque, NM; September 10, 2002, in Livermore, CA; September 12, 2002, in Amarillo, TX; and September 17, 2002, in Oak Ridge, TN. All hearings will be held from 9 a.m. to 12 noon and 1 p.m. to 4 p.m.

Requests to speak at any of the hearings should be mailed to Linda Repass, Personnel Security Assurance Program Manager, Security Policy Staff, Office of Security, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; e-mailed to the following address: *linda.repass@hq.doe.gov,* or telephoned to (301) 903–4800 by August 22, 2002, for the Albuquerque, NM, hearing; by August 27, 2002, for the Livermore, CA, hearing; by August 29, 2002, for the Amarillo, TX, hearing; and by September 3, 2002, for the Oak Ridge, TN, hearing. Each presentation is limited to no more than 10 minutes to ensure that all persons have an opportunity to speak.

**ADDRESSES:** Written comments (7 copies) should be addressed to Linda Repass, Personnel Security Assurance Program Manager, Security Policy Staff, Office of Security, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Alternatively, comments may be e-mailed to the following address: *linda.repass@hq.doe.gov.* Where possible, commenters should identify the specific section(s) of the proposed rule to which they are responding.

Copies of the public hearing transcripts, written comments, references to technical material pertaining to this notice, and any other docket material may be reviewed and copied at the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays. The docket material for this rulemaking will be filed under ''SO–RM–00–HRP.''

The public hearings for this rulemaking will be held at the following addresses: Albuquerque, NM; Albuquerque Marriott, 2101 Louisiana Boulevard, NE; Livermore, CA: Press Room, Trailer 6575 (Greenville Road Entrance) at the Lawrence Livermore National Laboratory, 7000 East Avenue; Amarillo, TX: Ambassador Hotel, 3100 I–40 West; and Oak Ridge, TN: Oak Ridge Mall, Community Room, Rutgers Place Entrance.

For more information concerning public participation in this rulemaking proceeding, see Section IV of this notice of proposed rulemaking (Opportunity for Public Comment).

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Repass, Personnel Security Assurance Program Manager, Security Policy Staff, Office of Security, Department of Energy, 1000 Independence Avenue, SW, Washington, DC, 20585, (301) 903–4800, or Mr. Charles Westfall, Personnel Assurance Program Manager, Office of Nuclear Weapons Surety, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (301) 903–4051.

For information concerning Subpart B, Medical Standards: Mr. Kenneth O. Matthews, Office of Health Studies, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (301) 903–6398.

**SUPPLEMENTARY INFORMATION:**



## I. Background

Pursuant to the Atomic Energy Act of 1954 (the AEA), the DOE owns, leases, operates or supervises activities at facilities in various locations in the United States. Many of these facilities are involved in researching, testing, producing, disassembling, or transporting nuclear explosives, which, when combined with Department of Defense delivery systems, become nuclear weapons systems. These facilities are often involved in other activities that affect the national security. DOE has long been aware that if certain DOE facilities are compromised, national security would be severely damaged. To guard against such compromise, DOE has taken the initiative to implement security and safety reliability programs designed to ensure that individuals occupying positions affording unescorted access to certain materials, facilities, and

programs meet the highest standards of reliability as well as physical and mental suitability.

In 1989, as part of its ongoing efforts to protect national security, DOE established regulations at 10 CFR part 710, subpart B, ''Criteria and Procedures for Establishment of the Personnel Security Assurance Program and Determinations of an Individual's Eligibility for Access to a Personnel Security Assurance Program Position.'' These Personnel Security Assurance Program (PSAP) regulations apply to individuals who occupy positions throughout the DOE complex that involve access to, or responsibility for, special nuclear material or otherwise have the potential to cause unacceptable damage to national security. In 1998, DOE established regulations at 10 CFR part 711, ''Personnel Assurance Program (PAP),'' which codified longstanding certification procedures pertaining to individuals who occupy positions that involve hands-on work with, or access to, nuclear explosives.

As the PSAP and PAP evolved, significant similarities developed between the two programs in their administration, requirements, and concerns. DOE has concluded that the monetary cost and time requirements of administering two very similar programs with similar goals, the protection of special nuclear material and nuclear explosives, cannot be justified as consistent with good business practices when contrasted with the benefits of consolidation. Accordingly, DOE has determined that a merger of the two programs is appropriate, which would result in more stringent medical assessments and training requirements for individuals in PSAP positions. DOE determined that a new rule, based on the many common elements of the PSAP and PAP, would establish a single unified management structure of both programs while incorporating all the important elements into one comprehensive regulation. By adopting a uniform set of requirements applicable to both categories of employees, DOE expects to have a stronger, more efficient, and effective human reliability program for personnel occupying these positions.

The proposed combined program, named the Human Reliability Program (HRP), is designed to meet the objective of protecting the national security through a system of continuous evaluation of individuals working in positions affording unescorted access to certain materials, facilities, and programs. The purpose of this continuous evaluation is to identify in a timely manner individuals whose judgment may be impaired by physical and/or emotional disorders, the use of illegal drugs or the abuse of legal drugs or other substances, the abuse of alcohol, or any other condition or circumstance that may represent a reliability, safety, and/or security concern.

The HRP will require that all individuals working in positions affording unescorted access to certain materials, facilities, and programs be certified to meet the highest standards of reliability and physical and mental suitability before such access may be granted. The certification of such individuals is subject to immediate review in the event an individual's behavior indicates a reliability or security risk to nuclear explosive operations or national security, during which time the individual will be immediately removed from assigned duties. Immediate removal is an interim, precautionary action and does not constitute a final determination regarding an individual's reliability or access authorization status. Individuals who are removed from HRP duties for non-security issues are entitled to resolve these issues through a formal procedure outlined in proposed sections 712.19 through 712.23. For removal based on a security concern, 10 CFR part 710 provides procedures for resolving issues concerning eligibility for an access authorization. These regulations provide the individual a written statement of the issues, an opportunity to respond, including an opportunity for a hearing before a DOE Hearing Officer, and an opportunity to have the opinion of the hearing officer reviewed at a higher level before a final determination is made.

Most of the provisions of the proposed HRP rule are taken directly from the PSAP and PAP regulations (*see* section-by-section description of the proposed HRP set forth below). However, the proposed HRP rule has several requirements that are new to all individuals and some that are new to certain HRP positions. These include:

1. *Random alcohol testing for all individuals in HRP positions.* DOE believes that the misuse or abuse of alcohol represents a risk that is incompatible with the nature of work performed by individuals in HRP positions. DOE has a compelling interest in ensuring that individuals who hold HRP positions are functioning at the highest level of reliability because they have unescorted access to certain materials, facilities, and programs. This interest outweighs the diminished privacy expectations in respect to intrusions occasioned by a carefully tailored alcohol testing program. The government must ensure the unimpaired judgment of persons who perform hands-on work with, or have access to, nuclear explosives or have access to, or responsibility for, special nuclear material, or who otherwise have the potential to cause unacceptable damage to national security. It also must ensure that the persons charged with the security of these research and production facilities do not pose a risk to the life of the citizenry as the result of impaired perception or judgment that might result from the use of deadly force.

This proposed regulation is consistent with regulations of other Federal agencies charged with overseeing critical activities. On February 15, 1994, the Department of Transportation (DOT) operating agencies promulgated alcohol testing regulations for the aviation, motor carrier, rail, transit, and pipeline transportation industries. In the common preamble for those regulations, the operating agencies discussed the research and recommendations by expert bodies, including the National Highway Transportation Safety Administration, the National Transportation Safety Board, the National Academy of Sciences, and the Transportation Research Board regarding the effects of blood alcohol (59 FR 7302, 7318–19). DOT concluded, based on this body of research, that while impairment of performance of safety-sensitive functions was clearly increased above 0.04 percent alcohol concentration, there was evidence of some impairment at levels as low as 0.02, the lowest level that can be reliably measured. Alcohol affects individuals differently; indeed, any blood alcohol impairs some individuals. Based on this evidence, DOT adopted a standard that requires removal of an employee from a safety-sensitive position at any alcohol concentration of 0.02 percent or greater. Some DOE employees at certain sites already are subject to random alcohol testing pursuant to DOT regulations.

The Nuclear Regulatory Commission (NRC) considers the misuse of alcohol to be a serious and pervasive workplace problem (Barnes, et al., *Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues*, 1988, NUREG/CR–5227, U.S. Nuclear Regulatory Commission, Washington, DC; Moore et al., *Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues*, 1989, NUREG/CR–5227, Supplement 1, U.S. Nuclear Regulatory Commission, Washington, DC). The NRC requires alcohol testing in its

fitness-for-duty program (10 CFR Part 26).

The proposed regulation is supported by scientific research that shows that cognitive and physical task performance decreases as a result of alcohol abuse (Hartwell, Steele, and Rodman, ''Workplace alcohol testing programs: prevalence and trends,'' *Monthly Labor Review*, V121, 1998; Mangione, et al., ''Employee drinking practices and work performance,'' *Journal of Studies on Alcohol*, V60, 1999; Ames, Grube, and Moore, ''The relationship of drinking and hangovers to workplace problems: An empirical study,'' *Journal of Studies on Alcohol* V58, 1997; Yesavage and Leirer, ''Hangover effects on aircraft pilots 14 hours after alcohol ingestion: A preliminary report,'' *American Journal of Psychiatry*, V143, 1986).

The job tasks performed by individuals in the HRP are clearly as, or more, safety-sensitive than those performed by workers in the transportation industry and the nuclear power industry and have the added security-sensitive requirements. The potential for (1) an accidental or unauthorized detonation of a nuclear explosive; (2) use of deadly force in guarding or transporting special nuclear materials or nuclear weapons; (3) a criticality incident involving special nuclear material; or (4) the misuse of classified information clearly demonstrates that alcohol abuse poses the same safety and security risks as does drug use. The proposed random alcohol testing is based on the DOT regulations that already are required for transportation workers at many DOE sites. DOE believes that random alcohol testing will enhance the safety and reliability aspects of the HRP and deter the use of alcohol on the job, as well as during a period prior to reporting for work. Individuals in HRP positions also will be subject to testing if they are involved in an incident, unsafe practice or occurrence, or if there is reasonable suspicion that they may be impaired.

2. *Eight-hour abstinence rule for alcohol*. In the past, individuals reporting for nuclear explosive duties have been prohibited from drinking alcohol during the eight hours before their work assignments. This eight-hour abstinence requirement is being retained in the HRP for those employees and is now made applicable to employees in specific positions designated by the Operations Office Manager, the National Nuclear Security Administration (NNSA) Administrator or his or her designee, or the appropriate Lead Program Secretarial Officer, or his or her designee. This abstinence requirement will be in addition to the random alcohol testing requirement.

3. *Annual Submission of Questionnaire for National Security Positions (QNSP), Part 2*. Previously this has been required only of participants in the PSAP, however; DOE proposes to make this a requirement for all individuals in the HRP. This requirement underscores DOE's continuous commitment to evaluate personnel security concerns that is fundamental to the success of the program. This annual requirement is designed to assist in assuring that HRP individuals and HRP-certified individuals are reliable and trustworthy.

4. *Psychological evaluations*. This requirement has been in effect for PAP individuals and is a new requirement for all other HRP participants. The psychological evaluation, as part of the overall medical assessment, addresses an individual's mental or behavioral state as it relates to security and safety concerns. This evaluation includes the completion of a psychological assessment (test) and a semi-structured interview with the Designated Psychologist, or a psychologist under his or her supervision, who has the latitude to vary the focus and content of questions based on the results of the psychological test and/or the interviewee's response to certain questions. Through this evaluation process, an assessment is made of whether the individual shows at-risk behavior or conditions that raise a security concern or may impact the ability to perform his or her job duties in a safe and reliable manner. Individuals will be subject to an initial psychological evaluation and annual evaluations thereafter. Every third year individuals in an HRP position will be required to have another psychological assessment (test). This process will assist medical personnel in their efforts to monitor participants and ensure that individuals in HRP positions are reliable and trustworthy.

5. *Counterintelligence polygraph examinations*. Individuals occupying either a PAP or PSAP position must submit to a counterintelligence-scope polygraph examination in accordance with the Polygraph Examination Regulation, 10 CFR Part 709. Both the PAP and PSAP regulations were amended to reflect this requirement when the Polygraph Examination Regulation was published on December 17, 1999 (64 FR 70962). This requirement is continued in the HRP rule. Refusal to submit to such a polygraph examination will result in rejection of the initial application for, or removal from, an HRP position, consistent with procedures in 10 CFR part 709.

**II. Section-by-Section Discussion**

The proposed HRP regulations are organized like the existing PAP regulations in 10 CFR part 711. Subpart A contains the provisions that establish the HRP and the HRP certification requirements; subpart B contains the provisions of the medical standards required for HRP certification. In drafting subpart A, the DOE carefully evaluated the existing provisions in both 10 CFR part 710, subpart B (the PSAP regulations) and part 711, subpart A (the PAP general regulations). Following are descriptions of selected proposed rule provisions:

*Section 712.3, Definitions*. The definition of ''access'' combines the PAP definition of ''access'' and the PSAP definition of ''direct access'' without substantive change.

The definition of ''alcohol use disorder'' is taken from PAP regulations. DOE proposes new definitions of ''alcohol'' and ''alcohol abuse.'' A definition of ''evidential-grade breath alcohol device'' is proposed, and is not currently found in either the PSAP or PAP regulations. A definition of ''random alcohol testing'' also is proposed.

The definitions of ''contractor'' in both the PSAP and PAP regulations would be replaced by the proposed definition of ''contractor.'' The proposed definition is more specific and is derived from the definition of ''contractor'' in 10 CFR part 1045, DOE's regulations on nuclear classification and declassification.

The term ''transfer'' is defined as the permanent move of an HRP-certified individual to another site having an HRP position.

*Section 712.10, HRP positions.* Proposed § 712.10 (a) lists the positions that will be included in the HRP and will require initial and annual certification. These include positions that afford access to Category I special nuclear material (SNM) or have responsibility for the transportation or protection of such material. Other positions included are those with the potential for causing unacceptable damage to national security that have been nominated for HRP designation by management officials and approved by the Administrator of the National Nuclear Security Administration (NNSA), or his or her designee, or by the appropriate Lead Program Secretarial Officer, or his or her designee. These are currently classified as PSAP positions, whereas the positions that afford direct access to the control areas of a nuclear

material production reactor have been eliminated from this rule (see 10 CFR 710.55). The HRP also will include all PAP positions (i.e., positions that involve nuclear explosive duties as defined in 10 CFR 711.3).

The proposed HRP also will include positions that afford access to information concerning vulnerabilities in protective systems when transporting nuclear explosives, nuclear devices, selected components or Category I quantities of SNM. The proposed category of positions includes many of the same ones currently in PSAP and PAP and may include others not previously in either program.

*Section 712.11, General requirements for HRP certification.* Proposed § 712.11 describes the certification requirements for all individuals in the HRP. The proposed psychological evaluation requirements, for example, have been in effect for PAP individuals and would be a new requirement for other HRP participants. Under this proposal, all HRP participants will be subject to a psychological evaluation, which consists of a psychological assessment (test) and a semi-structured interview with the designated psychologist or a psychologist under his or her supervision. Every third year, as part of the annual psychological evaluation, a psychological assessment (test) will be required. This process will enable medical personnel to monitor participants.

The proposed provision requiring HRP participants to submit annually the Questionnaire for National Security Position (QNSP), Part 2, currently applies only to participants in the PSAP. Application of this requirement to all HRP participants, including those currently in PAP, is considered an important element in the Department's ongoing process of ensuring that HRP individuals are reliable and trustworthy.

Random alcohol testing is proposed for all HRP positions. As discussed in the preamble, the DOE has a compelling interest in ensuring that individuals who hold an HRP position are functioning at the highest level of reliability. The DOE believes that misuse or abuse of alcohol presents a high level of risk at its research and production facilities. The risk of alcohol abuse or misuse by individuals in HRP positions warrants preventive action and intervention by the DOE to ensure protection of the environment, public health and safety, and national security.

*Section 712.12, HRP implementation.* Each DOE site or facility must prepare an HRP implementation plan that includes the same four annual components currently used in PSAP: supervisory review, medical assessment, management evaluation, and a DOE security review.

Many, but not all, of the PSAP and PAP positions are in the National Nuclear Security Administration. Section 3213 of the National Nuclear Security Administration Act (Pub. L. 106–65, Title XXXII) provides that no officer or employee of the NNSA, or contractor of the NNSA, may be ''subject to the authority, direction, or control of, any other officer, employee, or agent of the Department of Energy'' other than the Secretary of Energy (50 U.S.C. 2403). The proposed rule's section on implementation and other provisions has been drafted to satisfy this statutory limitation.

*Section 712.13, Supervisory review.* The proposed HRP supervisory review section consolidates current PSAP and PAP requirements found in 10 CFR 710.57 and 10 CFR 711.9, respectively.

*Section 712.14, Medical assessment.* The proposed medical assessment process is largely descriptive of the current process used in both PSAP and PAP. The main difference is the application of the annual PAP psychological evaluations to all individuals currently in PSAP. The psychological evaluation, as part of the overall medical assessment, addresses an individual's mental or behavioral state as it relates to security and safety concerns. This evaluation includes a semi-structured interview and completion of a psychological assessment. Through this evaluation process, an assessment is made as to whether the individual shows at-risk behavior or conditions, such as suicidal tendencies or attempted suicide, inability to deal with stress, hostility or aggression toward fellow workers or authority, uncontrolled anger, moodiness, depression, or other evidence of loss of emotional control. Individuals will be subject to an initial psychological evaluation and annual evaluations thereafter. Additionally, a psychological assessment (test) will be required every third year.

*Section 712.15, Management evaluation.* The management evaluation conducted for certification and recertification in the HRP will be conducted by the appropriate HRP management official. The management official will review the results of the supervisory review, medical assessment, and drug and alcohol testing, and will forward his or her recommendation to the HRP certifying official. If the evaluation reveals a security concern, the HRP management official must notify the applicable DOE personnel security office. Drug-testing requirements have not changed and are in accordance with 10 CFR part 707, for DOE contractor employees and DOE Order 3792.3 for DOE employees. Random, unannounced alcohol testing is a new requirement and will conform to the DOT procedures (49 CFR part 40, subpart C) already required at many DOE sites.

*Section 712.16, DOE security review.* As under the PAP and PSAP, security concerns identified at any stage of the certification process will be evaluated and resolved in accordance with DOE's regulations for determining eligibility for access to classified matter or special nuclear material in 10 CFR part 710, subpart A. This proposed rule will make no change to current policies and procedures.

*Section 712.17, Instructional requirements.* Proposed § 712.17 will require an initial and annual HRP instructional and educational program. The areas of instruction must include the objectives of the HRP, role and responsibilities of each individual in the HRP, procedures for recognizing and reporting security concerns, nuclear explosive duties and safety requirements for individuals in nuclear explosive positions, and procedures for recognizing and responding to behavioral changes and aberrant behavior in the workplace.

*Section 712.18, Transferring HRP certification.* Proposed § 712.18 describes the process for transferring an individual's HRP certification from one site to another. An individual must be currently certified in the HRP to request such a transfer.

*Sections 712.19 through 712.23.* The proposed rule's provisions for removing individuals from their HRP duties and resolving reliability concerns, which are not of a security concern, are similar to provisions in the current PAP regulations, 10 CFR 711.11 through 711.16. Under the proposed rule, however, final appeals of decisions to deny or revoke certification will be made by the DOE Deputy Secretary based on a recommendation of the Director, Office of Security. If removal is based on a security concern, the procedure described in 10 CFR part 710, will apply.

*Subpart B—Medical standards.* Subpart B contains the standards and procedures used to conduct medical assessments of HRP individuals. These standards and procedures were developed through the PAP rulemaking, completed on September 8, 1998 (63 FR 48060), and codified in subpart B to part 711. These provisions will be revised to reflect current DOE organization and

requirements of the National Nuclear Security Administration Act.

**III. Regulatory Review**

*A. Executive Order 12866*

Executive Order 12866, 58 FR 51735 (October 4, 1993) provides for a review by the Office of Information and Regulatory Affairs in the Office of Management and Budget of a ''significant regulatory action,'' which is defined as an action that may have an affect on the economy of $100 million or more or adversely affect the economy, competition, jobs, productivity, environment, public health or safety, or state, local or tribal governments. DOE has concluded that this proposed rule (10 CFR part 712) is not a significant regulatory action. Accordingly, this rulemaking has not been reviewed by the Office of Information and Regulatory Affairs.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires preparation of an initial regulatory flexibility analysis for every rule that must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rulemaking will not directly regulate small businesses or small governmental entities. It will apply principally to individuals who are employees of, or applicants for employment by, some of DOE's prime contractors, which are large businesses. There may be some affected small businesses that are subcontractors, but the rule will not impose unallowable costs. Accordingly, DOE certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

*C. National Environmental Policy Act*

The proposed rule, which consolidates the PAP and PSAP, relates to personnel qualifications that will have no impact on the environment. DOE has determined that this rule is covered under the Categorical Exclusion in DOE's National Environmental Policy Act regulations in paragraph A.6 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

*D. Paperwork Reduction Act*

DOE has determined that this proposed rule does not contain any new or amended recordkeeping, reporting or application requirements, or any other type of information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The OMB has defined the term ''information'' to exclude certifications, consents, and acknowledgments that entail only minimal burden [5 CFR 1320.3(h)(1)].

*E. Executive Order 13132*

Executive Order 13132, 64 FR 43255 (August 10, 1999), requires agencies to develop an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have ''federalism implications.'' Policies that have federalism implications are defined in the Executive Order to include regulations that 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.'' On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined this proposed rule and determined that it would not have a substantial direct effect 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. No further action is required by the Executive Order.

*F. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.*, requires a Federal agency to perform a detailed assessment of the costs and benefits of any rule imposing a Federal mandate with costs to state, local, or tribal governments, or to the private sector of $100 million or more. The proposed rule does not impose a Federal mandate requiring preparation of an assessment under the Unfunded Mandates Reform Act of 1995.

*G. Executive Order 12988*

Section 3(a) of Executive Order 12988, 61 FR 4729 (February 7, 1996) imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

*H. Executive Order 13084*

Under Executive Order 13084, 63 FR 27655 (May 19, 1998), DOE may not issue a discretionary rule that significantly or uniquely affects Indian tribal governments and imposes substantial direct compliance costs. This proposed rulemaking would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

*I. Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act of 1999, (Pub. L. No. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This proposed rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

**IV. Opportunity for Public Comment**

*A. Written Comments*

Interested individuals are invited to participate in this proceeding by submitting data, views, or comments on this proposed rule. To help DOE review the submitted comments, commenters are requested to reference the paragraphs [e.g., § 712.13 (c)] to which they refer. Seven copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. Comments should

be identified on the outside of the envelope and on the comments themselves with the designated ''Human Reliability Program Rule, Docket No. SO–RM–00–HRP.'' If anyone wishing to provide written comments is unable to provide seven copies, alternative arrangements can be made in advance with the DOE. All comments received on or before the date specified at the beginning of this notice, and other relevant information before final action is taken on the proposed rule, will be considered.

All submitted comments will be available for public inspection as part of the administrative record on file for this rulemaking in the DOE Freedom of Information Reading Room at the address indicated in the **ADDRESSES** section of this notice.

Pursuant to the provisions of 10 CFR 1004.11, anyone submitting information or data that he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document, as well as two copies, if possible, from which the information has been deleted. The DOE will make its determination as to the confidentiality of the information and treat it accordingly.

*B. Public Hearings*

Public hearings will be held at the times, dates, and locations indicated in the **DATES** and **ADDRESSES** section of this notice. DOE invites any person who has an interest in the proposed regulation, or who is a representative of a group or class of persons that has an interest, to make a request for an opportunity to make an oral presentation at the hearing. Requests to speak should be sent to the mailing address or e-mail address or made by calling the telephone number indicated in the **DATES** section of this notice. Requests must be received by the time specified in the **DATES** section of this notice. The person making the request should provide a daytime telephone number. Each person selected to speak at a public hearing will be notified as to his or her approximate speaking time. Seven copies of the statement should be brought to the hearing. If any person wishing to testify cannot meet this requirement, alternative arrangements may be made in advance with Linda Repass, at the address and telephone number indicated in the **DATES** section of this notice. The DOE reserves the right to select persons to be heard at each hearing, to schedule their presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to 10 minutes or less, based on the number of persons requesting to speak.

A Departmental official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing but will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191. Only those persons conducting the hearing may ask questions. At the conclusion of all initial oral statements, each person will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the same order as the initial statements. Any further procedural rules needed for the proper conduct of the hearing will be announced by the Presiding Officer at the hearing.

The DOE will retain the record of the full hearing, including the transcript, and make it available for inspection and copying in the DOE Freedom of Information Reading Room at the address provided in the **ADDRESSES** section of this notice of proposed rulemaking. Transcripts may be purchased from the court reporter.

If the DOE must cancel a hearing, every effort will be made to publish an advance notice of such cancellation in the **Federal Register**. Notice of cancellation also will be given to all persons scheduled to speak at the hearing. Hearing dates may be canceled in the event no public testimony has been scheduled in advance.

**List of Subjects**

*10 CFR Part 710*

Administrative practice and procedures, Classified information, Government contracts, Government employees, and Nuclear materials.

*10 CFR Part 711*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Government contracts, Government employees, Nuclear safety, Occupational safety and health.

*10 CFR Part 712*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Government contracts, Government employees, Health, National security, Nuclear safety, Occupational safety and health, Personnel security, and Security concerns.

Issued in Washington, DC, on June 21, 2002.

**Spencer Abraham,**

*Secretary of Energy.*

For reasons stated in the preamble, the DOE hereby proposes to amend Chapter III of Title 10 of the Code of Federal Regulations as set forth below:

## PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SIGNIFICANT QUANTITIES OF SPECIAL NUCLEAR MATERIAL

1. The authority citation continues to read as follows:

**Authority:** Sec. 145, 68 Stat. 942, as amended (42 U.S.C. 2165); sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); E.O. 10450; 3 CFR 1949–1953 Comp., p. 936, as amended; E.O. 10865; 3 CFR 1959–1963 Comp., p. 398 as amended; 3 CFR, Chap. IV, sec. 104(c); 38 Stat. 1237 (42 U.S.C. 5814), sec. 105 (a); 88 Stat. 1238 (42 U.S.C. 5815).

### Subpart B—[Removed]

2. Subpart B of 10 CFR part 710, is removed.

## PART 711—PERSONNEL ASSURANCE PROGRAM

3. The authority citation continues to read as follows:

**Authority:** 42 U.S.C. 2201 (p), 7191.

4. Part 711 is removed.

5. Part 712, Human Reliability Program is added to read as follows:

## PART 712—HUMAN RELIABILITY PROGRAM

### Subpart A—Establishment of and Procedures for the Human Reliability Program

**General Provisions**

Sec.
712.1 Purpose.
712.2 Applicability.
712.3 Definitions.

**Procedures**

712.10 Designation of HRP positions.
712.11 General requirements for HRP certification.
712.12 HRP implementation.
712.13 Supervisory review.
712.14 Medical assessment.
712.15 Management evaluation.
712.16 DOE security review.
712.17 Instructional requirements.
712.18 Transferring HRP certification.
712.19 Removal from HRP.
712.20 Request for reconsideration or certification review hearing.
712.21 Office of Hearings and Appeals.
712.22 Hearing officer's report and recommendation.
712.23 Final decision by DOE Deputy Secretary

### Subpart B—Medical Standards

712.30 Applicability.
712.31 Purpose.
712.32 Designated Physician.
712.33 Designated Psychologist.

**Authority:** 42 U.S.C. 2165; 42 U.S.C. 2201; 42 U.S.C. 5814–5815; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; E.O. 10450; 3 CFR 1949–1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 Comp., p. 398, as amended; 3 CFR Chap. IV.

## Subpart A—Establishment of and Procedures for the Human Reliability Program

### General Provisions

#### § 712.1 Purpose.

This part establishes the policies and procedures for a Human Reliability Program (HRP) in the Department of Energy (DOE), including the National Nuclear Security Administration (NNSA). The HRP is a security and safety reliability program designed to ensure that individuals who occupy positions affording access to certain materials, nuclear explosive devices, facilities, and programs meet the highest standards of reliability and physical and mental suitability. This objective is accomplished under this part through a system of continuous evaluation that identifies individuals whose judgment and reliability may be impaired by physical or emotional disorders, alcohol abuse, use of illegal drugs or the abuse of legal drugs or other substances, or any other condition or circumstance that may be of a security or safety concern.

#### § 712.2 Applicability.

The HRP applies to all applicants for, or current employees of DOE or a DOE contractor or subcontractor in a position defined or designated under § 712.10 of this subpart as an HRP position.

#### § 712.3 Definitions.

The following definitions are used in this part:

*Accelerated Access Authorization Program* means the DOE program for granting interim access to classified matter and special nuclear material based on a drug test, a National Agency Check, a psychological assessment, a counterintelligence-scope polygraph examination in accordance with 10 CFR Part 709, and a review of the applicant's completed ''Questionnaire for National Security Positions.'' (Standard Form 86).

*Access* means:

(1) A situation that may provide an individual proximity to or control over Category I special nuclear material (SNM); or

(2) The proximity to a nuclear explosive and/or Category I SNM that allows the opportunity to divert, steal, tamper with, and/or damage the nuclear explosive or material in spite of any controls that have been established to prevent such unauthorized actions.

*Alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol.

*Alcohol abuse* means consumption of any beverage, mixture, or preparation, including any medication containing alcohol that results in impaired social or occupational functioning.

*Alcohol use disorder* means a maladaptive pattern in which a person's intake of alcohol is great enough to damage or adversely affect physical or mental health or personal, social, or occupational function; or when alcohol has become a prerequisite to normal function.

*Blood Alcohol Concentration* means the measure, expressed as a decimal fraction, of the mass of alcohol in a volume of blood, which can be measured directly from blood or derived from the concentration of alcohol in a breath specimen.

*Certification* means the formal action the HRP certifying official takes that permits an individual to perform HRP duties after it is determined that the individual meets the requirements for certification under this part.

*Contractor* means subcontractors at all tiers and any industrial, educational, commercial, or other entity, grantee, or licensee, including an employee, that has executed an agreement with the Federal Government for the purpose of performing under a contract, license, or other arrangement.

*Designated Physician* means a licensed doctor of medicine or osteopathy who has been nominated by the Site Occupational Medical Director (SOMD) and approved by the Operations Office Manager or designee, with the concurrence of the Deputy Assistant Secretary for Health Studies, to provide professional expertise in occupational medicine for the HRP.

*Designated Psychologist* means a licensed Ph.D., or Psy.D., or clinical psychologist who has been nominated by the SOMD and approved by the Operations Office Manager or designee, with the concurrence of the Deputy Assistant Secretary for Health Studies, to provide professional expertise in the area of psychological assessment for the HRP.

*Diagnostic and Statistical Manual of Mental Disorders* means the current version of the American Psychiatric Association's manual containing definitions of psychiatric terms and diagnostic criteria of mental disorders.

*Deputy Assistant Secretary for Health Studies* means the DOE individual with responsibility for policy and quality assurance for DOE occupational medical programs.

*Drug abuse* means use of an illegal drug or misuse of legal drugs.

*Evidential-grade breath alcohol device* means a device that conforms to the model standards for an evidential breath-testing device as listed on the Conforming Products List of Evidential Breath Measurement Devices published by the National Highway Traffic Safety Administration.

*Flashback* means a transient, spontaneous, and often unpredictable recurrence of aspects of a person's use of a hallucinogen that involves dramatic alteration of emotional state, perception, sensation, and behavior.

*Hallucinogen* means any hallucinogenic drug or substance that has the potential to cause flashbacks.

*HRP-certified individual* means an individual who has successfully completed the HRP requirements.

*HRP certifying official* means the DOE Operations Office Manager or the manager's designee who certifies, recertifies, temporarily removes, or reviews the circumstances of an individual's removal from an HRP position.

*HRP individual* means an individual being considered for assignment to an HRP position.

*HRP management official* means an individual designated by the DOE or a DOE contractor, as appropriate, who has programmatic responsibility for HRP positions.

*Illegal drug* means a controlled substance, as specified in Schedules I through V of the Controlled Substances Act, 21 U.S.C. 811, and 812, but the term does not apply to the use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by Federal law.

*Impaired or impairment* means a decrease in functional capacity of a person caused by a physical, mental, emotional, substance abuse, or behavioral disorder.

*Incident* means an unplanned, undesired event that interrupts the completion of an activity and that may include property damage or injury.

*Job task analysis* means a process that describes systematically the performance requirements of a job and identifies and defines the valid tasks and elements needed to satisfactorily perform the analyzed job.

*Medical assessment* means an evaluation of an HRP and HRP-certified

individual's present health status and health risk factors by means of:

(1) Medical history review;

(2) Job task analysis;

(3) Physical examination;

(4) Appropriate laboratory tests and measurements; and

(5) Appropriate psychological and psychiatric evaluations.

*Nuclear explosive* means an assembly of fissionable and/or fusionable materials and main charge high explosive parts or propellants capable of producing a nuclear detonation.

*Nuclear explosive duties* means work assignments that allow custody of a nuclear explosive or access to a nuclear explosive device or area.

*Occurrence* means any event or incident that is a deviation from the planned or expected behavior or course of events in connection with any DOE or DOE-controlled operation if the deviation has environmental, public health and safety, or national security protection significance, including (but not limited to) incidents involving:

(1) Injury or fatality to any person involving actions of a DOE employee or contractor employee;

(2) An explosion, fire, spread of radioactive material, personal injury or death, or damage to property that involves nuclear explosives under DOE jurisdiction;

(3) Accidental release of pollutants that results from, or could result in, a significant effect on the public or environment; or

(4) Accidental release of radioactive material above regulatory limits.

*Operations Office Manager* means the manager of any DOE operations office as well as the Manager of the Rocky Flats Office, Manager of the Pittsburgh Naval Reactors Office, Manager of the Schenectady Naval Reactors Office, and, for the Washington, DC area, the Director, Office of Headquarters Security Operations.

*Random alcohol testing* means the unscheduled, unannounced alcohol testing of randomly selected employees by a process designed to ensure that selections are made in a nondiscriminatory manner.

*Reasonable suspicion* means a suspicion based on an articulable belief that an individual uses illegal drugs or is under the influence of alcohol, drawn from reasonable inferences from particular facts, as detailed further in Part 707 of this title.

*Recertification* means the formal action the HRP certifying official takes annually, not to exceed 12 months, that permits an employee to remain in the HRP and perform HRP duties.

*Reinstatement* means the action the HRP certifying official takes after it has been determined that an employee who has been temporarily removed from the HRP meets the certification requirements of this part and can be returned to HRP duties.

*Reliability* means an individual's ability to adhere to security and safety rules and regulations.

*Safety concern* means any condition, practice, or violation that causes a substantial probability from which physical harm, property loss, and/or environmental impact could result.

*Security concern* means the presence of information regarding an individual applying for or holding an HRP position that may be considered derogatory under the criteria listed in 10 CFR Part 710, Subpart A.

*Semi-structured interview* means an interview by a Designated Psychologist, or a psychologist under his or her supervision, who has the latitude to vary the focus and content of the questions depending on the interviewee's responses.

*Site Occupational Medical Director* (SOMD) means the physician responsible for the overall direction and operation of the occupational medical program at a particular site.

*Supervisor* means an individual who has oversight and responsibility for a person holding an HRP position.

*Transfer* means an HRP-certified individual moving from one site to another site.

*Unacceptable damage* means an incident that could result in a nuclear detonation; high-explosive detonation or deflagration from a nuclear explosive; the diversion, misuse, or removal of Category I special nuclear material; or an interruption of nuclear explosive operations with a significant impact on national security.

*Unsafe practice* means either a human action departing from prescribed hazard controls or job procedures or practices, or an action causing a person unnecessary exposure to a hazard.

**Procedures**

**§ 712.10 Designation of HRP positions.**

(a) HRP certification is required for each individual assigned to, or applying for, a position that:

(1) Affords access to Category I SNM or has responsibility for transportation or protection of Category I quantities of SNM;

(2) Involves nuclear explosive duties or has responsibility for working with, protecting, or transporting nuclear explosives, nuclear devices, or selected components;

(3) Affords access to information concerning vulnerabilities in protective systems when transporting nuclear explosives, nuclear devices, selected components or Category I quantities of SNM; or

(4) Is not included in paragraphs (a)(1) through (3) of this section but affords the potential to significantly impact national security or cause unacceptable damage and is approved pursuant to paragraph (b) of this section.

(b) The Operations Office Manager and the HRP management official for NNSA and non-NNSA headquarters offices may nominate positions for the HRP that are not specified in paragraphs (a) (1) through (3) of this section or that have not previously been designated HRP positions. All such nominations must be submitted and approved by either the NNSA Administrator, his or her designee, or the appropriate Lead Program Secretarial Officer, or his or her designee.

(c) Before nominating a position for designation as an HRP position, the Operations Office Manager or the HRP management official for NNSA and non-NNSA headquarters offices must analyze the risks the position poses for the particular operational program. If the analysis shows that more restrictive physical, administrative, or other controls could be implemented that would prevent the position from being designated an HRP position, those controls will be implemented, if practicable.

(d) Nothing in this part prohibits contractors from establishing stricter employment standards for individuals who are nominated to DOE for certification or recertification in the HRP.

**§ 712.11 General requirements for HRP certification.**

(a) The following certification requirements apply to each individual applying for or in an HRP position:

(1) A DOE ''Q'' access authorization based on a background investigation, except for security police officers who have been granted an interim ''Q'' through the Accelerated Access Authorization Program;

(2) The annual submission of SF–86, OMB Control No. 3206–0007, Questionnaire for National Security Positions, Part 2, and an annual review of the personnel security file;

(3) Signed releases, acknowledgments, and waivers to participate in the HRP on forms provided by DOE;

(4) Completion of initial and annual HRP instruction as provided in § 712.17;

(5) Successful completion of an initial and annual supervisory review, medical assessment, management evaluation, and a DOE personnel security review for

certification and recertification in accordance with this part;

(6) No use of any hallucinogen in the preceding five years and no experience of flashback resulting from the use of any hallucinogen more than five years before applying for certification or recertification;

(7) A psychological evaluation consisting of a generally accepted psychological assessment (test) and a semi-structured interview;

(8) An initial and random, unannounced drug test for the use of illegal drugs at least once each 12 months in accordance with DOE policies implementing Executive Order 12564 or the relevant provisions of 10 CFR Part 707 for DOE contractors, and DOE Order 3792.3 ''Drug-Free Federal Workplace Testing Implementation Program'' for DOE employees;

(9) An initial and random unannounced alcohol test at least once each 12 months using an evidential-grade breath alcohol device, as listed on the Conforming Products List of Evidential Breath Measurement Devices published by the National Highway Traffic Safety Administration (49 CFR Part 40); and

(10) Successful completion, if conducted, of a counterintelligence polygraph examination.

(b) Each HRP individual must be certified in the HRP before being assigned to HRP duties and must be recertified annually, not to exceed 12 months between recertifications. For certification:

(1) Individuals in newly identified HRP positions must immediately sign the releases, acknowledgments, and waivers to participate in the HRP and complete initial instruction on the importance of security, reliability, and suitability. If these requirements are not met, the individual must be removed from the HRP position.

(2) All remaining HRP requirements listed in paragraph (a) of this section must be completed in an expedited manner.

(c) Alcohol consumption is prohibited within an eight-hour period preceding scheduled work for individuals performing nuclear explosive duties and for individuals in specific positions designated by either the Operations Office Manager, the NNSA Administrator, his or her designee, or the appropriate Lead Program Secretarial Officer, or his or her designee.

(d) Individuals reporting for unscheduled nuclear explosive duties and those specific positions designated by either the Operations Office Manager, the NNSA Administrator or his or her designee, or the appropriate Lead Program Secretarial Officer, or his or her designee, will be asked prior to performing any type of work if they have consumed alcohol within the preceding eight-hour period. If they answer ''no,'' they may perform their assigned duties but still may be tested.

(e) An individual whose confirmatory breath alcohol test result is at or above an alcohol concentration of 0.02 percent is not permitted to perform scheduled or unscheduled duties until the individual's alcohol concentration is below 0.02 percent using an evidential-grade breath analysis device.

(f) HRP-certified individuals must be tested for alcohol and/or drugs in accordance with section 712.15(b), (c), (d), and (e) if they are involved in an incident, unsafe practice, or an occurrence, or if there is reasonable suspicion that they may be impaired.

**§ 712.12 HRP implementation.**

(a) The implementation of the HRP at NNSA sites is the responsibility of the NNSA Administrator or his or her designee and the implementation at non-NNSA sites is the responsibility of the Lead Program Secretarial Officer or his or her designee.

(b) Management officials for each site or facility with HRP positions must prepare an initial HRP implementation plan and submit it by [DATE 90 DAYS AFTER PUBLICATION OF FINAL RULE] to the applicable Operations Office Manager for review and site approval. The implementation plan must:

(1) Be reviewed and updated every two years;

(2) Include the four annual components of the HRP process: supervisory review, medical assessment, management evaluation (which includes random drug and alcohol testing), and a DOE personnel security determination; and

(3) Include the HRP instruction and education component under § 712.17 of this part.

(c) The Deputy Administrator for Defense Programs, NNSA must:

(1) Provide advice and assistance to the Director, Office of Security, regarding policies, standards, and guidance for all nuclear explosive duty requirements; and

(2) Be responsible for implementation of all nuclear explosive duty safety requirements.

(d) The DOE Deputy Secretary, based on a recommendation of the Director, Office of Security, makes the final decision for any appeal of denial or revocation of certification or recertification from HRP.

(e) The Director, Security Policy Staff, within the Office of Security, is responsible for HRP policy and must:

(1) Ensure consistency of the HRP throughout the DOE and NNSA;

(2) Review and comment on all HRP implementation plans to ensure consistency with policy; and

(3) Provide policies and guidance, including instructional materials, to NNSA and non-NNSA field elements concerning the HRP, as appropriate.

(f) The Operations Office Managers must:

(1) Review and approve the HRP implementation plan for NNSA and non-NNSA sites/facilities under their cognizance and forward the plan to the Director, Security Policy Staff; and

(2) Ensure that the HRP is implemented at the NNSA and non-NNSA sites/facilities under their cognizance.

(g) The HRP Certifying Official must:

(1) Approve placement, certification, recertification, temporary removal, and reinstatement of individuals into HRP positions;

(2) Ensure that instructional requirements are implemented;

(3) Immediately notify (for the purpose of limiting access) the appropriate HRP management official of a personnel security action that results in the suspension of access authorization; and

(4) Ensure that the supervisory review, medical assessment, and management evaluation, including drug and alcohol testing, are conducted on an annual basis (not to exceed 12 months).

(h) Individuals assigned to HRP duties must:

(1) Execute HRP releases, acknowledgments, and waivers to facilitate the collection and dissemination of information, the performance of drug and alcohol testing, and medical examinations;

(2) Notify the Site Occupational Medical Director immediately of a physical or mental condition requiring medication or treatment; and

(3) Provide full, frank, and truthful answers to relevant and material questions, and when requested, furnish, or authorize others to furnish, information that DOE deems pertinent to reach a decision regarding HRP certification or recertification.

(4) Report any observed or reported behavior or condition of another HRP-certified individual that could indicate a reliability concern, including those behaviors and conditions listed in § 712.13 (c), to a supervisor, the SOMD, or the HRP-certifying official.

**§ 712.13 Supervisory review.**

(a) The supervisor must ensure that each individual tentatively selected for, and each individual occupying an HRP position but not yet HRP certified, executes the appropriate HRP releases, acknowledgments, and waivers. If these documents are not executed:

(1) The request for HRP certification of tentatively selected individuals may not be further processed until these requirements are completed; and

(2) The individual is immediately removed from the position.

(b) Each supervisor of HRP-certified personnel must conduct an annual review of each HRP-certified individual during which the supervisor must evaluate information (including security concerns) relevant to the individual's suitability to perform HRP tasks in a reliable and safe manner.

(c) The supervisor must report any concerns resulting from his or her review to the appropriate HRP management official. Types of behavior and conditions that would indicate a concern include, but are not limited to:

(1) Psychological or physical disorders that impair performance of assigned duties;

(2) Conduct that warrants referral for a criminal investigation or results in arrest or conviction;

(3) Indications of deceitful or delinquent behavior;

(4) Attempted or threatened destruction of property or life;

(5) Suicidal tendencies or attempted suicide;

(6) Use of illegal drugs or the abuse of legal drugs or other substances;

(7) Alcohol use disorders;

(8) Recurring financial irresponsibility;

(9) Irresponsibility in performing assigned duties;

(10) Inability to deal with stress, or the appearance of being under unusual stress;

(11) Failure to comply with work directives, hostility or aggression toward fellow workers or authority, uncontrolled anger, violation of safety or security procedures, or repeated absenteeism; and

(12) Significant behavioral changes, moodiness, depression, or other evidence of loss of emotional control.

(d) The supervisor must immediately remove an HRP-certified individual from HRP duties, pursuant to § 712.19, and temporarily reassign the individual to a non-HRP position if the supervisor believes the individual has demonstrated a security or safety concern that warrants such removal. If temporary removal is based on a security concern, the HRP management official must immediately notify the applicable DOE personnel security office and the HRP certifying official.

(e) Based on the DOE personnel security office recommendation, the HRP certifying official will make the final decision about whether to reinstate an individual into an HRP position.

(f) If temporary removal is based on a medical concern, the SOMD must report these restrictions in writing to the appropriate HRP management official, who will immediately notify the appropriate HRP certifying official, who will make the final determination in temporary removal actions.

(g) The supervisor must immediately remove from HRP duties any Federal employee who does not obtain HRP recertification. The supervisor may reassign the individual or realign the individual's current duties.

**§ 712.14 Medical assessment.**

(a) Purpose. The HRP medical assessment is performed to evaluate whether an individual tentatively selected for, or an incumbent in, an HRP position:

(1) Represents a security concern; or

(2) Has a condition that may prevent the individual from performing HRP duties in a reliable and safe manner.

(b) When performed. (1) The medical assessment is performed initially on individuals tentatively selected for HRP certification and individuals occupying HRP positions who have not yet received HRP certification. The medical assessment is performed annually for HRP-certified individuals, or more often as required by the SOMD.

(2) The Designated Physician will conduct an intermediate evaluation:

(i) If an HRP-certified individual requests an evaluation (i.e., self-referral);

(ii) If an HRP-certified individual is referred by management for an evaluation; or

(iii) As a routine return-to-work evaluation for an HRP-certified individual.

(c) Process. The Designated Physician, under the supervision of the SOMD, is responsible for the medical assessment of HRP and HRP-certified individuals. In performing this responsibility, the Designated Physician or the SOMD must integrate the medical evaluations, available testing results, psychological evaluations, any psychiatric evaluations, a review of current legal drug use, and any other relevant information. This information is used to determine if a reliability, safety, or security concern exists and if the individual is medically qualified for his or her assigned duties. If a security concern is identified, the Designated Physician or SOMD must immediately notify the HRP management official, who notifies the applicable DOE personnel security office and appropriate HRP certifying official.

(d) Evaluation. The Designated Physician, with the assistance of the Designated Psychologist, must determine the existence or nature of any of the following:

(1) Physical or medical disabilities, such as a lack of visual acuity, defective color vision, impaired hearing, musculoskeletal deformities, and neuromuscular impairment;

(2) Mental disorders or behavioral problems, including alcohol and other substance use disorders, as described in the Diagnostic and Statistical Manual of Mental Disorders;

(3) Use of illegal drugs or the abuse of legal drugs or other substances, as identified by self-reporting or by medical or psychological evaluation or testing;

(4) Threat of suicide, homicide, or physical harm; or

(5) Medical conditions such as cardiovascular disease, endocrine disease, cerebrovascular or other neurologic disease, or the use of drugs for the treatment of conditions that may adversely affect the judgment or ability of an individual to perform assigned duties in a reliable and safe manner.

(e) Job task analysis/statement of duties. Employers must provide a job task analysis or statement of duties for each HRP individual or HRP-certified individual to both the Designated Physician and Designated Psychologist before the initial or annual medical assessment and psychological evaluation. Medical assessments and psychological evaluations may not be performed if a job task analysis or statement of duties has not been provided.

(f) Psychological evaluations. Psychological evaluations must be conducted:

(1) For initial HRP certification. This psychological evaluation consists of a psychological assessment (test) approved by the Deputy Assistant Secretary for Health Studies and a semi-structured interview.

(2) For recertification. This psychological evaluation consists of a semi-structured interview. A psychological assessment (test) may also be conducted as warranted.

(3) Every third year. The medical assessment for recertification must include a psychological assessment (test) approved by the Deputy Assistant Secretary for Health Studies.

(4) When additional psychological or psychiatric evaluations are required by the SOMD to resolve any concerns.

(g) Return to work after sick leave. HRP-certified individuals who have been on sick leave for five or more consecutive days, or an equivalent time period for those individuals on an alternative work schedule, must report in person to the SOMD before being allowed to return to normal duties. The SOMD must provide a written recommendation to the appropriate HRP supervisor regarding the individual's return to work. An HRP-certified individual in certain circumstances also may be required to report to the SOMD for written recommendation to return to normal duties after any period of sick leave.

(h) Temporary removal or restrictions. The SOMD may recommend temporary removal of an individual from an HRP position or restrictions on an individual's work in an HRP position if a medical condition or circumstance develops that affects the individual's ability to perform assigned job duties. The SOMD must recommend medical removal or medical restrictions immediately, in writing, to the appropriate HRP management official who will immediately notify the appropriate HRP certifying official. To reinstate or remove such restrictions, the SOMD must make this recommendation, in writing, to the HRP management official who will notify the appropriate HRP certifying official.

(i) Medical evaluation after rehabilitation. (1) Individuals who request reinstatement in the HRP following treatment leading to rehabilitation from alcohol use disorder, use of illegal drugs, or the abuse of legal drugs or other substances must undergo an evaluation, as prescribed by the SOMD, to ensure continued rehabilitation and adequate capability to perform their job duties.

(2) The HRP certifying official may reinstate an individual in the HRP who successfully completes an SOMD-approved drug or alcohol rehabilitation program. Recertification is based on the SOMD's follow-up evaluation and recommendation. The individual is also subjected to unannounced follow-up tests for illegal drugs or alcohol and relevant counseling for three years.

(j) Medication and treatment. HRP-certified individuals are required to immediately report to the SOMD any physical or mental condition requiring medication or treatment. The SOMD determines if temporary removal of the individual from HRP duties is required and, if the individual is temporarily removed, informs the appropriate HRP management official of the action.

**§ 712.15 Management evaluation.**

(a) Evaluation components. A management evaluation is required before an individual can be considered for initial certification or recertification in the HRP. This evaluation must be based on a careful review of the results of the supervisory review, medical assessment, and drug and alcohol testing. The appropriate HRP management official must evaluate the information and forward his or her recommendation, including any safety concern, to the HRP certifying official. If the management evaluation reveals a security concern, the HRP management official must notify the applicable DOE personnel security office.

(b) Drug testing. All HRP and HRP-certified individuals are subject to testing for the use of illegal drugs, as required by this part. Testing must be conducted in accordance with 10 CFR Part 707, the workplace substance abuse program for DOE contractor employees, and DOE Order 3792.3, ''Drug-Free Federal Workplace Testing Implementation Program,'' for DOE employees. The program must include an initial and random, unannounced drug testing at least once every 12 months and testing of individuals in the HRP if involved in an incident, unsafe practice or occurrence, or based on reasonable suspicion. Failure to appear for unannounced testing within two hours of notification constitutes a refusal to submit to a test. An HRP-certified individual who has been determined to use illegal drugs based on a drug test must be immediately removed from HRP duties, and DOE personnel security must be notified immediately.

(c) Alcohol testing. All HRP and HRP-certified individuals are subject to testing for the use of alcohol, as required by this part. The alcohol testing program must include, as a minimum, an initial and random unannounced alcohol testing at least once every 12 months and testing of individuals in the HRP if involved in an incident, unsafe practice, or occurrence, or based on reasonable suspicion. An HRP-certified individual who has been determined to have a blood alcohol concentration (BAC) of 0.02 percent or greater must be immediately removed from the HRP position, and the HRP management official must be notified.

(1) Breath alcohol testing must be conducted by a certified breath alcohol technician and conform to the DOT procedures (49 CFR Part 40, Alcohol Testing) for use of an evidential-grade breath analysis device approved for 0.02/0.04 cutoff levels that conforms to the DOT National Highway Traffic Safety Administration (NHTSA) model specifications and the most recent ''Conforming Products List'' issued by NHTSA.

(2) An individual required to undergo DOT alcohol testing is subject to the regulations of the NHTSA, and, if such individual's blood alcohol level exceeds DOT standards, the individual's employer may take appropriate disciplinary action.

(3) The supervisor must immediately remove an HRP-certified individual from his or her HRP position if the individual refuses to submit to a breath alcohol test and immediately notify the HRP management official of the removal. The following constitutes a refusal to submit to a test:

(i) Failure to appear for unannounced testing within two hours of notification;

(ii) Failure to provide an adequate volume of breath in two attempts, without a valid medical excuse; and

(iii) Engaging in conduct that clearly obstructs the testing process, including failure to cooperate with reasonable instructions provided by the testing technician.

(d) Occurrence testing. (1) When an HRP-certified individual is involved in, or associated with, an occurrence requiring immediate reporting to the DOE or the individual's behavior creates the basis for reasonable suspicion, the following procedures must be implemented:

(i) Testing for the use of illegal drugs in accordance with the provisions of the DOE policies implementing Executive Order 12564, and 10 CFR Part 707 or DOE Order 3792.3, which establish workplace substance abuse programs for contractor and DOE employees, respectively.

(ii) Testing for use of alcohol in accordance with this section.

(2) Testing must be performed as soon as possible after an occurrence that requires immediate notification or reporting.

(3) The supervisor must remove an HRP-certified individual from HRP duties if the individual refuses to undergo the testing required by this section.

(e) Testing for reasonable suspicion. (1) If the behavior of an individual in an HRP position creates the basis for reasonable suspicion of the use of an illegal drug or alcohol, that individual must be tested if two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the individual or is the

SOMD, agree that such testing is appropriate.

(2) Reasonable suspicion must be based on an articulable belief that an HRP-certified individual is in possession of, or under the influence of, an illegal drug or alcohol, drawn from facts and reasonable inferences from those particular facts. Such a belief may be based on, among other things:

(i) Observable phenomena, such as direct observation of the use or possession of illegal drugs or alcohol, or the physical symptoms of being under the influence of drugs or alcohol;

(ii) A pattern of abnormal conduct or erratic behavior; or

(iii) Information provided by a reliable and credible source that is independently corroborated.

(f) Counterintelligence Polygraph Examination. All HRP individuals and, when selected, all HRP-certified individuals, must submit to and successfully complete a counterintelligence polygraph examination in accordance with 10 CFR Part 709, Polygraph Examination Regulations.

### § 712.16 DOE security review.

(a) A personnel security specialist will perform a personnel security file review of an HRP and HRP-certified individual upon receiving the supervisory review, medical assessment, and management evaluation and recommendation.

(b) If the personnel security file review is favorable, this information must be forwarded to the HRP certifying official. If the review reveals a security concern, or if a security concern is identified during another component of the HRP process, the HRP certifying official must be notified and the security concern evaluated in accordance with the criteria in 10 CFR Part 710. All security concerns must be resolved according to procedures outlined in 10 CFR Part 710, rather than through the procedures in this part.

(c) Any mental or behavioral issues found in a personnel security file that could impact an HRP or HRP-certified individual's ability to perform HRP duties may be provided in writing to the SOMD, Designated Physician, and Designated Psychologist previously identified for receipt of this information. Medical personnel may not share any information obtained from the personnel security file with anyone who is not an HRP certifying official.

### § 712.17 Instructional requirements.

(a) Management officials at each DOE site or facility with HRP positions must establish an initial and annual HRP instruction and education program. The program must provide:

(1) Individuals, supervisors, and managers in HRP positions with the knowledge required to recognize and respond to behavioral change and aberrant behavior that may result in a risk to national security or nuclear explosive safety; and

(2) For all HRP medical personnel, detailed explanation of HRP duties and responsibilities.

(b) The following program elements must be included in initial and annual instruction:

(1) The objectives of the HRP and the role and responsibilities of each individual in the HRP to include recognizing and reporting security concerns, prescription drug usage, return to work requirements, and continuous evaluation of HRP participants;

(2) Instruction regarding the potential security and safety concerns from behavioral changes and aberrant behavior; and

(3) For nuclear explosive responsibilities, detailed explanation of duties and safety requirements.

### § 712.18 Transferring HRP Certification.

(a) An individual must be currently certified in the HRP to request transfer of HRP certification.

(b) Transferring the HRP certification from one site to another requires completion of the following actions before the individual is allowed to perform HRP duties at the new site:

(1) Verify that the individual is currently enrolled in the HRP and is transferring into a designated HRP position;

(2) Transfer the personnel security file to the applicable DOE personnel security office;

(3) Incorporate the individual into the new site's alcohol and drug-testing program;

(4) Incorporate the initial approval dates into the annual HRP requirements; and

(5) Receive site-specific instruction.

(c) HRP-certified individuals on temporary assignment or being detailed to HRP positions at other sites require verification that the individual:

(1) Is currently enrolled in the HRP;

(2) Has met all site-specific instruction; and

(3) Is required to return to the site that maintains the HRP certification for recertification.

### § 712.19 Removal from HRP.

(a) Supervisory responsibilities. A supervisor who has a reasonable belief that an HRP-certified individual is not reliable, based on either a safety or security concern, must immediately remove that individual from those duties pending a determination of the individual's reliability. The supervisor must, at a minimum:

(1) Require the individual to stop performing HRP duties;

(2) Take action to ensure the individual is denied both escorted and unescorted access to the HRP work areas; and

(3) Notify the individual and the HRP management official in writing of the reason for these actions within 24 hours.

(b) Immediate removal of an HRP-certified individual from HRP duties is an interim, precautionary action and does not constitute a determination that the individual is not fit to perform his or her required duties. Removal is not, in itself, cause for loss of pay, benefits, or other changes in employment status.

(c) Temporary removal. (1) If an HRP management official receives a supervisor's written notice of the immediate removal of an HRP-certified individual, that official must direct the temporary removal of the individual pending an evaluation and determination regarding the individual's reliability.

(2) If removal is based on a security concern, the HRP management official must notify the HRP certifying official and the applicable DOE personnel security office for resolution of the security concern under the criteria and procedures in 10 CFR Part 710.

(3) The HRP management official must conduct an evaluation of the circumstances or information that led the supervisor to remove the individual from HRP duties. The HRP management official must prepare a written report of the evaluation that includes the HRP management official's determination of the individual's reliability for continuing HRP certification.

(4) If the HRP management official determines that an individual who has been removed temporarily continues to meet the requirements for certification, the HRP management official must:

(i) Notify the individual's supervisor of the determination and direct that the individual be allowed to return to HRP duties;

(ii) Notify the individual; and

(iii) Notify the HRP certifying official.

(5) If the HRP management official determines that an individual who has been temporarily removed does not meet the requirements for certification, the HRP management official must forward the written report to the HRP certifying official. If the HRP certifying official is not the Operations Office Manager, the HRP certifying official

must review the written report and take one of the following actions:

(i) Direct that the individual be reinstated and provide written explanation of the reasons and factual bases for the action;

(ii) Direct continuation of the temporary removal pending completion of specified actions (e.g., medical assessment, treatment) to resolve the concerns about the individual's reliability; or

(iii) Recommend to the Operations Office Manager the revocation of the individual's certification and, provide written explanation of the reasons and factual bases for the decision.

(d) The Operations Office Manager, on receiving the HRP management official's written report and the HRP certifying official's recommendation (if any), must take one of the following actions:

(1) Direct that the individual be reinstated and, provide written explanation of the reasons and factual bases for the action;

(2) Direct the revocation of the individual's HRP certification; or

(3) Direct continuation of the temporary removal pending completion of specified actions (e.g., medical assessment, treatment) to resolve the concerns about the individual's reliability.

(e) If the action is revocation, the Operations Office Manager must provide the individual a copy of the HRP management official's report. The Manager may withhold such a report, or portions thereof, to the extent that he or she determines that the report, or portions thereof, may be exempt from access by the employee under the Privacy Act or the Freedom of Information Act.

(f) If an individual is directed by the Operations Office Manager to take specified actions to resolve HRP concerns, he or she must be reevaluated by the HRP management and HRP certifying officials after those actions have been completed. After considering the HRP management and HRP certifying officials' report and recommendation, the Operations Office Manager must direct either:

(1) Reinstatement of the individual; or

(2) Revocation of the individual's HRP certification.

(g) Notification of Operations Office Manager's initial decision. The Operations Office Manager must send by certified mail (return receipt requested) a written decision, including rationale, to an HRP individual or HRP-certified individual who is denied certification or whose certification is revoked. The Operations Office Manager's decision must be accompanied by notification to the individual, in writing, of the procedures pertaining to reconsideration or a hearing on the Operation Office Manager's decision.

#### § 712.20 Request for reconsideration or certification review hearing.

(a) An HRP individual or HRP-certified individual who receives notification of an Operation Office Manager's decision to deny or revoke his or her HRP certification may choose one of the following options:

(1) Take no action;

(2) Submit a written request to the Operations Office Manager for reconsideration of the decision to deny or revoke certification. The request must include the individual's response to any information that gave rise to the concern. The request must be sent by certified mail to the Operations Office Manager within 20 working days after the individual received notice of the Operations Office Manager's decision; or

(3) Submit a written request to the Operations Office Manager for a certification review hearing. The request for a hearing must be sent by certified mail to the Operations Office Manager within 20 working days after the individual receives notice of the Operations Office Manager's decision.

(b) If an individual requests reconsideration by the Operations Office Manager but not a certification review hearing, the Operations Office Manager must, within 20 working days after receipt of the individual's request, send by certified mail (return receipt requested) a final decision to the individual. This final decision about certification is based on the individual's response and other relevant information available to the Operations Office Manager.

(c) If an individual requests a certification review hearing, the Operations Office Manager must forward the request to the Office of Hearings and Appeals.

#### § 712.21 Office of Hearings and Appeals.

(a) The certification review hearing is conducted by the Office of Hearings and Appeals.

(b) The hearing officer must have a DOE ''Q'' access authorization when hearing cases involving HRP duties.

(c) An individual who requests a certification review hearing has the right to appear personally before the hearing officer; to present evidence in his or her own behalf, through witnesses or by documents, or by both; and to be accompanied and represented at the hearing by counsel or any other person of the individual's choosing and at the individual's own expense.

(d) In conducting the proceedings, the hearing officer must:

(1) Receive all relevant and material information relating to the individual's fitness for HRP duties through witnesses or documentation;

(2) Ensure that the individual is permitted to offer information in his or her behalf; to call, examine, and cross-examine witnesses and other persons who have made written or oral statements, and to present and examine documentary evidence;

(3) Require the testimony of the individual and all witnesses be given under oath or affirmation; and

(4) Ensure that a transcript of the certification review proceedings is made.

#### § 712.22 Hearing officer's report and recommendation.

Within 30 calendar days of the receipt of the hearing transcript by the hearing officer or the closing of the record, whichever is later, the hearing officer must forward written findings, a supporting statement of reasons, and recommendation regarding the individual's eligibility for certification or recertification in the HRP position to the Director, Office of Security. The hearing officer's report and recommendation must be accompanied by a copy of the record of the proceedings. The Director, Office of Security shall forward to the DOE Deputy Secretary a recommendation to either revoke, deny, certify, or recertify an individual in the HRP.

#### § 712.23 Final decision by DOE Deputy Secretary.

Within 20 working days of the receipt of the Director, Office of Security's recommendation, the Deputy Secretary should issue a final written decision. A copy of this decision must be sent by certified mail (return receipt requested) to the Operations Office Manager and to the individual accompanied by a copy of the hearing officer's report and the transcript of the certification review proceedings.

### Subpart B—Medical Standards

#### § 712.30 Applicability.

This subpart establishes standards and procedures for conducting medical assessments of DOE and DOE contractor individuals in HRP positions.

#### § 712.31 Purpose.

The standards and procedures set forth in this subpart are necessary for DOE to:

(a) Identify the presence of any mental, emotional, physical, or behavioral characteristics or conditions that present or are likely to present an unacceptable impairment in reliability;

(b) Facilitate the early diagnosis and treatment of disease or impairment and foster accommodation and rehabilitation;

(c) Determine what functions an HRP-certified individual may be able to perform and to facilitate the proper placement of individuals; and

(d) Provide for continuing monitoring of the health status of individuals to facilitate early detection and correction of adverse health effects, trends, or patterns.

**§ 712.32 Designated Physician.**

(a) The Designated Physician must be qualified to provide professional expertise in the area of occupational medicine as it relates to the HRP.

(b) The Designated Physician must:

(1) Be a graduate of an accredited school of medicine or osteopathy;

(2) Have a valid, unrestricted state license to practice medicine in the state where HRP medical assessments occur;

(3) Have met the applicable HRP instruction requirements; and

(4) Be eligible for the appropriate DOE access authorization.

(c) The Designated Physician is responsible for the medical assessments of HRP and HRP-certified individuals, including determining which components of the medical assessments may be performed by other qualified personnel. Although a portion of the assessment may be performed by another physician, physician's assistant, or nurse practitioner, the Designated Physician remains responsible for:

(1) Supervising the evaluation process;

(2) Interpreting the results of evaluations;

(3) Documenting medical conditions or issues that may disqualify an individual from the HRP;

(4) Providing medical assessment information to the Designated Psychologist to assist in determining psychological fitness;

(5) Determining, in conjunction with DOE if appropriate, the location and date of the next required medical assessment; and

(6) Signing a recommendation about the medical fitness of an individual for certification or recertification.

(d) The Designated Physician must immediately report to the SOMD any of the following about himself or herself:

(1) Initiation of an adverse action by any state medical licensing board or any other professional licensing board;

(2) Initiation of an adverse action by any Federal regulatory board since the last designation;

(3) The withdrawal of the privilege to practice by any institution;

(4) Being named a defendant in any criminal proceedings (felony or misdemeanor) since the last designation;

(5) Being evaluated or treated for alcohol use disorder or drug dependency or abuse since the last designation; or

(6) Occurrence of a physical or mental health condition since the last designation that might affect his or her ability to perform professional duties.

**§ 712.33 Designated Psychologist.**

(a) The Designated Psychologist reports to the SOMD and determines the psychological fitness of an individual to participate in the HRP. The results of this evaluation may be provided only to the Designated Physician or the SOMD.

The Designated Psychologist must:

(1) Hold a doctoral degree from a clinical psychology program that includes a one-year clinical internship approved by the American Psychological Association or an equivalent program;

(2) Have accumulated a minimum of three years postdoctoral clinical experience with a major emphasis in psychological assessment (test);

(3) Have a valid, unrestricted state license to practice clinical psychology in the state where HRP medical assessments occur;

(4) Have met the applicable HRP instruction requirements; and

(5) Be eligible for the appropriate DOE access authorization.

(b) The Designated Psychologist is responsible for all psychological evaluations of HRP and HRP-certified individuals, and otherwise as directed by the SOMD. Although a portion of the psychological evaluation may be performed by another psychologist, the Designated Psychologist must:

(1) Supervise the psychological evaluation process and designate which components may be performed by other qualified personnel;

(2) Upon request of management, assess the psychological fitness of HRP individuals and HRP-certified individuals for HRP duties including specific work settings and recommend referrals as indicated; and

(3) Make referrals for psychiatric, psychological, substance abuse, personal or family problems, and monitor the progress of individuals so referred.

(c) The Designated Psychologist must immediately report to the SOMD any of the following about himself or herself:

(1) Initiation of an adverse action by any state medical licensing board or any other professional licensing board;

(2) Initiation of an adverse action by any Federal regulatory board since the last designation;

(3) The withdrawal of the privilege to practice by any institution;

(4) Being named a defendant in any criminal proceeding (felony or misdemeanor) since the last designation;

(5) Being evaluated or treated for alcohol use disorder or drug dependency or abuse since the last designation; or

(6) Occurrence of a physical or mental health condition that might affect his or her ability to perform professional duties since the last designation.

**§ 712.34 Site Occupational Medical Director.**

(a) The SOMD must nominate a physician to serve as the Designated Physician and a clinical psychologist to serve as the Designated Psychologist. The nominations must be sent through the operations office to the Deputy Assistant Secretary for Health Studies. Each nomination must describe the nominee's relevant training, experience, and licensure, and include a curriculum vitae and a copy of the nominee's current state or district license.

(b) The SOMD must submit a renomination report biennially through the Operations Office Manager to the Deputy Assistant Secretary for Health Studies. This report must be submitted at least 60 days before the second anniversary of the initial designation or of the last redesignation, whichever applies. The report must include:

(1) A statement evaluating the performance of the Designated Physician and Designated Psychologist during the previous designation period; and

(2) A copy of the valid, unrestricted state or district license of the Designated Physician and Designated Psychologist.

(c) The SOMD must submit, annually, to the Deputy Assistant Secretary for Health Studies through the Operations Office Manager, a written report summarizing HRP medical activity during the previous year. The SOMD must comply with any DOE directives specifying the form or contents of the annual report.

(d) The SOMD must investigate any reports of performance issues regarding a Designated Physician or Designated Psychologist, and the SOMD may suspend either official from HRP-related duties. If the SOMD suspends either official, the SOMD must notify the Deputy Assistant Secretary for Health

Studies and provide supporting documentation and reasons for the action.

**§ 712.35 Deputy Assistant Secretary for Health Studies.**

The Deputy Assistant Secretary for Health Studies or his or her designee must:

(a) Develop policies, standards, and guidance for the medical aspects of the HRP, including the psychological testing inventory to be used;

(b) Review the qualifications of Designated Physicians and Designated Psychologists, and concur or nonconcur with their designations by sending a statement to the operations office and an informational copy to the SOMD;

(c) Provide technical assistance on medical aspects of the HRP to all DOE elements and DOE contractors; and

(d) Concur or nonconcur with the medical bases of decisions rendered on appeals of HRP certification decisions.

**§ 712.36 Medical assessment process.**

(a) The Designated Physician, under the supervision of the SOMD, is responsible for the medical assessment of HRP and HRP-certified individuals. In carrying out this responsibility, the Designated Physician or the SOMD must integrate the medical evaluations, psychological evaluations, any psychiatric evaluations, and any other relevant information to determine an individual's overall medical qualification for assigned duties.

(b) Employers must provide a job task analysis or detailed statement of duties for those individuals involved in HRP duties to both the Designated Physician and the Designated Psychologist before each medical assessment and psychological evaluation. HRP medical assessments and psychological evaluations may not be performed if a job task analysis or detailed statement of duties has not been provided.

(c) The medical process by the Designated Physician includes:

(1) Medical assessments for initial certification, annual recertification, and evaluations for reinstatement following temporary removal from the HRP;

(2) Evaluations from self-referrals and referrals by management;

(3) Routine medical contacts, including routine return-to-work evaluations and occupational and nonoccupational health counseling sessions; and

(4) Review of current, legal drug use.

(d) Psychological evaluations must be conducted:

(1) For initial certification. This psychological evaluation consists of a generally accepted, psychological assessment (test) approved by the Deputy Assistant Secretary for Health Studies and a semi-structured interview.

(2) For recertification. This psychological evaluation consists of a semi-structured interview, which is conducted annually at the time of the medical examination.

(3) Every third year. The medical assessment for recertification must include a generally accepted psychological assessment (test) approved by the Deputy Assistant Secretary for Health Studies.

(4) Additional psychological or psychiatric evaluations may be required by the SOMD when needed to resolve HRP concerns.

(e) Following absences requiring return-to-work evaluations under applicable DOE directives, the Designated Physician, with assistance from the Designated Psychologist as necessary, must determine whether a psychological evaluation is necessary.

(f) Except as provided in paragraph (g) of this section, the Designated Physician must forward the completed medical assessment of an HRP and HRP-certified individual to the SOMD, who must make a recommendation based on the assessment to the individual's HRP management official. If the Designated Physician determines that a currently certified individual no longer meets the HRP requirements, the Designated Physician must immediately, orally, inform the HRP management official, with a written explanation to follow within 24 hours.

(g) Only the Designated Physician, subject to informing the SOMD, may make a medical recommendation for return to work and work accommodations for HRP-certified individuals.

(h) The following documentation is required after treatment of an individual for any disqualifying condition:

(1) A summary of the diagnosis, treatment, current status, and prognosis to be furnished to the Designated Physician;

(2) The medical opinion of the Designated Physician advising the individual's supervisor whether the individual is able to return to work in either an HRP or non-HRP capacity; and

(3) Any periodic monitoring plan approved by the Designated Physician, the Designated Psychologist, and the SOMD used to evaluate the reliability of the individual.

(i) If the disqualifying condition was of a security concern, the appropriate procedure described in 10 CFR Part 710 will apply.

**§ 712.37 Evaluation for hallucinogen use.**

If DOE determines that an HRP or HRP-certified individual has used any hallucinogen, the individual is not eligible for certification or recertification unless:

(a) Five years have passed since the last use of the hallucinogen; and

(b) The individual has a record of acceptable job performance and observed behavior.

**§ 712.38 Maintenance of medical records.**

(a) The medical records of HRP and HRP-certified individuals must be maintained in accordance with the Privacy Act, 5 U.S.C. 552a and DOE implementing regulations in 10 CFR Part 1008; the Department of Labor's regulations on access to individual exposure and medical records, 29 CFR 1910.1020; and applicable DOE directives. DOE contractors also may be subject to § 503 of the Rehabilitation Act, 29 U.S.C. 793, and its implementing rules, including confidentiality provisions in 29 CFR 60–741.23(d).

(b) The psychological record of an HRP and HRP-certified individual is a component of the medical record. The psychological record must:

(1) Contain any clinical reports, test protocols and data, notes of individual contacts and correspondence, and other information pertaining to an individual's contact with a psychologist;

(2) Be stored in a secure location in the custody of the Designated Psychologist; and

(3) Be kept separate from other medical record documents, with access limited to the SOMD and the Designated Physician.

(c) The records of alcohol and drug testing must be maintained in accordance with 42 CFR Part 2, ''Confidentiality of Alcohol and Drug Abuse Patient Records,'' and 10 CFR Part 707, ''Workplace Substance Abuse Programs at DOE Sites.''

[FR Doc. 02–17803 Filed 7–16–02; 8:45 am]

BILLING CODE 6450–01–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 23**

**[Docket No. CE171; Notice No. 23–01–04–SC–A]**

## Special Conditions: Eclipse Aviation Corporation, Model 500; Fire Extinguishing System for Aft Mounted Engine Installations

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Amended notice of proposed special conditions.

**SUMMARY:** This notice amends special conditions that were proposed for the Eclipse Aviation Corporation Model 500 airplane. The original proposed special conditions were published on January 29, 2002 (67 FR 4215). This airplane design includes aft mounted turbine engines. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These amended proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. These special conditions are intended to provide the same level of safety and meet the same intent as previously adopted special conditions for fire extinguishing systems for aft mounted jet engine installations.

**DATES:** Comments must be received on or before August 16, 2002.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, Attention: Rules Docket No. CE171, 901 Locust, Room 506, Kansas City, Missouri 64106; or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE171. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lowell Foster, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust Street, Kansas City, Missouri, 816–329–4111, fax 816–329–4090.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE171.'' The postcard will be date stamped and returned to the commenter.

### Background

On July 12, 2001, Eclipse Aviation Corporation applied for a type certificate for their new Model 500.

The Model 500 design includes turbine engines mounted aft on the fuselage, which means early visual detection of engine fire is precluded. The applicable existing regulations do not require fire extinguishing systems for engines. Aft mounted turbine engine installations, along with the need to protect such installed engines from fires, were not envisioned in the development of part 23; therefore, a special condition regarding fire protection for the engines of the Model 500 is required.

### Type Certification Basis

Under the provisions of 14 CFR 21.17, Eclipse Aviation Corporation must show that the Model 500 meets the following:

(1) Applicable provisions of 14 CFR part 23, effective December 18, 1964, as amended by Amendments 23–1 through 23–54 (September 14, 2000).

(2) Part 34 of the Federal Aviation Regulations effective September 10, 1990, plus any amendments in effect on the date of type certification.

(3) Part 36 of the Federal Aviation Regulations effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect on the date of type certification.

(4) Noise Control Act of 1972.

(5) Special conditions that are not relevant to these proposed special conditions, if any;

(6) Exemptions, if any;

(7) Equivalent level of safety findings, if any; and

(8) Special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 23) do not contain adequate or appropriate safety standards for the Model 500 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 500 must comply with the part 23 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 23 noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

### Novel or Unusual Design Features

The Eclipse Aviation Corporation Model 500 will incorporate the following novel or unusual design feature:

Turbine engines mounted on the aft of the fuselage. Aft mounted turbine engine installations need to be protected from fire since early visual detection of engine fires is not possible. This notice proposes a special condition for a fire extinguishing system for the engines of the Model 500.

### Applicability

As discussed above, these special conditions are applicable to the Eclipse Aviation Corporation Model 500. The engine installation used in the Model 500 does not utilize additional engine compartments other than those addressed in the special conditions. Should Eclipse Aviation Corporation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

**Conclusion**

The originally published proposed special conditions have been revised to clarify that the intent of the proposed rule is to require a fire extinguishing system (reference 14 CFR part 23, § 23.1195(a)(1)) only if a fire is not controllable, and to remove the references to engine compartments that do not exist in this engine installation configuration. This amended special condition does not change the original technical requirements of the proposed special conditions that were the same as the previous requirements applied to part 23 airplanes with aft mounted turbine engines. The Eclipse Model 500 powerplant installation does not have a traditional jet engine nacelle design and does not perform the function of what is considered a traditional nacelle from a fire hazard standpoint. Areas that a fire extinguishing system would normally protect against fire hazards, such as nacelle compartments that can accumulate (pool) flammable fluids that can ignite and support combustion, do not exist in the Model 500 engine nacelle design. Therefore, this rule requires the applicant to show that the chosen control means is effective for any fire originating in the engine nacelle area under all operating conditions, including worst case critical conditions. If the applicant cannot meet this requirement as proposed, then a fire extinguishing system as defined in this publication will be required. These revised special conditions were coordinated and concurred with by the applicant. This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the Eclipse Model 500 airplane.

**List of Subjects in 14 CFR Part 23**

Aircraft, Aviation safety, Signs and symbols.

**Citation**

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Eclipse Aviation Corporation Model 500.

*Engine Fire Extinguishing System*

(a) Fires originating in combustor, turbine, and tailpipe sections of the engine installation which contain lines or components carrying flammable fluids must either:

(1) be demonstrated at critical conditions to be controllable by test or a combination of test or analysis; or

(2) a fire extinguishing system must serve each engine compartment.

(b) If a fire extinguishing system is installed, the system must comply with the following requirements:

(1) The system must serve each engine compartment;

(2) The system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. An individual ''one shot'' system may be used; and

(3) For a nacelle, the system must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

(c) If a fire extinguishing system is installed, fire extinguishing agents must meet the following requirements:

(1) Be capable of extinguishing flames emanating from any burning of fluids or other combustible materials in the area protected by the fire extinguishing system;

(2) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored; and

(3) If any toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid or vapors from entering any personnel compartment even though a defect may exist in the extinguishing system.

(d) If fire extinguishing agents are used, the agent containers must meet the following requirements:

(1) Have a pressure relief to prevent bursting of the container by excessive internal pressures;

(2) The discharge end of each discharge line from a pressure relief connection must be located so the discharge of the fire-extinguishing agent would not damage the airplane. The line must also be located or protected to prevent clogging caused by ice or other foreign matter;

(3) A means must be provided for each fire extinguishing agent container to indicate that the container has discharged or that the charging pressure is below the established minimum necessary for proper functioning;

(4) The temperature of each container must be maintained, under intended operating conditions, to prevent the pressure in the container from falling below that necessary to provide an adequate rate of discharge, or rising high enough to cause premature discharge; and

(5) If a pyrotechnic capsule is used to discharge the fire extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

(e) If a fire extinguishing system is installed, system materials must meet the following requirements:

(1) No material in any fire extinguishing system may react chemically with any extinguishing agent so as to create a hazard; and

(2) Each system component in an engine compartment must be fireproof.

Issued in Kansas City, Missouri on July 5, 2002.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate.*

[FR Doc. 02–18017 Filed 7–16–02; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–CE–21–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Company 200, 300, and 1900 Series, and Models F90 and A100–1 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) 200, 300, and 1900 series, and Models F90 and A100–1 airplanes. This proposed AD would require you to check the airplane logbook to determine if the elevator(s) have been removed from the airplane. If the elevator(s) have been removed, this proposed AD would also require you to inspect the elevator balance weight attachment screws for correct length, and, if necessary, install new screws that are of improved design and rebalance the elevator, depending on the results of the inspection. This proposed AD is the result of the elevator balance weight attachment screws and balance weights being improperly installed when balancing the elevator after it had been removed for repair or repainting. The actions specified by this

proposed AD are intended to prevent the balance weight attachment screws from becoming loose. Loose screws could come into contact and interfere with the horizontal stabilizer. This interference could restrict elevator movement and result in loss of elevator pitch control.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 16, 2002.

**ADDRESSES:** Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–21–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: 9-ACE-7-Docket@faa.gov. Comments sent electronically must contain ''Docket No. 2001–CE–21–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Raytheon Aircraft Company, P.O. 9709 E. Central, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may also view this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Paul DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

*How Do I Comment on This Proposed AD?*

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

*Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?*

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

*How Can I Be Sure FAA Receives My Comment?*

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2001–CE–21–AD.'' We will date stamp and mail the postcard back to you.

**Discussion**

*What Events Have Caused This Proposed AD?*

Raytheon notified FAA of three incidents in which the elevator jammed during takeoff and landing on Models 200, B300, and 1900C airplanes. Investigations showed the cause for the elevator to jam was that the attachment screws and balance weights were not properly installed when the elevators were balanced after they were removed for repair or repainting.

Improperly installed balance weight attachment screws could result in the screws becoming loose and contacting and interfering with the horizontal stabilizer. Interference with the horizontal stabilizer could result in restricted elevator movement.

*What Are the Consequences if the Condition Is Not Corrected?*

If this condition is not detected and corrected, loose screws could interfere with the horizontal stabilizer, which could cause restricted elevator movement. This condition could result in loss of elevator pitch control.

*Is There Service Information That Applies to This Subject?*

Raytheon has issued Mandatory Service Bulletin SB 27–3187, Rev. 1, September, 2001.

*What Are the Provisions of This Service Information?*

The service bulletin includes procedures for:

—Determining whether the elevator has been removed for repair or repaint;

—Inspecting the elevator balance weight attachment screws to determine if they are the correct length;

—Correcting the installation of improperly installed screws; and

—Rebalancing the elevators with new attachment bolts.

**The FAA's Determination and an Explanation of the Provisions of This Proposed AD**

*What Has FAA Decided?*

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other 200, 300, and 1900 series, and Models F90 and A100–1 airplanes of the same type design;

—Certain actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

*What Would This Proposed AD Require?*

This proposed AD would require you to check the airplane logbook to determine if the elevator(s) has/have been removed from the airplane. If the elevator(s) has/have been removed, this proposed AD would also require you to inspect the elevator balance weight attachment screws for correct length, and, if necessary, install new screws that are of improved design and rebalance the elevator, depending on the results of the inspection.

**Cost Impact**

*How Many Airplanes Would This Proposed AD Impact?*

We estimate that this proposed AD affects 2334 airplanes in the U.S. registry.

*What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?*

We estimate the following costs to accomplish the proposed check of the airplane logbook:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 1 workhour × $60 = $60 | None required | $60 | $140,040 |

We estimate the following costs to accomplish the proposed inspection of the elevator balance weight attachment screws that would be required based on the results of the proposed logbook check. We have no way of determining the number of airplanes that may need such inspection:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 2 workhours × $60 = $120 | None required | $120 |

We estimate the following costs to accomplish the proposed replacement of the elevator balance weight attachment screws that would be required based on the results of the proposed inspection for airplanes in which the logbook check reveals that further inspection is necessary. We have no way of determining the number of airplanes that may need such replacements:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 1 workhour × $60 = $60 | $16 per bolt × 2 bolts per elevator = $32 | $92 |

**Regulatory Impact**

*Would This Proposed AD Impact Various Entities?*

The regulations proposed herein would not have a substantial direct effect 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, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

*Would This Proposed AD Involve a Significant Rule or Regulatory Action?*

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

**Raytheon Aircraft Company:** Docket No. 2001–CE–21–AD

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

| Model | Serial Nos. |
|---|---|
| (1) F90 | LA–2 through LA–236. |
| (2) A100–1 (U–21J) | BB–3 through BB–5. |
| (3) A200 (C–12C) | BC–1 through BC–75 and BD–1 through BD–30. |
| (4) A200C (UC–12B) | BJ–1 through BJ–66. |
| (5) A200CT (C–12D), (C–12F), (RC–12D), (FWC–12D), (RC–12G), (RC–12H), (RC–12K), or (RC–12P). | BP–1, BP–7 through BP–11, BP–22, BP–24 through BP–63, FC–1 through FC–3, GR–1 through GR–19, FE–1 through FE–9, FE–25 through FE–36. |
| (6) B200 | BB–734, BB–793, BB–829, BB–854 through BB–870, BB–874 through BB–891, BB–894, BB–896 through BB–911, and BB–913 through BB–1652. |
| (7) B200C | BL–37 through BL–57, BL–61 through BL–72, BL–124 through BL–140. |
| (8) B200C (C–12F), (C–12R), (UC–12M), or (UC–12F) | BL–73 through BL–112, BL–118 through BL–123, BP–64 through BP–71, BU–1 through BU–12, BV–1 through BV–12, and BW–1 through BW–29. |
| (9) B200CT | BN–2 through BN–4, FG–1 and FG–2. |
| (10) B200T and 200T | BT–1 through BT–38. |
| (11) 200 | BB–2, BB–6 through BB–733, BB–735 through BB–792, BB–794 through BB–828, BB–830 through BB–853, BB–872, BB–873, BB–892, BB–893, and BB–912. |
| (12) 200C | BL–1 through BL–23 and BL–25 through BL–36. |

| Model | Serial Nos. |
|---|---|
| (13) 200CT | BN–1. |
| (14) 300 and 300LW | FA–1 through FA–230 and FF–1 through FF–19. |
| (15) B300 | FL–1 through FL–241. |
| (16) B300C | FM–1 through FM–9 and FN–1. |
| (17) 1900 | UA–2 and UA–3. |
| (18) 1900C | UB–1 through UB–74 and UC–1 through UC–174. |
| (19) 1900C (C–12J) | UD–1 through UD–6. |
| (20) 1900D | UE–1 through UE–358. |

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the balance weight attachment screws from becoming loose. Loose screws could come into contact and interfere with the horizontal stabilizer. This interference could restrict elevator movement and result in loss of elevator pitch control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Check the airplane logbook to determine whether the elevator(s) has/have been removed. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the airplane logbook. | Within the next 200 hours time-in-service (TIS) after the effective date of this AD. | No special procedures required to check the logbook. Raytheon Mandatory Service Bulletin SB 27–3187, Rev. 1, Revised: September, 2001, references this airplane logbook check. |
| (2) If, by checking the airplane logbook:(i) the pilot can positively show that both elevators have never been removed, then the requirements of paragraphs (d)(2)(ii) and (d)(3) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).<br>(ii) the pilot identifies that the elevator(s) has/have been removed, or if complete records of elevator(s) do not exist, inspect the elevator balance weight attachment screws to determine if they are the correct length | Within the next 200 hours time-in-service (TIS) after the effective date of this AD. | In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 27–3187, Rev. 1, Revised: September, 2001. |
| (3) If, during the inspection required in paragraph (d)(2)(ii) of this AD, the elevator balance weight attachment screws are found to be the correct length, paragraph (d)(4) of this AD does not apply. | Not Applicable | In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 27–3187, Rev. 1, Revised: September, 2001. |
| (4) If, during the inspection required in paragraph (d)(2)(ii) of this AD, the elevator balance weight attachment screw(s) is/are found to be the incorrect the length, remove and rebalance elevator(s) by installing the balance weights with the appropriate new elevator balance weight attachment bolts, part number (P/N) in the range of NAS6703HU12 through NAS6703HU22, that have drilled heads and are secured with safety wire, and re-install the elevator. | Prior to further flight after the inspection required in paragraph (d)(2)(ii) of this AD. | In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 27–3187, Rev. 1, Revised: September, 2001, and the applicable maintenance manual. |
| (5) Do not install, on any affected airplane, an elevator that has been rebalanced unless it has been rebalanced by installing the balance weights with the appropriate new elevator balance weight attachment bolts, P/N in the range of NAS6703HU12 through NAS6703HU22, that have drilled heads and are secured with safety wire. | As of the effective date of this AD. | Not applicable. |

**Note 1:** The compliance times specified in Raytheon Mandatory Service Bulletin SB 27–3187, Rev. 1, Revised: September, 2001, are different from those required by this AD. The compliance times in this AD take precedence over those in the service bulletin.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note 2:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Paul DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 9, 2002.

**Michael K. Dahl,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 02–17885 Filed 7–16–02; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–57–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes, that would have required, among other actions, various inspections to detect cracks of the cockpit enclosure window sill, and follow-on and corrective actions, as applicable. This new action revises the proposed rule by revising certain procedures and clarifying the proposed requirements. The actions specified by this new proposed AD are intended to prevent fatigue cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by August 6, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–57–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–57–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** *Technical Information:* Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; fax (562) 627–5210.

*Other Information:* Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–57–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–57–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD) applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on September 18, 2000 (65 FR 56270). That NPRM would have required, among other actions, various inspections to detect cracks of the cockpit enclosure window sill, and follow-on and corrective actions, as

applicable. That NPRM was prompted by reports of cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill. That condition, if not corrected, could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

**Actions Since Issuance of NPRM**

Since the issuance of that NPRM, the FAA has reviewed and approved Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002. (The original NPRM referred to McDonnell Douglas Service Bulletin DC9–53–290, dated December 14, 1999, as the appropriate source of service information for the proposed actions.) Revision 01 of the service bulletin incorporates changes made to a certain service rework drawing based on Non-Destructive Testing analysis and operator experience. These changes have resulted in the following revisions in Revision 01 of the service bulletin:

- Changes to certain inspection methods and parts to be inspected.
- Clarification of certain inspection procedures, criteria, and areas.
- Revision of kit information and the addition of new kits and parts.
- Deferral of the inspection of certain parts that cannot be inspected without extensive disassembly of the airplane until the permanent repair is done.

Revision 01 of the service bulletin now describes the following procedures:

- A visual inspection to determine if certain temporary repairs have been installed.
- A visual inspection to detect loose or missing fasteners or cracks of the upper nose skins of the cockpit.
- A high frequency eddy current (HFEC) inspection for cracking of Zees, and replacement of cracked Zees with new parts.
- Visual, borescope, and HFEC inspections for cracking of the skins and frames.

The service bulletin also describes applicable follow-on and corrective actions, which include:

- If no cracks and no previous repairs are found—Repeating the previously accomplished visual, borescope, and HFEC inspections for cracking (Condition 1, Option 1).
- If cracks within certain limits are found—Accomplishing a temporary repair (including installation of external doublers), and performing repetitive visual inspections for cracking of skins and external doublers and repetitive borescope and HFEC inspections for cracking of internal structure (Condition 2, Option 1).
- If certain existing temporary repairs are found—Performing repetitive visual inspections for cracking of skins and external doublers and repetitive borescope and HFEC inspections for cracking of internal structure, accomplishing a one-time inspection of existing repairs of certain frames for growth of cracks beyond the repair angles, and replacing frames with new frames if necessary (Condition 3, Option 1).

For all airplanes except those on which no cracking or previous temporary repair is found, the service bulletin recommends accomplishing a permanent repair (including visual and eddy current inspections, and repair replacement, or rework of various parts, if necessary). The recommended compliance time for such permanent repair varies by condition. Installing the permanent repair eliminates the need to perform repetitive inspections at the pre-permanent-repair intervals, but the service bulletin recommends eventual accomplishment of certain inspections to find cracks of the permanent repair area.

Accomplishment of the actions specified in Revision 01 of the service bulletin is intended to adequately address the identified unsafe condition.

**Comments**

Due consideration has been given to the comments received in response to the original NPRM.

**No Objection to Proposed AD**

One commenter, an operator, states that the proposed AD would not apply to its fleet and offers no additional comments on the original NPRM.

Another commenter states that it has no objection to the proposed AD because it is anticipating that all affected airplanes in its fleet will be retired before the compliance time. However, the commenter did offer several comments on the original NPRM.

**Refer to Revised Service Information and Clarify Requirements of Proposed AD**

One commenter makes numerous suggestions for revisions to the original NPRM. The commenter requests that the FAA revise the proposed AD to refer to Revision 01 of the service bulletin, described previously, ''or later approved revisions'' as the appropriate source of service information for the proposed actions. The commenter also suggests numerous editorial changes to the original NPRM.

We concur that it is necessary to revise this supplemental NPRM to refer to Revision 01 of the service bulletin. Based on the new service bulletin and for further clarification, we have reordered and reidentified many of the paragraphs in this supplemental NPRM. We also have considered the commenter's editorial suggestions and, where we agree that they provide clarification, we have incorporated such changes. (Due to the extensive revisions of the original NPRM, we find it is necessary to reopen the comment period to give interested parties additional opportunity to comment on the proposal.)

With regard to the commenter's request to refer to ''later approved revisions'' of the service bulletin, we do not concur. The use of that phrase violates Office of the Federal Register (OFR) regulations regarding approval of materials that are incorporated by reference. An AD may only refer to a service document that is submitted and approved by the OFR for ''incorporation by reference.'' For operators to use later revisions of the referenced document (issued after the publication of the AD), either the AD must be revised to refer to the specific later revisions, or request for approval of the use of the later revisions must be requested as an alternative method of compliance (AMOC) with the AD (e.g., under the provisions of paragraph (j)(1) of this supplemental NPRM). We have made no change to the supplemental NPRM in this regard.

**Clarify Compliance Time for Airplanes With Previously Installed Repairs**

One commenter requests that we clarify the compliance time in paragraph (g)(1) of the original NPRM. (The provisions of paragraph (g)(1) of the original NPRM are included under paragraph (d)(1) of this supplemental NPRM.) Paragraph (g)(1) of the original NPRM applies to airplanes on which certain temporary repairs have been installed previously. That paragraph refers to other paragraphs in the original NPRM that specify accomplishment of various inspections within 2,000 and 3,500 landings after installation of the temporary repair. The commenter points out that this proposed compliance time may conflict with the initial compliance time in paragraph (a)(1) of the original NPRM—i.e., the later of 40,000 total landings or 5,000 landings after the effective date of the AD. The commenter provides the example that, if a temporary repair was installed before the effective date of the proposed AD, and the initial inspection in the proposed AD was not done until after 3,500 landings after the effective date of the AD, the airplane would be out of

compliance with the proposed AD. The commenter states that the original NPRM should be revised to direct operators to accomplish repetitive inspections of existing temporary repairs at the applicable intervals, commencing at the time of the initial inspections specified in paragraph (a) of the proposed AD.

We have reviewed paragraph (g)(1) of the original NPRM and concur that we need to clarify the compliance time for the requirements proposed in that paragraph. We have revised the relevant paragraphs in this supplemental NPRM to specify a compliance time for the general visual inspection of 2,000 landings after the temporary repair, or before further flight after accomplishment of the initial inspections specified in paragraph (a) of this supplemental NPRM, whichever is later, and a compliance time for the borescope and HFEC inspections of 3,500 landings after the temporary repair, or before further flight after accomplishment of the initial inspections specified in paragraph (a) of this supplemental NPRM, whichever is later.

**Clarify Appropriate Source of Repair Instructions**

One commenter requests that we revise several paragraphs of the original NPRM to refer to the correct section of the service bulletin for repair instructions. As an example, the commenter notes that paragraph (c) of the original NPRM, which describes actions for airplanes with cracking within certain limits, specifies to repair cracks per paragraph (b)(2) of the original NPRM. That paragraph, in turn, specifies accomplishment of the permanent repair specified in Condition 1, Option 2. However, Condition 1, Option 2 of the accomplishment instructions of the service bulletin provides repair instructions for airplanes with no cracks and no previous repairs. The commenter requests that we revise paragraphs (c), (f), (g)(2), and (i) of the original NPRM to refer to the correct source of repair instructions in the service bulletin.

We concur. As explained previously, we have restructured this supplemental NPRM to take into account the changes in Revision 01 of the service bulletin, and this supplemental NPRM contains correct references to the repair instructions in the service bulletin.

**Explanation of Other Change Made to the Proposed AD**

Paragraph (j) of this supplemental NPRM (which appeared as paragraph (k) of the original NPRM) includes a new subparagraph. Paragraph (j)(2) of this supplemental NPRM is added to specify that ''an AMOC for any inspection or repair required by this [proposed] AD that provides an acceptable level of safety may be used per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Los Angeles ACO, to make such findings.'' For a repair method to be approved, the approval must specifically reference this AD.

**Explanation of New Requirements of Proposed AD**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in Revision 01 of the service bulletin described previously, except as discussed below.

**Differences Between Supplemental NPRM and Service Information**

Operators should note that, although the service bulletin specifies that the manufacturer should be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Also, the service bulletin specifies a ''visual'' inspection for cracking of the skins and frames. We find that the procedures involved in that inspection constitute a ''detailed'' inspection. A definition of ''detailed inspection'' is included in Note 4 of this supplemental NPRM.

Further, though the service bulletin describes procedures for inspections to eventually be performed following installation of the permanent repair, the service bulletin does not clearly identify procedures for addressing any crack found in these follow-on inspections. Therefore, if any crack is found during the follow-on inspections after installation of the permanent repair, the proposed AD would require a repair to be accomplished in accordance with a method approved by the FAA.

**Conclusion**

Since the changes described previously may expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

**Cost Impact**

There are approximately 809 Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 572 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed initial inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $137,280, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect 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, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**McDonnell Douglas:** Docket 2000–NM–57–AD.

*Applicability:* Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 airplanes; listed in Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002; certificated in any category.

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

**Note 2:** Where there are differences between the AD and the referenced service bulletin, the AD prevails.

**Initial Inspections**

(a) Before the accumulation of 40,000 total landings, or within 5,000 landings after the effective date of this AD, whichever occurs later, do the actions specified in paragraphs (a)(1) AND (a)(2) of this AD per the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002.

(1) Do a general visual inspection to determine if any existing repair of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill has been accomplished before the effective date of this AD.

**Note 3:** For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(2) Do inspections to detect cracks or loose or missing fasteners of the cockpit enclosure window sill per paragraphs 3.B.1. through 3.B.6. of the Accomplishment Instructions of the service bulletin. The inspections include a general visual inspection to detect loose or missing fasteners or cracks of the upper nose skins of the cockpit; a high frequency eddy current (HFEC) inspection for cracking of Zees; and detailed, borescope, and HFEC inspections for cracking of the skins and frames.

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

**Note 5:** If any cracked Zee is found during any inspection per paragraph (a)(2) of this AD, refer to paragraph (h) of this AD.

**Condition 1 (No Previous Repair and No Crack)**

(b) If no previous repair and no crack is found during the inspections required by paragraphs (a)(1) and (a)(2) of this AD: Do the actions specified in paragraph (b)(1) or (b)(2) of this AD, at the times specified in those paragraphs.

*Condition 1, Option 1: Repetitive Inspections*

(1) Condition 1, Option 1: Repeat the inspections required by paragraph (a)(2) of this AD every 5,000 landings, until paragraph (b)(2) of this AD is done. If any crack is found, determine the applicable Condition as specified in the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002, and do the applicable actions required by this AD.

*Condition 1, Option 2: Permanent Repair*

(2) Condition 1, Option 2: Do paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 1, Option 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002. This terminates the repetitive inspections per paragraph (b)(1) of this AD.

**Note 6:** Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002, refers to Boeing Service Rework Drawing SR09530268, Revision D, dated November 29, 2001, as an additional source of service information for identifying parts to be inspected, and repairing, replacing, or reworking those parts.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (b)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack is found, do paragraph (g) of this AD.

**Condition 2 (Any Crack Within Flyable Limits for Temporary Repair)**

(c) If any crack is found during the initial inspection required by paragraph (a)(2) of this AD or during any repetitive inspection required by paragraph (b)(1) of this AD, and that crack is WITHIN the flyable limits specified in Condition 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002: Do the actions specified in paragraph (c)(1) OR (c)(2) of this AD.

**Note 7:** Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002, refers to Boeing Service Rework Drawing SR09530268, Revision D, dated November 29, 2001, as the source for determining flyable limits.

*Condition 2, Option 1: Temporary Repair and Repetitive Inspections*

(1) Condition 2, Option 1: Do paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), and (c)(1)(iv) of this AD, at the times specified in those paragraphs.

(i) Before further flight, do the temporary repair (including installation of doublers) per Condition 2, Option 1, of the Accomplishment Instructions of the service bulletin.

(ii) Within 2,000 landings after doing the temporary repair, do a general visual inspection to detect cracks of the skins and external doublers. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 2,000 landings until paragraph (c)(2)(i) of this AD is done.

**Note 8:** If any crack is found during any inspection per paragraph (c)(1)(ii) or (c)(1)(iii) of this AD, refer to paragraph (f) of this AD.

(iii) Within 3,500 landings after doing the temporary repair, do borescope and HFEC inspections to detect cracks of the internal structure. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the

service bulletin, repeat the inspection every 3,500 landings until paragraph (c)(2)(i) of this AD is done.

(iv) Except as provided by paragraph (f) of this AD, within 8,000 landings after doing the temporary repair, do the permanent repair specified in paragraph (c)(2) of this AD.

*Condition 2, Option 2: Permanent Repair*

(2) Condition 2, Option 2: Do paragraphs (c)(2)(i) and (c)(2)(ii) of this AD at the times specified in those paragraphs.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 2, Option 2, of the Accomplishment Instructions of the service bulletin. This terminates the repetitive inspections required by paragraphs (c)(1)(ii) and (c)(1)(iii) of this AD.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (c)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

**Condition 3 (Existing Temporary Repairs Per Certain Service Information)**

(d) If any temporary repair is found during any inspection required by paragraph (a)(1) of this AD and that repair WAS accomplished per the service information identified in Condition 3 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002: Do the actions specified in paragraph (d)(1) or (d)(2) of this AD. Also, if the Station Y=83.550 frames have been repaired before the effective date of this AD per DC–9/MD–80 Structural Repair Manual, Section 53–03, Figure 34, or Boeing Service Rework Drawing S509530127, do a one-time inspection of the frames for crack growth emanating beyond the repair angles. If any crack progression is found, before further flight, replace the frames with new frames per the Accomplishment Instructions of the service bulletin.

*Condition 3, Option 1: Repetitive Inspections*

(1) Condition 3, Option 1: Do paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) of this AD at the times specified in those paragraphs.

(i) Within 2,000 landings after doing the temporary repair, or before further flight after accomplishment of the initial inspections in paragraph (a) of this AD, whichever is later, do a general visual inspection to detect cracks of the skins and external doublers. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 2,000 landings until paragraph (d)(2)(i) of this AD is done.

**Note 9:** If any crack outside the flyable limits is found during any inspection per paragraph (d)(1)(i) or (d)(1)(ii) of this AD, refer to paragraph (f) of this AD.

(ii) Within 3,500 landings after doing the temporary repair, or before further flight after accomplishment of the initial inspections in paragraph (a) of this AD, whichever is later, do borescope and HFEC inspections to detect cracks of the internal structure. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 3,500 landings until paragraph (d)(2)(i) of this AD is done.

(iii) Except as provided by paragraph (f) of this AD, within 8,000 landings after doing the temporary repair, or before further flight if more than 8,000 landings have been accumulated since the temporary repair, do the permanent repair specified in paragraph (d)(2)(i) of this AD.

*Condition 3, Option 2: Permanent Repair*

(2) Condition 3, Option 2: Do paragraphs (d)(2)(i) and (d)(2)(ii) of this AD at the times specified in those paragraphs.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 3, Option 2 of the Accomplishment Instructions of the service bulletin. This terminates the repetitive inspections required by paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (d)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found: Repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

**Condition 4 (Existing Repairs Per Other Service Information)**

(e) If any repair is found during any inspection required by paragraph (a)(1) of this AD, and the repair was not accomplished per the service information identified in Condition 4 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002: Before further flight, repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

**Condition 5 (Crack Outside Flyable Limits for Temporary Repair)**

(f) If any crack is found during any inspection required by paragraph (a)(2), (b)(1), (c)(1)(ii), (c)(1)(iii), (d)(1)(i), or (d)(1)(ii) of this AD; AND that crack is OUTSIDE the limits specified in Condition 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002; AND a permanent repair was NOT previously accomplished per this AD: Do paragraphs (f)(1) and (f)(2) of this AD at the times specified in those paragraphs.

(1) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 5 of the Accomplishment Instructions of the service bulletin.

(2) Within 40,000 landings after doing the permanent repair required by paragraph (f)(1) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

**Corrective Actions: Cracking Following Permanent Repair**

(g) If any crack or crack progression is found during any inspection required by paragraph (b)(2)(ii), (c)(2)(ii), (d)(2)(ii), or (f)(2) of this AD: Before further flight, repair per a method approved by the Manager, Los Angeles ACO.

**Corrective Action for Cracked Zee**

(h) If any cracked Zee is found during any inspection performed per paragraph (a)(2) of this AD: Before further flight, replace the cracked Zee with a new part per the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002.

**Previously Accomplished Inspections and Repairs**

(i) Inspections and repairs accomplished before the effective date of this AD per the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, dated December 14, 1999, are acceptable for compliance with the corresponding actions in this AD.

**Alternative Methods of Compliance**

(j)(1) An alternative method of compliance (AMOC) or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) An AMOC for any inspection or repair required by this AD that provides an acceptable level of safety may be used per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Los Angeles ACO, to make such findings.

**Note 10:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

**Special Flight Permits**

(k) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a

location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 11, 2002.

**Lirio Liu-Nelson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 02–18025 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–40–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes; and Model A310 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300 B2 and B4 series airplanes; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes. This proposal would require revising the Airplane Flight Manual to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds. This action is necessary to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by August 16, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–40–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** *Technical Information:* Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

*Other Information:* Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 227–1119, fax (425) 687–4243. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.

sbull; Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–40–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Background Information

On October 25, 1999, a Learjet Model 35 airplane operating under part 135 of the Federal Aviation Regulations (14 CFR 135) departed Orlando International Airport en route to Dallas, Texas. Air traffic control lost communication with the airplane near Gainesville, Florida. Air Force and National Guard airplanes intercepted the airplane, but the flightcrews of the chase airplanes indicated that the windows of the Model 35 airplane were apparently frosted over, which prevented the flightcrews of the chase airplanes from observing the interior of the Model 35 airplane. The flightcrews of the chase airplanes reported that they did not observe any damage to the airplane. Subsequently, the Model 35 series airplane ran out of fuel and crashed in South Dakota. To date, causal factors of the accident have not been determined. However, lack of the Learjet flightcrew's response to air traffic control poses the possibility of flightcrew incapacitation and raises concerns with the pressurization and oxygen systems.

Recognizing these concerns, the FAA initiated a special certification review (SCR) to determine if pressurization and oxygen systems on Model 35 airplanes were certificated properly, and to determine if any unsafe design features exist in the pressurization and oxygen systems.

The SCR team found that there have been several accidents and incidents that may have involved incapacitation of the flightcrews during flight. In one case, the airplane flightcrew did not activate the pressurization system or don their oxygen masks, and the airplane flew in excess of 35,000 feet altitude. In another case, the airplane

flightcrews did not don their oxygen masks when the cabin aural warning was activated. Further review by the SCR team indicates that the Airplane Flight Manual (AFM) of Learjet Model 35 and 36 airplanes does not have an emergency procedure that requires donning the flightcrew oxygen masks when the cabin altitude aural warning is activated. Additional review has found that the AFMs of Model 35A and 36A airplanes also do not contain appropriate flightcrew actions when the cabin altitude aural warning is activated. However, the AFMs do contain an abnormal procedure that allows the flightcrew to troubleshoot the pressurization system prior to donning the oxygen masks after the cabin altitude warning sounds. Troubleshooting may delay donning of the oxygen masks to the point that flightcrews may become incapable of donning their oxygen masks.

The SCR findings indicated that the most likely cause for incapacitation was hypoxia (lack of oxygen). The only other plausible cause of incapacitation is exposure to toxic substances. However, no evidence was found to support the existence of toxic substances.

Delayed response of the flightcrew in donning oxygen masks as a first and immediate action upon the activation of the cabin altitude warning horn could lead to incapacitation of the flightcrew and loss of control of the airplane.

**Discussion**

The FAA has received reports that a review of the emergency procedures in the AFMs for all Airbus Model A300 B2 and B4 series airplanes; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes revealed that those AFMs also did not contain the requirement for the flightcrew to immediately don emergency oxygen masks. In light of this, the FAA considers issuance of this AD is necessary to address the identified unsafe condition.

**Other Related Rulemaking**

The FAA has previously issued AD 2000–23–10, amendment 39–11980 (65 FR 70294, November 22, 2000), which applies to all Lockheed Model 188A and 188C series airplanes. That AD requires a revision of the AFM to add procedures for donning the flightcrew oxygen masks when the cabin altitude warning horn is activated. The requirements of that AD are intended to prevent incapacitation of the flightcrew as a result of lack of oxygen and consequent loss of control of the airplane.

In addition, we have previously issued AD 2001–22–10, amendment 39–12489 (66 FR 54425, October 29, 2001), which applies to all Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900EX series airplanes. That AD requires revising the Emergency Procedures and Abnormal Procedures sections of the AFM to advise the flightcrew to immediately don oxygen masks in the event of significant pressurization or oxygen level changes. The requirements of that AD are intended to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in their inability to continue to control the airplane.

We are continuing to review emergency procedures in the AFMs for other airplane models to ensure that the AFMs contain appropriate instructions for donning the flightcrew oxygen masks. We may consider further rulemaking based on the results of these reviews.

**FAA's Determination**

The FAA finds that it is necessary to require revisions to the Emergency Procedures section (for Model A300 B2 and B4 series airplanes) and the Procedures Following Failure section (for Model A300–600 and A310 series airplanes) of the FAA-approved AFM, as applicable.

**Explanation of Relevant Service Information**

Airbus issued a facsimile, dated January 30, 2002, which revises the Emergency Procedures and the Procedures Following Failure sections of the FAA-approved AFMs for the respective airplane models referenced above. These AFM revisions specify that flightcrews must don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds. Airbus will incorporate the revisions in the next general revision to the AFM for Model A300 B2 and B4, A300–600, and A310 series airplanes.

**FAA's Conclusions**

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require revising two sections of the FAA-approved AFM, as described previously in the Explanation of Relevant Service Information section of this proposed AD.

**Cost Impact**

The FAA estimates that 168 Airbus Model A300 B2 and B4; A300–600; and Model A310 series airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $10,080, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect 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, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Airbus:** Docket 2002–NM–40–AD.

*Applicability:* All Airbus Model A300 B2 and B4 series airplanes; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane, accomplish the following:

**Revision to the Airplane Flight Manual**

(a) Within 90 days after the effective date of this AD, accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable, to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds.

(1) For Model A300 series airplanes, revise the Emergency Procedures section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM.

''EMERGENCY PROCEDURES

CABIN DEPRESSURIZATION
- CREW OXYGEN MASKS ..... ON
- CREW COMMUNICATIONS ..... established
- PASSENGER OXYGEN ..... as required
- EMERGENCY DESCENT ..... as required (see 3.02.00 page 8)''

(2) For Model A300–600 and A310 series airplanes: Revise the Procedures Following Failure section of the FAA-approved AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''PROCEDURES FOLLOWING FAILURE

CABIN PRESS
- EXCESS CAB ALT
  - OXY MASKS ..... ON
  - DESCENT ..... AS RQRD
  - IF RAPID DECOMPRESSION EMERG DESCENT PROC ..... APPLY''

**Removal of AD From AFM**

(b) When the information included in the AFM procedures specified in paragraphs (a)(1) and (a)(2) of this AD has been incorporated into the FAA-approved general revision of the AFM, and the information contained in the general revision is identical to that specified in this AD, this AD may be removed from the AFM.

**Alternative Methods of Compliance**

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

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

**Special Flight Permits**

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

Issued in Renton, Washington, on July 11, 2002.

**Michael J. Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 02–18027 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 02–AEA–09]**

## Proposed Amendment to Class E Airspace; Mount Pocono, PA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend the Class E airspace area at Mount Pocono, PA. The development of an Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) for the Pocono Mountains Municipal Airport (KMPO), Mount Pocono, PA, has made this proposal necessary. Sufficient controlled airspace is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

**DATES:** Comments must be received on or before August 16, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–09, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–AEA–09.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Mount Pocono, PA. The development of a SIAP to serve flights operating IFR into the airport makes this action necessary. Controlled airspace extending upward from 700 feet AGL within a 6.4 mile radius of the airport and an 8 mile wide corridor extending to 8.6 miles northwest of the airport is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(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 would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have 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).

**The Proposed Amendment**

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

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 CFR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designation and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is proposed to be amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AEA PA E5 Mount Pocono, PA [REVISED]**

Pocono Mountains Municipal Airport, Mount Pocono, PA
Lat. 41°08′15″ N., long 75°22′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Pocono Mountains Municipal Airport and within 4 miles each side of the 295° bearing from the airport extending from the 6.4-mile radius to 8.6 miles northwest of the airport.

* * * * *

Issued in Jamaica, New York, on July 1, 2002.

**F.D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 02–17579 Filed 7–16–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 02–AEA–07]**

## Proposed Amendment to Class E Airspace; Seneca Falls, NY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend the Class E airspace area at Seneca Falls, NY. The amendment to a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Finger Lakes Regional Airport (K0G7), Seneca Falls, NY and a change in the airport reference point have made this proposal necessary. Controlled airspace is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

**DATES:** Comments must be received on or before August 16, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–07, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions

presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–AEA–07.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

Any person may obtain a copy of this notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Seneca Falls, NY. An amendment to a SIAP based on the GPS and a change in the airport reference point have made this action necessary. The airspace will be defined to accommodate the approach and contain IFR operations to the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(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 would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have 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).

**The Proposed Amendment**

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

## PART 71—[AMENDED]

1. The authority citation for 14 CFR 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is proposed to be amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AEA NY E5 Seneca Falls, NY [Revised]**

Finger Lakes Regional Airport
(Lat.42°52′50″ N., long. 76°46′55″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of Finger Lakes Regional Airport.

* * * * *

Issued in Jamaica, New York, on July 1, 2002.

**F.D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 02–17577 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 872

**[Docket No. 01N–0067]**

## Dental Devices: Classification of Encapsulated Amalgam Alloy and Dental Mercury and Reclassification of Dental Mercury; Issuance of Special Controls for Amalgam Alloy; Reopening of Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is reopening for 60 days the comment period for the proposed rule on the classification of encapsulated amalgam alloy and dental mercury, the reclassification of dental mercury, and the issuance of special controls for amalgam alloy. The proposed rule was published in the **Federal Register** of February 20, 2002 (67 FR 7620). The agency is taking this action in response to a request for an extension. The comment period for this information closed on May 21, 2002. Elsewhere in this issue of the **Federal Register**, FDA is reopening for 60 days the comment period on the draft guidance entitled ''Special Control Guidance Document on Encapsulated Amalgam, Amalgam Alloy, and Dental Mercury Labeling.''

**DATES:** Submit written or electronic comments on the proposed rule by September 16, 2002.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

**FOR FURTHER INFORMATION CONTACT:** Susan Runner, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In the **Federal Register** of February 20, 2002 (67 FR 7620), FDA published a proposed rule entitled ''Dental Devices: Classification of Encapsulated Amalgam Alloy and Dental Mercury and Reclassification of Dental Mercury; Issuance of Special Controls for Amalgam Alloy.''

FDA received an electronic request dated May 20, 2002, requesting that the agency extend the comment period on the proposed rule for 60 days, noting the importance of public health issues involved and explaining that there were apparently technical difficulties with the submission of electronic comments. FDA has determined that it is appropriate to grant this request.

**II. Comments**

You may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on classification, reclassification, and special controls for dental amalgam products by September 16, 2002. You must submit two copies of any comments. Individuals may submit one copy. You must identify comments with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 5, 2002.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 02–17960 Filed 7–16–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### 30 CFR Parts 250 and 251

**RIN 1010–AC81**

## Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf—Proprietary Terms and Data Disclosure

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This rule proposes to modify the start date for the 50-year proprietary term for geophysical data, and the start date for the 25-year proprietary term for geophysical information that MMS acquires pursuant to a permit issued under 30 CFR part 251. We propose to change the start of the proprietary terms from the date the data and information are submitted to the date the permit is issued. Although the lengths of the proprietary terms do not change, the net result is the total length of time that geophysical data and information, selected and retained by MMS, are held by MMS before public release will be less than under current practice.

In addition, the rule would clarify that geological data and information, acquired under part 251 and submitted to MMS under part 250, retain proprietary terms under part 251. The rule also expands language that allows selective inspection of G&G data and information that MMS acquires under parts 250 and 251, and uses for specified purposes, by only those persons with a direct interest in related MMS decisions and issues.

**DATES:** We will consider all comments received by September 16, 2002. We will begin reviewing comments then and may not fully consider comments we receive after September 16, 2002.

**ADDRESSES:** Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team. If you wish to e-mail comments, the address is: *rules.comments@mms.gov.* Reference AC–81 G&G in your subject line. Include your name and return address in your message and mark your message for return receipt.

**FOR FURTHER INFORMATION CONTACT:** George Dellagiarino or David Zinzer at (703) 787–1628.

**SUPPLEMENTARY INFORMATION:** This proposed rule would modify the start date for the proprietary terms for geophysical permit data and information, acquired under part 251, by starting the terms with the date MMS issues the permit. (The proposed rule does not affect the proprietary terms for geophysical data and information related to a deep stratigraphic test.) Currently, the proprietary terms begin when the data and information are submitted to MMS. This change would conform with geological permit data and information whose proprietary terms begin with the date MMS issues the permit. This modification is necessary because MMS may select geophysical data and information numerous times from a single permit.

Current regulations establish a separate release date for each submission of geophysical data or information because the start of the proprietary term occurs with each submission to MMS. This results in complicated and burdensome recordkeeping for submitted data or information over a period of 50 or 25 years (respectively) for each submission. When it is time to release data or information to the public, the dates of submission for the data or information are not readily ascertainable. It also presents confusion to our customers with regard to the separate public release dates applicable to different parts of data and information obtained under a single permit. Beginning the proprietary term at the time that a permit is issued for all submissions of data or information minimizes such confusion, and aids MMS in managing the release of data and information once the proprietary term expires.

Furthermore, as progressively more data and information are submitted electronically, the specific ''date of submission'' becomes even more difficult to ascertain. Because we will be acquiring these data and information from a consortium on a continuous basis, it will become difficult if not impossible to identify the start date, based on a date of submission, for the proprietary terms. The only readily identifiable date available is the date the permit was issued.

To relieve a substantial administrative recordkeeping burden and to exercise proper management of the release of geophysical data and information, we propose to make this change retroactive to the original establishment date of the regulations at 30 CFR part 251, June 11, 1976.

The original 1976 proprietary term for geophysical data acquired under a permit was 10 years after issuance of the permit. For geophysical information acquired under a permit, the proprietary term was 10 years after submission to the (then U.S. Geological Survey) Supervisor. Effective March 17, 1988, the proprietary term for geophysical data was changed to 50 years after the date on which data are submitted, and for geophysical information the proprietary term was changed to 25 years after the date the information is submitted. These are the current terms for geophysical data and information.

Because these changes were made retroactive to June 1976, companies submitting data and information between June 1976 and March 1988 enjoy the benefit of the proprietary terms of their data and information submitted during that timeframe being extended to 50 years and 25 years, respectively.

The 1988 extension of proprietary terms recognized the longer periods that geophysical data and information remain of some commercial value. MMS believes that the proposed modifications still would adequately protect geophysical data and information because the data and information are protected for 50 and 25 years, respectively, after issuance of the permit.

In addition, we propose to clarify that geological data and information, originally acquired under a permit

pursuant to part 251 and later submitted to MMS by a lessee under parts 203 or 250, retain the proprietary terms under part 251 for geological permit data and information, namely, 10 years after MMS issues the permit.

To allow parties who are directly affected by our decisions regarding units, reservoirs, operations, environmental protection, field determinations, and royalty relief to better understand the basis of our decisionmaking process and any related issues, we are also proposing to selectively allow inspection of germane G&G permit and lease data and information that MMS uses to:

(1) Make unitization determinations on two or more leases;

(2) Make competitive reservoir determinations;

(3) Ensure proper plans of development for competitive reservoirs;

(4) Promote operational safety;

(5) Protect the environment;

(6) Make field determinations; or

(7) Determine eligibility for royalty relief.

The disclosure would be restricted to limited inspection of these data and information by those persons with a direct interest in related MMS decisions and issues. Copying, direct access, or other forms of retention by the interested persons will not be allowed. These inspections will occur only at meetings between MMS and the interested persons involved in the above cases.

**Procedural Matters**

*Public Comments Procedure*

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*Regulatory Planning and Review (Executive Order 12866)*

This document is not a significant rule and is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. MMS takes all actions that result from the change in the start dates of the proprietary terms, with no costs to outside parties. Similarly, there would be no costs associated to industry concerning our disclosing permitted geophysical information for ensuring proper development.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. There are no other Federal agencies involved in this process, as it relates to release or disclosure of geophysical data and information.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or rights or obligations of their recipients. This rule has no effect on these programs or such rights.

(4) This rule changes the basis for the start of proprietary terms for geophysical data and geophysical information acquired under a permit, retroactive to June 11, 1976. This rule does not raise novel legal or policy issues, although we recognize that this change in the start date may be controversial. Certain geophysical companies, if still in existence, whose data and information being held by us may be released earlier than under current regulations, may have concerns about the change. However, any data to be released will be at least 50 years old, and any information to be released will be at least 25 years old. As previously stated, the intent of this rule is to alleviate administrative recordkeeping burdens and to ensure proper development of fields or reservoirs.

*Regulatory Flexibility (RF) Act*

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). This revised rule would modify the start of the proprietary terms for geophysical data and information and add language to ensure proper development of fields or reservoirs under 30 CFR 251.14 and 250.196. The only entities affected by this rule change are certain geophysical companies, if still in existence, whose data and information being held by us may be released earlier than under current regulations. The Small Business Administration classifies geophysical surveying and mapping services companies under the North American Industry Classification System Code 541360. These changes will have no economic impact on these constituents, as MMS takes all of the actions with no cost to our customers.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under the SBREFA, 5 U.S.C. 804(2). This rule:

(1) Does not have an annual effect on the economy of $100 million or more. This rule would modify the proprietary terms for geophysical data and information for consistency with those for geological data and information and allow for possible limited disclosure of certain permitted information for assuring proper development of a field or competitive reservoir. This rule will not impose any costs on industry.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic areas. The modification to the proprietary term and change in language regarding disclosure of information for proper development will not cause a burden in terms of finance or time for any outside parties.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, ability of United States-based enterprises to compete with foreign-based enterprises as the information to be released will be 25 years old, and any data to be released will be 50 years old. There are no United States- or foreign-based enterprises involved in this rule.

*Paperwork Reduction Act (PRA) of 1995*

A form OMB–83–I submission to OMB is not required. The proposed rule concerns actions by MMS and does not contain new requirements subject to the PRA. Nor does the proposed rule change the information collection requirements OMB approved for 30 CFR part 250, subpart A (OMB control number 1010–0114, current expiration date of September 30, 2002), or in 30 CFR part 251 (OMB control number 1010–0048, current expiration date of May 31, 2003).

*Federalism (Executive Order 13132)*

According to Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State Governments. The proposed modification to the proprietary terms affects only our own methods of doing business, and the added language regarding data disclosure would only be of interest to industry. There will be no financial costs to States.

*Takings Implications Assessment (Executive Order 12630)*

According to Executive Order 12630, the rule does not have significant Takings implications. A Takings Implication Assessment is not required because the rule would not take away or restrict an operator's right to collect data and information and would have us maintain that data and information as proprietary under the terms of the permit.

*Energy Supply, Distribution, or Use (Executive Order 13211)*

This rule is not a significant rule and is not subject to review by OMB under Executive Order 12866. The rule does not have a significant effect on energy supply, distribution, or use because the rule's purpose is to modify the start of the proprietary terms for geophysical data and information acquired from industry and released by MMS, and to modify language allowing for selected disclosure by MMS of G&G data and information used by MMS for specified purposes.

*Civil Justice Reform (Executive Order 12988)*

According to Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The rule would have little effect on the judicial system, because it is an administrative action to modify the proprietary terms and support the MMS decisionmaking process for proper development.

*National Environment Policy Act (NEPA)*

We have analyzed this rule according to the criteria of the NEPA and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required. This rule will have no impact regarding the criteria of the NEPA.

*Unfunded Mandate Reform Act (UMRA) of 1995*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule does not create any kind of a mandate for State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA, 2 U.S.C. 1501 *et seq.* is not required.

**List of Subjects in 30 CFR Parts 250 and 251**

Continental shelf, Freedom of information, Exploration, Development, Minerals Management Service, Oil, Gas, Sulphur, Reporting and recordkeeping requirements, Research, Public lands—mineral resources.

Dated: July 2, 2002.

**Rebecca W. Watson,**

*Assistant Secretary, Land and Minerals Management.*

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR parts 250 and 251 as follows:

## PART 250–OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

**Authority:** 43 U.S.C. 1331 *et seq.*

2. In § 250.196 the following changes are made:

A. Revise the section heading as set forth below.

B. Revise the introductory paragraph as set forth below.

C. Revise the introductory language in paragraph (b) as set forth below.

D. Remove line item (1) from the table in paragraph (b); redesignate line items (2) through (10) as (1) through (9) respectively; and revise redesignated line (9) to read as set forth below.

E. Add new paragraph (c) to read as set forth below.

### § 250.196 Data and information to be made available to the public or for limited inspection.

MMS will protect data and information that you submit under this part, and part 203 of this chapter, as described in this section. Paragraphs (a) and (b) of this section describe what data and information will be made available to the public without the consent of the lessee and under what circumstances and in what time period. Paragraph (c) of this section describes what data and information will be made available for limited inspection without the consent of the lessee and under what circumstances.

* * * * *

(b) MMS will release lease and permit data and information that you submit, but that are not normally submitted on MMS forms, according to the following table:

| If | MMS will release | At this time | Special provisions |
|---|---|---|---|
| * * | * * | * * | * |
| (9) Data and information acquired by a permit under part 251 are submitted by a lessee under 30 CFR part 203 or part 250 and retained by MMS. | G&G data, analyzed geological information, processed and interpreted G&G information. | Geological data and information: 10 years after MMS issues the permit; Geophysical data: 50 years after MMS issues the permit; Geophysical information: 25 years after MMS issues the permit. | None. |

(c) MMS may allow limited inspection, but only to persons with a direct interest in related MMS decisions and issues and who agree to confidentiality of G&G data and information submitted under this part or part 203 of this chapter and that MMS uses:

(i) To make unitization determinations on two or more leases;

(ii) To make competitive reservoir determinations;

(iii) To ensure proper plans of development for competitive reservoirs;

(iv) To promote operational safety;

(v) To protect the environment;

(vi) To make field determinations; or

(vii) To determine eligibility for royalty relief.

## PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

3. The authority citation for part 251 continues to read as follows:

**Authority:** 43 U.S.C. 1331 *et seq.*

4. In § 251.14 the introductory language in paragraph (b) is revised, the table in paragraph (b)(1) is revised, and paragraph (b)(3) is added to read as follows:

### § 251.14 Protecting and disclosing data and information submitted to MMS under a permit.

* * * * *

(b) *Timetable for release of G&G data and information that MMS acquires.* MMS will release or disclose data and information that you or a third party submit and MMS retains in accordance with paragraphs (b)(1), (b)(2), and (b)(3) of this section.

(1) * * *

| If you or a third party submit and MMS retains . . . | The Regional Director will release them to the public . . . |
|---|---|
| (i) Geological data and information | 10 years after MMS issues the permit. |
| (ii) Geophysical data | 50 years after MMS issues the permit. |
| (iii) Geophysical information | 25 years after MMS issues the permit. |

* * * * *

(3) MMS may allow limited inspection, but only to persons with a direct interest in related MMS decisions and issues and who agree to confidentiality of G&G data and information submitted under this part and that MMS uses:

(i) To make unitization determinations on two or more leases;

(ii) To make competitive reservoir determinations;

(iii) To ensure proper plans of development for competitive reservoirs;

(iv) To promote operational safety;

(v) To protect the environment;

(vi) To make field determinations; or

(vii) To determine eligibility for royalty relief.

[FR Doc. 02–17880 Filed 7–16–02; 8:45 am]

BILLING CODE 4310–MR–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1200

**RIN 3095–AB12**

### Official Seals

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Proposed rule.

**SUMMARY:** The National Archives and Records Administration (NARA) is proposing to revise its regulations on the NARA official seals. This proposal adds our criteria for approving and denying requests submitted by the public and other Federal agencies to use our official seals. It also proposes to require more detailed facts in written requests and includes NARA's conditions for use if a request is approved. This part has been rewritten in plain language format and applies to the public and other Federal agencies.

**DATES:** Comments are due by September 16, 2002.

**ADDRESSES:** Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–837–0319. You may also comment via the Internet to *comments@nara.gov.* See the **SUPPLEMENTARY INFORMATION** section for additional instructions on submitting e-mail comments.

Comments on the information collection contained in this proposed rule should also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Brooke Dickson, NARA Desk Officer, via fax or e-mail to *bdickson@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kim Richardson at telephone number 301–837–2902 or fax number 301–837–0319.

**SUPPLEMENTARY INFORMATION:** NARA's three official seals are the National Archives and Records Administration seal; the National Archives seal; and the National Archives Trust Fund Board seal. The official seals are used to authenticate various copies of official records in our custody and for other official NARA business. Occasionally, when criteria are met, we will permit the public and other Federal agencies to use our official seals. A written request must be submitted to use the official seals, which we approve or deny using specific criteria. We are proposing to add our criteria for approval as follows:

- The first criterion is that NARA must be participating in the event or activity by providing speakers, space, or other similar services (examples: NARA co-sponsoring a symposium or conference).
- The second criterion for approval is the seal's proposed use must not imply NARA's endorsement of a commercial product or service or of the user's policies or activities. NARA, as a Federal agency, cannot promote or endorse, directly or indirectly, any of the above mentioned activities.

We are also proposing to require more detailed facts in written requests. Detailed and accurate requests enable us to make determinations that do not compromise our provisions for using the official seals as stated in these regulations.

We also propose to add conditions for use if the request is approved. The conditions include that the seal must only be used for the specific purpose for which approval is granted, the approval must not be delegated without our prior approval, and the seal itself must not be altered.

This part has been rewritten in plain language format and applies to the public and other Federal agencies.

### Information Collection Subject to the Paperwork Reduction Act

The proposed information collection in § 1200.10, the written request, is subject to the Paperwork Reduction Act. Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The control number for this information collection will be assigned by OMB. NARA invites comments on this proposed information collection.

Comments should be addressed to NARA and OMB (see **ADDRESSES**).

The proposed information collection in § 1200.10 is designed to assist NARA in determining whether to approve requests to use our official seals. It affects the public and other Federal agencies that are requesting to use our official seals. We estimate that we will receive five requests per year from five respondents and that the respondent burden to provide the information will be 20 minutes per request, for a total burden of one hour and 40 minutes.

**E-mail Comments**

Please submit e-mail comments within the body of your e-mail message or as an attachment. Please also include ''Attn: 3095–AB12'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your e-mail message, contact the Regulation Comment Desk at 301–837–2902.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this proposed rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

**List of Subjects in 36 CFR Part 1200**

Seals and insignia.

For the reasons set forth in the preamble, NARA proposes to revise part 1200 of title 36, Code of Federal Regulations, to read as follows:

## PART 1200—OFFICIAL SEALS

**Subpart A—General**



**Subpart B—How are NARA's Official Seals Designed and Used?**



**Subpart C—Procedures for the Public to Request and Use NARA Seals**



**Subpart D—Penalties for Misuse of NARA Seals**



**Authority:** 18 U.S.C. 506 and 1017; 44 U.S.C. 2104(e), 2116(b), 2302.

## Subpart A—General

### § 1200.1 Definitions.

The following definitions apply to this part:

*Embossing seal* means a display of the form and content of the official seal made on a die so that the seal can be embossed on paper or other medium.

*NARA* means all organizational units of the National Archives and Records Administration.

*Official seal* means the original(s) of the seal showing the exact form and content.

*Replica or reproduction* means a copy of the official seal displaying the form and content.

## Subpart B—How Are NARA's Official Seals Designed and Used?

### § 1200.2 How is each NARA seal designed?

NARA's three official seals are illustrated in Figures 1, 2, and 3. A description of each seal is as follows:

(a) *The National Archives and Records Administration seal.* The design is illustrated below in Figure 1 and described as follows:

(1) The seal is centered on a disc with a double-line border.

(2) The words ''NATIONAL ARCHIVES AND RECORDS ADMINISTRATION'' encircle the inside of the seal and the date 1985 is at the bottom center.

(3) A solid line rendition of a heraldic eagle displayed holding in its left talon 13 arrows, in its right talon a branch of olive, bearing on its breast a representation of the shield of the United States.

(4) Displayed above the eagle's head is a partially unrolled scroll inscribed with the words ''LITTERA SCRIPTA MANET'' one above the other.


Figure 1 – The National Archives and Records Administration Seal

(b) *National Archives seal.* The design is illustrated below and described as in paragraph (a) of this section. However, the words ''THE NATIONAL ARCHIVES OF THE UNITED STATES'' encircle the inside of the seal and the date 1934 is at the bottom center.


Figure 2 – The National Archives Seal

(c) *National Archives Trust Fund Board seal.* The design is illustrated below and described as in paragraph (a) of this section. However, the words ''NATIONAL ARCHIVES TRUST FUND BOARD'' encircle the inside of the seal and the date 1941 is at the bottom center.


Figure 3 – National Archives Trust Fund Board Seal

**§ 1200.4 How does NARA use its official seals?**

NARA uses its three official seals to authenticate various copies of documents and for informational purposes as follows:

(a) The National Archives and Records Administration seal, dated 1985, is used:

(1) For official business, e.g., stationery;

(2) To authenticate copies of Federal records in NARA's temporary custody and copies of NARA operational records; and

(3) For informational purposes with NARA's prior approval (includes use by NARA employees, the public, and other Federal agencies).

(b) The National Archives seal, dated 1934, is used to authenticate copies of documents in NARA's permanent legal custody.

(c ) The National Archives Trust Fund Board seal, dated 1941, is used for Trust Fund documents and publications.

**§ 1200.6 Who is authorized to apply the official seals on documents or other materials?**

The Archivist of the United States (and the Archivist's designee) is the only individual authorized to apply NARA official seals, embossing seals, and replicas and reproductions of seals to appropriate documents, authentications, and other material. NARA accepts requests to use the official seals and approves or denies them based on the criteria identified in § 1200.10.

## Subpart C—Procedures for the Public to Request and Use NARA Seals

**§ 1200.8 How do I request to use the official seals?**

You may only use the official seals if NARA approves your written request. Follow the procedures in this section to request authorization.

(a) Prepare a written request explaining, in detail:

(1) The name of the individual/organization requesting use and how it is associated with NARA;

(2) Which of the three official seals you want to use and how or on what it is going to be displayed. Provide a sample of the document or other material on which the seal is intended to appear. Mark the sample in all places where the seal would be displayed;

(3) How the intended use of the official seal is connected to your work with NARA on an event or activity (example: requesting to use the official NARA seal on a program brochure, poster, or other publicity announcing a co-sponsored symposium or conference.); and

(4) The dates of the event or activity for which you intend to display the seal.

(b) You must submit the request at least six weeks before you intend to use it to the Archivist of the United States (N), 8601 Adelphi Rd., College Park, MD 20740–6001.

(c) The OMB control number _____ has been assigned to the information collection contained in this section.

**§ 1200.10 What Are NARA's criteria for approval?**

NARA's criteria for approval are as follows:

(a) NARA must be participating in the event or activity by providing speakers, space, or other similar services (example: NARA co-sponsoring a symposium or conference).

(b) The seal is not going to be used on any article or in any manner that reflects unfavorably on NARA or endorses, either directly or by implication, commercial products or services, or a requestor's policies or activities.

**§ 1200.12 How does NARA notify me of the determination?**

NARA will notify you by mail of the final decision, usually within 3 weeks from the date we receive your request. If NARA approves your request, we will send you a camera-ready copy of the official seal along with an approval letter that will:

(a) Reference back to the submitted request (either through the date or another distinguishing characteristic) indicating approval of the specific use, as defined in the request; and

(b) Include NARA's conditions for use, which are identified in § 1200.14.

**§ 1200.14 What are NARA's conditions for the use of the official seals?**

If your request is approved, you must follow these conditions:

(a) Use the official seal only for the specific purpose for which approval was granted;

(b) Submit additional written requests for any uses other than the use granted in the approval letter;

(c) Do not delegate the approval to another individual(s) or organization without NARA's prior approval; and

(d) Do not change the official seals themselves. They must visually and physically appear as illustrated in § 1200.2, with no alterations.

(e) Only use the official seal for the time period designated in the approval letter (example: for the duration of a conference or exhibit).

## Subpart D—Penalties for Misuse of NARA Seals

**§ 1200.16 Will I be penalized for misusing the official seals?**

(a) If you falsely make, forge, counterfeit, mutilate, or alter official seals, replicas, reproductions or embossing seals, or knowingly use or possess with fraudulent intent any altered seal, you are subject to penalties under 18 U.S.C. 506.

(b) If you use the official seals, replicas, reproductions, or embossing seals in a manner inconsistent with the provisions of this part, you are subject to penalties under 18 U.S.C. 1017 and to other provisions of law as applicable.

Dated: July 8, 2002.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 02–17962 Filed 7–16–02; 8:45 am]

**BILLING CODE 7515–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA 247–0347b; FRL–7220–7]**

## Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District and South Coast Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent cleaning operations and dry cleaners using solvent other than perchloroethylene. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by August 16, 2002.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536

South Coast Air Quality Management District, 21865 E. Copley Dr., Diamond Bar, CA 91765–4182

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Allen, Rulemaking Office (Air–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4120.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rules: MBUAPCD 416 and SCAQMD 1102. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions

are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 9, 2002.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 02–17703 Filed 7–16–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 141

**[FRL–7247–6]**

**RIN 2040–AD61**

### Announcement of Preliminary Regulatory Determinations for Priority Contaminants on the Drinking Water Contaminant Candidate List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Environmental Protection Agency (EPA) published a document in the **Federal Register** of June 3, 2002, announcing the preliminary regulatory determinations for priority contaminants on the Drinking Water Contaminant Candidate List. EPA inadvertently included the incorrect docket number in the **ADDRESSES** section. The correct docket number is W–01–03.

**FOR FURTHER INFORMATION CONTACT:** Harriet T. Corbett-Colbert, 202–564–4698.

**Correction**

The **ADDRESSES** caption in the **Federal Register** document of June 3, 2002, Vol. 67, No. 106, page 38223, first column, should have read:

**ADDRESSES:** Please send your comments to the W–01–03 Comments Clerk. Submit electronic comments to: *ow-docket@epa.gov.* Written comments should be mailed to: Water Docket (MC–4101), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries should be delivered to EPA's Water Docket at East Tower Basement (EB Room 57), Waterside Mall, 401 M Street, SW, Washington, DC 20460. You may contact the docket at (202) 260–3027 between 9 a.m. and 3:30 p.m. Eastern Time, Monday through Friday. Comments may be submitted electronically. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing and docket review.

This correction notice will not extend the comment period. The comment period ends on August 2, 2002. All comments received under the incorrect docket number will be directed to the appropriate Comments Clerk.

Dated: July 11, 2002.

**Cynthia C. Dougherty,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 02–18146 Filed 7–16–02; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### 42 CFR Chapter IV

**[CMS–1227–N]**

**RIN 0938–ZA40**

### Medicare Program; Town Hall Meeting on the Outcome Assessment Information Set (OASIS)

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a town hall meeting to discuss and obtain general comments from the public about the items contained in the OASIS home health assessment instrument. Specifically, the meeting will attempt to elicit the individual comments and experiences of home health stakeholders in using the OASIS and any burden associated with its completion, and their comments about the necessity of individual assessment items. Beneficiaries, providers, physicians, home health agencies and industry representatives, encoding specialists, and other interested parties are invited to this meeting to present their individual views on these issues. We will consider the individual opinions provided during this meeting as we proceed with our efforts to update the OASIS assessment instrument and reduce the burden of OASIS data collection by home health care providers. The meeting is open to the public, but attendance is limited to space available.

**DATE:** *Meeting Date:* The town hall meeting announced in this notice will be held on Wednesday, July 31, 2002, from 1 p.m. to 4 p.m. (eastern standard time).

**ADDRESSES:** The town hall meeting will be held in the auditorium at the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

**FOR FURTHER INFORMATION CONTACT:** Katie Laschinger, 410–786–2119. You may also send inquiries about this meeting via e-mail to *KLaschinger@cms.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On June 10, 2002, the Secretary of Health and Human Services announced the launching of a new effort to streamline Medicare's paperwork requirements for home health nurses and therapists so that they can focus more on providing quality care to their patients.

The action is one of several steps announced to address interim recommendations from the Secretary's Advisory Committee on Regulatory Reform. Secretary Thompson created the panel of consumers, physicians, and other health care professionals to help guide HHS' broader efforts to streamline unnecessarily burdensome or inefficient regulations that interfere with the quality of health care for Americans.

Since 1999, Medicare has required home health agencies to complete the OASIS (Outcome Assessment Information Set) at regular intervals both to ensure Medicare pays appropriately and to assess and improve the quality of care provided by the home health agency. Committee members, however, made several recommendations for streamlining the assessment to achieve those goals more efficiently, allowing home health agencies to spend more resources providing care to their patients.

Acting on the committee's recommendations to date, we have already taken steps to revise the OASIS form and its use, and will begin implementation of the changes. These changes will be described at the OASIS town hall meeting. We are now interested in providing interested parties with the opportunity to propose additional changes to OASIS as part of

the process for the regular update of the OASIS instrument, its format, and use.

**II. Meeting Format**

The meeting will begin with an overview of the goals of the meeting, the recommendations made by the Secretary's Advisory Committee on Regulatory Reform, the Secretary's Committee on Government Reform, and our efforts to implement those recommendations to revise the OASIS and its administration by home health agencies. The meeting moderator will be introduced along with members of the OASIS Technical Expert Panel, which is working with us on the long-term review and update of OASIS. The moderator will elicit the individual comments and recommendations of the audience about OASIS, its content, and ways to further reduce the burden of OASIS data collection.

Beginning on July 12, 2002, information about the OASIS town hall meeting will be posted at the following website address: *www.cms.hhs.gov/oasis/hhnew.asp.* At this address, interested parties will find an agenda for the meeting and handouts to be used during the discussions.

We will limit the time for participants to make formal statements according to the number of registered participants. Individuals who wish to make formal statements must contact Katie Laschinger as soon as possible. Those individuals must subsequently submit their formal statement in writing no later than 5 p.m., Wednesday, July 24, 2002. Send written submissions to: Katie Laschinger, Division of Ambulatory and Post Acute Care (DAPAC), Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop S3–06–26, Baltimore, Maryland 21244 or *Klaschinger@cms.hhs.gov.* Comments from individuals not registered to speak will be heard after individuals with scheduled statements, if time permits.

**III. Registration Instructions**

The DAPAC is coordinating meeting registration. While there is no registration fee, all individuals must register to attend. Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend this meeting must call or e-mail Katie Laschinger to register at least 72 hours in advance. Attendees must show photographic identification to the Federal Protective Service or Guard Service personnel before they will be permitted to enter the building. Individuals who have not registered in advance will not be allowed to enter the building to attend the meeting. Seating capacity is limited to the first 250 registrants.

Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Katie Laschinger at least 10 days before the meeting.

**Authority:** Section 1891 of the Social Security Act (42 U.S.C. 1395bbb)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 15, 2002.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 02–18149 Filed 7–16–02; 8:45 am]

**BILLING CODE 4120–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 25

**[IB Docket No. 02–10, DA 02–806]**

### Procedures To Govern the Use of Earth Stations on Board Vessels in Bands Shared With Terrestrial Fixed Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On March 22, 2002, the Federal Communications Commission published a proposed rule document on the variety of issues related to the authorization of satellite earth stations on board vehicles (ESVs). In response to a request for an extension of time, on April 9, 2002, the Commission released an order granting an extension of time for filing comments and reply comments in this proceeding.

**DATES:** Comments were due on or before May 10, 2002. Reply comments were due on or before June 10, 2002.

**ADDRESSES:** All comments and reply comments should be addressed to: Office of the Secretary, Federal Communications Commission, Washington, DC 20554. All comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Peggy Reitzel, Policy Division, International Bureau, (202) 418–1499.

**SUPPLEMENTARY INFORMATION:**

1. On April 5, 2002, Maritime Telecommunications Network, Inc. (MTN) filed a motion to extend the comment and reply comment filing deadlines in this proceeding. (*see* Notice of Inquiry in the Matter of Procedures to Govern the Use of Earth Stations on Board Vessels in Bands Shared with Terrestrial Fixed Service, IB Docket No. 02–10, 67 FR 13399, March 22, 2002). MTN contends that the current pleading schedule coincides with the upcoming meeting of the ITU–R Working Group 4–9S in Geneva, at which studies regarding the regulatory, technical and operational aspects of ESVs are expected to be conducted. Because many of these same technical and operational issues are under consideration in this proceeding, MTN asserts that commenters would benefit from additional time to review the results of the ITU–R meeting prior to the filing of comments.

2. Although we do not routinely grant extensions of time, *see* 47 CFR 1.46(a), we believe that extending the pleading cycle in this case will serve the public interest. In the Notice of Inquiry, the Commission indicated that it would note further international developments concerning the ESV service as it considers issues that could arise in the potential licensing of ESVs on a domestic level. Therefore, it is appropriate to extend the comment and reply comment deadlines by 30 days to permit MTN and other members of the public to incorporate the results of the ITU–R meeting in their comments and reply comments so as to help the Commission address the complex issues raised in this proceeding.

3. Pursuant to § 1.46 of the Commission's Rules, 47 CFR 1.46, the request of Maritime Telecommunications Network Inc. *is granted.*

4. The deadline for filing comments in this proceeding *was extended* to May 10, 2002.

5. The deadline for filing reply comments in this proceeding *was extended* to June 10, 2002.

Federal Communications Commission.

**James Ball,**

*Chief, Policy Division, International Bureau.*

[FR Doc. 02–17994 Filed 7–16–02; 8:45 am]

**BILLING CODE 6712–01–U**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AI17**

## Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period on the Proposed Listing of the Columbia Basin Distinct Population Segment of the Pygmy Rabbit (*Brachylagus idahoensis*) as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended, provide notice of the reopening of the comment period for the proposed listing of the Columbia Basin distinct population segment of the pygmy rabbit (*Brachylagus idahoensis*) as endangered. The comment period has been reopened in order to conduct a peer review of the proposed rule. Comments previously submitted need not be resubmitted as they already have been incorporated into the public record and will be fully considered in the final rule.

**DATES:** The public comment period is reopened and we will accept comments until August 1, 2002. Comments must be received by 5 p.m. on the closing date. Any comments that are received after the closing date may not be considered in the final decision on this action.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Upper Columbia Fish and Wildlife Office, 11103 East Montgomery Drive, Spokane, WA 99206.

You may also send comments by electronic mail (e-mail) to: *fw1cbprabbit@r1.fws.gov*. See the Public Comments Solicited section below for file format and other information about electronic filing.

You may hand-deliver comments to our Upper Columbia Fish and Wildlife Office at the address listed above.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Christopher Warren, Upper Columbia Fish and Wildlife Office (see **ADDRESSES**) (telephone 509/891–6839; facsimile 509/891–6748; electronic mail: *chris_warren@fws.gov*).

**SUPPLEMENTARY INFORMATION:**

### Background

The Columbia Basin distinct population segment of the pygmy rabbit (*Brachylagus idahoensis*) consists of a single, wild colony totaling fewer than 30 individuals in Douglas County, WA, and a small captive population.

Pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we published an emergency rule to list the Columbia Basin pygmy rabbit as endangered on November 30, 2001 (66 FR 59734). The emergency rule provides immediate Federal protection to this species for a period of 240 days. We also published a concurrent proposed rule on November 30, 2001, to list the Columbia Basin pygmy rabbit as endangered under our normal listing procedures (66 FR 59769).

For further information regarding background biological information, previous Federal actions, factors affecting the species, and conservation measures available to the Columbia Basin pygmy rabbit, please refer to our emergency and proposed rules published in the **Federal Register** on November 30, 2001.

### Public Comments Solicited

With this notification, we solicit additional information and comments that may assist us in making a final decision on the proposed rule to list the Columbia Basin pygmy rabbit as endangered. We intend that any final listing action resulting from our proposal will be as accurate and effective as possible. Therefore, we request comments and additional information from the general public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments are particularly sought concerning:

(1) The location of any additional populations of this species, and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(2) Additional information regarding the range, distribution, and population size of this species;

(3) Biological, commercial trade, or other relevant data regarding any threat (or lack thereof) to the Columbia Basin pygmy rabbit; and

(4) Current or planned activities or land use practices that could potentially impact the Columbia Basin pygmy rabbit.

Previously submitted written comments on this proposal need not be resubmitted. If you submit comments by e-mail, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: Columbia Basin pygmy rabbit'' and your name and return address in your e-mail message. If you do not receive a confirmation from our system that we have received your e-mail message, contact us directly by calling our Upper Columbia Fish and Wildlife Office, at telephone number 509/891–6839. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Upper Columbia Fish and Wildlife Office (see **ADDRESSES**).

In making any final decision on the proposed action, we will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from the proposal.

### Author

The primary author of this notice is Barbara Behan of the Regional Office, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–6131).

### Authority

The authority of this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 9, 2002.

**Marshall P. Jones, Jr.,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 02–18015 Filed 7–16–02; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register
Vol. 67, No. 137
Wednesday, July 17, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. FV02–377]**

### Fruit and Vegetable Industry Advisory Committee

**AGENCY:** Agricultural Marketing Service.

**ACTION:** Notice of public meeting.

**SUMMARY:** The purpose of this notice is to notify all interested parties that the Agricultural Marketing Service (AMS) will hold a Fruit and Vegetable Industry Advisory Committee (Committee) meeting that is open to the public to attend. The U.S. Department of Agriculture (USDA) established the Committee to examine the full spectrum of issues faced by the fruit and vegetable industry and provide suggestions and ideas on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. This notice sets forth the schedule and location for the meeting.

**DATES:** The Committee meeting which is open to the public will be held on Wednesday, September 4, 2002, from 8 a.m. to 5:30 p.m.

**ADDRESSES:** The Committee will meet in the Congressional Room at the Holiday Inn—On the Hill, 415 New Jersey Avenue NW., Washington, DC 20001. To submit comments for review by the Committee please send them to: Sandra Gardei, U.S. Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue, SW., Room 2073, Washington, DC 20250 by August 30, 2002 or E-mail: *Sandra.gardei@usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** Robert C. Keeney, Deputy Administrator, Fruit and Vegetable Programs (202) 720–4722, or E-mail: *Robert.keeney@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture has established the Fruit and Vegetable Industry Advisory Committee. The elected Chairperson for the Committee is Ms. Maureen Marshall of Torrey Farms, New York. The Vice-Chairperson of the Committee is Ms. Karen Caplan of Freida's, Inc., California. The Deputy Administrator of the Agricultural Marketing Service's Fruit and Vegetable Programs, Mr. Robert C. Keeney, is the Committee's Executive Secretary, and Ms. Sandra Gardei is the Designated Official for the Fruit and Vegetable Industry Advisory Committee.

Topics for discussion at the Committee meeting on September 4, 2002, will include the following: USDA programs encouraging increased consumption of fruits and vegetables; pilot project to increase purchases of fresh produce for domestic feeding programs; possible inspection fee increase at destination markets; and a review of the market news service.

Representatives from the U.S. Department of Agriculture and the Committee will seek public comment from parties interested in fruit and vegetable programs. To submit comments for review by the Committee please send them to: Attn: Sandra Gardei, U.S. Department of Agriculture, Agricultural Marketing Services, 1400 Independence Avenue, SW., Room 2073, Washington, DC 20250 by August 30, 2002 or send comments by email to *Sandra.gardei@usda.gov.* The meeting is scheduled from 8 a.m. to 5:30 p.m. on Wednesday, September 4, 2002. It will be held in the Congressional Room at the Holiday Inn—On the Hill, 415 New Jersey Avenue NW., Washington, DC 20001.

Those parties that wish to attend the meeting or speak at the meeting should register on or before August 30, 2002. Space is limited. To register send an E-mail to *Sandra.gardei@usda.gov* or fax your request to 202–720–0016. Registrants and speakers should include their name, address, organization, and daytime telephone number. Identification will be required to be admitted to the meeting. All visitors must be registered with AMS in advance of the meeting.

If you require special accommodations, such as a sign language interpreter, please contact Robert C. Keeney, Deputy Administrator, Fruit and Vegetable Programs at (202) 720–4722, or send an E:mail to: *Robert.keeney@usda.gov.* The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting or you may call 202–720–4722 to obtain a transcript two weeks after the meeting.

Dated: July 11, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–17991 Filed 7–16–02; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Ravalli County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Ravalli County Resource Advisory Committee will be meeting to discuss projects to fund this fiscal year. Agenda topics will include Project evaluation and selection, Next steps, and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106393). The meeting is open to the public.

**DATES:** The meeting will be held on August 6, 2002, 6:30 p.m.

**ADDRESSES:** The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 7777423, or electronically to *jmhiggins@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 7775461.

Dated: July 11, 2002.

**Lesley Thompson,**

*Acting Forest Supervisor.*

[FR Doc. 02–17952 Filed 7–16–02; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Del Norte County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Del Norte County Resource Advisory Committee (RAC) will meet on August 6, 2002 in Crescent City, California. The purpose of the meeting is to select Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

**DATES:** The meeting will be held on August 6, 2002 from 6 to 8:30 p.m.

**ADDRESSES:** The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Suite B, Crescent City, California.

**FOR FURTHER INFORMATION CONTACT:** Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *lchapman@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** This will be the tenth meeting of the committee and will focus on selecting Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: July 10, 2002.

**S.E. 'Lou' Woltering,**

*Forest Supervisor.*

[FR Doc. 02–18029 Filed 7–16–02; 8:45 am]

**BILLING CODE 3410–11–M**

## CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

### Sunshine Act Meeting

The U. S. Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 10 a.m. local time on July 31, 2002, at 2175 K Street, NW., Suite 400 Conference Room, Washington DC. The Board will discuss and deliberate on staff recommendations regarding an update to the CSB strategic plan for FY 2003. The Board will also consider the status of recommendations from prior CSB investigations and the responses from recipients of those recommendations. Additionally, the CSB staff will present to the Board an update on the Reactive Chemical Hazards Investigation and the close of the public comment period following the public hearing held in Paterson, New Jersey, on May 30, 2002.

CSB investigators will also update the Board on the status of current CSB investigative efforts. The meeting will conclude with an update on current administrative and contracting matters and the resolution of on-going audit issues.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the relevant issues and factors. No factual analyses, conclusions, or findings should be considered final.

The meeting is open to the public. Please notify CSB if a translator or interpreter is needed, 10 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202)–261–7600, or visit our website at: *www.csb.gov.*

**Christopher W. Warner,**

*General Counsel.*

[FR Doc. 02–18172 Filed 7–15–02; 2:04 pm]

**BILLING CODE 6350–01–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–813]**

### Notice of Preliminary Results of Antidumping Duty New Shipper Review; Stainless Steel Butt-Weld Pipe Fittings From Korea

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

**ACTION:** Notice of Preliminary Results of Antidumping Duty New Shipper Review.

**SUMMARY:** In response to a request from TK Corporation, the Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on stainless steel butt-weld pipe fittings from Korea. This new shipper review covers imports of subject merchandise from TK Corporation. The period of review is February 1, 2001 through July 31, 2001.

**EFFECTIVE DATE:** July 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker, Mike Heaney, or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2924, (202) 482–4475, or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

**Applicable statute and regulations:**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 1, 2001).

**Background**

On February 23, 1993, the Department published the antidumping duty order on stainless steel butt-weld pipe fittings from Korea. *See Antidumping Duty Order: Certain Welded Stainless Steel Butt-Weld Pipe Fittings from Korea*, 58 FR 11029 (February 23, 1993). On August 31, 2001, TK Corporation, a producer and exporter of the subject merchandise during the period of review (POR), requested that the Department conduct an antidumping duty new shipper review of the antidumping duty order. TK Corporation certified it did not export subject merchandise to the United States during the period of the investigation (POI) (December 1, 1991 through May 30, 1992), and that it was not affiliated with any exporter or producer of the subject merchandise to the United States during the POI. TK Corporation also submitted documentation establishing the date on which it first shipped the subject merchandise for export to the United States, the volume shipped, and the date of the first sale to an unaffiliated customer in the United States. On October 5, 2001, the Department initiated a new shipper review of the antidumping duty order on stainless steel butt-weld pipe fittings from Korea. *See Stainless Steel Butt-Weld Pipe Fittings from Korea: Notice of Initiation of New Shipper Antidumping Duty Review*, 66 FR 51017 (October 5, 2001).

On October 12, 2001, the Department issued its antidumping duty questionnaire. On November 9, 2001, the Department received TK Corporation's Section A response to the questionnaire; TK Corporation filed its Sections B and C responses on November 30, 2001. On January 22, 2002, the Department issued a Sections A-C supplemental questionnaire, to which TK Corporation responded on Februry 6, 2002.

On April 3, 2002 the Department extended the time limit for completion of the preliminary results. *See Notice of Extension of Time Limit of Preliminary*

*Results of New Shipper Review: Stainless Steel Butt-Weld Pipe Fittings from Korea*, 67 FR 15793 (April 3, 2002).

**Period of Review**

The POR is February 1, 2001 through July 31, 2001.

**Scope of the Review**

The products subject to this review are certain welded stainless steel butt-weld pipe fittings (pipe fittings), whether finished or unfinished, under 14 inches in inside diameter.

Pipe fittings are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise can be used where one or more of the following conditions is a factor in designing the piping system: (1) corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, and the following five are the most basic: ''elbows,'' ''tees,'' ''reducers,'' ''stub ends,'' and ''caps.'' The edges of finished fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

**Product Comparisons**

In accordance with section 771(16) of the Tariff Act, we considered all stainless steel butt-weld pipe fittings covered by the ''Scope of the Review'' section of this notice, *supra*, which were produced and sold by TK Corporation in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of stainless steel butt-weld pipe fittings.

We relied on six characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product: type, grade, seam, size, schedule, and blank/finished. We did not need to perform a twenty-percent difference in merchandise (DIFMER) test or make a DIFMER adjustment because there were contemporaneous home market sales of identical merchandise, based on all six characteristics, to compare to TK Corporation's U.S. sales. We used only these contemporaneous identical home market sales in calculating the dumping margin.

**Export Price**

In accordance with section 772(a) of the Tariff Act, export price (EP) is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser for export to the United States. In accordance with section 772(b) of the Tariff Act, constructed export price (CEP) is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Tariff Act. For purposes of this review, TK Corporation has classified its sale(s) as EP sales. *See* November 20, 2001 sections B/C response, at page 106. TK Corporation identified one channel of distribution (direct sales to distributors) for its U.S. sales during the POR. *See* November 9, 2001 section A response at page 9. Based on TK Corporation's description of its U.S. sales process, that it sells the merchandise directly to unaffiliated distributors in the U.S. market, and did not sell in the United States through an affiliated U.S. importer, we preliminarily determine that TK Corporation's U.S. sales were EP sales. We calculated EP in accordance with section 772(a) of the Tariff Act. We based EP on packed prices for export to distributors in the U.S. market. We made deductions for foreign inland freight, international freight, marine insurance, and domestic brokerage.

**Normal Value**

In accordance with section 773(a)(1)(C) of the Tariff Act, to determine whether there was sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared TK Corporation's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Because TK Corporation's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. We therefore based NV on home market sales to unaffiliated purchasers made in the usual commercial quantities and in the normal course of trade.

Since no information on the record indicates any comparison market sales to affiliates, we did not use an arm's-length test for comparison market sales.

We made adjustments, where applicable, for movement expenses (consisting of inland freight) in accordance with section 773(a)(6)(B) of the Tariff Act. In accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410, we made a circumstance-of-sale adjustment for imputed credit. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6) of the Tariff Act. Because TK Corporation failed to include packing overhead in its packing calculation, we made an addition to its packing costs to account for overhead using the overhead ratio TK Corporation used in its computation of variable cost of manufacturing. *See* TK Corporation's February 6, 2002 submission at 19.

**Level of Trade**

In accordance with section 773(a)(1)(B) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The LOT in the comparison market is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. With respect to U.S. price for EP transactions, the LOT is also that of the starting-price sale, which is usually from the exporter to the importer. For CEP, the LOT is that of the sale from the exporter to the importer.

To determine whether comparison market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. In analyzing the selling activities of the respondents, we did not note any significant differences in functions provided in any of the markets. Based upon the record evidence, we have determined that there is one LOT for all EP sales and the same LOT as for all comparison market sales. Accordingly, because we find the U.S. sales and comparison market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) is warranted.

**Currency Conversion**

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period February 1, 2001, through July 31, 2001, to be as follows:

| Manufacturer / Exporter | Margin (percent) |
|---|---|
| TK Corporation ..... | 0.00 |

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument 1) a statement of the issue, 2) a brief summary of the argument and (3) a table of authorities. An interested party may request a hearing within 30 days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). The Department will issue the final results of this new shipper review, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

**Assessment**

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total quantity (in kilograms) of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of merchandise of that manufacturer/exporter made during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of the review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this new shipper review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for the reviewed company will be the rate established in the final results of the new shipper review (except that no deposit will be required if the rate is zero or *de minimis, i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 21.2 percent, the ''all others'' rate established in the LTFV investigation (58 FR 11029) (February 23, 1993).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Tariff Act.

Dated: July 10, 2002.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 02–18041 Filed 7–16–02; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–122–839]**

### Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products From Canada

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

**ACTION:** Notice of Initiation of Expedited Reviews.

**SUMMARY:** On May 22, 2002, the Department of Commerce (the Department) published in the **Federal Register** its amended final affirmative countervailing duty determination and countervailing duty order covering softwood lumber products (subject merchandise) from Canada (67 FR 36068), as corrected (67 FR 37775, May 30, 2002).

Included with the amended final affirmative determination and countervailing duty order was an announcement that we would be accepting applications for company-specific expedited reviews. The purpose of such reviews is the calculation of company-specific cash deposit rates. By this notice, the Department is initiating expedited reviews of companies that submitted timely and complete applications pursuant to our announcement.

**EFFECTIVE DATE:** July 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Carrie Farley at (202) 482–0395 or Gayle Longest at (202) 482–3338, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2002).

**Background**

On May 22, 2002, the Department published the countervailing duty order on softwood lumber from Canada. *See*

67 FR 36070. In that **Federal Register** notice, we indicated that individual exporters of subject merchandise could request expedited reviews for the purpose of establishing individual cash deposit rates. We stated that we had posted, on the IA website, an electronic application form and requested that all applicants submit their review requests in electronic format. All such requests were to be filed with the Department by June 21, 2002.

In response, the Department received a total of 100 timely requests for expedited review. A total of 73 of these requests contained all of the information requested by the Department and are therefore timely and complete. By this notice, the Department is initiating reviews of the exporters that filed timely and complete requests for expedited review (*see* listing below).

For those requests that were timely but incomplete, we are providing each applicant with one, and only one, opportunity to file an amended request for expedited review. We will notify these applicants of the deficiencies in their submissions. The amended requests must be received by the Department within two weeks of the date of the Department's notification. We intend to initiate expedited reviews of companies that properly and timely resubmit their applications.

**Conduct of Reviews**

The concept of expedited reviews in countervailing duty proceedings is very recent; it arose in the context of the Uruguay Round multilateral trade negotiations. Although section 751(a) of the Act provides clear authority for the conduct of such reviews, the Department has not yet had an opportunity to conduct one, either in a proceeding such as this in which the investigation was conducted on an aggregate basis, or in a proceeding in which the investigation was conducted on a company-specific basis. In addition, because aggregate cases are rare, the Department has not yet promulgated regulations governing expedited reviews in such cases. Consequently, we find ourselves in the position of having few guideposts in developing an approach to these reviews that strikes an appropriate balance between our dual mandates of (1) calculating company-specific rates and (2) conducting the reviews on an expedited basis.

In a normal countervailing duty administrative review, the Department examines no more than a handful of respondents. Expedited reviews of potentially 100 lumber exporters, accounting for approximately 50 percent of Canadian softwood lumber exports to the United States, present the Department with an enormous challenge. Although ideally we would conduct full-scale reviews—and, in fact, could do so for an extremely limited number of companies—it is simply not possible, as a practical matter, for the Department to conduct such reviews of 100 companies on an expedited basis. Given our statutory obligations, an undertaking of that magnitude would put an unmanageable strain on the Department's resources. For this reason, the Department recognized at the outset that it could only fulfill its dual mandates of company-specific rates and expeditious processing by developing streamlined methodologies and procedures for these reviews.

In fact, many of the interested parties who have contacted us regarding our approach to these reviews fully understand that we must develop streamlined methodologies and procedures. They have recommended a variety of means to accomplish our twin objectives. Even petitioners, while generally objecting to these reviews, suggested that, were the Department to conduct these reviews, it would need to categorize applicants into various groups based on their respective circumstances. Our approach, as fully set forth below, incorporates many of the suggestions of the interested parties and attempts to protect the equities on all sides.

We begin by discussing how we arrived at our approach. As mentioned above, our approach should provide a practicable balance between our twin objectives of (1) assigning companies individualized rates and (2) conducting the reviews in an expeditious manner.

In addressing the first of these objectives, we note that these reviews cover the same period as the investigation, and are intended solely to provide individual cash deposit rates. Accordingly, we will, to the extent possible, track the methodology used in the investigation. Consequently, we considered measuring the company-specific stumpage benefit by applying the investigation methodology strictly, only substituting company data for aggregate data. Under this approach, we would not revisit issues addressed in the investigation such as the selection of the benchmarks and the allowable adjustments.

Even with this simplification, the investigation methodology applied to a company-specific analysis would still require extensive data collection and an examination of complex issues that did not arise under the aggregate methodology used in the investigation. Consideration of these issues in the context of expedited reviews would jeopardize the fulfillment of our second mandate—to conduct the reviews in an expeditious manner. We therefore consider it to be appropriate to conduct company-specific analyses of stumpage programs only on the portion of Crown timber that was harvested by the exporter under tenure contracts. Following the investigation methodology, this calculation can be done in a relatively straightforward and expeditious manner.

For Crown timber acquired from other sources and for lumber from all sources (except from the United States, the Maritime Provinces, and excluded Canadian companies), we considered the suggestion made by several parties to use the more streamlined exclusion methodology. Under that methodology, the benefit is calculated by multiplying the volume of Crown logs (except those from the exporter's tenure) and lumber (except from the sources listed above) used as inputs by the province-specific stumpage benefit calculated in the investigation. We noted that the advantages of the exclusion methodology, as compared with the full investigation methodology, are that it involves significantly less data collection and requires a less complicated, and less time-consuming, analysis. This allows us to satisfy our second mandate of conducting the reviews expeditiously.

We also considered an additional factor: the degree to which the company utilized inputs from the United States, the Maritime provinces, and Canadian private lands. These sources are easily identifiable, and the Department has already determined that these sources do not give rise to subsidies. For companies that primarily utilize inputs from these sources, because the exclusion methodology is based on the average Province-wide stumpage benefit, the calculated company-specific benefit would not vary significantly whether we utilize the exclusion methodology or do an additional analysis of the companies' own tenures.

Based on the above considerations, and with a view to accommodating as many of the concerns expressed by the parties as possible, we have devised an approach which involves separating the reviews into two groups. The first group includes: (a) Companies that obtain the majority of their wood (over 50 percent of their inputs) from the United States, the Maritime Provinces, Canadian private lands, and/or Canadian companies excluded from the order, and (b) companies that source less than a majority of their wood from these

sources and do not have tenure. The second group is comprised of companies that source less than a majority of their wood from these sources and have acquired Crown timber through their own tenure contracts.

For the first group, we will calculate company-specific rates based on the exclusion methodology used in the investigation. That is, we will multiply the quantity of Crown logs and the total quantity of lumber inputs by the province-specific stumpage benefit, *i.e.,* the average per-unit price differential between the calculated adjusted stumpage fee for the relevant province and the appropriate benchmark for that province, to obtain the company-specific stumpage benefit. We will not, however, attribute a benefit to lumber acquired from the Maritime Provinces and accompanied by the appropriate certification, from the United States, or from one of the excluded mills. We will divide the total company benefit by the appropriate value of the company's sales to determine the subsidy rate from stumpage and add any benefit from other programs for each company in the first group.

For the second group, we will follow the exclusion methodology as described above with respect to purchases of Crown logs from all sources other than the companies' own tenures, and for purchases of lumber. For logs obtained from a company's own tenure, however, we will follow the investigation methodology, using company-specific data instead of aggregate data to the extent possible. In light of the expedited nature of this process, however, we will not revisit the issues already addressed in the investigation, such as the selection of the benchmark or the types of allowable adjustments. We will request from each company in this group the total amount of Crown timber harvested under its own tenure contract, the fees paid according to species, and the costs incurred in harvesting and maintaining the tenure. To derive a per-unit benefit, we will then compare the per-unit acquisition cost to the benchmark used in the investigation. We will multiply that dollar amount by the quantity of Crown timber harvested by the company to calculate the benefit to the company derived from its own tenure. This benefit will be combined with the benefit, calculated in accordance with the methodology described for group one, for all wood inputs from other sources. To derive the company-specific rate, the resulting total will be divided by the appropriate amount of the company's total sales and combined with the benefit from other programs.

This two-track, streamlined approach will enable us to review the maximum number of companies in the shortest possible time. We expect to issue the final results of review for companies in group one in September, with preliminary results issued by the end of July. We expect to complete the analysis for companies in group two within six to nine months, with preliminary results in November.

We invite comments on our approach and will consider alternative methodologies proposed by interested parties. Parties that file such comments should (1) describe each proposal in detail and (2) explain how it represents a practicable approach that strikes an appropriate balance between the calculation of individualized rates and expeditiousness. All interested parties should submit comments within 10 days of the publication of this notice in the **Federal Register**. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. All submissions should be made in accordance with the filing requirements outlined in section 351.303 of the Department's Regulations, which are available on the Internet at *www.ia.ita.doc.gov.*

**Initiation**

At this time, we are initiating expedited reviews of the following companies:

Alexandre Côté Ltée.
American Bayridge Corporation
Apollo Forest Products Ltd.
Aspen Planers Ltd.
Blanchette & Blanchette Inc.
Boccam Inc.
Bois Daaquam Inc.
Bois Omega Ltée
Byrnexo Inc.
Cambie Cedar Products Ltd.
Canadian Forest Products Ltd
Cando Contracting Ltd.
City Lumber Sales & Services Limited
Commonwealth Plywood Co. Ltd.
Davron Forest Products Ltd.
Domtar Inc.
Downie Timber Ltd.
Dunkley Lumber Ltd.
E. Tremblay et fils Ltée
Federated Co-operatives Limited
Francois Giguère Inc.
Fraser Pacific Forest Products Inc
Frontier Mills Inc.
Goodfellow Inc.
Gorman Bros. Lumber Ltd.
Greenwood Forest Products (1983) Ltd.
Haida Forest Products Ltd.
Herridge Sawmills Ltd.
Interbois, Inc.
J. A. Fontaine et fils Inc.
Jackpine Engineered Wood Products Inc.
Jackpine Forest Products Ltd.
Jointfor (3207021 Canada Inc.)
Kalesnikoff Lumber Co. Ltd.
Kenora Forest Products Ltd.
Kootenay Innovative Wood Ltd.
Landmark Truss & Lumber Inc
Les Bois d'Oeuvre Beaudoin & Gauthier Inc.
Les Bois S&P Grondin Inc.
Les Industries P.F. Inc.
Les Moulures Jacomau 2000, Inc.
Les Produits Forestiers Dube Inc
Liskeard Lumber Limited
Lonestar Lumber Inc.
Lulumco Inc.
Maibec Industries, Inc.
Materiaux Blanchet Inc.
Meunier Lumber Company Ltd.
MF Bernard Inc.
Mid America Lumber
Mill & Timber Products Ltd.
North Enderby Timber Ltd.
Olav Haavaldsrud Timber Company Limited
R. Fryer Forest Products Limited
Richard Lutes Cedar, Inc.
Riverside Forest Products Limited
Scierie Lapointe & Roy Ltee.
Scierie Nord-Sud Inc.
Scierie West-Brome Inc.
Séchoirs de Beauce Inc.
Selkirk Specialty Wood Ltd.
Slocan Forest Products Ltd.
Tembec Inc.
Terminal Forest Products Ltd.
Tolko Industries Ltd.
Treeline Wood Products Ltd.
Tyee Timber Products Ltd.
Uphill Wood Supply Inc.
Usine Sartigan Inc.
West Bay Forest Products & Manufacturing Ltd.
West Fraser Mills Ltd.
West Can Rail Ltd.
Western Commercial Millwork Inc.

This notice is in accordance with section 751(a) of the Tariff Act of 1930.

Dated: July 11, 2002.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 02–18043 Filed 7–16–02; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Notice, Roundtable on Convergence of Communications Technologies

**AGENCY:** National Telecommunications and Information Administration, Department of Commerce

**ACTION:** Notice of Public Meeting

**SUMMARY:** The National Telecommunications and Information Administration (NTIA) will host a morning roundtable to address issues relating to the convergence of communications technologies, including the Telephone Number Mapping (ENUM) Protocol that facilitates convergence between the Internet and the public-switched telephone network. The roundtable will address how such convergence technologies function, alternatives to ENUM in the competitive marketplace, and policy issues including privacy and security that may arise with use of such convergence technologies.

**DATES:** The roundtable will be held from 1 p.m. to 5 p.m. on Wednesday, August 14, 2002.

**ADDRESSES:** The roundtable will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C., in Room 4830. (Entrance to the Department of Commerce is on 14th Street between Constitution and Pennsylvania Avenues.) The roundtable will be open to the public. To facilitate entry into the Department of Commerce, please have a photo identification and/or a U.S. Government building pass, if applicable.

**FOR FURTHER INFORMATION CONTACT:** Wendy Lader, Office of Policy Analysis and Development, NTIA, telephone (202) 482–1150, or electronic mail: *wlader@ntia.doc.gov*. Media inquiries should be directed to the Office of Public Affairs, NTIA, at (202) 482–7002.

**SUPPLEMENTARY INFORMATION:** Traditionally, different communications networks and services have required separate addresses or numbers, such as an e-mail address, a telephone number, a fax number, or a cell phone number. Convergence technologies, such as ENUM, Voice-over-IP, and Session Initiation Protocol (SIP), now facilitate or promise to facilitate voice and other communications across these various architectures. ENUM, for example, is intended to map a telephone number from the public-switched telephone network (PSTN) to the Domain Name System (DNS) on the Internet. This mapping system may make it possible to reach a user via e-mail, fax, or phone using the standard telephone number (e.164 number) as the universal communications identifier.

NTIA's morning roundtable will address issues regarding such convergence technologies. As the principal adviser to the President on telecommunications and information policies, NTIA is vested with ''[t]he authority to conduct studies and make recommendations concerning the impact of the convergence of computer and communications technology'' 47 U.S.C. § 902(M). The roundtable will explore the range of existing or developing convergence technologies, how they may be used, and their implications for consumer data privacy and security. This dialogue with leading U.S. experts in the field will help the U.S. government, among other things, prepare for discussions in international fora. Issues relating specifically to ENUM are currently being addressed in other venues, including the International Telecommunication Union, the Internet Engineering Task Force, and the ENUM Forum.

To solicit views from selected roundtable participants, the morning roundtable will be divided into two parts. The tentative agenda is as follows:

1 pm to 2:30 pm—Convergence Technologies: Their Viability and Utility in a Competitive Marketplace

2:45 pm to 4:15 pm—Privacy, Security, Authentication, and other Policy Issues Relating to Convergence Technologies

4:15 pm to 5 pm—Audience Question and Answer Session

The first session will address such questions as: (1) how the various convergence technologies function, including results from existing testbeds; (2) possible applications of convergence technologies; (3) how ENUM or similar systems would be introduced and implemented in the U.S., including how such systems could open to competition; and (4) whether and how convergence technologies and systems can co-exist.

The second session will address policy issues, particularly in the areas of privacy, security, and authentication, including: (1) what privacy measures might be necessary to protect individual data collected through the use of convergence technologies; (2) whether privacy protections are better left to the competitive marketplace or should be standardized; (3) what security precautions might be necessary to protect user data; and (4) what authentication and authorization requirements might be necessary to ensure the identity of the user.

A final, updated copy of the agenda will be available on NTIA's webpage at *http://www.ntia.doc.gov* before the roundtable.

*PUBLIC PARTICIPATION:* This meeting will be open to the public. Seating for public attendees is limited and is available on a first-come, first-served basis. The roundtable will be physically accessible to people with disabilities. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Wendy Lader at least three (3) days prior to the meeting via the contact information provided above.

Dated: July 12, 2002.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. 02–17956 Filed 7–16–02; 8:45 am]

**BILLING CODE 3510–60–S**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

**DATES:** Comments must be submitted on or before August 16, 2002.

**FOR FURTHER INFORMATION OR A COPY CONTACT:** Lawrence B. Patent, Division of Trading and Markets, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5439; FAX: (202) 418–5536; email: *lpatent@cftc.gov* and refer to OMB Control No. 3038–0021.

**SUPPLEMENTARY INFORMATION:**

*Title:* Regulation of Domestic Exchange-Traded Options (OMB Control No. 3038–0007). This is a request for extension of a currently approved information collection.

*Abstract:* Regulation of Domestic Exchange-Traded Options, OMB Control No. 3038–0007—Extension

The rules require futures commission merchants and introducing brokers (1) to provide their customers with standard risk disclosure statements concerning the risk of trading commodity interests; and (2) to retain all promotional material and the source of authority for information contained therein. The purpose of these rules is to ensure that customers are advised of the risks of trading commodity interests and to avoid fraud and misrepresentation.

These rules are promulgated pursuant to the Commission's rulemaking authority contained in Sections 4a(a), 4i, and 8a(5) of the Act, 7 U.S.C. 6a(1), 6i, and 12a(5).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published on June 27, 2002 (67 FR 43285).

*Burden statement:* The respondent burden for this collection is estimated to average .39 hours per response.

*Respondents/Affected Entities:* 415.

*Estimated number of responses:* 20,380.

*Estimated total annual burden on respondents:* 7,985 hours.

*Frequency of collection:* On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0007 in any correspondence.

Lawrence B. Patent, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581 and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: July 11, 2002.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02–17976 Filed 7–16–02; 8:45 am]

**BILLING CODE 6351–01–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 02–39]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House or Representatives, Transmittal 02–39 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 10, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5001–08–M**

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

**27 June 2002**

**In reply refer to:**
**I-02/008738**

**The Honorable J. Dennis Hastert**
**Speaker of the House of**
**Representatives**
**Washington, D.C. 20515-6501**

**Dear Mr. Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-39, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $80 million. Soon after this letter is delivered to your office, we plan to notify the news media.**

**Sincerely,**

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

**Attachments**

**Same ltr to: House Committee on International Relations**
**Senate Committee on Appropriations**
**Senate Committee on Foreign Relations**
**House Committee on Armed Services**
**Senate Committee on Armed Services**
**House Committee on Appropriations**

**Transmittal No. 02-39**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act, as amended**

(i) **Prospective Purchaser: Israel**

(ii) **Total Estimated Value:**

| | |
|---|---|
| Major Defense Equipment* | $ 78 million |
| Other | $ 2 million |
| TOTAL | $ 80 million |

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 2,030 TOW 2A Missiles (includes 30 lot acceptance missiles), publications and logistics support, and other related elements of logistics support.**

(iv) **Military Department: Army (YZC)**

(v) **Prior Related Cases, if any: FMS case YKR - $42 million – 1Aug95**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: see Annex attached**

(viii) **Date Report Delivered to Congress:**

*** as defined in Section 47(6) of the Arms Export Control Act.**

## POLICY JUSTIFICATION

**Israel – TOW 2A Missiles**

**The Government of Israel has requested a possible sale of 2,030 tube-launched, optically-tracked, wire-guided TOW 2A missiles; publications and logistics support; and other related elements of logistics support. The estimated cost is $80 million.**

**This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.**

**Israel will augment their land forces with these TOW 2A anti-armor guided missiles. The proposed sale of the missiles will not affect the basic military balance in the region and will provide the Government of Israel a formidable defensive system for their use against armor, combat vehicles and other maneuverable elements.**

**The prime contractor will be the Raytheon Corporation of Tucson, Arizona.**

**The proposed sale of this equipment and support will not affect the basic military balance in the region.**

**Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Israel.**

**There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.**

**Transmittal No. 02-39**

**Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act**

**Annex**
**Item No. vii**

(vii) Sensitivity of Technology:

1. The TOW anti-armor guided missile system and documentation are Unclassified. Sensitive technology is contained within the missile system software programs. Some performance characteristics and system capabilities which could be derived from the use of the equipment are classified Secret. The hardware is also considered sensitive and knowledge of the modulation frequency and infrared wavelengths could be useful in developing countermeasures. The highest level of classified material which could be disclosed through reverse engineering or testing of the TOW missile is Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Israel can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.



[FR Doc. 02–17913 Filed 7–16–02; 8:45 am]
BILLING CODE 5001–08–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Strategic Environmental Research and Development Program, Scientific Advisory Board Meeting

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following Committee meeting:

**DATES:** August 7, 2002 from 0830 a.m. to 1715 p.m., and August 8, 2002 from 0830 a.m. to 1205 p.m.

**ADDRESSES:** Holiday Inn Arlington at Ballston, 4610 North Fairfax Drive, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

**SUPPLEMENTARY INFORMATION:**

*Matters to be Considered:* Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

Dated: July 10, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 02–17914 Filed 7–16–02; 8:45 am]

**BILLING CODE 5001–08–M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Grant Exclusive Patent License; BTG International, Inc.

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to BTG International, Inc. a revocable, nonassignable, exclusive license in the United States, to practice the Government-owned inventions described in U.S. Patent No. 5,435,264 entitled ''Process for Forming Epitaxial BaF2 on GaAs'', Navy Case No. 76233, and U.S. Patent No. 5,690,737 entitled ''Growth of BaF2 Thin Films on Silicon and GaAs Substrates with Chemical Vapor Deposition'', Navy Case No. 76470, and U.S. Patent Application Serial No. 09/563,740 entitled ''Electronic Devices with Diffusion Barrier and Process for Making Same'', filing date: May 3, 2000, Navy Case No. 82111.

**DATES:** Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

**ADDRESSES:** Written objections are to be filed with the Technology Transfer Office, Naval Surface Warfare Center Dahlgren Div, Code B04, 17320 Dahlgren Rd, Dahlgren, VA 22448–5100.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ramsey D. Johnson, Technology Transfer Manager, Code B04, Naval Surface Warfare Center Dahlgren Div, 17320 Dahlgren Rd, Dahlgren, VA 22448–5100, telephone (540) 653–2680, E-Mail *Johnsonrd2@nswc.navy.mil* or fax (540) 653–2687.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: July 10, 2002.

**R.E. Vincent II,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 02–17951 Filed 7–16–02; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Grant Exclusive Patent License; Survival, Inc.

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to Survival, Inc. a revocable, nonassignable, exclusive license in the United States, to practice the Government-owned inventions described in U.S. Patent No. 6,376,436 entitled ''Chemical Warfare Agent Decontamination Foaming composition and Method'', Navy Case No. 82169, and U.S. Patent No. RE 37,207 E entitled ''Decontamination Solution and Method'', Navy Case No. 82505, and U.S. Patent No. 5,760,089 entitled ''Chemical Warfare Agent Decontaminant Solution Using Quaternary Ammonium Complexes'', Navy Case No. 77029.

**DATES:** Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

**ADDRESSES:** Written objections are to be filed with the Technology Transfer Office, Naval Surface Warfare Center Dahlgren Div, Code B04, 17320 Dahlgren Rd, Dahlgren, VA 22448–5100.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ramsey D. Johnson, Technology Transfer Manager, Code B04, Naval Surface Warfare Center Dahlgren Div, 17320 Dahlgren Rd, Dahlgren, VA 22448–5100, tel (540) 653–2680, E-Mail *johnsonrd2@nswc.navy.mil* or fax (540) 653–2687.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: July 10, 2002.

**R.E. Vincent II,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 02–17950 Filed 7–16–02; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management, Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 16, 2002.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Officer of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type

of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 11, 2002.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Extension of a currently approved collection.

*Title:* Annual Report on Appeals Process (SC).

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAS or LEAs (primary).

*Reporting and Recordkeeping Hour Burden:* Responses: 1. Burden Hours: 160.

*Abstract:* Form RSA–722 is needed to meet specific data collection requirements in Subsections 102(c)(8)(A) and (B) of the Rehab Act of 1973, as amended on the number of requests for mediation, hearings and reviews filed. The information collected is used to evaluate the types of complaints made by applicants for and eligible individuals of the vocational rehabilitation program and the final resolution of appeals filed. Respondents are State agencies that administer the Federal/State Program for Vocational Rehabilitation.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2082. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxes to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at 202–708–6287. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–17915 Filed 7–16–02; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 16, 2002.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren Wittenberg@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 11, 2002.

**John D. Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Title:* Application for New Grants—State Program Improvement Grants for Children With Disabilities.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 30.

Burden Hours: 2700.

*Abstract:* This information collection is necessary to make awards authorized by the Individuals with Disabilities Education Act, Part D, Subpart 1—State Program Improvement Grants. Eligible grantees are State Departments of Education in the 50 States, the District of Columbia, or Puerto Rico or an outlying area (Virgin Islands, Guam, American Somoa, and the Northern Mariana Islands). This program was newly authorized by the Individuals With Disabilities Education Act Amendments of 1997 (Public Law 105–17). The purpose of this program is to assist State educational agencies, and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities. Appropriations for the first awards under this program become available for obligation on June 15, 2002.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2040. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information

should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via his internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–17908 Filed 7–16–02; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

### List of Correspondence

**AGENCY:** Department of Education.

**ACTION:** List of correspondence from January 2, 2002 through March 31, 2002.

**SUMMARY:** The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

**FOR FURTHER INFORMATION CONTACT:** Melisande Lee or JoLeta Reynolds. Telephone: (202) 205–5507.

If you use a telecommunications device for the deaf (TDD) you may call (202) 205–5637 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Format Center. Telephone: (202) 205–8113.

**SUPPLEMENTARY INFORMATION:** The following list identifies correspondence from the Department issued from January 2, 2002 through March 31, 2002.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

**Part A—General Provisions**

*Section 602—Definitions*

Topic Addressed: Child With a Disability

• Letter dated January 7, 2002 to individual, (personally identifiable information redacted), clarifying that (1) a State must make clear to the Office of Special Education Programs that it has the authority to enforce the requirements of IDEA under State law and (2) a State may adopt a definition of ''adverse effect'' provided that the State definition is not implemented in a manner that excludes otherwise eligible children.

Topic Addressed: Special Education

• Letter dated January 30, 2002 to Florida Department of Education Bureau of Instructional Support and Community Services Chief Shan Goff, clarifying that each State must ensure that any child with a disability who needs speech-language pathology services to benefit from special education receives those services, even if the child does not meet the State's criteria to receive speech-language pathology services as a special education service.

*Section 603—Office of Special Education Programs*

Topic Addressed: Responsibilities of the Office of Special Education Programs

• Letter dated January 18, 2002 to U.S. Congresswoman Patsy Mink clarifying that the U.S. Department of Education is not responsible for monitoring court-ordered decrees and explaining the discretionary grant awards process.

**Part B—Assistance for Education of All Children With Disabilities**

*Section 612—State Eligibility*

Topic Addressed: Condition of Assistance

• Letter dated January 18, 2002 to individual, (personally identifiable information redacted), regarding (1) a State's obligation to develop policies and procedures to resolve signed written complaints filed by individual parents of children with disabilities, other individuals, and organizations and (2) OSEP's obligation to monitor each State's compliance with the complaint resolution requirements in the final regulations implementing the IDEA through its continuous improvement monitoring process.

Topic Addressed: Free Appropriate Public Education

• Letter dated February 12, 2002 to individual, (personally identifiable information redacted), clarifying that decisions regarding the provision of services that are appropriate for an individual child must be based on the child's unique needs and not on the disability category in which the child is classified.

*Section 613—Local Educational Agency Eligibility*

Topic Addressed: Charter Schools

• Letter dated February 12, 2002 to Connecticut Department of Education Associate Commissioner George Coleman, regarding the categories of charter schools, the eligibility of charter schools for Federal funds, and the responsibilities of charter schools under Part B of IDEA.

*Section 615—Procedural Safeguards*

Topic Addressed: Prior Written Notice

• Letter dated March 6, 2002 to Texas Education Agency Division of Special Education Senior Director Eugene Lenz, regarding the circumstances under which a parent or a school district is required to provide prior notice and clarifying that no notice provisions other than those expressly contained in the IDEA can be applied to limit the statutory right to a due process hearing.

*Section 618—Program Information*

Topic Addressed: Disproportionality

• Letter dated January 14, 2002 to individual, (personally identifiable information redacted), regarding the ways in which OSEP and the Office for Civil Rights address the disproportionate representation of students from some racial and ethnic

minority backgrounds in special education programs and classes.

**Part C—Infants and Toddlers With Disabilities**

*Section 631—Findings and Policy*

Topic Addressed: Amendment of Regulations

• Letter dated February 13, 2002 to U.S. Congresswoman Judy Biggert, regarding the Department of Education's decision to delay the issuance of any new regulations for the Part C program until after the IDEA is reauthorized and to withdraw the Notice of Proposed Rulemaking published in the **Federal Register** on September 5, 2000.

*Section 636—Individualized Family Service Plan*

Topic Addressed: Early Intervention Services

• Letter dated February 12, 2002 to Kelly C. Wilson, Esq., clarifying (1) that the individualized family service plan (IFSP) may include a particular methodology or instructional approach that is considered by the IFSP team to be integral to the design of an individualized program of services to meet the unique needs of the individual child and (2) that the State is required to provide all services identified in the IFSP and to ensure that those services are implemented according to the IFSP.

*Other Letters Relevant to the Administration of Idea Programs*

Topic Addressed: Assistance Under Other Federal Programs

• Letter dated February 22, 2002 to President Lee Grossman and Executive Director Rob Beck of the Autism Society of America, clarifying that the Family Educational Rights and Privacy Act, as currently written, does not allow educational agencies and institutions to disclose information from student education records to the Centers for Disease Control without prior written consent of the parent.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–800–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: July 11, 2002.

**Robert H. Pasternack,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 02–18031 Filed 7–16–02; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER02–1838–000]**

## FPL Energy Seabrook, LLC; Notice of Issuance of Order

July 11, 2002.

FPL Energy Seabrook, LLC (Seabrook) submitted for filing a rate schedule under which Seabrook will engage in the sale of wholesale energy, capacity and ancillary services at market-based rates, and for the reassignment of transmission capacity. Seabrook also requested waiver of various Commission regulations. In particular, Seabrook requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Seabrook.

On July 3, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Seabrook should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Seabrook is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Seabrook, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Seabrook's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 2, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–17967 Filed 7–16–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER02–1747–000 and ER02–1749–000]**

## PPL Shoreham Energy, LLC and PPL Edgewood Energy, LLC; Notice of Issuance of Order

July 11, 2002.

PPL Shoreman Energy, LLC (Shoreham) and PPL Edgewood, LLC (Edgewood) submitted for filing rate schedules under which Shoreham and Edgewood will engage in the sale of wholesale electric energy, capacity and ancillary services at market-based rates. Shoreham and Edgewood also requested waiver of various Commission regulations. In particular, Shoreham and Edgewood requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Shoreham and Edgewood.

On June 28, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Shoreham or Edgewood should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First

Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Shoreham and Edgewood are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Shoreham or Edgewood, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Shoreham's or Edgewood's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 29, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–17966 Filed 7–16–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER02–1942–000]**

## Tenaska Virginia Partners, L.P.; Notice of Issuance of Order

July 11, 2002.

Tenaska Virginia Partners, L.P. (TVP) submitted for filing a rate schedule under which TVP will engage in the sales of wholesale energy and capacity at market-based rates and for the reassignment of transmission capacity. TVP also requested waiver of various Commission regulations. In particular, TVP requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by TVP.

On July 3, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by TVP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, TVP is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of TVP, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of TVP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 2, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–17968 Filed 7–16–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER02–517–000, ER02–517–001, and ER02–517–002]**

## UtiliGroup, Inc.; Notice of Issuance of Order

July 11, 2002.

UtiliGroup, Inc. (UtiliGroup) submitted for filing a Petition for Acceptance of Initial Rate Schedule and Blanket Authority. UtiliGroup also requested waiver of various Commission regulations. In particular, UtiliGroup requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by UtiliGroup.

On June 26, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by UtiliGroup should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, UtiliGroup is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of UtiliGroup, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of UtiliGroup's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 26, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the

internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–17965 Filed 7–16–02; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7246–9]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Activities Associated With EPA's Energy Star® Product Labeling

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Activities Associated with EPA's ENERGY STAR® Product Labeling, EPA ICR No. 2078.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before September 16, 2002.

**ADDRESSES:** Climate Protection Partnerships Division, US EPA (MC–6202J), 1200 Pennsylvania Ave, NW., Washington, DC 20460. ICR may be obtained electronically by contacting Rachel Schmeltz via e-mail at *schmeltz.rachel@epa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rachel Schmeltz, phone: 202–564–9124, fax: 202–565–2077, *schmeltz.rachel@epa.gov*

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are product manufacturers which are Partners in EPA's ENERGY STAR program.

*Title:* Information Collection Activities Associated with EPA's ENERGY STAR® Product Labeling, EPA ICR No. 2078.01. This is a new collection.

*Abstract:* ENERGY STAR is a voluntary program developed in collaboration with industry to create a self-sustaining market for energy efficient products. The center piece of the program is the ENERGY STAR label, a registered certification label that helps consumers identify products that save energy, save money, and help protect the environment without sacrificing quality or performance. In order to protect the integrity of the label and enhance its effectiveness in the marketplace, EPA must ensure that products carrying the label meet appropriate program requirements. Since ENERGY STAR is a self-certification program, it is important that program participants submit signed Partnership Agreements indicating that they will adhere to logo-use guidelines and that participating products meet specified energy performance criteria based on a standard test method.

As part of our contribution to the overall success of the program, EPA has agreed to facilitate the sale of qualifying products by providing consumers with easy-to-use information about the products. To be effective, EPA must receive qualifying product information from participating manufacturers. Partners will be requested to submit updates to qualifying product information on an annual basis, so as to ensure that EPA information is recent and accurate. The information will be compiled into a complete qualifying products list per product category, posted on the ENERGY STAR Web site, and supplied to those purchasers who request it via phone, fax, or e-mail. In addition, because of the nature of these products, manufacturer of roof products and residential light fixtures will be requested to submit testing reports in order to verify qualification.

In order to monitor progress and support the best allocation of resources, EPA will also ask manufacturers to submit annual shipment data for their ENERGY STAR qualifying products. EPA is flexible as to the methods by which manufacturers may submit unit shipment data. For example, if manufacturers already submit this type of information to a third party, such as a trade association, manufacturers are given the option of arranging for shipment data to be sent to EPA via this third party to avoid duplication of efforts and to ensure confidentiality. In using any shipment data received directly from a partner, EPA will mask the source of the data so as to protect confidentiality.

Finally, Partners that wish to receive recognition for their efforts in ENERGY STAR may submit an application for the Partner of the Year Award.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

*Burden Statement:* The estimated total cost for respondents is $8,245,116 and the hourly burden is approximately 129,623 hours. The estimated total cost for the Agency is $413,361 and the hourly burden is approximately 9,549 hours. A grand total of $8,658,477 and an hourly burden of approximately 139,172 hours is expected for all information collection activities under ENERGY STAR product labeling.

EPA collects initial information in the Partnership Agreement (PA), which is completed and submitted by every Partner participating in ENERGY STAR. One overarching PA has been developed by EPA for ENERGY STAR product labeling. It is expected that 118 new Partners will join each year for the three years of this ICR. The reporting burden for information collection requirements associated with completing the PA for each respondent is estimated to be 12.85 hours. This estimate includes times for reviewing the instructions on the PA, completing and reviewing the information requested by the PA, and submitting the PA.

Every manufacturing Partner is required to submit information on each of their qualifying products. Annual updates, notifying EPA of any changes in qualifying product information, are required as well. Thirty-two different product categories are covered by EPA under ENERGY STAR. Each product category has specific qualifying product information that must be submitted by each Partner for at least one qualifying product. Qualifying product information is expected for 3,112 new qualifying

products each year for the three years of this ICR. The qualifying product list for each product category is updated by the Agency once each month, for a total of 384 times annually (32 product categories times 12 months in a year). Approximately twice each month the Agency receives a request for qualifying product information that cannot be fulfilled by the ENERGY STAR Web site, for a total of 768 requests. The reporting burden for information collection requirements associated with completing the qualifying product information for each qualifying product submitted by a respondent is estimated to be 19.47 hours. This estimate includes time for reviewing instructions, completing and reviewing the information requested, and submitting the information.

ENERGY STAR Partners for residential light fixtures and roof products are required to submit testing reports for each product determined to by qualified with the ENERGY STAR criteria. It is anticipated that qualifying product information for 654 new roof and residential light fixture products will be received by EPA each year for the three years of this ICR. The reporting burden for information collection requirements associated with testing reports by roof product and residential light fixture Partners for each qualifying product submitted by a respondent is estimated to be 69.75 hours. This estimate includes performing testing in house or by a Third Party, assembling the data into a report format, reviewing it and submitting it.

EPA also requires that manufacturing Partners submit information on their unit shipments of ENERGY STAR labeled products annually. Each year, ENERGY STAR Partners are required to submit unit shipment data for their ENERGY STAR labeled products. There will be an average of 1,143 total Partners each year for the three-years of this ICR. Therefore, 1,143 reports of unit shipment data are expected each year for the three years of this ICR. Unit shipment data will be aggregated for each of the 32 product categories covered by EPA under ENERGY STAR. The reporting burden for information collection requirements associated with unit shipment data for each respondent is estimated to be 26.76 hours. This estimate includes gathering unit shipment data compiling and reviewing unit shipment data by product category, and submitting unit shipment data.

Partners interested in receiving recognition for their efforts on ENERGY STAR are required to submit a Partner of the Year Award application. One set of Partner of the Year award criteria are developed by the Agency each year and posted on the ENERGY STAR web site. An average of 30 Partners of the Year Award applications are expected each year for the three years of this ICR. The reporting burden for information collection requirements associated with the Partner of the Year Application for each respondent is estimated to be 44.10 hours. This estimate includes reviewing the eligibility requirements and instruction on the application, gathering data and information for submission, completing the application, reviewing the information and narrative description required, and submitting the application to EPA.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 26, 2002.

**Kathleen Hogan,**

*Director, Climate Protection Partnerships Division.*

[FR Doc. 02–17982 Filed 7–16–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7247–1]**

## Adequacy Status of Submitted State Implementation Plans (SIP) for Transportation Conformity Purposes: Baton Rouge Attainment Demonstration SIP for Ozone

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of adequacy.

**SUMMARY:** In this notice, EPA is notifying the public that we have found that the on-road motor vehicle emissions budgets contained in the Baton Rouge serious ozone nonattainment area attainment demonstration SIP for the Baton Rouge 5-Parish ozone nonattainment area are adequate for transportation conformity purposes. As a result of our finding, the budgets from the submitted attainment demonstration SIP must be used for future conformity determinations in the Baton Rouge area.

**DATES:** These budgets are effective August 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** The essential information in this notice will be available at EPA's conformity Web site: *http://www.epa.gov/oms/transp/conform/adequacy.htm.* You may also contact Mr. Kenneth W. Boyce, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202; telephone (214) 665–7259 or by e-mail at: *boyce.kenneth@.epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we'', ''us'', or ''our'' are used we mean EPA. The word ''budgets'' refers to the mobile source emission budget for volatile organic compounds (VOCs) and the mobile source emissions budget for nitrogen oxides ($NO_X$). The word SIP in this document refers to the State Implementation Plan revision submitted to satisfy the attainment demonstration for ozone.

On December 28, 2001, we received the attainment demonstration SIP for the Baton Rouge 5—Parish ozone nonattainment area. There are two motor vehicle emissions budgets found in this plan for 2005. The emissions budget for VOCs is 15.48 tons/day and the emissions budget for $NO_X$ is 34.26 tons/day. On January 23, 2002, the availability of these budgets was posted on EPA's web site for the purpose of soliciting public comments. The comment period closed on February 22, 2002, and we received no comments.

Today's notice is simply an announcement of a finding that we have already made. EPA Region VI sent a letter to the Louisiana Department of Environmental Quality (LDEQ) on July 5, 2002, stating that the motor vehicle emissions budgets in the Baton Rouge 5—Parish ozone nonattainment area are adequate and they must be used for transportation conformity determinations.

Transportation conformity is required by section 176(c) of the Clean Air Act. The EPA's conformity rule, 40 CFR part 93, requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. The criteria by which EPA determines

whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

On March 2, 1999, the DC Circuit Court of Appeals ruled that budgets contained in submitted SIPs cannot be used for conformity determinations unless EPA has affirmatively found the conformity budget adequate. We have described our process for determining the adequacy of submitted SIP budgets in the policy guidance dated May 14, 1999, and titled *Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision.* We followed this guidance in making our adequacy determination. You may obtain a copy of this guidance from EPA's conformity web site or by contacting us at the address above.

Dated: July 5, 2002.

**Lawrence E. Starfield,**

*Regional Administrator, Region 6.*

[FR Doc. 02–17984 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0055; FRL–7187–7]**

## Organophosphate Pesticides; Disulfoton; Availability of Interim Risk Management Decision Document

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice (or ''action'') announces the availability of the Interim Reregistration Eligibility Decision (IRED) document and technical support documents for the organophosphate (OP) pesticide, disulfoton. These documents have been developed using a public participation process designed by EPA and the U.S. Department of Agriculture (USDA) to involve the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA) and the reregistration of individual OPs under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This notice starts a 30–day public comment period for disulfoton, during which the public is invited to submit comments on the Agency's risk management decision. This comment period will allow growers and other stakeholders one final opportunity to submit new information on disulfoton alternatives and benefits for uses that are being phased out. Comments concerning the phase out must include specific information on current disulfoton use, timing of applications, target pests, available alternatives, and the cost and efficacy of alternatives, to be considered by the Agency.

**DATES:** Comments on the IRED for disulfoton must be identified by docket ID number OPP–2002–0055 and must be received by EPA on or before August 16, 2002 to be considered by the Agency.

**ADDRESSES:** You may submit comments by mail, electronically, or in person. Please follow the detailed instructions for each method as described under **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0055 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Christina Scheltema, Manager for disulfoton, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–2201; e-mail address: scheltema.christina@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general, but will interest a wide range of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. The Agency has not attempted to describe all the persons or entities who may be interested in or affected by this action. If you have questions in this regard, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environment Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You can obtain copies of the disulfoton documents at http://www.epa.gov/pesticides/op/status.htm. You can also access this site from EPA's Office of Pesticide Programs Home Page, http://www.epa.gov/pesticides/, using the following links: Reregistration and Special Review, Organophosphates, OP Schedule and Documents, and disulfoton. Available documents include the IRED, supporting technical documents, **Federal Register** notices, and EPA's response to public comments. General information on reregistration and tolerance reassessment, including IREDs, is available at http://www.epa.gov/pesticides/reregistration.

2. *In person*. The Agency has established an official record for the disulfoton IRED under docket ID number OPP–2002–0055. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as references within those documents. The public version of the official record does not include any information claimed as CBI. The public record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The PIRIB telephone number is (703) 305–5805. EPA documents relevant to the 6–phase public participation process for disulfoton are located under a different docket number, OPP 34165, which contains the Agency's preliminary and revised risk assessments for disulfoton, public comments, and the Agency's response to comments.

### II. How Can I Respond to this Action?

*A. How and to Whom do I Submit Comments?*

You may submit comments through the mail, in person, or by e-mail. To ensure proper receipt by EPA, it is imperative that you include docket ID number OPP–2002–0055 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to the following address: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The PIRIB telephone number is: (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any electronic information that you consider to be CBI. Avoid the use of special characters and any form of encryption. EPA will accept electronic submissions submitted in WordPerfect versions 6.1/8.0/9.0 or ASCII file format. Electronic comments may also be filed online at many Federal Depository Libraries.

*B. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any electronic information that you consider to be CBI. You may claim written information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. You must submit one complete version of the comment that includes any information claimed as CBI, as well as a copy of the comment that does not contain the CBI information for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the offical record without prior notice. If you have any questions about CBI or the procedures for making CBI claims, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

**III. What Action is the Agency Taking?**

*A. General Information*

For the OP pesticide disulfoton, the Agency is announcing the availability of the IRED document and supporting technical documents. EPA has assessed the risks associated with the use of disulfoton and reached an interim reregistration eligibility decision for disulfoton. The disulfoton IRED and supporting technical documents were developed using the OP public participation process, which was designed to increase transparency and maximize stakeholder involvement and to provide numerous opportunities for public comment. You can read more about the OP public participation process at http://www.epa.gov/pesticides/op/process.htm. Below is a brief summary of EPA's interim decision, which is fully described in disulfoton's IRED document.

*B. Disulfoton Decision*

EPA has determined that disulfoton is eligible for reregistration, pending a full reassessment of the cumulative risk from all OP pesticides, and provided that all the conditions identified in the IRED document are satisfied, including implementation of risk mitigation measures. Without implementation of the risk mitigation measures, the Agency has determined that disulfoton products may pose unreasonable adverse effects on human health and the environment. Therefore, EPA expects that registrant will implement the risk mitigation measures as soon as possible. The IRED document describes, in detail, what is necessary for implementing the risk mitigation measures, such as submission of label amendments for end-use products and submission of any required data. Mitigation measures for disulfoton include a phase out of disulfoton use on wheat, barley, potatoes, and commercially grown ornamentals by June 2005. Should a registrant fail to implement any of the risk mitigation identified in the IRED document, the Agency may take regulatory action to address risk concerns from the use of disulfoton.

EPA is taking comment on benefits associated with disulfoton use in response to grower concerns about the benefits assessment used to support the interim RED for disulfoton. There will be a 30–day public comment period to allow growers and other stakeholders an opportunity to submit any new use and usage information relevant to the risk management decision for disulfoton. Comments concerning uses being phased out must include specific information oncurrent disulfoton use, timing of applications, target pests, available alternatives, and the cost and efficacy of alternatives, to be considered by the Agency.

*C. Next Steps*

EPA's next step under FQPA is to consider a cumulative risk assessment and risk management decision encompassing all the OP pesticides, which share a common mechanism of toxicity. Because the Agency has not yet finished its consideration of the cumulative risks for the OPs, the Agency's interim decisions do not fully satisfy the reassessment of the existing food residue tolerances as required by FQPA for disulfoton. When the Agency has considered the cumulative risks for the OPs, tolerances for disulfoton will be reassessed along with the other OP pesticides. At that time, the Agency will complete the FQPA requirements for the OPs and make a final reregistration eligibility decision, which may include further risk mitigation measures.

**List of Subjects**

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 5, 2002.

**Lois A. Rossi,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 02–17985 Filed 7–16–02; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0111; FRL–7186–8]**

## Organophosphate Pesticides; Reassessment of Certain Non-Contributing Commodity Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** As part of its ongoing review of existing organophosphate (OP) tolerances under the Food Quality Protection Act (FQPA), EPA has determined that 47 OP tolerances can be reassessed at this time. EPA has concluded that these tolerances make, at most, a negligible contribution to the cumulative risk from OP pesticides. These ''non-contributor'' tolerances have no reported pesticide residue detections in the monitoring data being used in the OP cumulative risk assessment (CRA)(U.S. Department of Agriculture's (USDA) Pesticide Data Program (PDP). These non-contributor tolerances meet the FQPA safety standard in section 408(b)(2) of the Federal Food, Drug and Cosmetic Act (FFDCA) and can be reassessed for the purposes of FFDCA section 408 (q). This Notice discusses the concept and basis for this approach to reassessing selected OP tolerances based on available information relating to the OP CRA. Nothing in this Notice is intended to

modify in any way any determination or requirement set forth in individual pesticide Interim Reregistration Eligibility Decisions (IREDs), or affect regulatory agreements or use cancellation actions required for some other purpose (e.g., due to worker or ecological risk concerns). This Notice closely relates to a previous **Federal Register** Notice of (May 22 2002, 66 FR 35991), (FRL–7178–9) in which EPA announced the reassessment of non-contributing tolerances for certain meats, animal feeds, and refined sugars, and requested suggestions on other approaches for identifying tolerances that do not contribute risk to the OP cumulative risk assessment.

**DATES:** The reassessment of these tolerances is effective as of July 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Karen Angulo, Special Review and Reregistration Division (7805C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general who are interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of this Notice may also be accessed at http: www.epa.gov/oppsrrd1/op.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0111. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background

The FQPA of 1996 significantly amended the FFDCA, creating a new safety standard for judging the acceptability of tolerances for pesticide residues in food. The new statutory standard allows EPA to approve a new tolerance or leave an existing tolerance in place only if the tolerance is ''safe.'' The statute defines ''safe'' to mean ''that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable data'' FFDCA section 408(b)(2)(A)(ii). In making the safety determination, EPA ''shall consider, among other relevant factors . . . available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity'' FFDCA section 408(b)(2)(D)(v). The FQPA amendments not only made the new safety standard applicable to new tolerances, but also to tolerances in existence when FQPA became law. FQPA set a 10 year schedule for EPA to reassess all existing tolerances, with interim deadlines for completion of 33% and 66% of tolerance reassessments three and 6 years, respectively, after the date of enactment. Pesticide tolerances subject to reassessment under the FQPA section 408(q) may only remain in effect without modification if they meet the section 408(b)(2) safety standard. Finally, FQPA instructed EPA to give priority to the review of tolerances which appear to pose the greatest risk to public health.

Consistent with the FQPA mandate, EPA identified organophosphate pesticides as high priority for tolerance reassessment. EPA has determined that the OPs share a ''common mechanism of toxicity,'' and therefore, that the Agency will consider the cumulative risks of OPs in making the safety determination for any tolerance for a pesticide in this group. The Agency has reviewed individual OP pesticides to determine whether they meet the current health and safety standards of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the FFDCA safety standard, and has presented its determinations in documents called ''Interim Reregistration Eligibility Decisions (IREDs).'' When the pesticide covered by an IRED shares a common mechanism of toxicity with other pesticides, the IRED addresses the aggregate risk of the chemical but does not take a position on the FFDCA standard until the Agency has also considered the potential cumulative risks of the group of pesticides.

In addition to its consideration of individual OP pesticides, EPA has also conducted a preliminary CRA for all of the OPs and sought public comment on the assessment. The Agency recently released the revised OP CRA for public comments. The preliminary and revised OP cumulative risk assessment documents are available at www.epa.gov/pesticides/cumulative. In addition, EPA presented the assessment to its FIFRA Scientific Advisory Panel (SAP) for expert, independent scientific peer review. The SAP provided a generally favorable review of the preliminary assessment. See www.epa.gov/scipoly/sap/index.htm.

EPA has raised with stakeholders during a number of public meetings the concept of reassessing selected OP tolerances because, based on available data and assessments, EPA could determine that they make, at most, no more than a negligible contribution to risk. Most recently, the concept of reassessing such ''non-contributors'' was an agenda topic for the February, 2002, meeting of the Committee to Advise on Reassessment And Transition (CARAT). In the **Federal Register** of (May 22 2002, 66 FR 35991), EPA announced the reassessment of non-contributing tolerances for certain meats, animal feeds, and refined sugars, and requested suggestions on other approaches for identifying tolerances that do not contribute risk to the OP cumulative risk assessment.

**III What Action is the Agency Taking?**

*A. Reassessment of Non-Contributor Tolerances*

In this Notice, EPA identifies non-contributor tolerances and considers these tolerances reassessed for the purposes of FQPA section 408 (q) as of today's date. Pesticide tolerances subject to reassessment under the FQPA section 408(q) may only remain in effect without modification if it meets the section 408(b) safety standard. This standard is met if EPA finds that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.'' In evaluating tolerances under the standard, the FQPA also instructs the Agency to consider the cumulative effects of the pesticide and other substances that have a common mechanism of toxicity. For each of the tolerances being reassessed, the Agency has issued an IRED, which found that, apart from consideration of the potential cumulative risks from all of the OPs, each of the tolerances would meet the FFDCA safety standard. EPA has now considered the impact of these cumulative risks in the reassessment of these tolerance and has determined that these tolerances make, at most, only a negligible contribution to the overall risks from OPs. Therefore, these tolerances can be maintained regardless of the outcome of the OP cumulative assessment and any potential regulatory action taken as a result of that assessment. Accordingly, EPA believes it is appropriate to consider these tolerances reassessed for the purposes of FQPA section 408(q) as of today's date.

In making the determination that these tolerances contribute negligible (if any) residues and/or risk, EPA considered, among other things, the nature of the use of the pesticide, the data used in conducting aggregate risk assessments for each individual OP, the potential for drinking water contamination, and other data and analyses available to the Agency (such as food residue monitoring and other information that the Agency is using for the CRA). The Agency concludes that these pesticide uses result in minimal or no detectable residues in food, and have no or negligible effects through drinking water. Because a tolerance may apply to more than one raw agricultural commodity (RAC), no tolerance is herein reassessed as a non-contributor unless all of the RAC (food forms) that are part of that tolerance are also considered to be non-contributors. EPA also considered the potential impacts of future OP risk management decisions and determined that such decisions would be very unlikely to increase the use of the pesticide on these use sites in a manner or to a degree that the potential exposure under the tolerance would no longer be negligible. As part of its preliminary cumulative risk assessment, the Agency developed an estimate of the potential contribution that OP pesticides used in different parts of the country could make to overall risk as a result of the presence of residues of such pesticides in drinking water. Because of the nature of the available data, EPA's estimate employs assumptions that are designed not to understate potential drinking water exposure. The OP preliminary and revised CRA concluded that drinking water was not a significant source of potential exposure. In reaching the determination to reassess these tolerances, EPA has considered this analysis, the public comment and the SAP's advice, as well as the information developed to assess the aggregate exposure from drinking water for each of the individual pesticides being reassessed.

The Agency's assessment of these tolerances is effectively complete and the tolerances are considered reassessed. Nothing in this Notice is intended to modify in any way any determination or requirement set forth in individual pesticide IREDs, or affect existing or future regulatory agreements or use cancellation actions required for some other purpose (e.g., due to worker or ecological risk concerns). For any of the uses that may be cancelled pursuant to any such decision, EPA expects that the associated tolerance would be revoked at the appropriate time unless it is properly supported for an import tolerance. In addition, all of these pesticide/use pattern combinations are included in the preliminary CRA and will remain in the CRA even though they involve exposures that pose negligible/minimal risk.

No conclusions about reassessment should be drawn about tolerances that are not identified as non-contributors in this Notice. EPA expects that additional tolerances will be appropriate for reassessment based on the kind of approach described here and in a previous the **Federal Register** Notice of May 22 2002, 66 FR 35991 in which EPA announced the reassessment of non-contributing tolerances for certain meats, animal feeds, and refined sugars. Additional tolerances may be reassessed without the need for regulation upon completion of the CRA. In other words, the failure of a tolerance to be identified as a non-contributor in this or any other announcement does not imply that the pesticide/use combination will ultimately be subject to regulatory action. For tolerances reassessed as announced in this Notice or using the approach described herein, EPA has concluded that the decision to reassess these tolerances will have no impact on any subsequent determination or decisions that may be necessary if the CRA were to conclude that cumulative exposure to the OPs poses risks of concern.

*B. Tolerances With No Residue Detections in PDP*

EPA has determined that certain OP tolerances, listed later in the Notice, are reassessed at this time because they make, at most, a negligible contribution to OP risk. The Agency examined the monitoring data being used in the OP cumulative risk assessment and found that no residues were detected for these food commodity/OP combinations, including the parent chemical and the degradates that were tested. The monitoring data being used in the OP cumulative assessment, USDA's PDP data, are the Agency's preferred data for risk assessment. The number of samples analyzed in the PDP for these food commodity/OP combinations ranged from almost 200 to 2,600 samples.

USDA's PDP program has been collecting data on pesticide residues found on foods since 1991, primarily for purposes of estimating dietary exposure to pesticides. For several years, EPA has routinely used the PDP data base in developing assessments of dietary risk. The PDP's sampling procedures were designed to capture actual residues of the pesticide and selected metabolites in the food supply as close as possible to the time of consumption. Data collected close to actual consumption, such as PDP data, depicts a more realistic estimate of exposure, i.e., residues that could be encountered by consumers. The real-world nature of PDP data makes it preferable for the purposes of this assessment than pesticide field trials, which are another data source available to the Agency. Field trial data are designed to test for residues under exaggerated application scenarios, and are primarily used in establishing tolerances.

The PDP is designed to focus on foods highly consumed by children and to reflect foods typically available throughout the year. PDP's commodity testing profile includes not only fresh fruits and vegetables, but also canned and frozen fruits/vegetables, fruit juices, whole milk, wheat, soybeans, oats, corn syrup, peanut butter, rice, poultry, beef, and drinking water. The PDP generally collects foods at wholesale distribution centers and stores them frozen until

analysis. Foods are washed and inedible portions are removed before analysis but these foods are not further cooked or processed. A complete description of the PDP and all data through 1999 are available on the internet at www.ams.usda.gov/science/pdp.

PDP data are not available for all food commodities with current OP registrations, including a limited number of food commodity tolerances that are listed in this Notice. When PDP data are not available for a commodity, EPA uses data when it is appropriate to do so from commodities that are measured by PDP to serve as surrogate data sources. This well established practice of using surrogate, or ''translated,'' data is based upon the concept that families of commodities with similar cultural practices and insect pests are likely to have similar pesticide use patterns. For example, data on peaches can be used as surrogate data for apricots. The practice of translating data from tested sources to similar situations that have not been directly tested has been used for some time by EPA in the development of pesticide-specific dietary exposure assessments when monitoring data are unavailable. The methods of translation, specifically, what commodities may be used to represent other commodities, have been made public. EPA is using translated data where appropriate for the purposes of the OP cumulative risk assessment and tolerance reassessment as discussed in this Notice.

EPA has examined the PDP data that is being used for the OP cumulative risk assessment and found that no residues for the parent pesticide or any tested metabolite were reported for the 47 OP tolerances listed below. As a result, EPA has concluded that these tolerances make, at most, a negligible contribution to the cumulative risk from OP pesticides, and, therefore, these tolerances are considered reassessed. EPA expects to announce as reassessed other tolerances that have no detections in PDP in future Notices as appropriate in light of their individual OP assessments.

The following 47 tolerances are considered reassessed at this time:

*Azinphos methyl* (40 CFR 180.154)
Brussels sprouts
*Chlorpyrifos* (40 CFR 180.342)
Banana, whole
Bananas, pulp with peel removed
Corn, field, grain
Corn, fresh (inc. sweet, kernel plus cob with husks removed)
*Disulfoton* (40 CFR 180.183)
Bean, dry
Bean, lima
Bean, snap
Broccoli
Brussels sprouts
Cauiflower
Peanut
Pea
Spinach
*Mevinphos* (40 CFR 180.157)
Melon (incl. Cantaloupe, melon, honeydew, and muskmelon, determined on the edible portion with rind removed)
Pea
Watermelon
*Oxydemeton methyl* (40 CFR 180.330)
Apple
Apricot
Bean, lima
Bean, snap
Brussels sprouts
Cabbage
Eggplant
Grapefruit
Grape
Lemon
Melon
Oranges
Pear
Plum, prune, fresh
Pumpkin
Squash, winter
Strawberry
Turnip
*Phorate* (40 CFR 180.206)
Bean
Corn, grain
Corn, sweet, kernel plus cob with husks removed
Soybean
*Phosalone* (40 CFR 180.263)
Apricot
Cherry
Grape
Peach
Pear
Plum, prune, fresh
*Phosmet* (40 CFR 180.261)
Pea
Potato

**List of Subjects**

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 8, 2002.

**Lois Rossi,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 02–17987 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–42079A; FRL–6821–3]**

## West Virginia State Plan for Certification of Applicators of Restricted Use Pesticides; Notice of Approval

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final notice.

**SUMMARY:** In the **Federal Register** of September 17, 2001 (66 FR 48057) (FRL–6777–1), EPA issued a notice of intent to approve an amended West Virginia Plan for the certification of applicators of restricted use pesticides. In the notice EPA solicited comments from the public on the proposed action to approve the amended West Virginia Plan. The amended Certification Plan contained several statutory and programmatic changes. The approved amendments establish: New requirements for the certification and recertification of pesticide applicators; for the issuance of pesticide business licences; categories for private applicators; additional competency standards and time intervals between re-examination attempts for initial certification; training requirements for registration of non-certified employees; commercial categories and subcategories, and civil penalties private applicators. The plan also contains a speciality subcategory for predator control. Persons certified in this subcategory will not only be required to demonstrate a practical knowledge of predator control, but also must demonstrate a knowledge of the specific label requirements and use restrictions of the 1080 Livestock Protection Collar and M–44 Device. No comments were received and EPA hereby approves the amended West Virginia Plan.

**ADDRESSES:** The amended West Virginia Certification Plan can be reviewed at the locations listed under Unit I.B. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Magda Rodriguez-Hunt, Pesticides/Asbestos Programs and Enforcement Branch, Waste and Chemicals Management Division (3WC32), Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2099; telephone number: (215) 814–2128; fax number: (215) 814–3113; e-mail address: rodriguez-hunt.magda@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to those involved in agriculture and anyone involved with the distribution and application of pesticides for agricultural purposes. Others involved with pesticides in a non-agricultural setting may also be affected. In addition, it may be of interest to others, such as, those persons

who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of the Amended State Plan, Other Related Documents, and Additional Information?*

To obtain copies of the amended West Virginia Certification Plan, other related documents, or additional information contact:

1. Magda Rodriguez-Hunt at the address listed under **FOR FURTHER INFORMATION CONTACT**.

2. Robert Frame, Pesticide Regulatory Programs, West Virginia Department of Agriculture, 1900 Kanawha Boulevard, East, Charleston, WV 25305–0190; telephone number: (304) 558–2209; e-mail address: rframe@ag.state.wv.us.

3. Jeanne Heying, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.; telephone number: (703) 308–3240; e-mail address: heying.jeanne@epa.gov.

## II. What Action is the Agency Taking?

EPA is approving the amended West Virginia Certification Plan. This approval is based upon the EPA review of the West Virginia Plan and finding it in compliance with FIFRA and 40 CFR part 171. Further, there were no public comments submitted to the earlier **Federal Register** Notice soliciting comments. The amended West Virginia Certification Plan is therefore, approved.

## List of Subjects

Environmental protection.

Dated: June 27, 2002.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

[FR Doc. 02–17878 Filed 7–16–02; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0136; FRL–7186–4]**

## Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request on the **Federal Register**.

**DATES:** The deletions are effective on January 13, 2003, unless indicated otherwise. The Agency will consider withdrawal requests postmarked on or before January 13, 2003.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before, unless indicated otherwise, January 13, 2003.

**ADDRESSES:** Withdrawal requests may be submitted by mail,electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the**SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0136 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency,1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5761; e-mail address: hollins.james@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get additional information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0136. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of this official record, which includes printed, paper versions of any electronic comments submitted during as applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 A.M. to 4:00 P.M., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Withdrawal Requests?*

You may submit withdrawal requests through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0136 in the subject line on the first page of your response.

1. *By mail*. Submit your withdrawal request to: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your withdrawal request to: Public Information and Records Integrity

Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your withdrawal requestelectronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All withdrawal requests in electronic form must be identified by docket ID number OPP–2002–0136. Electronic withdrawal requests may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the withdrawal request that includes any information claimed as CBI, a copy of the withdrawal request that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under**FOR FURTHER INFORMATION CONTACT**.

## II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 by registration number, product name/active ingredient, and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| Registration No. | Product | Chemical Name | Delete From Label |
|---|---|---|---|
| 000655–00028 | Lindane Technical Powder | Lindane | Broccoli, brussels sprouts, cabbage, cauliflower, celery, collards, lettuce, kale, kohlrabi, mustard greens, radishes, spinach and Swiss chard |
| 000655–00028 | Prentox Lindane Technical Powder | Lindane | Broccoli, brussel sprouts, cabbage, cauliflower, celery, collards, lettuce, kale, kohlrabi, mustard greens, radishes, spinach and Swiss chard |
| 004581–00405 | TOPSIN M 4.5F for Turf and Ornamentals | Thiophanate-methyl | Sod farms |
| 005481–00225 | Technical Lindane | Lindane | Broccoli, brussel sprouts, cabbage, cauliflower, celery, collards, kale, kohlrabi, lettuce, mustard greens, radishes, spinach and Swiss chard |
| 007501–00034 | Gustafson Lindane 30C | Lindane | Broccoli, brussel sprouts, cabbage, cauliflower, and radishes |
| 007501–00038 | Gustafson Captan Lindane 12.5-25 Seed Protectant | Lindane | Broccoli, brussel sprouts, cabbage, cauliflower, radishes, and spinach |
| 019713–00061 | Drexel Lindane Technical 1 | Lindane | Broccoli, brussel sprouts, cabbage, cauliflower, celery, collards, kale, kohlrabi, lettuce, mustard greens, radishes, spinach, and Swiss chard |
| 019713–00191 | Drexel Lindane Technical 2 | Lindane | Broccoli, brussel sprouts, cabbage, cauliflower, celery, collards, kale, kohlrabi, lettuce, mustard greens, radishes, spinach, and Swiss chard |
| 019713–00262 | Drexel 25% Lindane Seed Treater | Lindane | Broccoli, brussel sprouts, cabbage, cauliflower, lettuce, radishes, and spinach |
| 019713–00387 | Drexel Lindane Flowable | Lindane | Broccoli, brussel sprouts, cabbage, cauliflower, lettuce, radishes, and spinach |
| 019713–00401 | Drexel Lindane 300 Flowable | Lindane | Broccoli, brussel sprouts, cabbage, cauliflower, celery, collards, kale, kohlrabi, lettuce, mustard greens, radishes, spinach, and Swiss chard |
| 034704–00653 | Captan Seed Treater with Lindane | Lindane | Cabbage, cauliflower, broccoli, brussel sprouts, radishes, milo, and spinach |
| 034704–00658 | Lindane 25 Planter Box Seed Treater | Lindane | Lettuce, milo, and spinach |
| 034704–00674 | Lindane 25 EC-LF | Lindane | Broccoli, cabbage, brussel sprouts, cauliflower, lettuce, milo, radishes, and spinach |

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

| Registration No. | Product | Chemical Name | Delete From Label |
|---|---|---|---|
| 034704–00737 | Maneb-Lindane | Lindane | Soybeans |
| 034797–00029 | General Purpose Aqueous Insecticide | (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds; Pyrethrins | Surface spray, space spray, and mosquito adulticide |
| 066330–00019 | Isotox Seed Treater (F) | Lindane | Alfalfa/clover/beans/cabbage/cauliflower/broccoli/brussel sprouts/radishes/carrots/onions/cotton/cucumbers/cantaloupe/watermelon/squash/pumpkin/flax/okra/peas/safflower/sudangrass/spinach/soybean/sugars beets |

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before January 13, 2002, unless indicated otherwise, to discuss withdrawal of the application for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

| EPA Company no. | Company Name and Address |
|---|---|
| 000655 | Prentiss Inc., C.B. 2000, Floral Park, NY 11001. |
| 004581 | Cerexagri, Inc., 630 Freedom Business Center, Suite 402, King Of Prussia, PA 19046. |
| 005481 | AMVAC Chemical Corp., Attn: Jon C. Wood, 4695 Macarthur Ct., Suite 1250, Newport Beach, CA 92660. |
| 007501 | Gustafson LLC, Box 660065, Dallas, TX 75266. |
| 019713 | Drexel Chemical Co, 1700 Channel Ave., Box 13327, Memphis, TN 38113. |
| 034704 | Jane Cogswell, Agent For: Platte Chemical Co Inc., Box 667, Greeley, CO 80632. |
| 034797 | Qualis Inc., 4600 Park Ave., Des Moines, IA 50321. |
| 066330 | Arvesta Corp., 100 First Street, Suite 1700, San Francisco, CA 94105. |

## III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

## IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address under **FOR FURTHER INFORMATION CONTACT**, postmarked on or before January 13, 2002, unless indicated otherwise.

## V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

## List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 8, 2002.

**Arnold E. Layne,**

*Acting Director, Information Resources and Services Division.*

[FR Doc. 02–17986 Filed 7–16–02; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0130; FRL–7185–6]**

## Notice of Filing a Pesticide Petition To Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP–2002–0130; must be received on or before August 16, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0130; in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Shaja R. Brothers, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br><br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet home page at *http://www.epa.gov/*. To access this document, on the home page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0130. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0130 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0130. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 2, 2002.

**Debra Edwards,**

*Director, Registration Division, Office of Pesticide Programs.*

**Summary of Petition**

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the IR-4 Project, Centre for Minor Crop Pest Management and represents the view of the Centre for Minor Crop Pest Management. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**Interregional Research Project Number 4**

*PP 0E6219*

EPA has received a pesticide petition 0E6219 from the IR-4 Project, Centre for Minor Crop Pest Management, Rutgers, The State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 8920–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.414 by establishing a tolerance for residues of the insecticide, cyromazine, (N-cyclopropyl-1,3,5-triazine-2,4,6-triamine) in or on the raw agricultural commodity dry bean at 3.0 parts per million (ppm). This notice includes a summary of the petition prepared by Novartis Crop Protection Inc., Greensboro, NC 27419. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism.* The metabolism of cyromazine in plants is adequately understood for the purposes of these tolerances.

2. *Analytical method.* Methods AG–408 and AG–417 as listed in the Food and Drug Administration's Pesticide Analytical Manual (PAM), Vol-II are adequate to enforce the proposed tolerance.

3. *Magnitude of residues.* A total of nine residue field tests were conducted in typical growing regions for dry beans. The data collected support the proposed tolerance of 3.0 ppm.

*B. Toxicological Profile*

1. *Acute toxicity.* A rat acute oral toxicity study with a lethal dose $(LD)_{50}$ of approximately 3,387 milligrams/kilogram (mg/kg) (toxicity category III; moderately toxic). A rat acute dermal toxicity study with a $LD_{50}$ greater than 3,100 mg/kg (toxicity category III; moderately toxic). A rat acute inhalation study with a lethal concentration $(LC)_{50}$ greater than 2.9 mg/kg (toxicity category IV; slightly toxic). A primary eye irritation study in the rabbit that showed no eye irritation. A primary dermal irritation study in the rabbit that showed mild irritation (toxicity category; IV). A dermal sensitization study in the guinea pig that showed no sensitization.

2. *Genotoxicity.* Studies on gene mutation and other genotoxic effects showed no evidence of point mutation in an Ames test; no indication of mutagenic effects in a dominant lethal test; and no evidence of mutagenic effects in a nucleus anomaly test in Chinese hamsters.

3. *Reproductive and developmental toxicity.* In a rat developmental toxicity study, the maternal NOAEL was 100 mg/kg/day. The maternal LOAEL was 300 mg/kg based on decreased body weight gain and clinical observations. The developmental NOAEL was 300 ppm. The developmental LOAEL was 600 mg/kg based upon an increase of minor skeletal variations.

In a rabbit developmental toxicity study, the maternal NOAEL was 10 mg/kg. The maternal LOAEL was 30 mg/kg based upon decreased body weight gain and food consumption. The developmental NOAEL/LOAEL was greater than or equal to 60 mg/kg.

In a multi-generation study in rats, the systemic NOAEL was 30 ppm (1.5 mg/kg). The systemic LOAEL was 1,000 ppm (50 mg/kg) based upon decreased body weights associated with decreased food consumption. The developmental/offspring systemic NOAEL was 1,000 ppm. The developmental/offspring systemic LOAEL was 3,000 ppm (150 mg/kg) based upon decreased body weight at birth through weaning. There were no effects on reproductive parameters at the highest dose tested (3,000 ppm).

4. *Subchronic toxicity.* In a 6–month feeding study in dogs, the NOAEL was 30 ppm (0.75 mg/kg). The LOAEL was 300 ppm (7.5 mg/kg) based upon decreased hematocrit and decreased hemoglobin. Groups of male and female beagle dogs (4/sex/dose) were fed diets containing cyromazine at 0, 30, 300, or 3,000 ppm (0, 0.75, 7.5, or 75 mg/kg/day, respectively) for 6–months. No treatment-related effects were observed in survival, clinical signs or body weight parameters. Pronounced effects on hematologic parameters, were manifested as decreases in hematocrit and hemoglobin levels at 300 and 3,000 ppm.

5. *Chronic toxicity.* In a 24–month feeding study in rats the NOAEL for the study was 30 ppm (1.5 mg/kg/day). The LOAEL was 300 ppm (15.0 mg/kg) based on decreased body weight. In a 24–month mouse chronic feeding carcinogenicity study the NOAEL was 50 ppm (7.5 mg/kg/day). The LOAEL was 1,000 ppm (150.0 mg/kg) based upon decreased body weight. There was no evidence of carcinogenicity at 3,000 ppm (450 mg/kg). In a 24–month rat chronic feeding carcinogenicity study the NOAEL was greater than 3,000 ppm (150 mg/kg) (highest dose tested). There was no evidence of carcinogenicity at 3,000 ppm.

6. *Animal metabolism.* The metabolism of cyromazine has been adequately characterized in the rat, goat and chicken.

7. *Metabolite toxicology.* EPA has removed melamine, a metabolite of cyromazine, from the tolerance expression as a residue of toxicological concern. For more information on melamine, see the **Federal Register** of September 15, 1999 (64 FR 50043) (FRL–6098–7).

8. *Endocrine disruption.* Cyromazine does not belong to a class of chemicals proven to have adverse effects on the endocrine system. There is no evidence that cyromazine has any effect on endocrine function in developmental or reproduction studies.

*C. Aggregate Exposure*

1. *Dietary exposure.* EPA has conducted risk assessments to assess dietary exposures from cyromazine. Details of these assessments are in the **Federal Register** of September 15, 1999 (64 FR 50043).

i. *Food—a. Acute risk.* A food-use pesticide is presumed to pose an acute risk if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. There were no toxicological effects attributed to a single exposure (dose) observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, there is a reasonable certainty of no harm from acute dietary exposure.

b. *Chronic.* The chronic reference dose (RfD) used for the chronic dietary

analysis is 0.0075 milligram/kilogram body weight/day (mg/kg bwt/day). The following assumptions were used in the dietary risk assessment: (i) PCT estimates were utilized for cucurbit vegetables, leafy vegetables (except Brassica), onions, peppers and tomatoes. All other crops 100% crop-treated was assumed; (ii) anticipated residue estimates were used for milk, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; and (iii) all other commodities tolerance level residues were assumed.

ii. *Drinking water exposure—a. Acute.* Because no acute dietary endpoint was determined, cyromazine does not pose an acute risk through drinking water.

b. *Chronic.* EPA has calculated drinking water level of concern (DWLOC) values for chronic (non-cancer) exposure to cyromazine in surface water and ground water. A human health DWLOC is the concentration of a pesticide in drinking water that would result in an acceptable aggregate risk after having factored in all food exposures and other non-occupational exposures for which EPA has reliable data. To calculate the DWLOCs for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to cyromazine in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures. The modeling conducted was based on the environmental profile and the maximum seasonal application rate proposed for cyromazine (6 applications at 0.125 lb/acre).

2. *Non-dietary exposure.* Cyromazine is currently registered for commercial outdoor use on landscape ornamentals and commercial interiorscapes. There are no lawn or indoor residential uses and significant residential exposure is not expected.

*D. Cumulative Effects*

Novartis does not have, at this time, available data to determine whether cyromazine has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyromazine does not appear to produce a toxic metabolite produced by other substances.

*E. Safety Determination*

1. *U.S. population.* The aggregate exposure to cyromazine from food will utilize 17% of the chronic population dose (cPAD) for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is 34% for children (1–6 years old). Other subgroups include non-nursing infants, (1 year old) utilizing 13% of cPAD, and children (7-12 years old) utilizing 26% of the cPAD. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

Based on the chronic dietary (food only) exposures and using default body weights and water consumption figures, chronic DWLOCs for drinking water were calculated. For chronic exposure, based on an adult body weight of 70 kg and 2 liter (2L) consumption of water per day, the DWLOC from chronic dietary exposure in drinking water is 220 ppb. For children (10 kg and consuming 1 liter water/day) the DWLOC is 50 parts per billion (ppb). The estimated chronic drinking water exposure for cyromazine is 28.9 ppb (surface water) and 1.6 ppb (ground water). Thus, the potential residues in drinking water are not greater than the DWLOCs. Therefore, the combined exposure of chronic dietary food and drinking water exposure to cyromazine would be no greater than 100% of the cPAD for children or the general U.S. population.

Due to the nature of the non-dietary use, the commercial use of cyromazine on landscape ornamentals will not result in any significant residential exposure. Therefore, the chronic risk is the sum of food and water and there is reasonable certainty that no harm will result from aggregate exposure to cyromazine residues.

The Cancer Peer Review Committee determined that there is no evidence of carcinogenicity in studies in either the mouse or rat. Based upon this determination it can be concluded that cyromazine does not pose a cancer risk.

Therefore, based on these risk assessments there is a reasonable certainty that no harm will result from aggregate exposure to cyromazine residues.

2. *Infants and children.* The safety factor for infants and children under FFDCA section 408 provides that EPA shall apply an additional ten-fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. EPA determined that reliable data support using the standard MOE and uncertainty factor (100 for combined interspecies and intraspecies variability) and that an additional safety factor of 10 is not necessary to be protective of infants and children.

Using the conservative exposure assumptions described above, the aggregate exposure to cyromazine from food will utilize a maximum 34% of the cPAD for children 1–6 years old. EPA generally has no concern for exposures below 100% of the cPAD, because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. As noted above, potential exposure from drinking water is at a level below the DWLOCs. Therefore, based on these risk assessments there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyromazine residues.

*F. International Tolerances*

There are currently no codex, Canadian or Mexican limits for residues of cyromazine on dry beans.

[FR Doc. 02–17688 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0131; FRL–7185–8]**

## Notice of Filing a Pesticide Petition To Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP–2002–0131, must be received on or before August 16, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0131 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide

Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br><br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet home page at *http://www.epa.gov/*. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–2002–0131. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0131 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0131. Electronic comments may also be filed online at many Federal Depository Libraries.

### *D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or

whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 2, 2002.

**Debra Edwards,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

**Summary of Petition**

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the Interregional Research Project Number 4 and represents the view of the Interregional Research Project Number 4. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**Interregional Research Project Number 4**

*PP 2E6407*

EPA has received a pesticide petition [2E6407] from the Interregional Research Project Number 4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.425 by establishing a tolerance for residues of the herbicide clomazone, 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodities peppermint tops and spearmint tops at 0.05 part per million (ppm). This notice includes a summary of the petition prepared by FMC, Agricultural Products Group, Philadelphia, PA 19103. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism.* The metabolism of clomazone in plants is adequately understood.

2. *Analytical method.* Samples were analyzed using an analytical method consisting of an acid reflux, a C18 solid phase extraction (SPE), a Florisil SPE clean-up followed by gas chromatography (GC)-mass selective detection (MSD). Mint oil samples were partitioned with hexane followed by clean-up with two Florisil columns. Analysis was conducted using GC/MS. The method limit of quantitation (LOQ) is 0.05 ppm. The method limit of detection (LOD) is 0.01 ppm.

3. *Magnitude of residues.* IR-4 conducted a residue study consisting of five trials, located in EPA Regions 5 and 10, to determine the magnitude of the residue of clomazone in/on mint and mint oil after Command 3ME was applied once as a pre-emergence broadcast spray at 0.5 pound active ingredient/acre (lb. ai/acre), or at 1.0 lb. ai/acre for processing into mint oil. No quantifiable residues of clomazone were observed in the mint stems or leaves or mint oil.

*B. Toxicological Profile*

The nature of the toxic effects caused by clomazone is discussed in unit II.B. of the **Federal Register** on March 28, 2001 (66–FR–16917) (FRL–6775–4).

1. *Animal metabolism.* The metabolism of clomazone in animals is adequately understood. Clomazone degrades rapidly and extensively in rats, goats and poultry to a variety of metabolites which were readily excreted from the body via excreta.

2. *Metabolite toxicology.* No clomazone related metabolite residues have been identified as being of toxicological concern. The residue of significance is parent. Clomazone, has been thoroughly investigated in a full battery of studies including acute, genetic, reproduction, developmental and oncogenic tests. These studies have demonstrated that clomazone has low acute toxicity, an overall absence of genotoxicity and does not cause reproductive toxicity, developmental toxicity, or carcinogenicity.

3. *Endocrine disruption.* No specific tests have been conducted with clomazone to determine whether the herbicide may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. It should be noted, however, that the chemistry of clomazone is unrelated to that of any compound previously identified as having estrogen or other endocrine effects. Additionally, a standard battery of required studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. No endocrine effects were noted in any of these studies with clomazone.

*C. Aggregate Exposure*

1. *Dietary exposure.* For purposes of assessing the potential dietary exposure, EPA has estimated aggregate exposure based on the theoretical maximum residue contribution (TMRC) from the established tolerances for clomazone. The TMRC is a ''worst case'' estimate of dietary exposure since it is assumed that 100% of all crops for which tolerances are established are treated and that pesticide residues are present at the tolerance levels.

i. *Food.* Dietary exposure to residues of clomazone in or on food will be limited to residues on cabbage (0.1 ppm), cottonseed (0.05 ppm), cucumber (0.1 ppm), succulent peas (0.05 ppm), peppers (0.05 ppm), pumpkins (0.1 ppm), soybeans (0.05 ppm), winter squash (0.1 ppm), summer squash (0.1 ppm), sweet potato (0.05 ppm), snap beans (0.05 ppm), rice (0.05 ppm), sugar (from cane) (0.05 ppm), tanier, cassava, yams, arracacha (0.05 ppm), and mint (0.05 ppm). Various feedstuffs from cotton, soybeans and sugarcane are fed to animals, thus exposure of humans to residues might result if such residues carry through to meat, milk, poultry, or eggs. No tolerances are proposed for meat, milk, poultry, or eggs since no detectable residues from clomazone have been found in animal feed items from these crops.

ii. *Drinking water.* It is unlikely that there will be exposure to residues of clomazone through drinking water supplies. A field mobility study was conducted at a loamy sand location. Clomazone was found only in the top 0-1 ft. soil samples during the 61–day study period. No clomazone residue <0.02 ppm was detected in the deeper soil levels (1-2, 2-3 and 3-4 ft.). Detectable residues of clomazone were found only in the 0-6 horizon. Should movement into surface water occur, potential for clomazone residues to be detected in drinking water supplies at significant levels is minimal. Accordingly, there is no reasonable expectation that there would be an additional incremental aggregate dietary contribution of clomazone through ground water or surface water. For further information see Unit II.C. of the **Federal Register.**

2. *Non-dietary exposure.* Clomazone is only registered for use on food crops. Since the proposed use on mint is consistent with existing registrations, there will be no non-dietary, non-occupational exposure.

*D. Cumulative Effects*

Clomazone is an isoxazolidinone herbicide. No other registered chemical exists in this class of chemistry. Therefore, given clomazone's unique chemistry low acute toxicity, the absence of genotoxic, carcinogenic, developmental or reproductive effects, and low exposure potential, the expression of cumulative human health effects with clomazone and other natural or synthetic pesticides is not anticipated.

*E. Safety Determination*

1. *U.S. population.* Using TMRC (a conservative exposure assumption), and based on the completeness and reliability of the toxicology data, it is concluded that aggregate exposure due to existing registered uses, and pending uses of clomazone will utilize less than 1% of the RfD for the U.S. population. Additionally, an analysis concluded that aggregate exposure to clomazone adding mint (spearmint tops and peppermint tops) at 0.05 ppm tolerance level will utilize a negligible percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Therefore, It is concluded that there is a reasonable certainty that no harm will result from aggregate exposure to residues of clomazone, including all anticipated dietary exposure.

2. *Infants and children*— Safety factor. Based on the current toxicological data requirements, the data base relative to prenatal and postnatal effects for children is complete. Further, for clomazone, the no observed adverse effect level (NOAEL) in the 2–year feeding study which was used to calculate the reference dose (RfD) milligrams/kilogram/day (0.043 mg/kg/day) is already lower than the NOAELs from the reproductive and developmental studies by a factor of more than 10–fold. Therefore, it can be concluded that no additional uncertainty factors are warranted and that the RfD at 0.043 mg/kg/day is appropriate for assessing aggregate risk to infants and children as well as adults.

Using the conservative exposure assumptions described above, FMC has concluded that the percent of the RfD that will be utilized by aggregate exposure to residues of clomazone in/on mint (spearmint tops and peppermint tops) for non-nursing infants (<1 year old), the population subgroup most sensitive, is negligible (i.e., 0.00) and the percent of the RfD that will be utilized by the children (1–6 years old) population subgroup is also negligible (0.00). The percent of the RfD utilized for infants and children for mint (spearmint tops and peppermint tops), plus all other current clomazone tolerances is 0.8 and 0.5 respectively.

Based on the above information, FMC has concluded that there is a reasonable certainty that no harm will result to infants, children or adults from dietary food consumption exposure to clomazone residues from mint (spearmint tops and peppermint tops) plus all other clomazone treated human dietary food sources.

*F. International Tolerances*

There are codex residue limits for residues of clomazone in or on oilseed rape, potatoes, tobacco, soybeans, rice, cottonseed, sugarcane and peas.

[FR Doc. 02–17689 Filed 7–16–02; 8:45 am]

**BILLING CODE 6560–50–S**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:43 a.m. on Friday, July 12, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, supervisory, and resolution activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Director John M. Reich (Appointive), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: July 12, 2002.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 02–18116 Filed 7–15–02; 10:32 am]

**BILLING CODE 6714–01–M**

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 011810

*Title:* CMA–CGM/HL GUMEX-Brasil Cooperative Working Agreement

*Parties:*

CMA–CGM SA

Hapag-Lloyd Container Linie GmbH

*Synopsis:* The proposed agreement would authorize CMA–CGM and Hapag-Lloyd to charter space to and from each other on each other's vessels and discuss and agree on rates on a voluntary basis in the trade between ports on the U.S. Gulf Coast and ports in Mexico, Venezuela, Brazil, Argentina, Uruguay, and the Caribbean Sea.

By Order of the Federal Maritime Commission.

Dated: July 12, 2002.

**Theodore A. Zook,**

*Assistant Secretary.*

[FR Doc. 02–18009 Filed 7–16–02; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Performance Review Board

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the names of the members of the Performance Review Board.

**FOR FURTHER INFORMATION CONTACT:** Harriette H. Charbonneau, Director of Human Resources, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573.

**SUPPLEMENTARY INFORMATION:** Section 4314(c)(1) through (5) of title 5, U.S.C.,

requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

**Harold J. Creel, Jr.,**

*Chairman.*

*The Members of the Performance Review Board Are*

1. Joseph E. Brennan, Commissioner
2. Delmond J.H. Won, Commissioner
3. Norman D. Kline, Chief Administrative Law Judge
4. Frederick M. Dolan, Jr., Administrative Law Judge
5. Michael A. Rosas, Administrative Law Judge
6. Bryant L. VanBrakle, Secretary
7. Bruce A. Dombrowski, Executive Director
8. Florence A. Carr, Director, Bureau of Trade Analysis
9. Vern W. Hill, Director, Bureau of Enforcement
10. Sandra L. Kusumoto, Director, Bureau of Consumer Complaints and Licensing
11. Austin L. Schmitt, Deputy Executive Director

[FR Doc. 02–18008 Filed 7–16–02; 8:45 am]

BILLING CODE 6730–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Cooperative Agreement To Establish a National Poverty Research Center and Area Poverty Research Centers: Correction

**AGENCY:** The Office of the Assistant Secretary for Planning and Evaluation, HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Department of Health and Human Services published a notice in the **Federal Register** of June 18, 2002, regarding the announcement of the availability of funds and request for applications for a cooperative agreement to establish a National Poverty Research Center and Area Poverty Research Centers. The document contained incorrect information in Part IV.

**FOR FURTHER INFORMATION CONTACT:** Don Oellerich, 202–690–6805.

**Correction**

In the **Federal Register** of June 18, 2002, in FR Doc. 02–15232, at 67 FR 41420, concerning the announcement of the availability of funds and request for applications for a cooperative agreement to establish a National Poverty Research Center and Area Poverty Research Centers, please correct the following:

Part IV, Section A, General Information, page 41426, second column, correct the second line to read as follows:

2. Double line spacing (except for appendices).

Part IV, Section B, Application Development—National Center, on page 41427, second column, add:

(5) Dissemination Plan

A brief discussion of the plans for developing and maintaining a network for the dissemination of findings to the policy and research communities through newsletters, working papers, special reports and briefings. Other dissemination methods are encouraged.

Part IV, Section C, Application Development—Area Poverty Centers, on page 41428, first column, add:

(6) Dissemination Plan

A brief discussion of the plans for developing and maintaining a network for the dissemination of findings to the policy and research communities through newsletters, working papers, special reports and briefings. Other dissemination methods are encouraged.

Part IV, Section C, Disposition of Applications on page 41428, third column, becomes Part IV, Section E, Disposition of Applications.

Part IV, Section D, The Catalog of Federal Domestic Assistance Number, on page 41428, third column, becomes Part IV, Section F, the Catalog of Federal Domestic Assistance Number.

Part IV, Section E, Components of Complete Application, on page 41428, third column, becomes Part IV, Section G, Components of a Complete Application: National Poverty Research Center and Area Poverty Research Centers.

Part IV, Section G(8), Project Narrative Statement, on page 41428, third column, is corrected to read as follows:

8. Project Narrative Statement for the National Poverty Research Center, organized in 6 sections:

(a) Overview
(b) Research Agenda
(c) Staff and Organizational Data
(d) Training and Mentoring Emerging Scholars
(e) Budget Narrative
(f) Dissemination Plan

Project Narrative for the Area Poverty Research Centers, organized in 7 sections:

(a) Overview
(b) Key Trends and Past Research Analysis
(d) Staff and Organizational Data
(e) Training and Mentoring Emerging Scholars
(f) Budget Narrative
(g) Dissemination Plan

Dated: June 3, 2002.

**William F. Raub,**

*Principal Deputy for Secretary for Planning and Evaluation.*

[FR Doc. 02–17990 Filed 7–16–02; 8:45 am]

BILLING CODE 4150–28–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Safety and Occupational Health Study Section: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Safety and Occupational Health Study Section, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention of the Department of Health and Human Services, has been renewed for a 2-year period extending through June 30, 2004.

For further information, contact Charles N. Rafferty, Ph.D., Executive Secretary, Safety and Occupational Health Study Section, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, 301/435–3562 FAX 301/480–2644.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 10, 2002.

**John Burckhardt,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 02–17945 Filed 7–16–02; 8:45 am]

BILLING CODE 4163–19–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel; Notice of Meeting

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Integrated, Multi-Level Intervention to Improve Adolescent Health Through the Prevention of Sexually Transmitted Diseases, Including HIV, and Teen Pregnancy, Program Announcement 02008.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Integrated, Multi-Level Intervention to Improve Adolescent Health Through the Prevention of Sexually Transmitted Diseases, Including HIV, and Teen Pregnancy, PA# 02008.

*Times and Dates:* 9 a.m.–9:30 a.m., July 31, 2002 (Open), 9:30 a.m.–4:30 p.m., July 31, 2002 (Closed), 9 a.m.–4:30 p.m., August 1, 2002 (Closed).

*Place:* Holiday Inn Select—Decatur Conference Plaza, 130 Clairmont Ave., Decatur, GA 30030.

*Status:* Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to PA# 02008.

*Contact Person for More Information:* Deirdre Kelly Hector and/or Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road NE MS E–07, Atlanta, Georgia 30333, 404–639–8025.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 11, 2002.

**Joseph E. Salter,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 02–17947 Filed 7–16–02; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel; Notice of Meeting

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Occupational Safety and Health Research, Program Announcement 99–143, Program for the Initiation and Development of State-Based Surveillance Capacity in Occupational Safety and Health, Request for Applications OH–02–007,Continuation Support for State-Based SENSOR Programs, Request for Applications OH–02–013.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Occupational Safety and Health Research, PA# 99–143, Program for the Initiation and Development of State-Based Surveillance Capacity in Occupational Safety and Health, RFA OH–02–007,Continuation Support for State-Based SENSOR Programs, RFA OH–02–013.

*Times and Dates:* 9 a.m.–9:30 a.m., August 1, 2002 (Open), 9:40a.m.–5 p.m., August 1, 2002 (Closed), 9 a.m.–5 p.m., August 2, 2002 (Closed).

*Place:* Harbor Court Hotel, 550 Light Street, Baltimore MD 21202. Phone 1–800–824–0076.

*Status:* Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to PA# 99–143, RFA OH–02–007 and RFA OH–02–013.

*Contact Person for More Information:* Gwendolyn Haile Cattledge, Ph.D., Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road NE MS E–74, Atlanta, GA 30333 telephone (404) 498–2508.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 11, 2002.

**John Burckhardt,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 02–17948 Filed 7–16–02; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Developmental Disabilities Protection & Advocacy Program Performance Report

*OMB No.:* 0980–0160

*Description:* This information collection is required by federal statute. Each State Protection and Advocacy System must prepare and submit a Program Performance Report for the preceding fiscal year of activities and accomplishments and of conditions in the State. The information in the Annual Report will be aggretated into a national profile of Protection and Advocacy Systems. It will also provide ADD with an overview of program trends and achievements and will enable ADD to respond to administration and congressional requests for specific information on program activities. This information will also be used to submit an Annual Report to Congress as well as to comply with requirements in GPRA.

*Respondents:* State and Tribal Governments.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| P&A PPR | 57 | 1 | 44 | 2,508 |
| Estimated Total Annual Burden Hours | | | 44 | 2,508 |

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503; Attn: Desk Officer for ACF.

Dated: July 11, 2002.

**Bob Sargis,**

*Reports Clearance Officer.*

[FR Doc. 02–17939 Filed 7–16–02; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Developmental Disabilities Protection and Advocacy Statement of Goals and Priorities.

*OMB No.:* 0980–0270.

*Description:* Required by federal statute and regulation. Each State Protection and Advocacy System must prepare and submit to public comment a Statement of Goals and Priorities (SGP). The final version of this SGP for the coming fiscal year is submitted to ADD. The information in the SGP will be aggregated into a national prospective profile of where Protection and Advocacy Systems are going. It will provide ADD with an overview of program direction, and permit ADD to track accomplishments against goals/targets, permitting the formulation of technical assistance and compliance with GPRA.

*Respondents:* State and Tribal Governments.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| P&A SGP | 57 | 1 | 44 | 2,508 |
| Estimated Total Annual Burden Hours | | | 44 | 2,508 |

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: July 11, 2002.

**Bob Sargis,**

*Reports Clearance Officer.*

[FR Doc. 02–17940 Filed 7–16–02; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Developmental Disabilities State Plan.

*OMB No.:* 0980–0162.

*Description:* A Plan developed by the State Council on Developmental Disabilities is required by Federal statute. Each State Council on Developmental Disabilities must develop the plan, provide for public comments in the State, provide for approval by the State's Governor, and finally submit the plan on a five year basis. On an annual basis, the Council must review the plan and make any amendments. The State Plan will be used (1) by the Council as a planning document; (2) by the citizenry on the State as a mechanism for commenting on the plans of the Council; and (3) by the Department as a stewardship tool, for ensuring compliance with the Developmental Disabilities Assistance and Bill of Rights Act and as one basis for providing technical assistance (e.g., during site visits).

*Respondents:* State and Tribal Governments.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| State Plan on Developmental Disabilities | 55 | 1 | 80 | 4,400 |
| Estimated Total Annual Burden Hours | | | 80 | 4,400 |

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: July 11, 2002.

**Bob Sargis,**

*Reports Clearance Officer.*

[FR Doc. 02–17941 Filed 7–16–02; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Financial Status Reporting (SF–269) with Supplemental ADD–02 for State Councils on Developmental Disabilities.

*OMB No.:* 0980–0212.

*Description:* For the program of the State Council on Developmental Disabilities, funds are awarded to State Agencies contingent on fiscal requirements in Subtitle B of the Developmental Disabilities Assistance and Bill of Rights Act. The SF–269, mandated in the revised OMB Circular A–102, provides no accounting breakouts necessary for proper stewardship. The proposed supplement will allow compliance monitoring and proactive compliance maintenance and technical assistance.

*Respondents:* State Governments.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ADD02 | 55 | 2 | 9 | 990 |
| Estimated Total Annual Burden Hours | | | 9 | 990 |

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Desk Officer for ACF.

Dated: July 11, 2002.

**Bob Sargis,**

*Reports Clearance Officer.*

[FR Doc. 02–17942 Filed 7–16–02; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* State Council on Developmental Disabilities Program Performance Report.

*OMB No.:* 0980–0172

*Description:* A Developmental Disabilities Council Program Performance Report is required by federal statute. Each State Developmental Disabilities Council must submit an annual report for the preceding fiscal year of activities and accomplishments. Information provided in the Program Performance Report will be used (1) in the preparation of the Annual Report to the President, the Congress, and the National Council on Disabilities and (2) to provide a national perspective on program accomplishments and continuing challenges.

*Respondents:* State Governments

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| State Council on Developmental Disabilities Program Performance Report | 55 | 1 | 44 | 2,420 |
| Estimated Total Annual Burden Hours | | | 44 | 2,420 |

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: July 11, 2002.

**Bob Sargis,**

*Reports Clearance Officer.*

[FR Doc. 02–17943 Filed 7–16–02; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 01E–0404]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; CeeOn Model 911A

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for CeeOn Model 911A 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 Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

**ADDRESSES:** Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

**FOR FURTHER INFORMATION CONTACT:** Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 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 medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director 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 medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device CeeOn Model 911A. CeeOn Model 911A is indicated for primary implantation for the visual correction of aphakia in persons 60 years of age or older in whom a cataractous lens has been removed by phacoemulsification. The lens is intended to be placed in the capsular bag. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CeeOn Model 911A (U.S. Patent No. 5,444,106) from Pharmacia AB, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of CeeOn Model 911A 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 CeeOn Model 911A is 1,594 days. Of this time, 1,101 days occurred during the testing phase of the regulatory review period, while 493 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: November 25, 1996. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective November 25, 1996.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: November 30, 1999. FDA has verified the applicant's claim that the premarket approval application (PMA) for CeeOn Model 911A (PMA P990080) was initially submitted November 30, 1999.

3. *The date the application was approved*: April 5, 2001. FDA has verified the applicant's claim that PMA P990080 was approved on April 5, 2001.

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 956 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by September 16, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 13, 2003. 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. Three copies of any information are to be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 17, 2002.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. 02–17904 Filed 7–16–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket Nos. 02M–0083, 02M–0082, 02M–0006, 02M–0128, 02M–0076, 02M–0034, 02M–0030, 02M–0060, 02M–0118, 02M–0121, and 02M–0134]**

### Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Dockets Management Branch.

**ADDRESSES:** Submit written requests for copies of summaries of safety and effectiveness to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

**FOR FURTHER INFORMATION CONTACT:** Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d)) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Instead, revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on FDA's home page on the Internet at http://www.fda.gov, by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch, and by publishing in the **Federal Register** after each quarter a list of available safety and effectiveness summaries of approved PMAs and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet in accordance with the procedure explained previously from January 1, 2002, through March 31, 2002. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE JANUARY 1, 2002, THROUGH MARCH 31, 2002

| PMA Number/Docket No. | Applicant | Trade Name | Approval Date |
|---|---|---|---|
| P000012/02M–0083 | Roche Molecular Systems, Inc. | COBAS AMPLICOR Hepatitis C Virus Test, version 2.0. | July 3, 2001. |
| P000010/02M–0082 | Roche Molecular Systems, Inc. | AMPLICOR Hepatitis C Virus Test, version 2.0. | July 5, 2001. |
| P000025/02M–0006 | Med-El Corp. | MED-EL COMBI 40+ Cochlear Implant System. | August 20, 2001. |
| P010013/02M–0128 | Novacept, Inc. | NOVASURE Impedance Controlled Endometrial Ablation System. | September 28, 2001. |
| P010022/02M–0076 | Cohesion Technologies, Inc. | COSEAL Surgical Sealant. | December 14, 2001. |
| P000048/02M–0034 | Dornier Medical Systems, Inc. | DORNIER EPOS ULTRA. | January 15, 2002. |
| P010038/02M–0030 | Intelligent Systems Software, Inc. | MAMMOREADER (Computer-Aided Detection System For Mammography). | January 15, 2002. |
| P010034/02M–0060 | CADx Medical Systems, Inc. | SECOND LOOK (Computer-Aided Detection System For Mammography). | January 31, 2002. |
| P010040/02M–0118 | Safeguard Medical Devices, Inc. | The DISINTEGRATOR Insulin Needle Destruction Device. | March 15, 2002. |
| H010005/02M–0121 | Ascension Orthopedics, Inc. | ASCENSION PIP. | March 22, 2002. |
| P010049/02M–0134 | SUB–Q, Inc. | QuickSeal Femoral Arterial Closure System. | March 25, 2002. |

**II. Electronic Access**

Persons with access to the Internet may obtain the documents at http://www.fda.gov/cdrh/pmapage.html.

Dated: July 5, 2002.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 02–18038 Filed 7–16–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Safety and Efficacy of Methods for Reducing Pathogens in Cellular Blood Products Used in Transfusion; Public Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of Public Workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Safety and Efficacy of Methods for Reducing Pathogens in Cellular Blood Products Used in Transfusion.'' The workshop will provide a forum for discussion of the scientific aspects of using state of the art methods for pathogen reduction in cellular blood products.

*Date and Time*: The 2-day public workshop will be held on August 7 and 8, 2002, from 8 a.m. to 5 p.m.

*Location*: The workshop will be held at Jack Masur Auditorium, National Institutes of Health, Bldg. 10, 9000 Rockville Pike, Bethesda, MD 20892.

*Contact*:

*For information about this notice*: Michael D. Anderson, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20857, 301–827–6210, FAX 301–594–1944.

*For information about the public workshop*: Joseph Wilczek, Center for Biologics Evaluation and Research (HFM–305), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6129, FAX 301–827–2843, e-mail at wilczek@cber.fda.gov.

*Registration*: Mail, fax, or e-mail your registration information (including name, professional degree, title, e-mail address, firm name, address, telephone, and fax number) to Joseph Wilczek by July 26, 2002. There is no registration fee for the public workshop. Space is limited, therefore, interested parties are encouraged to register early. There will be onsite registration done on a space available basis on the days of the workshop beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Joseph Wilczek at least 7 days in advance.

**SUPPLEMENTARY INFORMATION:** FDA is sponsoring a public workshop on evaluating methods for reducing pathogens in cellular blood products. Although there are no currently approved methods on the market today for pathogen reduction in cellular blood products, FDA is sponsoring this workshop for discussion of the scientific aspects of such methodologies. The objectives of the workshop are to discuss the criteria to define the efficacy of such products and appropriate ways to evaluate their toxicities to the transfusion products and to the recipients of these products. A public discussion of these topics will help the transfusion community better understand the development of these methods for cellular blood products intended for transfusion. The workshop will also help FDA prepare for the review of related applications. The public workshop agenda is posted on the FDA Internet at http://www.fda.gov/cber/scireg.htm.

*Transcripts*: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 per page. The public workshop transcript will also be available on the Internet at http://www.fda.gov/cber/minutes/workshop-min.htm.

Dated: July 11, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–18037 Filed 7–16–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 01D–0064]**

### Draft Special Control Guidance Document on Encapsulated Amalgam,Amalgam Alloy, and Dental Mercury Labeling; Availability; Reopening of Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; reopening of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is reopening for 60 days the comment period on the draft guidance entitled ''Special Control Guidance Document on Encapsulated Amalgam, Amalgam Alloy, and Dental Mercury Labeling.'' Elsewhere in this issue of the **Federal Register**, the agency is announcing the extension of the comment period on a proposed rule to classify encapsulated amalgam into class II, to amend the classification regulation for amalgam alloy to provide for special controls, and to reclassify dental mercury into class II. The draft guidance document is intended to serve as a special control for these devices. The agency is taking this action in response to a request for an extension.

**DATES:** Submit written or electronic comments on the guidance by September 16, 2002.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

**FOR FURTHER INFORMATION CONTACT:** Susan Runner, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200Corporate Blvd., Rockville, MD 20850, 301–827–5283.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 20, 2002 (67 FR 7703), FDA published a notice announcing the availability of a draft guidance entitled ''Special Control Guidance Document on Encapsulated Amalgam, Amalgam Alloy, and Dental Mercury Labeling.'' In the same issue of the **Federal Register** (67 FR 7620), the agency published a proposed rule to classify encapsulated amalgam into class II, to amend the classification regulation for amalgam alloy to provide for special controls, and to reclassify dental mercury into class II. The draft guidance document is intended to serve as a special control for these devices.

FDA received an electronic request dated May 20, 2002, requesting that the agency extend the comment period on the proposed rule for 60 days, noting the importance of public health issues involved and explaining that there were apparently technical difficulties with the submission of electronic comments. FDA has determined that it is appropriate to grant this request, and elsewhere in this issue of the **Federal Register** FDA is announcing the reopening of the comment period on the proposed rule. FDA believes that it is also appropriate to reopen the comment period on the guidance document.

You may submit to the Dockets Management Branch (see **ADDRESSES**)

written or electronic comments on the draft guidance entitled ''Special Control Guidance Document on Encapsulated Amalgam, Amalgam Alloy, and Dental Mercury Labeling'' by September 16, 2002. You must submit two copies of any comments. Individuals may submit one copy. You must identify comments with the docket number found in brackets in the heading of this document. Comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 5, 2002.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 02–17961 Filed 7–16–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00D–1458]**

### Medical Devices: Class II Special Controls Guidance Document: Apnea Monitors; Guidance for Industry and FDA; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Apnea Monitors; Guidance for Industry and FDA.'' This document describes a means by which apnea monitors may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying apnea monitors into class II (special controls).

**DATES:** Submit written or electronic comments on the guidance at any time. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written requests for single copies on a 3.5″ diskette of the guidance entitled ''Class II Special Controls Document: Apnea Monitors; Guidance for Industry and FDA'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

**FOR FURTHER INFORMATION CONTACT:** William Noe, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In the **Federal Register** of September 22, 2000 (65 FR 57355), FDA announced the availability of this draft guidance document and invited interested persons to comment on it by December 21, 2000. FDA also announced in that notice its intention to modify the guidance so that it would apply to apnea monitors for patients of all ages. In that same issue of the **Federal Register** (65 FR 57301), FDA proposed to classify the apnea monitor into class II with this guidance document as the special control. This guidance supersedes the draft guidance entitled ''Guidance for Infant/Child Apnea Monitor 510(k) Submissions.''

FDA received comments on the draft guidance from one manufacturer. We considered this manufacturer's comments and included some of its suggestions in our revised guidance. We revised the guidance to make it applicable to devices intended for adults as well as infants and children, added information concerning industry's option to submit an abbreviated 510(k) when relying on a class II special controls guidance document, and retitled the guidance to reflect these changes.

#### II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on ''Class II Special Controls Guidance Document: Apnea Monitors; Guidance for Industry and FDA.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

#### III. Electronic Access

In order to receive the guidance entitled ''Class II Special Controls Guidance Document: Apnea Monitors; Guidance for Industry and FDA'' via your fax machine, call the Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1178) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. A search capability for all CDRH guidance documents is available at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available at http://www.fda.gov/ohrms/dockets.

#### IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in the labeling section of this guidance discussing labeling under 21 CFR 807.87(e) was approved under OMB control number 0910–0120. The collection of information in the labeling section of this guidance discussing labeling under 21 CFR 801.109 was approved under OMB control number 0910–0485.

#### V. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this guidance at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the

heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 5, 2002.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 02–17958 Filed 7–16–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Science and Regulation of Biological Products: From a Rich History to a Challenging Future; Public Symposium

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public symposium.

The Food and Drug Administration (FDA) is announcing a public symposium entitled ''Science and Regulation of Biological Products: From a Rich History to a Challenging Future.'' The purpose of the symposium is to commemorate the 100th anniversary of the enactment of the Biologics Control Act, the first Federal law regulating biological products. The symposium is dedicated to the memory and achievements of Dr. Harry Meyer, Jr., who, together with Dr. Paul Parkman, developed the first licensed rubella virus vaccine. The Center for Biologics Evaluation and Research (CBER) staff and invited guests will present scientific lectures describing the achievements of the past and the challenges of the future in the areas regulated by CBER (blood, vaccines, and therapeutic biological products).

*Date and Time*: The public symposium will be held on Monday, September 23, 2002, from 8:30 a.m. to 5 p.m., and Tuesday, September 24, 2002, from 8:30 a.m. to 12 noon.

*Location*: The public symposium will be held at the National Institutes of Health (NIH), Natcher Conference Center, Bldg. 45, 45 Center Dr., Bethesda, MD.

*Contact*:

*For information about this notice*: Michael D. Anderson, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–6210, FAX 301–594–1944.

*For information about the public symposium*: Gail Sherman, Center for Biologics Evaluation and Research (HFM–42), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–2000, FAX 301–827–3079, e-mail: Sherman@cber.fda.gov.

*Registration*: Mail, fax, or e-mail your registration information (including name, professional degree, title, e-mail address, firm name, address, telephone, and fax number) to Gail Sherman by September 1, 2002. There is no registration fee for the public symposium. Space is limited, therefore, interested parties are encouraged to register early. There will be no onsite registration.

*Travel Information*: The NIH campus is accessible via the Washington, DC metro system, Red Line, at the Medical Center stop. The Natcher Conference Center is a short walk from the metro station, or you may take one of the many shuttle buses that run from the metro station to the various buildings on the campus. Due to newly imposed security measures, visitors parking is limited and use of private vehicles may cause significant delays in entering the campus.

If you need special accommodations due to a disability, please contact Gail Sherman at least 7 days in advance.

Dated: July 11, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–18039 Filed 7–16–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Commission of Childhood Vaccines; Request for Nominations for Voting Members

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is requesting nominations to fill three vacancies on the Advisory Commission on Childhood Vaccines (ACCV). The ACCV was established by Title XXI of the Public Health Service Act (the Act), as enacted by Public Law (Pub. L.) 99–660 and as subsequently amended, and advises the Secretary of Health and Human Services (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP).

**DATES:** The agency must receive nominations on or before August 16, 2002.

**ADDRESSES:** All nominations are to be submitted to the Director, Division of Vaccine Injury Compensation, Office of Special Programs, HRSA, Parklawn Building, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cheryl A. Lee, Principal Staff Liaison, Policy Analysis Branch, Division of Vaccine Injury Compensation, at (301) 443–2124.

**SUPPLEMENTARY INFORMATION:** Under the authorities that established the ACCV, viz. the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463) and section 2119 of the Act, 42 U.S.C. 300aa–19, as added by Public Law 99–660 and amended, HRSA is requesting nominations for three voting members of the ACCV.

The ACCV advises the Secretary on the implementation of the VICP. The activities of the ACCV include: Recommending changes in the Vaccine Injury Table at its own initiative or as the result of the filing of a petition; advising the Secretary in implementing section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveying Federal, State, and local programs and activities related to gathering information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b); advising the Secretary on the methods of obtaining, compiling, publishing, and using credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; and recommending to the Director of the National Vaccine Program that vaccine safety research be conducted on various vaccine injuries.

The ACCV consists of nine voting members appointed by the Secretary as follows: Three health professionals, who are not employees of the United States Government and have expertise in the health care of children, the epidemiology, etiology and prevention of childhood diseases, and the adverse reactions associated with vaccines, at least two shall be pediatricians; three members from the general public, at least two shall be legal representatives (parents or guardians) of children who have suffered a vaccine-related injury or death; and three attorneys, at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and one shall be an attorney

whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of the Food and Drug Administration (or the designees of such officials) serve as nonvoting ex officio members.

Specifically, HRSA is requesting nominations for three voting members of the ACCV representing: (1) A pediatrician with special experience in childhood diseases; (2) an attorney with no specific affiliation; and (3) a member from the general public who is a legal representative (parent or legal guardian) of a child who has suffered a vaccine-related injury or death. Nominees will be invited to serve a 3-year term beginning January 1, 2003, and ending December 31, 2005.

Interested persons may nominate one or more qualified persons for membership on the ACCV. Nominations shall state that the nominee is willing to serve as a member of the ACCV and appears to have no conflict of interest that would preclude the ACCV membership. Potential candidates will be asked to provide detailed information concerning consultancies, research grants, or contracts to permit evaluation of possible sources of conflicts of interest. A curriculum vitae or resume should be submitted with the nomination.

The Department of Health and Human Services has special interest in assuring that women, minority groups, and the physically disabled are adequately represented on advisory committees; and therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or physically disabled candidates.

Dated: June 24, 2002.

**Elizabeth M. Duke,**

*Administrator, HRSA.*

[FR Doc. 02–17905 Filed 7–16–02; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of Loan Repayment and Scholarship; Proposed Collection; Comment Request; Career Survey of Biomedical Researchers Receiving Loan Repayment Benefits

**SUMMARY:** In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of Loan Repayment and Scholarship (OLRS), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

*Proposed Collection: Title:* Career Survey of Biomedical Researchers Receiving Loan Repayment Benefits. *Need and Use of Information Collection:* This survey is part of a comprehensive evaluation of the National Institutes of Health (NIH) Intramural Research Loan Repayment Program (LRP), the purpose of which is to evaluate the success of the LRP in raising the probability that a qualified scientist will stay in the intramural research program and pursue a long-term career as a biomedical researcher. The survey will document the actual career outcomes of current and former LRP participants and comparable non-participants. Such information can be used to gauge whether the program is meeting the expectations of program managers and how the program could be improved in the future. It will be used to address the outcome and impact study questions related to short and long term retention, both at NIH and in biomedical research generally.

In addition to informing OLRS about the effectiveness of the program, the results of the LRP evaluation will become the basis for recommendations on how the program could be modified to improve outcomes. Indeed, some of the findings may be useful to the Office of the Director in terms of scientific human resources policy in particular and the Intramural Research Program generally. Also, the information collection will help our nation's leaders in setting policies to ensure a human resources infrastructure for biomedical research. Encouraging the nation's brightest minds to pursue careers in biomedical research, both in public laboratories such as NIH and in non-profit laboratories, is critical to this effort. *Frequency of Response:* One time data collection. *Affected Public:* Individuals. *Type of Respondents:* Current and former NIH biomedical researchers. The annualized cost to respondents is estimated at $10,250. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

ESTIMATES OF ANNUALIZED BURDEN

| Type of respondent | Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated total annual burden hours requested |
|---|---|---|---|---|
| LRP Program Participant | 300 | 1 | .33 | 100 |
| Comparison Group | 450 | 1 | .33 | 150 |
| Total | 750 | 1 | .33 | 250 |

*Requests for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Marc S. Horowitz, J.D., Director, Office of Loan Repayment and Scholarship, National Institutes of Health, 6006 Executive Boulevard, Room 303, Bethesda, Maryland 20892–

7060 or call non-toll-free (301) 402–5666 or e-mail your request, including your address, to <*lrp@nih.gov*>.

**COMMENTS DUE DATE:** Comments regarding this information collection are best assured of having their full effect if received on or before September 16, 2002.

Dated: July 9, 2002.

**Ruth L. Kirschstein,**

*Deputy Director, NIH.*

[FR Doc. 02–17931 Filed 7–16–02; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Human Genome Research Institute Special Emphasis Panel, MOD Database.

*Date:* August 12, 2002.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Ken D. Nakamura, PhD., Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 401–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 9, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–17935 Filed 7–16–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Human Genome Research Institute Special Emphasis Panel, BAC Physical Map RFA.

*Date:* July 25, 2002.

*Time:* 8 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 9, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–17936 Filed 7–16–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Nursing Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Nursing Research Special Emphasis Panel, June 7, 2002, 10 a.m. to June 7, 2002, 11 a.m., 1 Democracy, 6701 Democracy Blvd, Suite 707 MSC 4870, Bethesda, MD, 20892–4870 which was published in the **Federal Register** on June 12, 2002, 67; Number 113.

The meeting will be held on 6/28/2002; 3–3:30 instead of 6/7/2002. The meeting is closed to the public.

Dated: July 9, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–17932 Filed 7–16–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Program Project Review.

*Date:* July 26, 2002.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 2 Democracy Plaza, 6707 Democracy Blvd., Room 750, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798, *muston@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Consortium for Identification of Environmental Triggers of Diabetes.

*Date:* August 1, 2002.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20817, 301–897–5600.

*Contact Person:* Maria E. Davila-Bloom, PhD, Scientific Review Administrator,

Review Branch, DEA, NIDDK, Room 758 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Diabetes Based Science Education in Tribal Schools.

*Date:* August 15, 2002.

*Time:* 9 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Francisco O. Calvo, PhD, Chief, Review Branch, DEA, NIDDK, Room 752, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8897.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 9, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–17933 Filed 7–16–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institutes of Nusuring Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Nursing Research Special Emphasis Panel, July 25, 2002, 8 a.m. to July 25, 2002, 5 p.m., Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD, 20817 which was published in the **Federal Register** on June 21, 2002, 67; Number 120.

The meeting will be held on 7/30/2002—8 a.m.–5 a.m.; and 7/31/2002 8 a.m. to Adjournment instead of 7/15/2002. The meeting is closed to the public.

Dated: July 10, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–17934 Filed 7–16–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4639–N–02]**

### Notice of HUD-Held Multifamily and Healthcare Loan Sale (MHLS 2002–1)

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

**ACTION:** Notice of sale of mortgage loans.

**SUMMARY:** This notice announces HUD's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale (MHLS 2002–1). This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

**DATES:** Bidder Information Packages are currently available to qualified bidders. Bids for the loans must be submitted on the bid date that currently is scheduled for July 30, 2002. HUD anticipates that awards will be made on or about August 1, 2002. Closings are expected to take place between August 8, 2002 and September 13, 2002.

**ADDRESSES:** To become a qualified bidder and receive access to the Bidder Information Package (BIP), prospective bidders must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement that are acceptable to HUD. Both documents are available on the HUD website at *www.hud.gov/offices/hsg/comp/assets/hsgloan.cfm.* The executed documents must be mailed and faxed to Cushman & Wakefield at 1801 K Street, NW., Suite 100–L, Washington, DC 20006, Attention: MHLS 2002–1 Sale Coordinator, Fax: (202) 293–9049.

The MHLS 2002–1 due diligence facility is located at 1500 K Street, NW., Suite 625, Washington, DC 20005. The facility will be open from June 17, 2002 through July 29, 2002.

**FOR FURTHER INFORMATION CONTACT:** Myrna Gordon, Deputy Director, Asset Sales Office, Room 6266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2625, extension 3369. Hearing or speech-impaired individuals may call (202) 708–4594 (TTY). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** HUD announces its intention to sell in MHLS 2002–1 certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States. The Mortgage Loans are comprised of performing, subperforming and nonperforming mortgage loans. A final listing of the Mortgage Loans is included in the BIP. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans have been stratified for bidding purposes into 12 mortgage loan pools. Each pool contains Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders may submit bids on one or more pools of Mortgage Loans. A mortgagor who is a qualified bidder may submit an individual bid on its own Mortgage Loan.

#### The Bidding Process

The BIP describes in detail the procedure for bidding in MHLS 2002–1. The BIP also includes a standardized nonnegotiable loan sale agreement (Loan Sale Agreement) and a loan information CD that contains a spreadsheet with selected attributes for each Mortgage Loan.

As part of its bid, each bidder must submit a deposit equal to the greater of $100,000 or 5% of the bid price. HUD will evaluate the bids submitted and determine the successful bids in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. HUD anticipates that the awards will be made on August 1, 2002 (Award Date). Deposits will be returned to unsuccessful bidders. Closings are scheduled to occur between August 8, 2002 and September 13, 2002.

These are the essential terms of sale. The Loan Sale Agreement, which is included in the BIP, contains additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the Loan Sale Agreement are not subject to negotiation.

#### Due Diligence Facility

From June 17, 2002 through July 29, 2002, the due diligence facility for MHLS 2002–1 will be open at 1500 K Street, NW, Suite 625, Washington, DC. Qualified bidders will be able to access loan information at the due diligence facility through computer workstations connected to the due diligence system or remotely via a high speed Internet connection. Qualified bidders may make appointments to visit the facility or obtain user IDs and passwords for

remote access by contacting Owusu & Company, HUD's due diligence contractor, at (202) 638–8390.

**Mortgage Loan Sale Policy**

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2002–1 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans. Additionally, there are no project-based Section 8 Rental Assistance Contracts on any of the mortgaged properties. Therefore, HUD has determined that, pursuant to the Multifamily Mortgage Sale Regulations, the Mortgage Loans will be sold without FHA insurance. Consistent with HUD's policy as set forth in 24 CFR 290.35, HUD knows of no Mortgage Loan that is delinquent and secures a project (1) for which foreclosure appears unavoidable, and (2) in which reside very low-income tenants who are not receiving housing assistance and who would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the Mortgage Loan. If HUD determines that any Mortgage Loans meet these criteria, they will be removed from the sale.

**Mortgage Loan Sale Procedure**

HUD selected a competitive sale as the method to sell the Mortgage Loans primarily to satisfy the Mortgage Sale Regulations. These regulations require that, except under certain limited circumstances, HUD-held multifamily mortgage loans must be sold on a competitive basis (24 CFR 290.30). This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

**Bidder Eligibility**

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD and meet the requirements set forth in the BIP. Qualified bidders will receive a password that will permit them to access the BIP through the MHLS 2002–1 website.

The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in MHLS 2002–1:

(1) Any employee of FHA or HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) any individual or entity that is debarred from doing business with FHA or HUD pursuant to Title 24 of the Code of Federal Regulations;

(3) any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with MHLS 2002–1;

(4) any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MHLS 2002–1;

(5) any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;

(6) any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MHLS 2002–1;

(7) any mortgagor (or affiliate of a mortgagor) that failed to submit to HUD the 1999, 2000 and 2001 audited financial statements for a project securing a Mortgage Loan on or before May 31, 2002; and

(8) any individual or entity and any Related Party (as such term is defined in the Qualification Statement) that is a mortgagor in any of HUD's multifamily housing programs that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD, unless such default or violation is cured on or before June 28, 2002.

In addition, any entity or individual that served as a loan servicer or performed other services for or on behalf of FHA or HUD at any time during the 2-year period prior to May 1, 2002 with respect to any Mortgage Loan is ineligible to bid on such Mortgage Loan. Also ineligible to bid on any Mortgage Loan are: (a) Any affiliate or principal of any entity or individual described in the preceding sentence; (b) any employee or subcontractor of such entity or individual during that 2-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan.

Prospective bidders should carefully review the Qualification Statement and the BIP to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2002–1.

**Freedom of Information Act Requests**

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2002–1, including, but not limited to, the identity of any bidder and their bid price or bid percentage, upon the completion of the sale. Even if HUD elects not to publicly disclose any information relating to MHLS 2002–1, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

**Scope of Notice**

This notice applies to MHLS 2002–1, and does not establish HUD's policy for the sale of other mortgage loans.

Dated: July 11, 2002.

**John C. Weicher,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 02–18113 Filed 7–16–02; 8:45 am]

BILLING CODE 4210–27–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4743–N–04]**

## Notice of Planned Closing of Rapid City, South Dakota Post-of-Duty Station

**AGENCY:** Office of Inspector General, HUD.

**ACTION:** Notice of Planned Closing of Rapid City, South Dakota Post-of-Duty Station.

**SUMMARY:** This notice advises the public that the HUD Office of Inspector General (OIG) is closing its Rapid City, South Dakota post-of-duty station, and also provides a cost-benefit analysis of the impact of the closure.

**FOR FURTHER INFORMATION CONTACT:** Bryan Saddler, Counsel to the Inspector General, Room 8260, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–1613. (This is not a toll free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services).

**SUPPLEMENTARY INFORMATION:**

**Background**

In 1998, HUD/OIG established a single person post-of-duty station in Rapid City, South Dakota, to conduct an intensive investigation of allegations involving the Pine Ridge Indian Reservation. Specifically, the establishment of the office was intended to minimize substantial anticipated travel costs associated with having staff located in the Denver Regional Office perform the investigation. The investigation is now complete, and the need for a separate post-of-duty station in Rapid City is therefore unnecessary. The closing of this post-of-duty station will provide the HUD/OIG with the opportunity to generate cost savings associated with closing this station.

Section 7(p) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(p)) provides that a plan for field reorganizations, which may involve the closing of any field or regional office of HUD may not take effect until 90 days after a cost-benefit analysis of the effect of the plan on the office in question is published in the **Federal Register**. The required cost-benefit analysis should include: (1) An estimate of cost savings anticipated; (2) an estimate of the additional cost which will result from the reorganization; (3) a discussion of the impact on the local economy; and (4) an estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services.

Legislative history pertaining to section 7(p) indicates that not all reorganizations are subject to the requirements of section 7(p). Congress stated that ''[t]his amendment is not intended to [apply] to or restrict the internal operations or organization of the Department (such as the establishment of new or combination of existing organization units within a field office, the duty stationing of employees in various locations to provide on-site service, or the establishment or closing, based on workload, of small, informal offices such as valuations stations).'' (See House Conference Report No. 95–1792, October 14, 1978 at 105–106.)

The one-person Rapid City, South Dakota post-of-duty station is a single purpose duty station, and it is being closed based on workload rather than on a reorganization of HUD/OIG field offices. Although notice of the closing of the post-of-duty station is not subject to the requirements of section 7(p), as supported by the legislative history, HUD/OIG nevertheless prepared a cost-benefit analysis for its own use in determining whether to proceed with the closing. Through this notice, HUD/OIG advises the public of the closing of the Rapid City, South Dakota post-of-duty station and provides its cost-benefit analysis of the impact of the closure.

**Impact of the Closure of the Rapid City, South Dakota Post-of-Duty Station**

HUD/OIG considered the costs and benefits of closing the Rapid City, South Dakota post-of-duty station, and is publishing its cost-benefit analysis with this notice. In summary, HUD/OIG has determined that the closure will result in a cost savings, and, as a result of the size and limited function of the office, will cause no appreciable impact on the provision of authorized investigative services/activities in the area.

*Cost Benefit Analysis*

A. *Cost Savings:* The Rapid City, South Dakota post-of-duty station currently costs approximately $2,200 per month for the space rental and associated overhead expenses to operate. Thus, closing the post-of-duty will result in annual savings of at least $26,000. In addition, by closing the office, HUD/OIG will not be required to incur additional costs associated with current plans to install high-speed computer access lines to and on the premises.

B. *Additional Costs:* There are no offsetting expenses anticipated. Currently, no Special Agent is assigned to the Rapid City, South Dakota post-of-duty station, and, therefore, relocation costs are not associated with the closure.

C. *Impact on Local Economy:* No appreciable impact on the local economy is anticipated. Another Federal agency has already expressed an interest in taking over the office space that HUD/OIG leases in Rapid City, South Dakota.

D. *Effect on Availability, Accessibility and Quality of Services Provided to Recipients of Those Services:* The establishment of the Rapid City, South Dakota post-of-duty station was based largely on needs associated with HUD/OIG's investigation of the Pine Ridge Indian Reservation, which has since concluded. Further, as was the case prior to 1998, ordinary or less intensive fraud investigations in the Rapid City area can be effectively addressed by agents assigned to the Denver Regional Office.

For the reasons stated in this notice, HUD/OIG intends to proceed to close its Rapid City, South Dakota post-of-duty station at the expiration of the 90-day period from the date of publication of this notice.

Dated: July 9, 2002.

**Kenneth M. Donohue,**

*Inspector General.*

[FR Doc. 02–17930 Filed 7–16–02; 8:45 am]

**BILLING CODE 4210–68–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Agency Information Collection; Proposed Revisions to a Currently Approved Information Collection; Comment Request

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of renewal of a currently approved collection (OMB No. 1006–0001).

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 et seq.), the Bureau of Reclamation (we, our or us) intends to submit a request for renewal (with revisions) of an existing approved information collection to the Office of Management and Budget (OMB): Crop Acreage and Yields and Water Distribution (Water User Crop Census Report [Form 7–332], and Crop and Water Data [Form 7–2045]), OMB Control Number: 1006–001. We request your comments on the revised Crop Acreage and Yields and Water Distribution Forms and specific aspect of the information collection.

**DATES:** Your written comments must be received on or before September 16, 2002.

**ADDRESSES:** You may send written comments to the Bureau of Reclamation, Attention: D–5200, P.O. Box 25007, Denver, CO 80225–0007.

**FOR FURTHER INFORMATION CONTACT:** You may request copies of the proposed revised forms by writing to the above address or by contacting Jeremy Simons at: (303) 445–2739.

**SUPPLEMENTARY INFORMATION:** The currently approved collection has been revised to reflect industry standards concerning units used to measure yields for certain copies (i.e., using pounds instead of bales for cotton lint and using pounds instead of tons for hops). Other changes include:

- In Section II–e on both forms, ''Acres irrigated by'', we are adding the option to choose ''Flood'' along with the current options of ''Sprinkler'' and ''Drip''.
- In Section II–g on both forms, ''Acres not irrigated'', we are adjusting

the format of the box to allow checkmark indications for the options of ''dry cropped'', ''fallow'', and ''idle'', in addition to the number of acres.

• Within each subsection (i.e., Cereals, Forage, Vegetables, etc.) in Section III on both forms, ''Crop Production'', we are placing the items in alphabetical order.

• In Section III on both forms, we are moving ''Cantaloupe'', ''Watermelon'', and ''Honey Ball, Honeydew, etc.'' from the ''Vegetables'' subsection to the ''Fruits'' subsection.

• In Section I on Form 7–332, ''Irrigator Information'', we are including a box that asks for the respondent's telephone number so any potential questions may be directed to that person.

• We are removing the footnotes to both forms and incorporating the footnotes within the body of the instructions that accompany each form.

There have been editorial changes to the current Form 7–332 and Form 7–2045, and to the instructions that accompany these forms. These changes have been made to increase the respondents' understanding of the forms and understanding of the instructions to the forms. The proposed changes will be included starting with the 2003 Crop Acreage and Yields and Water Distribution information collection.

*Title:* Crop Acreage and Yields and Water Distribution

*Forms:* Form 7–332, Water User Crop Census Report; and Form 7–2045, Crop and Water Data.

*Abstract:* The annual crop census is taken on all Bureau of Reclamation projects, along with collection of related statistics, primarily for use as a tool in administering, managing, and evaluating the Federal Reclamation program. The census is used to assist in the administration of repayment and water service contracts, which are used to repay the irrigators' obligation to the Federal Government. The census will provide data to facilitate the required 5-year review of ability-to-pay analysis, which is being incorporated into new repayment and water service contracts. The basis for these reviews is an audit by the Office of the Inspector General, Department of the Interior.

Data from the census are utilized to determine class 1 equivalency computations, i.e., determining the number of acres of class 2 and class 3 land that are required to be equivalent in productivity to class 1 land.

In recent years, the census has provided data which are used to administer international trade agreements, such as the North American Free Trade Agreement. Data from the census are also used by the Office of the Inspector General, General Accounting Office, and the Congressional Research Service to independently evaluate our program and to estimate the impacts of proposed legislation. These data are supplied to other Federal and State agencies to evaluate the program and provide data for research.

*Description of Respondents:* Irrigators and water user entities in the 17 Western States who receive irrigation water service from Bureau of Reclamation facilities. Also included are entities who receive other water services, such as municipal and industrial water through Bureau of Reclamation facilities.

*Frequency of Collection:* Annually.

*Estimated completion time:* Form 7–332, 15 minutes; Form 7–2045, 480 minutes.

*Annual responses:* Form 7–332, 25,000 responses; Form 7–2045, 225 responses.

*Annual burden hours per form:* Form 7–332, 6,250; Form 7–2045, 1,800.

*Total Annual burden hours:* 8,050.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Reclamation, including whether the information will have practical utility; (b) the accuracy of our burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information being collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including increased use of automated collection techniques or other forms of information technology.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

Department of the Interior practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: July 1, 2002.

**Elizabeth Cordova-Harrison,**

*Deputy Director, Office of Policy.*

[FR Doc. 02–17944 Filed 7–16–02; 8:45 am]

BILLING CODE 4310–MN–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### San Luis Reservoir Low Point Improvement Project, California

**AGENCY:** U.S. Bureau of Reclamation, Interior.

**ACTION:** Notice of intent to prepare an environmental impact report/environmental impact statement (EIR/EIS).

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), and the California Environmental Quality Act (CEQA), Reclamation and the Santa Clara Valley Water District (District) propose to prepare a joint EIR/EIS for the San Luis Reservoir Low Point Improvement Project (Project). The Project is being proposed by the District to maintain a healthy, clean water supply for the District and other contractors of Reclamation's San Felipe Division. The term ''low point'' refers to a range of pool elevations in San Luis Reservoir (in Merced County, California) within which seasonal algae blooms can create water quality problems directly affecting the treatability and reliability of deliveries to Central Valley Project (CVP) San Felipe Division contractors (the District is a member of CVP's San Felipe Division). An additional goal of the Project is to increase the operational flexibility of the San Luis Reservoir and to improve the reliability of deliveries to the District and other San Felipe Division contractors. The District will be the lead agency under CEQA.

**DATES:** Reclamation and the District will seek public input on alternatives, concerns, and issues to be addressed in the EIR/EIS through scoping meetings in August, 2002. Scoping is an early and open process designed to determine the issues and alternatives to be addressed in the EIR/EIS. The schedule and locations of the scoping meetings are as follows:

• Scoping Meeting 1: August 26, 2002, 6:30 to 8:30 p.m., San Jose, California.

• Scoping Meeting 2: August 27, 2002, 6:30 to 8:30 p.m., San Luis Reservoir, California.

The draft EIR/EIS is expected to be available for public review at the end of 2003.

**ADDRESSES:** Meeting locations are:

• Scoping Meeting 1: Santa Clara Valley Water District, Board Meeting Room, 5750 Almaden Expressway, San Jose, California.

• Scoping Meeting 2: San Luis Reservoir Romero Visitor Center, Highway 152, San Luis Reservoir, California.

Written comments on the project scope of alternatives and impacts to be considered should be sent to Mr. Kurt Arends of the Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA 95118.

**FOR FURTHER INFORMATION CONTACT:** Kevin Moody of Reclamation at 1243 N Street, Fresno, CA 93727, telephone: (559) 487–5179. Additional information can also be found at *http://www.Valleywater.org.*

**SUPPLEMENTARY INFORMATION:**

## Background

The San Luis Reservoir is among the largest reservoirs in the state, and represents a significant component of the District, the CVP, and the State Water Project (SWP) water supply. When water levels in San Luis Reservoir are low, high water temperatures combined with wind-induced mixing can result in algae blooms at the reservoir's water surface, which can extend down more than 30 feet. As reservoir storage drops below about 300,000 acre-feet (approximate elevation 369), algae can be drawn into the San Felipe Division intake structure. This condition can: (1) Cause taste and odor problems; (2) become difficult or impractical to treat; (3) foul drip irrigation systems; and/or (4) eliminate the possibility of delivering any water to the San Felipe Division. To minimize these conditions, the reservoir is currently operated to attempt to maintain reservoir storage above problematic levels.

Recognizing the need to resolve the low point problem, the Low Point Improvement Project was included in the August 28, 2000, CALFED Bay-Delta Program's Programmatic Record of Decision as a complementary conveyance action. The low point problem currently creates water quality, reliability, and operational impacts to the District, other San Felipe Division contractors, the CVP, and the SWP. The results of these impacts are additional operating costs, risks to public health and safety, and economic losses to agriculture and industry. There are also significant opportunity costs to the CVP and SWP as a result of their inability to fully utilize all of the available storage in the reservoir. These impacts will increase in the future as the low point occurs more frequently and for a longer duration. The following summary includes information on San Luis Reservoir, current and future operations, as well as impacts to users.

### *San Luis Reservoir*

Reclamation and the California Department of Water Resources (DWR) jointly own the San Luis Reservoir to store and reregulate CVP and SWP water from the Sacramento-San Joaquin Delta. San Luis Reservoir is an off-stream water storage facility that stores water for both the SWP and CVP; construction was completed in 1967. The State owns a little more than half of the 2,042,000 acre-feet water storage capacity. The reservoir is operated by the DWR; however, operational decisions are coordinated with Reclamation and the CVP. San Luis Reservoir serves as the major storage reservoir and O'Neill Forebay acts as an equalizing basin for the upper stage dual-purpose pumping-generating plant. Pumps located at the base of O'Neill Dam convey water from the Delta-Mendota Canal through an intake channel and discharge it into O'Neill Forebay. The California Aqueduct flows directly into O'Neill Forebay. The pumping-generating units lift the water from O'Neill Forebay and discharge it into the main reservoir. Releases from San Luis Reservoir are made through the Gianelli Pumping-Generating Plant to the San Luis Canal and to the Pacheco Pumping Plant for the San Felipe Division.

### *Reservoir Water Quality*

In the summer months, when water levels are low, water quality deteriorates due to a combination of higher water temperatures, wind-induced nutrient mixing, and algae blooms near the reservoir surface. Algae content is of primary importance during periods of reservoir drawdown, when the surface water elevation drops to within 20 to 30 feet of the inlet to the Pacheco Pumping Plant. Under these conditions, poor water quality may be delivered to the San Felipe Division contractors. Additional factors may also contribute to algae problems in the reservoir. The reservoir is operated as an active offstream storage facility, and therefore, has a relatively short detention time. The reservoir also has an unusual configuration with a very large surface area and a relatively shallow depth (a contributing factor in algal bloom formation and persistence).

### *Current Operations*

San Luis Reservoir is operated by filling in the wet winter months and draining in the dry summer months. Drawdown typically begins in about March and reaches the low point in August or September. Historically, the SWP and CVP have cooperated to try and maintain reservoir elevations above the low point capacity of 300,000 acre-feet.

### *Future Operations*

Although the CVP and SWP have cooperated to try to maintain San Luis Reservoir above 300,000 acre-feet to date, there is no guarantee that they will do so in the future. In fact, as demands on the CVP and SWP continue to grow and Delta export pumping restrictions for environmental purposes occur more frequently, pressure will increase to fully utilize the available storage in San Luis Reservoir.

The State and Federal Governments coordinate implementation of all CALFED projects through the use of a common set of assumptions relative to water supply, hydrology, and operations. The primary method for providing technical consistency is the use of the CALSIM II model for operational studies, which provides a baseline condition for comparing project impacts at current and future levels of development. Preliminary results of CALSIM II operational modeling indicate that San Luis Reservoir will be drawn down below 300,000 acre-feet more frequently and for longer durations in the future.

### *Impacts to the District*

The District has entitlement to 152,500 acre-feet per year of water from the San Felipe Division, which is critical to meeting the demands of 1.6 million residents and important high-technology industries. As storage in the reservoir drops to approximately 300,000 acre-feet, quality, reliability, and operational impacts occur as follows:

• *Water Quality Degradation*—Algae entering the intakes could cause: potential impacts on water treatment plant production rates and increased risk of being unable to meet treated water demands; increased risk of exceeding primary water quality standards for disinfection byproducts and secondary standards for taste and odor; and increased costs of both treating water for taste and odor problems as well as for monitoring and responding as impacts occur.

• *Interruption in Water Supply*—If San Luis Reservoir water quality becomes unacceptable for treatment, the supply to the District would be interrupted, which would have a serious water supply, public health and safety, and economic risk to Santa Clara County. Once the reservoir drops to elevation 334 (110 TAF capacity), the Pacheco Pumping Plant is unable to deliver water. This condition would result in an interruption in supply due to water supply availability. However, it is likely that the water supply would be interrupted prior to reaching this condition due to untreatable water quality. In either case, the potential interruption in water supply creates a major reliability impact to the District and other San Felipe Division contractors. The potential interruption to water supply would also occur at the time of year when water supply demands are at their peak.

• *Reoperation of Water Supply System*—Due to the risks to water quality and reliability from the low point problem, District operations must be modified annually in order to prepare for a worst case scenario. Modifications typically involve reoperating supply and conveyance systems and/or rescheduling CVP deliveries to minimize reliance on CVP supplies during low point conditions. These actions disrupt District operations and result in additional costs.

*Impacts to Other San Felipe Division Contractors*

The low point problem also results in water quality and reliability impacts to other San Felipe Division contractors, including the San Benito County Water District, which receives San Luis Reservoir supplies from the Hollister Conduit, and the Pajaro Valley Water Management Agency, which is in the process of implementing a pipeline project to connect to the Santa Clara Conduit for future delivery of San Luis Reservoir water.

*Impacts to the CVP*

The low point will be an ongoing constraint to the operational flexibility and reliability of San Luis Reservoir and will have increasing CVP impacts. Eliminating the low point operating constraint could improve operational flexibility of the CVP.

**Project Objectives**

The objectives of the Low Point Improvement Project are to:

• Resolve the water quality problems associated with the San Luis Reservoir low point. The District and other San Felipe Division contractors want to maintain a consistent healthy, clean, and affordable water supply that meets or exceeds all applicable water quality standards in a cost-effective manner. Reclamation seeks to maintain and protect the water it delivers to CVP contractors. By resolving the water quality problems associated with the San Luis Reservoir low point, the District will be able to better predict the quality of water it is supplied, ensure the health and safety of its water supply, and maximize the efficiency of its water supply and treatment system. Resolving the water quality problems would reduce the risk of exceeding water quality standards, reduce costs of water treatment, reduce operating costs for monitoring, and reduce the risk of exceeding the capacity of drip irrigation filtering systems.

• Improve the reliability of deliveries to the District and other San Felipe Division contractors. There is a need to improve the reliability of water supplies to the San Felipe Division contractors without adversely affecting deliveries of CVP and SWP water. Improving the reliability of water would avoid public health and economic impacts associated with water quality degradation and potential water supply interruptions. Improving water supply reliability would ensure that existing contract allocations to the San Felipe Division are met by Reclamation and that the District and other San Felipe Division contractors meet their water supply obligations.

• Increase the operational flexibility of the San Luis Reservoir. There is a need to eliminate the low point operational constraints on the delivery of water from San Luis Reservoir. Through collaborative efforts, Reclamation, the District, and CVP contractors have occasionally modified operations to minimize the potential of San Luis Reservoir dropping below 300,000 acre-feet. However, these operational changes cannot be sustained over the long term as they reduce the likelihood of deliveries of full contract supplies to CVP contractors. A long-term, regional solution is needed to eliminate the constraints on San Luis Reservoir operations. Resolving the low point problem will increase the effective storage capacity in San Luis Reservoir by allowing the State and Federal projects to continue to draw down San Luis Reservoir in accordance with existing operating rules and regulations without impact to the San Felipe Division.

• Provide opportunities for project-related environmental improvements. In accordance with the District's Ends Policies, an objective of the Project will be to protect environmental resources and to identify project related opportunities for environmental improvements by enhancing or restoring the natural benefits of streams and watersheds. Environmental improvements, where feasible, will be a direct component of the project's integrated solution. The Project, where feasible and appropriate, will also provide project-related opportunities for recreation, hydropower, and flood control benefits. The goal is a multi-purpose project with regional benefits.

**Potential Alternatives**

A wide range of conceptual alternatives is being considered to address the low point problem. A total of 9 major conceptual alternatives have been identified to date and include:

*No Project Alternative*

A No Action Alternative that represents existing conditions will be analyzed. The No Action Under Projected Future Conditions will also be analyzed.

*Institutional Alternatives*

Institutional Alternatives include non-structural measures such as implementation of pumping limitations and amended operation plans or agreements for San Luis Reservoir.

*Source Water Quality Control Alternatives*

Source Water Quality Control Alternatives would be implemented on-site at San Luis Reservoir. Potential methods under consideration include reservoir aeration, algaecide application, algae harvesting, and managed stratification of waters in San Luis Reservoir.

*Water Treatment Alternatives*

Potential Water Treatment Alternatives include additional treatment of water supplies by methods such as dissolved air flotation.

*Bypass Alternatives*

Bypass Alternatives include the construction of pump stations, pipelines, and tunnels that bypass the San Luis Reservoir. Potential routes under consideration include a pipeline originating at the O'Neill Forebay, at the California Aqueduct, or at the Delta-Mendota Canal and proceeding around or under the San Luis Reservoir. The bypass pipelines would terminate at the intake to the San Felipe Division facilities.

*Storage Alternatives*

Storage Alternatives include expansion of existing District reservoirs,

such as Anderson Reservoir or construction of a new dam and reservoir in the foothills east of the Santa Clara Valley. Potential sites for a new dam and reservoir include Pacheco Reservoir on Pacheco Creek, upstream of the existing Pacheco Reservoir; Packwood Reservoir, east of the existing Anderson Reservoir; Coe Reservoir inside Henry Coe State Park; Los Osos Reservoir south of Henry Coe Park; and Cedar Creek Reservoir southwest of the existing Pacheco Reservoir.

*Integrated District Solutions*

Integrated District Solutions involve use of existing District facilities such as the groundwater basin, water reuse and recycling, interties with San Francisco Public Utilities Commission, or reconfiguration and reoperation of the District's in-County water transmission and distribution system.

*Desalination*

Desalination would involve treatment of alternative supplies from San Francisco Bay or Monterey Bay.

*Integrated CALFED Solutions*

Integrated CALFED Solutions include use of water supplies from an expanded Los Vaqueros Reservoir or use of an enlarged South Bay Aqueduct to facilitate delivery of SCVWD water supplies.

The draft EIR/EIS will focus on the impacts and benefits of implementing the various alternatives. It will contain an analysis of the physical, biological, social, and economic impacts arising from the alternatives. In addition, it will address the cumulative impacts of implementation of the alternatives in conjunction with other past, present, and reasonably foreseeable actions. The following are issues that have been identified by Reclamation to date: water quality; agricultural and municipal water supply reliability and quality; water supply system flexibility and reliability; diversity of water supply sources; construction-related effects on urban areas and natural habitats.

**Interests in Assets Held in Trust**

An initial review of available data indicates that there are no known Indian Trust lands that would be affected by the project.

**Disclosure of Public Comments**

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

**Special Assistance**

If special assistance is required, contact Mr. Kevin Moody at Reclamation (559) 487–5179. Please notify Mr. Moody as far in advance of the scoping meetings as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at (559) 487–5933.

Dated: June 25, 2002.

**Frank Michny,**

*Regional Environmental Officer.*

[FR Doc. 02–17946 Filed 7–16–02; 8:45 am]

**BILLING CODE 4310–MN–P**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

**[INS No. 2209–02; AG Order No. 2598–2002]**

**RIN 1115–AE26**

### Extension of the Designation of Montserrat Under the Temporary Protected Status Program

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** The designation of Montserrat under the Temporary Protected Status (TPS) program will expire on August 27, 2002. This notice extends the Attorney General's designation of Montserrat under the TPS program for 12 months until August 27, 2003, and sets forth procedures necessary for nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) with TPS to re-register for the additional 12-month period. Re-registration is available only to persons who registered during the initial registration period, which ended August 27, 1998, or registered after that date under the late initial registration provisions, and timely re-registered under each subsequent extensions. Nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

**EFFECTIVE DATES:** The extension of Montserrat's TPS designation is effective August 27, 2002, and will remain in effect until August 27, 2003. The 60-day re-registration period begins July 17, 2002, and will remain in effect until September 16, 2002.

**FOR FURTHER INFORMATION CONTACT:** Emily Crowder Frazelle, Program Analyst, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3040, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–4754.

**SUPPLEMENTARY INFORMATION:**

**What Authority Does the Attorney General Have To Extend the Designation of Montserrat Under the TPS Program?**

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of a designation, or any extension thereof, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General does not determine that the foreign state no longer continues to meet the conditions for designation, the period of designation is extended automatically for 6 months pursuant to section 244(b)(3)(C) of the Act, although the Attorney General may exercise his discretion to extend the designation for a period of 12 or 18 months. 8 U.S.C. 1254a(b)(3)(C).

**Why Did the Attorney General Decide To Extend the TPS Designation for Montserrat?**

On August 28, 1997, the Attorney General designated Montserrat under the TPS program for a period of 12 months due to volcanic eruptions that affected the entire island and its residents. 62 FR 45685. The Attorney General has extended Montserrat's TPS designation four times, determining each time that the conditions warranting such designation continued to be met. See 66 FR 40834 (August 3, 2001); 65 FR 58806 (October 2, 2000); 64 FR 48190 (September 2, 1999); 63 FR 45864 (August 27, 1998).

Since the date of the last extension, the Departments of Justice and State have continued to review conditions in Montserrat. A 12-month extension is warranted due to the threat of further volcanic eruptions, the ongoing housing shortage, and the serious health risks from hazardous volcanic ash.

Citing the Montserrat Volcano Observatory's March 2002 Hazard Assessment, the Department of State reports that a significant risk of a new eruption exists in the near future caused by the sustained growth of the lava dome of the Soufriere Hills volcano. Recommendation for the Extension of TPS (April 24, 2002). Such continuous dome growth has increased the hazards of pyroclastic flows, explosions, volcanic mudflow, and fall of ash and small stones. *Id.* The Department of Justice reports that the volcano spews hundreds of tons of sulphur dioxide daily, as well as produces numerous rockfalls and flows of super-heated rocks, ash, and gas. The Immigration and Naturalization Service (INS) Resource Information Center (March 2002). Furthermore, scientists monitoring the volcano have issued a bulletin warning that the volcano remains deadly. *Id.*

The Department of State further notes that emergency measures remain in place in Montserrat, the airport remains closed without a functioning airstrip, and a housing shortage persists. Recommendation for Extension of TPS. In addition to destruction caused by the volcano's eruptions in 1997 and 2000, volcanic ash covers much of the island, posing serious health risks to those who inhale the airborne cristobalite contained in the ash. *Id.* Such reports demonstrate that the volcano eruptions that led to the initial designation of TPS for Montserrat continue to cause health risks as well as create problems with the reconstruction of the island's airport.

Based on this review, the Attorney General, after consultation with appropriate government agencies, finds that the conditions that warranted designation of Montserrat under the TPS program continue to be met. 8 U.S.C. 1254a(b)(3)(A). There continues to be a substantial, but temporary, disruption of living conditions in Montserrat as a result of environmental disaster, and Montserrat remains unable, temporarily, to handle adequately the return of its nationals. 8 U.S.C. 1254a(b)(1)(B)(i)–(ii). On the basis of these findings, the Attorney General concludes that the TPS designation for Montserrat should be extended for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

**If I Currently Have TPS Through the Montserrat TPS Program, Do I Still Re-register for TPS?**

Yes. If you already have been granted TPS through the Montserrat TPS program, your status will expire on August 27, 2002. Accordingly, you must re-register for TPS in order to maintain your status through August 27, 2003. See the following re-registration instructions.

**If I Am Currently Registered for TPS, How Do I Re-Register for An Extension?**

Persons previously granted TPS under the Montserrat program who wish to maintain such status must apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the fee, (2) a Form I–765, Application for Employment Authorization, and (3) two identification photographs (1½ inches x 1½ inches). See the chart below to determine whether you must submit the one hundred and twenty dollar ($120) filing fee with the Form I–765. Applicants for an extension of TPS benefits do not need to be re-fingerprinted and thus do not pay the fifty dollar ($50) fingerprint fee. Children beneficiaries of TPS who have reached the age of fourteen (14) but previously were not fingerprinted must pay the fifty dollar ($50) fingerprint fee with the application for extension.

Submit the completed forms and applicable fee, if any, to the INS district office that has jurisdiction over your place of residence during the 60-day re-registration period that begins July 17, 2002, and will remain in effect until September 16, 2002 (inclusive of such end date).

| If | Then |
|---|---|
| You are applying for employment authorization through August 27, 2003. | You must complete and file Form I–765, Application for Employment Authorization, with the $120 fee. |
| You already have employment authorization or do not require employment authorization. | You must complete and file Form I–765, with no filing fee. |
| You are applying for employment authorization and are requesting a fee waiver. | You must complete and file (1) Form I–765 with no fee; and (2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20. |

**How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?**

An application for TPS does not affect an application for asylum or any other immigration benefit. A national of Montserrat (or alien having no nationality who last habitually resided in Montserrat) who otherwise is eligible for TPS and has applied for, or plans to apply for, asylum but who has not been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to apply for TPS, although the grounds for denying one form of relief may serve as the basis for denying TPS as well. For example, a person who has been convicted of a particularly serious crime is ineligible for both asylum and TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B).

**Does This Extension Allow Nationals of Montserrat (or Aliens Having No Nationality Who Last Habitually Resided in Montserrat) Who Entered the United States After August 28, 1997, To Apply for TPS?**

No. This is a notice of an extension of the TPS designation for Montserrat, not a notice of re-designation of Montserrat under the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those who are not already TPS class members. To be eligible for benefits under this extension, nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) must have resided continuously in the United States since August 22, 1997, and have been continuously physically present in the United States since August 28, 1997.

**Is Late Initial Registration Possible?**

Yes. Some persons may be eligible for late initial registration under 8 CFR 244.2. To apply for late initial registration an applicant must:

(1) Be a national of Montserrat (or an alien who has no nationality and who last habitually resided in Montserrat);

(2) Have been continuously physically present in the United States since August 28, 1997;

(3) Have continuously resided in the United States since August 22, 1997; and

(4) Be admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the initial registration period from August 28, 1997, through August 27, 1998, he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from

removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must file an application for late registration within a 60-day period immediately following the expiration or termination of the above described conditions. 8 CFR 244.2(g).

**Notice of Extension of Designation of Montserrat Under the TPS Program**

By the authority vested in me as Attorney General under sections 244(b)(1)(B), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies and determine that the conditions for designation of TPS for Montserrat continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Montserrat under section 244(b) of the Act is extended for an additional 12-month period from August 27, 2002, to August 27, 2003. 8 U.S.C. 1254a(b)(3)(C).

(2) There are approximately 327 nationals of Montserrat (or aliens who have no nationality and who last habitually resided in Montserrat) who have been granted TPS and who are eligible for re-registration.

(3) To maintain TPS, a national of Montserrat (or an alien having no nationality who last habitually resided in Montserrat) who received TPS during the initial designation period must re-register for TPS during the 60-day re-registration period from July 17, 2002 until September 16, 2002.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). There is no fee for a Form I–821 filed as part of the re-registration application. If the applicant requests employment authorization, he or she must submit one hundred and twenty dollars ($120) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit any fee. The fifty-dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but previously were not fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who previously had not applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on August 27, 2003, the Attorney General will review the designation of Montserrat under the TPS program and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(6) Information concerning the extension of designation of Montserrat under the TPS program will be available at local INS offices upon publication of this notice and the INS National Customer Service Center at 1–800–375–5283. This information will also be published on the INS Website at *http://www.ins.usdoj.gov.*

Dated: July 11, 2002.

**John Ashcroft,**

*Attorney General.*

[FR Doc. 02–18040 Filed 7–16–02; 8:45 am]

**BILLING CODE 4410–10–P**

## NATIONAL COUNCIL ON DISABILITY

### Sunshine Act Meetings

*Time and Dates:* 8:30 a.m. to 5 p.m., August 19–20, 2002.

*Place:* Los Angeles Marriott Hotel Downtown, 333 South Figueroa Street, Los Angeles, California

*Status:* Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

*Matters To Be Considered:* Reports from the Chairperson and the Executive Director, Committee Meetings and Committee Reports, Executive Session, Unfinished Business, New Business, Announcements, Adjournment

*Portions Open to the Public:* Reports from the Chairperson and the Executive Director, Committee Meetings and Committee Reports, Unfinished Business, New Business, Announcements, Adjournment

*Portions Closed to the Public:* Executive Session.

*Contact Person for More Information:* Mark S. Quigley, Director of Communications, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), *mquigley@ncd.gov* (E-mail)

*Agency Mission:* The National Council on Disability (NCD) is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature or significance 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 sign language interpreters or other disability accommodations should notify NCD at least one week prior to this meeting.

*Language Translation:* In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least one week prior to this meeting.

*Multiple Chemical Sensitivity/ Environmental Illness:* People with multiple chemical sensitivity/ environmental illness must reduce their exposure to volatile chemical substances to attend this meeting. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at this meeting. Smoking is prohibited in meeting rooms and surrounding areas.

Dated: July 15, 2002.

**Ethel D. Briggs,**

*Executive Director.*

[FR Doc. 02–18126 Filed 7–15–02; 11:13 am]

**BILLING CODE 6820–MA–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 10A–1, SEC File No. 270–425, OMB Control No. 3235–0468

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below.

Rule 10A–1 implements the reporting requirements in Section 10A of the Exchange Act, which was enacted by Congress on December 22, 1995 as part of the Private Securities Litigation Reform Act of 1995, Public Law No. 104–67. Under section 10A and Rule 10A–1 reporting occurs only if a registrant's board of directors receives a report from its auditors that (1) there is an illegal act material to the registrant's financial statements, (2) senior management and the board have not taken timely and appropriate remedial action, and (3) the failure to take such action is reasonably expected to warrant the auditor's modification of the audit report or resignation from the audit engagement. The board of directors must notify the Commission within one business day of receiving such a report. If the board fails to provide that notice, then the auditor, within the next business day, must provide the Commission with a copy of the report that it gave to the board.

Likely respondents are those registrants filing audited financial statements under the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

It is estimated that Rule 10A–1 results in an aggregate additional reporting burden of 10 hours per year. The estimated average burden hours are solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules or forms.

There are no recordkeeping retention periods in Rule 10A–1. Because of the one business day reporting periods, recordkeeping retention periods should not be significant.

Filing the notice or report under Rule 10A–1 is mandatory once the conditions noted above have been satisfied. Because these notices and reports discuss potential illegal acts, they are considered to be investigative records and are kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 9, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–17973 Filed 7–16–02; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 15c3–1, SEC File No. 270–197, OMB Control No. 3235–0200

Rule 17a–10, SEC File No. 270–154 OMB Control No. 3235–0122

Rule 17a–19 and Form X–17a–19, SEC File No. 270–148, OMB Control No. 3235–0133

Form BDW, SEC File No. 270–17, OMB Control No. 3235–0018

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') requests for extension of the previously approved information collections under the Securities Exchange Act of 1934 discussed below.

Rule 15c3–1 (17 C.F.R. 240.15c3–1) requires a broker or dealer registered with the Commission to maintain at all times sufficient liquid assets in excess of liabilities to promptly satisfy the claims of customers in the event the broker or dealer fails. The rule facilitates monitoring the financial condition of brokers and dealers by the Commission and the various self-regulatory organizations. There are approximately 8,000 broker-dealer respondents registered with the Commission who incur an aggregate burden of 950 hours per year to comply with this rule.

Rule 17a–10 (17 CFR 240.17a–10) requires broker-dealers that are exempted from the filing requirements of paragraph (a) of Rule 17a–5 (17 CFR section 240.17a–5) to file with the Commission an annual statement of income (loss) and balance sheet. It is anticipated that approximately 1,100 broker-dealers will spend 12 hours per year complying with Rule 17a–10. The total burden is estimated to be approximately 13,200 hours.

Rule 17a–19 (17 CFR 240.17a–19) and Form X–17A–19 requires National Securities Exchanges and Registered National Securities Associations to file a Form X–17A–19 with the Commission within 5 days of the initiation, suspension or termination of a member in order to notify the Commission that a change in designated examining authority may be necessary.

It is anticipated that approximately eight National Securities Exchanges and Registered National Securities Associations collectively will make 2,600 total annual filings pursuant to Rule 17a-19 and that each filing will take approximately 15 minutes. The total burden is estimated to be approximately 650 total annual hours.

Broker-dealers and notice-registered broker-dealers use Form BDW (17 CFR 249.501a) to withdraw from registration with the Commission, the self-regulatory organizations, and the states. It is estimated that approximately 900 fully registered broker-dealers annually will incur an average burden of 15 minutes, or 0.25 hours, to file for withdrawal on Form BDW via the internet with Web CRD, a computer system operated by the National Association of Securities Dealers, Inc. that maintains information regarding fully registered broker-dealers and their registered personnel. It is further estimated that 140 futures commission merchants that are notice-registered broker-dealers annually will incur an average burden of 15 minutes, or 0.25 hours, to file for withdrawal on Form BDW by sending the completed Form BDW to the National Futures Association, which maintains information regarding notice-registered broker-dealers on behalf of the Commission. The annualized compliance burden per year for both fully registered and notice-registered broker-dealers is 260 hours

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Nathan Knuffman, Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: July 9, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–17974 Filed 7–16–02; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 25655; 812–12640]**

## The Phoenix Edge Series Fund and Phoenix Variable Advisors, Inc.; Notice of Application

July 10, 2002.

**AGENCY:** Securities and Exchange Commission (''SEC'' or ''Commission'').

**ACTION:** Notice of application for an exemption under section 6(c) of the Investment Company Act of 1940 (''Act'') from section 15(a) of the Act and rule 18f–2 under the Act.

*Summary of Application:* The order would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

*Applicants:* The Phoenix Edge Series Fund (the ''Fund'') and Phoenix Variable Advisors, Inc. (the ''Advisor'').

*Filing Dates:* The application was filed on September 26, 2001, and amended on July 9, 2002.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, One American Row, P.O. Box 5056, Hartford, CT, 06102–5056.

**FOR FURTHER INFORMATION CONTACT:** Keith A. Gregory, Senior Counsel, at (202) 942–0611, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

### Applicants' Representations

1. The Fund is a Massachusetts business trust registered under the Act as an open-end management investment company. The Fund is presently comprised of twenty-seven series, each with its own investment objectives, policies, and restrictions. Shares of the Fund are currently offered only to the separate accounts of Phoenix Life Insurance Company (''Phoenix''), PHL Variable Insurance Company, and Phoenix Life and Annuity Company to fund benefits under variable annuity and variable life insurance contracts issued by those companies.

2. The Advisor, a Delaware corporation, serves as the investment adviser to certain series of the Fund that use the management structure described in the application (each a ''Series'' and collectively, the ''Series'') [1]. The Advisor is registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') and is an indirect, wholly owned subsidiary of Phoenix.

3. The Fund, on behalf of the Series, has entered into an investment advisory agreement with the Advisor (the ''Advisory Agreement''), pursuant to which the Advisor serves as the investment adviser to the Series. The Advisory Agreement has been approved by a majority of the Fund's board of trustees (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Fund or the Advisor (''Independent Trustees''), and each Series' shareholder(s). Under the terms of the Advisory Agreement, the Advisor, subject to oversight by the Board, has supervisory responsibility for the investment program of each Series. The Advisor also evaluates, selects, and recommends subadvisors (''Subadvisors'') to manage all or a portion of the assets of each Series. Each Subadvisor is, or will be, an investment adviser registered, or exempt from registration, under the Advisers Act, and performs services pursuant to a written agreement with the Advisor (''Subadvisory Agreement''). As compensation for its services, the Advisor receives a fee from the Fund at annual rates based on a percentage of the applicable Series' average daily net assets. Each Subadvisor will be paid by the Advisor out of the fees received by the Advisor from the Series.

4. The Advisor selects Subadvisors based on continuing quantitative and qualitative evaluation of their skills and proven abilities in managing assets pursuant to a specific investment style. The Advisor monitors compliance of Subadvisors with the investment objectives and related policies of each Series and reviews the performance of each Subadvisor in order to assure continuing quality of performance. The Advisor may recommend to the Board reallocation of Series' assets among Subadvisors, if necessary, or recommend that the Fund employ or terminate particular Subadvisors, to the extent the Advisor deems appropriate to achieve the overall objectives of a particular Series.

5. Applicants request an order to permit the Advisor, subject to oversight by the Board, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadvisor that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Fund or the Advisor, other than by reason of serving as a Subadvisor to one or more of the Series (''Affiliated Subadvisor''). None of the current Subadvisors is an Affiliated Subadvisor.

### Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides, in relevant part, that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions from the provisions of the

[1] The Applicants also request relief with respect to current or future series of the Fund and any other registered open-end management investment companies and their series that: (a) Are advised by the Advisor or any entity controlling, controlled by, or under common control with the Advisor; (b) use the management structure described in the application; and (c) comply with the terms and conditions in the application (''Future Series,'' included in the term ''Series''). The Fund is the only registered open-end management investment company that currently intends to rely on the requested order. Applicants state that if a Series has the name of any Subadvisor, as defined below, in the Series' name, the Series' name will be preceded by the name of the Advisor (such as ''Phoenix,'' which is the name of the Advisor in conducting its business) or the name of the entity controlling, controlled by, or under common control with the Advisor that serves as the primary adviser to such Series.

Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f–2 under the Act to permit them to enter into and materially amend Subadvisory Agreements without shareholder approval.

3. Applicants assert that shareholders rely on the Advisor to select and monitor the Subadvisors best suited to achieve a Series' investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisors is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of the Subadvisory Agreements would impose expenses and unnecessary delays on the Series, and may preclude the Advisor from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement will remain fully subject to section 15(a) of the Act and rule 18f–2 under the Act, including the requirements for shareholder approval.

**Applicants' Conditions**

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The Advisor will not enter into a Subadvisory Agreement with any Affiliated Subadvisor without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Series (or, if the Series serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by owners of the variable annuity contracts and variable life insurance contracts (''Contract Owners'') who have allocated assets to that sub-account).

2. At all times, a majority of the Board will be Independent Trustees, subject to the suspension of this requirement for the death, disqualification or bona fide resignation of trustees as provided by rule 10e–1 under the Act, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

3. When a Subadvisor change is proposed for a Series with an Affiliated Subadvisor, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Series and its shareholders (or, if the Series serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Series and the Contract Owners who have allocated assets to that sub-account), and does not involve a conflict of interest from which the Advisor or the Affiliated Subadvisor derives an inappropriate advantage.

4. Before a Series may rely on the requested order, the operation of the Series in the manner described in the application will be approved by a majority of the Series' outstanding voting securities, (or, if the Series serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by Contract Owners who have allocated assets to that sub-account) or, in the case of a Series whose public shareholders (or Contract Owners through a sub-account of a registered separate account) purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 6 below, by the initial shareholder(s) before offering shares of that Series to the public (or to Contract Owners through a sub-account of a registered separate account).

5. The Advisor will provide general management services to the Fund and its Series, including overall supervisory responsibility for the general management and investment of each Series' securities portfolio, and, subject to review and approval by the Board, will: (a) Set the Series' overall investment strategies; (b) evaluate, select and recommend Subadvisors to manage all or part of a Series' assets; (c) allocate and, when appropriate, reallocate a Series' assets among multiple Subadvisors; (d) monitor and evaluate the performance of Subadvisors; and (e) implement procedures reasonably designed to ensure that the Subadvisors comply with the relevant Series' investment objectives, policies and restrictions.

6. Each Series relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Series will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Advisor has the ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisors and recommend their hiring, termination, and replacement.

7. No trustee or officer of the Fund or officer or director of the Advisor will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that trustee, director or officer), any interest in a Subadvisor, except for: (a) Ownership of interests in the Advisor or any entity that controls, is controlled by, or is under common control with the Advisor; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadvisor or an entity that controls, is controlled by, or is under common control with a Subadvisor.

8. Within 90 days of the hiring of any new Subadvisor, shareholders of the Series (or, if the Series serves as a funding medium for any sub-account of a registered separate account, Contract Owners who have allocated assets to that sub-account) will be furnished all information about the new Subadvisor that would be included in a proxy statement, including any change in such disclosure caused by an addition of a new Subadvisor. To meet this condition, the Series will provide shareholders (or Contract Owners) with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–17916 Filed 7–16–02; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46176; File No. SR–Amex–2002–60]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Extend for an Additional 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

July 9, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 3, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Amex proposes to extend for an additional 90 days its pilot program relating to facilitation cross transactions, described in Item II.A. below. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to extend for an additional 90 days its pilot program relating to member firm facilitation cross transactions, which was originally approved by the Commission in June 2000, was most recently extended on April 8, 2002, and expires on July 6, 2002.[3]

Revised Commentary .02(d) to Amex Rule 950(d) establishes a pilot program to allow facilitation cross transactions in equity options.[4] The pilot program entitles a floor broker, under certain conditions, to cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class by class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the current program, when a trade takes place at the market provided by the crowd, all public customer orders on the specialist's book or represented in the trading crowd at the time the market was established must be satisfied first. Following satisfaction of any customer orders on the specialist's book, the floor broker is entitled to facilitate up to 20% of the contracts remaining in the customer order. When a floor broker proposes to execute a facilitation cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market—and the crowd then wants to take part or all of the order at the improved price—the floor broker is entitled to priority over the crowd to facilitate up to 40% of the contracts. If the floor broker has proposed the cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market, and the trading crowd subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the floor broker would only be entitled to priority to facilitate up to 20% of the contracts.

The program also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices would apply only to the number of contracts remaining after all public customer orders have been filled and the member firm's crossing rights have been exercised.[5] However, in no case could the total number of contracts guaranteed to the member firm and the specialist exceed 40% of the facilitation transaction.

In the two years since the pilot program was first implemented, the Exchange has found it to be generally successful. The Exchange seeks to extend the pilot program for an additional 90 days, pending consideration of a related proposed rule change it has filed with the Commission[6] concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make the program permanent.

In order to allow the pilot program to be extended without significant interruption, the Amex has requested that the Commission expedite review of, and grant accelerated approval to, the proposal to extend it, pursuant to Section 19(b)(2) of the Act.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[3] The pilot program, originally approved on June 2, 2000, was subsequently extended on two occasions, reinstated after a brief lapse in July 2001, and extended again in October 2001, and in January and April 2002. *See* Securities Exchange Act Release Nos. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000), 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000); 44019 (February 28, 2001), 66 FR 13819 (March 7, 2001); 44538 (July 11, 2001), 66 FR 37507 (July 18, 2001); 44924 (October 11, 2001), 66 FR 53456 (October 22, 2001); 45241 (January 7, 2002), 67 FR 1524 (January 11, 2002); and 45703 (April 8, 2002), 67 FR 18272 (April 15, 2002).

[4] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

[5] Amex trading floor practices provide specialists with a greater than equal participation in trades that take place at a price at which the specialist is on parity with registered options traders in the crowd. These practices are subject to a separate filing that seeks to codify specialist allocation practices. *See* Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

[6] *See* File No. SR–Amex–2000–49, available for inspection at the Commission's Public Reference Room.

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–60 and should be submitted by August 7, 2002.

### IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In its original approval of the pilot program,[11] the Commission detailed its reasons for finding its substantive features consistent with the Act, and, in particular, the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.[12] The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,[13] and the extension of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with Sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal will extend the pilot program without significant interruption while revisions are considered, and does not raise any new regulatory issues.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2002–60) be, and hereby is, approved on an accelerated basis as a pilot program through October 4, 2002.

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See supra,* note 3.

[12] 15 U.S.C. 78f(b)(5) and (b)(8).

[13] *See, e.g.,* Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–17978 Filed 7–16–02; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46178; File No. SR–DTC–2001–19]**

## Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the Automated Corporation Action Program Applicable to the Exercise of Warrants, Conversions, and Put Option Privileges

July 10, 2002.

On December 18, 2001, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–2001–19) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposed rule change was published in the **Federal Register** on May 8, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

### I. Description

The Commission has proposed for comment amendments to Rule 17Ad–14 under the Act[3] that will expand the scope of the rule to include reorganization events in addition to tender offers and exchange offers.[4] Under the proposed changes to Rule 17Ad–14, a ''reorganization agent''[5] acting on behalf of an issuer in connection with a ''reorganization event''[6] which involves securities eligible at a ''qualified registered securities depository''[7] would be required to establish an account at DTC to receive the subject securities from DTC participants by book-entry deliveries. In addition, the reorganization agent would not be permitted to require DTC to deliver any physical securities prior to the third business day following the record date, payment date, or expiration date, as applicable, of the reorganization event. These proposed changes to Rule 17Ad–14 would subject transfer agents acting as reorganization agents to requirements under Rule 17Ad–14 similar to those that currently apply to transfer agents acting as depositaries in tender offers and as exchange agents in exchange offers.

In order to be ready for processing changes that will occur if the Commission adopts the proposed amendments to Rule 17Ad–14, DTC is establishing its Automated Corporation Action Program (''ACAP''). The ACAP procedures and ACAP agreement will govern participants' exercises of warrants, conversions, and put options privileges that DTC has made eligible for ACAP (''ACAP reorganization event''). Tender offers and exchange offers will continue to be processed through DTC's Automated Tender Offer Program. Prior to making one of the above-listed reorganization events eligible for ACAP, DTC and the agent will have entered into an ACAP agreement that provides that DTC's ACAP procedures are applicable to the event.[8]

Under the ACAP procedures, participants wishing to exercise warrant, conversion, or put option privileges in an ACAP reorganization event will transmit the acceptance to DTC. DTC will transmit an instruction to the agent in the form of a DTC ''agent's message'' and will affect a book-entry delivery of the subject securities to the account of the reorganization agent maintained at DTC

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 45867 (May 2, 2002), 67 FR 30986 (May 8, 2002).

[3] 17 CFR 240.17Ad–14.

[4] Securities Exchange Act Release No. 40386 (August 31, 1998), 63 FR 47209 [File No. S7–25–98].

[5] *Id.* As proposed, a ''reorganization agent'' would be the transfer agent receiving shares from tendering depository participants and performing payment or exchange functions in connection with a reorganization event.

[6] *Id.* As proposed, a ''reorganization event'' would mean and include conversions, maturities, full and partial redemptions, calls, put option exercises, and warrant and rights exercises involving corporate and municipal securities of an issuer.

[7] ''Qualified registered securities depository'' is defined in Rule 17Ad–14 as a registered clearing agency having rules and procedures approved by the Commission pursuant to section 19 of the Act to enable book-entry delivery of the securities of the subject company to, and return of those securities from, the transfer agent through the facilities of that securities depository.

[8] DTC and the reorganization agent will enter into an ACAP agreement, the terms of which will apply to all reorganization events for that reorganization agent thereafter made eligible for ACAP. When ACAP is fully automated, it is contemplated that DTC's Participant Terminal System or other electronic means will be used to confirm the agreement between DTC and the reorganization agent with respect to each reorganization event and to confirm any special procedures applicable to an event. Prior to completion of ACAP system automation, event information may be exchanged by telephone, fax, or e-mail.

for this purpose no later than the prescribed deadline for the event. The book-entry delivery into the account will constitute the delivery of the securities required by the terms of the reorganization event. DTC will deliver the certificates evidencing the subject securities no later than three business days after the applicable deadline.

Under the ACAP procedures, DTC's delivery of the agent's message or electronic instruction letter, as the case may be, to the reorganization agent will satisfy the terms of the reorganization event, in the form required by the reorganization event, as to the execution and delivery of either (1) the warrant/conversion/put option form by a DTC participant or (2) an instruction letter by a DTC participant to cover a protect (*i.e.,* surrender securities) if the reorganization agent has accepted a notice of guaranteed delivery from a DTC participant outside of DTC.[9]

If DTC presents a certificate to the reorganization agent which the reorganization agent determines to be nontransferable, DTC will within three business days after notice from the reorganization agent either (i) put the certificate into transferable form or replace it with a transferable certificate for the same quantity of that issue of securities or (ii) return to the reorganization agent all funds and all securities of other issues paid to and issued to DTC in exchange for the nontransferable certificate. If a cash dividend or interest payment is payable on the nontransferable certificate during such three business day period, the reorganization agent may deduct the amount of the payment from the total payment due to DTC with respect to that issue of securities. As is generally the case with securities certificates deposited with DTC, DTC will resolve any problems relating to a nontransferable certificate with the participant that deposited the securities.

## II. Discussion

Section 17A(b)(3)(F)[10] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The rule change allows DTC to adopt procedures consistent with the proposed requirements of Rule 17Ad–14. These procedures should make the processing of DTC's participants' participation in ACAP reorganization events more efficient and thereby should promote the prompt and accurate clearance and settlement of these transactions. ACAP should also lead to better coordination and cooperation between DTC and transfer agents acting as reorganization agents for ACAP reorganization events. Therefore, the Commission finds that the rule change is consistent with these obligations under section 17A of the Act.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2001–19) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–17917 Filed 7–16–02; 8:45 am]

**BILLING CODE 8010–01–P**

[9] Upon completion of ACAP automation, DTC participants will be able to submit through ACAP notices of guaranteed delivery to reorganization agents.

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46181; File No. SR–ISE–2002–18]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange, Inc. Relating to the Execution of Complex Orders Involving Options and Single Stock Futures

July 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2002, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt rules and procedures governing the execution of complex orders involving options and single stock futures.

The text of the proposed rule change appears below. New text is in italics.

Rule 722. Complex Orders

(a) *Complex Orders Defined.* A complex order is any order for the same account as defined below:

* * * * *

(5) *Combination orders with non-equity options legs. One or more legs of a complex order may be to purchase or sell a stated number of units of another security.*

*(i)* Stock-Option Order. A stock-option order is an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') coupled with either [(i)] *(A)* the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of the underlying stock or convertible security or the number of units of the underlying stock necessary to create a delta neutral position; or [(ii)] *(B)* the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date, and each representing the same number of units of stock, as and on the opposite side of the market from, the stock or convertible security portion of the order.

*(ii) SSF-Option Order. A SSF-option order is an order to buy or sell a stated number of units of a single stock future or a security convertible into a single stock future (''convertible SSF'') coupled with either (A) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of stock underlying the single stock future or convertible SSF, or the number of units of stock underlying the single stock future or convertible SSF necessary to create a delta neutral position; or (B) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date, and each representing the same number of units of underlying stock, as and on the opposite side of the market from, the stock underlying the single stock future or convertible SSF portion of the order.*

* * * * *

(b) Applicability of Exchange Rules. Except as otherwise provided in this Rule, complex orders shall be subject to all other Exchange Rules that pertain to orders generally.

* * * * *

(2) Complex Order Priority. Notwithstanding the provisions of Rule 713, a complex order, as defined in paragraph (a) of this Rule, may be executed at a total credit or debit price with one other Member without giving priority to bids or offers established in the marketplace that are no better than the bids or offers comprising such total credit or debit; provided, however, that if any of the bids or offers established in the marketplace consist of a Public Customer limit order, the price of at least one leg of the complex order must trade at a price that is better than the corresponding bid or offer in the marketplace. Under the circumstances described above, the option leg of a stock-option order[,] as defined in subparagraph (a)(5)(i)*(A)* of this Rule, *or SSF-option order as defined in subparagraph (a)(5)(ii)(A) of this Rule,* has priority over bids and offers established in the marketplace by Non-Customer orders and market maker quotes that are no better than the price of the options leg, but not over such bids and offers established by Public Customer Orders. The option legs of a stock-option order as defined in subparagraph (a)(5)(ii)*(B), or SSF-option order as defined in subparagraph (a)(5)(ii)(B),* consisting of a combination order with stock *or single stock futures, as the case may be,* may be executed in accordance with the first sentence of this subparagraph (b)(2).

Supplementary Material to Rule 722

.01 This Rule 722 will be in effect until October 18, 2002.

.02 A bid or offer made as part of a stock-option order[,] (as defined in (a)(5)*(i)* above)[,] *or a SSF-option order (as defined in (a)(5)(ii) above)* is made and accepted subject to the following conditions: (1) the [stock-option] order must disclose all legs of the order and must identify the *security (which in the case of a single stock future requires sufficient identification to determine the market(s) on which the single stock future trades) and the* price at which the non-option leg(s) of the order is to be filled; and (2) concurrent with the execution of the options leg of the order, the initiating member and each member that agrees to be a contra-party on the non-option leg(s) of the order must take steps immediately to transmit the non-option leg(s) to a non-Exchange market(s) for execution. Failure to observe these requirements will be considered conduct inconsistent with just and equitable principles of trade and a violation of Rule 400.

A trade representing the execution of the options leg of a stock-option *or SSF-option* order may be cancelled at the request of any member that is a party to that trade only if market conditions in any of the non-Exchange market(s) prevent the execution of the non'option leg(s) at the price(s) agreed upon.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

Last year the Commission approved Exchange rules defining various types of ''complex orders,'' including orders involving multiple options legs and stock/option orders.[3] In addition, the Exchange recently adopted procedures for executing stock/option complex orders.[4] The purpose of this proposed rule change is to authorize the execution of complex orders involving options and single stock futures pursuant to procedures that are virtually identical to the stock/option procedures. The Exchange states that this proposed rule change, if approved by the Commission, would become part of the complex order pilot program approved to operate through October 18, 2002.[5]

The proposed rules would permit Exchange members to enter option-stock future complex orders. As with stock/option orders, the option leg of the transaction would have priority over non-customer orders at the same price. The Exchange states that it would execute the options leg of the trade and the parties then would seek to execute the stock futures leg on an appropriate exchange. Because the stock futures products may not be fungible between markets, the complex order would need to specify the market of execution for the stock futures leg. As with stock/option orders, if the parties are unable to execute the single stock futures leg of the transaction due to a change in market conditions, the Exchange states that it would cancel the options leg of the transaction at the request of a party to the trade.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under Section 6(b)(5) of the Act[6] that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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[3] *See* Securities Exchange Act Release No. 44955 (October 18, 2001), 66 FR 53819 (October 24, 2001) (File No. SR–ISE–2001–18).

[4] *See* Securities Exchange Act Release No. 45985 (May 24, 2002), 67 FR 38533 (June 4, 2002) (File No. SR–ISE–2002–14).

[5] *See* Securities Exchange Act Release No. 44955, *supra* note 3.

[6] 15 U.S.C. 78f(b)(5).

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–2002–18 and should be submitted by August 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–17977 Filed 7–16–02; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46180; File No. SR–MSRB–2002–07]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G–14, on Reports of Sales or Purchases

July 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''the Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 3, 2002 the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–2002–07) as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The MSRB has filed with the Commission a proposed rule change with regard to Rule G–14, on reports of sales or purchases, to increase transparency in the municipal securities market. The proposed rule change would not change the wording of Rule G–14.

**II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The MSRB has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. Since 1995, the MSRB has expanded the scope of the public transparency reports in several steps. Each step has provided industry participants and the public successively more information about the market.[3]

In May, 2001, the MSRB announced its plan to begin reporting trades in ''real time'' on a schedule coordinated with the industry's timetable for migration to an environment of next-day settlement of securities transactions.[4] To attain real-time reporting, the MSRB intends in the future to file an amendment to Rule G–14 to require dealers to report their trades within 15 minutes of the time they are effected. The planned implementation date for real-time reporting is now set for mid-2004.

Prior to the implementation of real-time transaction reporting, the MSRB intends to continue to increase transparency in the market using the currently available data. As its next step, the MSRB is now proposing to disseminate the Daily Comprehensive Report with a one-week delay. The proposed Report would contain details of all municipal securities transactions that were effected during the trading day one week earlier. Data about each trade on the proposed Report would be the same as that on the current Daily Comprehensive Transaction Report. For each trade, the proposed Report, like the current report, would show the trade date, the CUSIP number of the issue traded, a short issue description, the par value traded, the time of trade reported by the dealer, the price of the transaction, and the dealer-reported yield of the transaction, if any. Each transaction would be categorized as a sale by a dealer to a customer, a purchase from a customer, or an inter-dealer trade.

The current Daily Comprehensive Report began operation on November 1, 2001.[5] The proposed Report, with a one-week delay, would replace the current report that has a two-week delay.

Description of Service

Like the current two-week delayed report, the new Report will be available daily to subscribers. Subscribers to the current two-week delayed report would continue to access the proposed Report via the Internet and download copies from the MSRB's computer using a password-protected FTP account. The MSRB expects that the proposed Report would be available within two weeks of approval by the Commission.

The MSRB will continue the established annual fee for the Service of $2,000. The fee is structured approximately to defray the MSRB's costs for production of daily data sets, operation of telecommunications lines, and subscription maintenance. Subscription fees that have been paid for the two-week delayed report will be applied toward the one-week delayed report.

To enable the MSRB to compile a comprehensive trades database for enforcement purposes, dealers report a small amount of data after trade date,

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The MSRB's report summarizing prices for issues that are frequently traded on the inter-dealer market began operation in 1995; in 1998, dealer-customer prices were added in a second summary report; in January 2000, a report with details of trades in frequently traded issues was added; in October 2000, a monthly comprehensive report, covering all transactions effected during the previous month, began operation; and in November 2001, a daily comprehensive report was begun, with trades effected two weeks earlier.

[4] *See* ''Real-Time Reporting of Municipal Securities Transactions,'' *MSRB Reports,* Vol. 21, No. 2 (July 2001) at 31–36.

[5] *See* Release No. 34–44894 (October 2, 2001), 66 FR 51485 (October 9, 2001).

and a few trades may be added, deleted or amended as late as a few weeks after trade date.[6] To ensure that subscribers to the report have access to those trades, the MSRB will make available each day an ''updated'' report containing all trades effected one month previously. This will enable subscribers to see the effect of changes reported by dealers after the one-week report was disseminated.

2. Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(I) of the Act, which authorizes the MSRB to adopt rules that provide for the operation and administration of the Board.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The MSRB does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2002–07 and should be submitted by August 7, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–17972 Filed 7–16–02; 8:45 am]

**BILLING CODE 8010–01–P**

[6] *See* Release No. 34–43060 (July 20, 2000), 65 FR 46188–46189 (July 27, 2000) at note 7. Approximately one percent of the trades in the database have data submitted between one week and one month after trade date.

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 46182; File No. SR–NYSE–2002–23]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Changes to Effective Dates for Certain Provisions of Recently Amended Rule 472 (''Communications With the Public'')

July 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 5, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. On July 9, 2002, the NYSE filed Amendment No. 1 to the proposed rules change.[3] The NYSE has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b–4 under the Act,[4] which renders the proposal effective upon filing Amendment No. 1 with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing with the Commission a proposed rule change that would establish November 6, 2002 as the effective date for certain provisions of NYSE Rule 472 (''Communications with the Public'').

First, the proposed rule change would establish, subject to certain conditions described below, November 6, 2002 as the effective date for Rule 472(b)(1), (2) and (3) for members or member organizations that over the three previous years, on average, have participated in 10 or fewer underwritings as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. Rule 472(b)(1), (2) and (3), when effective, will prohibit associated persons, as defined in Rule 472.40 from being subject to the supervision or control of any employees of a member's or member organization's investment banking department, and will further require legal or compliance personnel to intermediate certain communications between the research department and either the investment banking department or the company that is the subject of a research report by the research department (referred to herein as the ''subject company''). Those members or member organizations that meet the eligibility requirements outlined above for the delayed implementation date, would be required to disclose in research reports that they are delaying implementation of this Rule provision until November 6, 2002. Further, they would also be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of Rule 472(b)(2)(i) and (ii).

Second, the proposed rule change would establish November 6, 2002 as the effective date for Rule 472(k)(1)(ii) as applied to the receipt of compensation by a member's or member

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NYSE provided associated persons until July 16, 2002 to submit plans for liquidation to their member or member organization's legal or compliance department. In Amendment No. 1, NYSE also corrected the several technical errors that appeared in its original filing. *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to James A. Brigagliano, Assistant Director, Division of Market Regulation, Commission, dated July 9, 2002 (''Amendment No. 1'').

[4] 17 CFR 240.19b–4(f)(1).

organization's foreign affiliates from a subject company. Rule 472(k)(1)(ii), when effective, will require members or member organizations to disclose in research reports all compensation received by it or its affiliates from a subject company for investment banking services in the past 12 months, or expected to be received in the next three months. Members and member organizations that delay implementation nevertheless would have to disclose in research reports that their foreign affiliates may (a) have managed or co-managed a public offering of the subject company's securities in the past 12 months; (b) have received compensation for investment banking services from the subject company in the last 12 months; or (c) expect to receive or intend to seek compensation for investment banking services from the subject company in the next three months. Members or member organizations that delay implementation of Rule 472(k)(1)(ii) must notify the Exchange, and must also disclose in research reports that, with regard to their foreign affiliates, they are not making the disclosures required by the Rule until November 6, 2002. Further, members and member organizations would remain responsible for complying with the Rule's provisions for investment banking compensation received by the member or member organization and those affiliates based in the United States.

Third, the proposed rule change would establish November 6, 2002, subject to certain conditions described below, as the effective date for Rule 472(e)(3) for those associated persons who must divest certain holdings to comply with their member's or member organization's more restrictive policy that prohibits an associated person's ownership of securities that they cover in research reports. Rule 472(e)(3), when effective, will prohibit an associated person from purchasing or selling a security in a manner contrary to the associated person's most recent published recommendation reflected in the member's or member organization's research report. The Exchange is proposing to delay implementation of Rule 472(e)(3) only for associated persons that meet the following conditions: (1) they are employed by a member or member organization that, as of July 9, 2002, has adopted a policy that bans research analysts' ownership of securities they cover and further requires complete divestiture of existing holdings in those securities; (2) they abide by a reasonable plan of liquidation under which all shares are to be sold by November 6, 2002 and submit that plan to their member's or member organization's legal or compliance department no later than July 16, 2002; (3) they receive written approval of the liquidation plan from their member's or member organization's legal or compliance department; and (4) the member or member organization notifies the Exchange that they have approved plans that delay implementation of the provision.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is filing the proposed rule change to establish November 6, 2002 as the effective date for: (a) Rule 472(b)(1), (2) and (3), subject to certain conditions, for members and member organizations that over the previous three years, on average, have participated in 10 or fewer underwritings as manager or co-manager *and* generated $5 million or less in gross investment banking revenues from those transactions; (b) Rule 472(k)(1)(ii) as applied to the receipt of compensation by a member's or member organization's foreign affiliates from a subject company; and (c) Rule 472(e)(3), subject to certain conditions, for those associated persons who must divest certain holdings to comply with their member's or member organization's more restrictive policy that prohibits an associated person's ownership of securities they cover.

On May 10, 2002, the Commission approved amendments to NYSE Rules 351 and 472, which place prohibitions and/or restrictions on Investment Banking Department, Research Department and Subject Company relationships and communications and impose new disclosure requirements on members and member organizations and their associated persons.[5]

At the same time, the Commission also approved a staggered implementation period for the Rules. Most provisions of the Rules become effective on July 9, 2002, including those that restrict supervision and control of associated persons by the investment banking department and those that require disclosure of investment banking compensation received from a subject company.

The ''gatekeeper'' provisions, described below, become effective September 9, 2002, and Rule 472(k)(1)(i)a.—a requirement to disclose firm ownership of subject company securities—becomes effective on November 6, 2002.

Small Firm Relief

The Rules contain provisions that generally restrict the relationship between the research and investment banking departments, including ''gatekeeper'' provisions that require a legal or compliance person to intermediate certain communications between the research and investment banking departments. Rule 472(b)(1) prohibits an associated person (also referred to throughout this filing as a ''research analyst'') from being under the control or supervision of any employee of the investment banking department.

Rule 472(b)(1) also prohibits the investment banking department from reviewing or approving any research report prior to distribution. Rule 472(b)(2) creates an exception to the prohibitions of (b)(1) to allow investment banking personnel to review a research report prior to publication to verify the factual information contained therein and to screen for potential conflicts of interest. Any permissible written communications must be made through an authorized legal or compliance official or copied to such official. Oral communications must be made through, or in the presence of, an authorized legal or compliance official and must be documented.

Similarly, Rule 472(b)(3) restricts communications between a member or member organization and the subject company of a research report, except that a member or member organization may submit sections of the research report to the subject company to verify factual accuracy and may notify the subject company of a ratings change after the ''close of trading'' on the

[5] *See* Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002) (''May 10th order'').

business day preceding the announcement of the ratings change. Submissions to the subject company may not include the research summary, the rating or the price target, and a complete draft of the research report must be provided beforehand to legal or compliance personnel. Finally, any change to a rating or price target after review by the subject company must first receive written authorization from a legal or compliance official.

As the Commission noted in its May 10th order, several commenters argued that the ''gatekeeper'' provisions would impose significant costs, especially for smaller firms that may have to hire additional personnel to comply with the requirements. Commenters also noted that personnel often wear multiple hats in smaller firms, thereby causing a greater burden to comply with the restriction on supervision and control by investment banking personnel over research analysts. These comments raised the prospect that the Rules might force some firms out of the investment banking or research business and/or reduce important sources of capital and research coverage for smaller companies.

The NYSE is sensitive to the issues confronted by small firms and, as the Commission's May 10th order noted, along with NASD, is reviewing the issue to explore possible exemptions or accommodations that might be made while preserving the purposes of the Rules. To that end, and in order to provide time to review those issues, the Exchange is proposing to delay implementation of Rules 472(b)(1), (2), and (3) until November 6, 2002 for members and member organizations that over the previous three years, on average, have participated in 10 or fewer underwritings as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions.

Those members or member organizations that meet the eligibility requirements outlined above for the delayed implementation date, would be required to disclose in research reports that they are delaying implementation of this Rule provision until November 6, 2002. Further, they would also be required to maintain records of communications that would otherwise be subject to the ''gatekeeper'' provisions of Rules 472(b)(2)(i) and (ii). The Exchange believes that for these members and member organizations, provided they comply with the conditions described, the temporary relief from these provisions will not adversely impact the spirit and intent of the Rule initiative.

Receipt of Investment Banking Compensation by Foreign Affiliates

Rule 472(k)(1)(ii) requires a member or member organization to disclose in research reports if the member or member organization or its affiliates: (a) managed or co-managed a public offering of the subject company's securities in the past 12 months; (b) received compensation for investment banking services from the subject company in the past 12 months; or (c) expects to receive or intends to seek compensation for investment banking services from the subject company in the next 3 months.

The Exchange understands that members and member organizations are setting up systems that can track the information required by this provision of the Rule. However, members and member organizations, particularly those with global operations and foreign affiliates, have informed the Exchange that the scope of their operations make it impossible to have systems in place by July 9, 2002, to track all investment banking compensation received by their foreign affiliates.

The Exchange recognizes that the tracking of investment banking compensation received by foreign affiliates requires significant resources, and therefore believes it is appropriate to allow members and member organizations additional time to set up systems to enable compliance with the Rule. Accordingly, NYSE is proposing to delay the implementation date for Rule 472(k)(1)(ii) until November 6, 2002, only as it relates to investment banking compensation received by members' and member organizations' foreign affiliates. Members and member organizations would remain responsible for complying with the Rule's provisions for investment banking compensation received by the member or member organization and those affiliates based in the United States.

Members and member organizations that delay implementation nevertheless would have to disclose in research reports that their foreign affiliates may (a) have managed or co-managed a public offering of the subject company's securities in the past 12 months; (b) have received compensation for investment banking services from the subject company in the last 12 months; or (c) expect to receive or intend to seek compensation for investment banking services from the subject company in the next three months. Members or member organizations that delay implementation of Rule 472(k)(1)(ii) must notify the Exchange, and must also disclose in research reports that, with regard to their foreign affiliates, they are not making the disclosures required by the Rule until November 6, 2002.

Trading Contrary to Recommendations

The Rules contain provisions that restrict the personal trading by research analysts, but it does not completely prohibit ownership of securities that the research analyst covers. One such restriction is found in Rule 472(e)(3), which becomes effective on July 9, 2002. That provision prohibits an associated person from purchasing or selling a security or option or derivative of that security, in a manner contrary to the research analyst's most recent published recommendation reflected in the member's research report. For purposes of this Rule, the restriction applies to the associated person and ''household member'' as it is defined in the Rule, and to any account in which an associated person or household member has a financial interest, or over which the associated person has discretion or control, except for an investment company registered under the Investment Company Act of 1940.

Several members and member organizations have gone beyond the requirements of the Rule and instituted internal policies that prohibit research analysts from owning securities that they cover. Most of these firms require that research analysts divest themselves, over a certain period of time, of any existing holdings in securities they cover. Consequently, research analysts could face the predicament of violating Rule 472(e)(3) to comply with their firm's more restrictive policy because they could be required by their firm to divest their holdings in a security even as they maintain a buy recommendation in that security. Absent some relief from the Rule, the practical impact of the firm-imposed prohibition would be that research analysts would have to divest all holdings in securities they cover by July 9, 2002, or cease coverage in those securities in which they hold positions.

To alleviate this situation, and to allow an orderly liquidation of holdings, the Exchange is proposing to delay implementation of Rule 472(e)(3) until November 6, 2002, only for associated persons that meet the following conditions: (a) they are employed by a member or member organization that as of July 9, 2002 has adopted a policy that bans research analysts' ownership of securities they cover and further requires complete divestiture of existing holdings in those securities; (b) they abide by a reasonable plan of liquidation under which all shares are to be sold by November 6, 2002 and submit that plan to their member's or

member organization's legal or compliance department no later than July 16, 2002; (c) they receive written approval of the liquidation plan from their member's or member organization's legal or compliance department; and (d) the member or member organization notifies the Exchange that they have approved plans that delay implementation of the provision.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5)[6] of the Act which requires, among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general to protect investors and the public interests.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has been filed by the Exchange as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Rule 19b–4(f)(1) under the Act.[7] Consequently, it has become effective pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(1) thereunder.[9]

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR–NYSE–2002–23 and should be submitted by August 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–17979 Filed 7–16–02; 8:45 am]

**BILLING CODE 8010–01–P**

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 240.19b–4(f)(1).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46170; File No. SR–Phlx–2001–111]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Termination of Broker-Dealer Agreements on PACE

July 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2002,[3] the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Phlx as a ''non-controversial'' rule change under Rule 19b–4(f)(6) of the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Phlx proposes to specify that the signing and termination of specialist agreements to execute broker-dealer orders on the Philadelphia Stock Exchange Automated Communication and Execution (''PACE'') system[5] shall be in accordance with the procedures set forth by the Exchange. The text of the proposed rule change is available at the Phlx and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

According to the Phlx, the purpose of the proposed rule change is to expressly provide for the signing and termination of Specialist Agreements accepting broker-dealer orders on the PACE system pursuant to the procedures set forth by the Exchange. Phlx equity specialists may choose to participate in PACE with respect to specialty securities. Further, specialists, once on PACE, may choose to accept only agency orders,[6] subject to the appropriate PACE execution parameters, or may choose, in addition, to accept non-agency orders. Phlx Rule 229, describes the minimum PACE execution parameters the specialist is required to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that although Phlx officially filed this proposed rule change in 2002, Phlx had submitted a pre-filing in December 2001, at which time it assigned the file number SR–Phlx–2001–111.

[4] 17 CFR 240.19b–4(f)(6).

[5] PACE is the electronic order routing, delivery, execution and reporting system used to access the Phlx Equity Floor.

[6] For purposes of the PACE system, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. *See* Supplementary Material .02 to Phlx Rule 229.

provide to agency orders received through the system.

Previously, the Commission approved an amendment to Phlx Rule 229 allowing specialists, subject to certain parameters, to accept non-agency orders over the PACE system.[7] In order to accept non-agency orders, the specialist must, among other things, enter into a Specialist Agreement with the broker-dealer and file such agreement with the Exchange. Supplementary Material .02 to Phlx Rule 229 describes some of the terms that the Specialist Agreement must contain, however, there is no mention made of the mechanics the specialist must use to secure such an agreement or what additional terms such an agreement may contain. In addition, no explicit mechanism or conditions for terminating such agreements were discussed in Supplementary Material .02 of Phlx Rule 229 or the approval of the earlier proposed rule change.

With this proposed rule change, the Exchange proposes to add language to Supplementary Material .02 of Phlx Rule 229 to clarify that the Exchange has implemented procedures for the signing and termination of Specialist Agreements.[8] Naturally, while the Exchange will change these procedures from time to time, such procedures will not conflict with the then existing requirements in Supplementary Material .02 of Phlx Rule 229.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5),[10] in particular, because it should promote just and equitable principles of trade, prevent fraudulent and manipulative acts and protect investors and the public interest by more specifically delineating the procedures to be followed by specialists entering into and terminating Specialist Agreements.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2001–111 and should be submitted by August 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–17980 Filed 7–16–02; 8:45 am]

**BILLING CODE 8010–01–P**

[7] *See* Securities Exchange Act Release No. 36442 (October 31, 1995) 60 FR 56084 (November 6, 1995) (File No. SR–Phlx–95–32) (''[A]ny specialist who has agreed to facilitate broker-dealer orders on PACE must provide all broker-dealers with the opportunity to submit non-agency orders for execution through PACE on equal terms.'').

[8] Currently, the Exchange requires that terminations of these agreements be in writing and submitted to the Exchange at least 24 hours before the effectiveness of the termination.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Submit comments on or before September 16, 2002.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Brenda Washington, Lead Analyst, Office HUBZone Empowerment, Small Business Administration, 409 3rd Street, SW., Suite 8000, Washington DC 20416

**FOR FURTHER INFORMATION CONTACT:** Brenda Washington, Lead Analyst, (202) 205–7663 or Curtis B. Rich, Management Analyst, (202) 205–7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* HUBZone Empowerment Contracting Program Application.

*Form No:* 2103.

*Description of Respondents:* Small Businesses Seeking Certification as a Qualified HUBZone Small Business Concern.

*Annual Responses:* 20,000.

*Annual Burden:* 20,000.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 02–17954 Filed 7–16–02; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Submit comments on or before September 16, 2002.

**ADDRESSES:** Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Linda Waters, Program Analyst, Office Government Contracting, Small Business Administration, 409 3rd Street, SW., Suite 8800, Washington DC 20416

**FOR FURTHER INFORMATION CONTACT:** Linda Waters, Program Analyst, (202) 205–7315 or Curtis B. Rich, Management Analyst, (202) 205–7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* Prime Contracts Program Quarterly Report; Part A, Traditional PCR and Part B, Breakout PCR.

*Form No's:* 843A, 843B.

*Description of Respondents:* Procurement Center Representatives.

*Annual Responses:* 63.

*Annual Burden:* 1024.

*Title:* Nomination for the Small Business Prime Contractor and Nomination for the Small Business Subcontractor of the Year Award.

*Form No's:* 883, 1375.

*Description of Respondents:* Prime Contractor, Subcontractor Annual Responses: 469.

*Annual Burden:* 3,752.

*Title:* PRONet.

*Form No:* 1167.

*Description of Respondents:* Small Disadvantaged Businesses.

*Annual Responses:* 200,000.

*Annual Burden:* 50,000.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 02–17955 Filed 7–16–02; 8:45 am]

**BILLING CODE 8025–01–P**

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer at the following addresses: (OMB) Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503; (SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

**1. State Contribution Return—0960–0041**

Form SSA–3961 is used by the Social Security Administration (SSA) to identify and account for all contributions due and paid under section 218 of the Social Security Act. The respondents are State Social Security agencies (one agency in each state, Puerto Rico, and the Virgin Islands) and each of approximately 65 interstate instrumentalities.

*Type of Request:* Extension of an OMB-Approved Information Collection.

*Number of Respondents:* 117.

*Frequency of Response:* 8.5.

*Average Burden Per Response:* 3 minutes.

*Estimated Annual Burden:* 50 hours.

**2. Report on Individual with Mental Impairment—0960–0058**

Form SSA–824 is used by the Social Security Administration to determine the claimant's medical status prior to making a disability determination. The respondents are physicians, medical directors, medical record librarians and other health professionals.

*Type of Request:* Extension of an OMB-Approved Information Collection.

*Number of Respondents:* 50,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 36 minutes.

*Estimated Annual Burden:* 30,000 hours.

**3. Missing and Discrepant Wage Reports Letter and Questionnaires-0960–0432**

SSA uses the information on Forms SSA–L93, SSA–95 and SSA–97 to secure the employer information missing from its records (or discrepant with Internal Revenue Service (IRS) records) by contacting the involved employers. When secured, SSA is able to properly post the employee's earnings records. Compliance by employers with SSA requests facilitates proper posting of employees' wage records. SSA makes two efforts to obtain wage information from the employer before the case is turned over to the IRS for penalty assessments. The respondents are employers with missing or discrepant wage reports.

*Type of Request:* Extension of an OMB-Approved Information Collection.

*Number of Respondents:* 360,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 30 minutes.

*Estimated Annual Burden:* 180,000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on 410–965–0454, or by writing to the address listed above.

**1. Continuation of Full Benefit Standard for Persons Institutionalized—0960–0516**

SSA is required by law to establish procedures for collecting information on whether an SSI recipient who becomes institutionalized (e.g., hospital, nursing home) may be eligible for continued benefits, based on the full federal benefit rate, if a physician certifies that the anticipated period of medical confinement will last no more than 90 days. The individual (or someone acting on his/her behalf) must demonstrate that he/she needs to pay some or all of the expenses of maintaining the home to which he/she expects to return. The

respondents are applicants for SSI benefits.

*Type of Request:* Extension of an OMB-Approved Information Collection.

*Number of Respondents:* 60,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 5 minutes.

*Estimated Annual Burden:* 5,000 hours.

**2. Inquiry To File an SSI Child's Application—0960–0557**

The information collected on Form SSRO–3–293 (formerly SSA–293) is used by SSA to document the earliest possible filing date and to determine potential eligibility for Supplemental Security Income (SSI) child's benefits. The respondents are individuals, such as hospital social workers, who inquire about SSI eligibility for low birth weight babies.

*Type of Request:* Extension of an OMB-Approved Information Collection.

*Number of Respondents:* 2,100.

*Frequency of Response:* 1.

*Average Burden Per Response:* 3 minutes.

*Estimated Average Burden:* 105 hours.

**3. Supplemental Security Income Notice of Interim Assistance Reimbursement (Two Forms)—0960–0546**

Form SSA–8125 and SSA–L8125–F6 collect interim assistance reimbursement (IAR) information from the States that provide such assistance. Form SSA–8125 is used in situations where IAR can be distributed directly to the recipient after the State has deducted the amount of assistance it provided. Form SSA–L8125–F6 is used in situations where a recipient entitled to underpayments has received IAR from a State and SSA will control the benefit through the installment process.

The respondents are States that provide IAR to SSI claimants.

*Type of Request:* Extension of an OMB-Approved Information Collection.

| | SSA–8125 | SS–L8125–F6 |
|---|---|---|
| Number of Respondents | 50,000 | 50,000. |
| Frequency of Response | 1 | 1. |
| Average Burden Per Response | 10 minutes | 10 minutes. |
| Estimated Annual Burden | 8,333 hours | 8,333 hours. |

**4. National Employment Activity and Disability Survey—0960–NEW**

*Background*

The Ticket to Work program (TTW) was established by the 1999 Ticket to Work and Work Incentives Improvement Act. The program will provide eligible Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) disability beneficiaries with a Ticket, which can be used to obtain vocational rehabilitation (VR) or employment services through participating providers, called Employment Networks (ENs).

The reason for the TTW program is that some beneficiaries currently lack the resources necessary to return to work at a level above the Substantial Gainful Activity (SGA) level, either because they do not have easy access to such services, or because they lack the incentive to invest resources in return to work activities because of a variety of factors affecting the decision to work. TTW confers upon a beneficiary a means to access those resources in a less restrictive manner than under the traditional program. The manner in which the program is being implemented is expected to increase beneficiary demand for employment-related services and activities. It is also expected to increase the number and diversity of providers in response to the less restrictive participation requirements and increased consumer demand for services.

*The National Employment Activity and Disability Survey*

The National Employment Activity and Disability Survey will collect data on the work-related activities of SSI and Old Age, Survivors and Disability Insurance (OASDI) beneficiaries as the TTW program, and other initiatives designed to improve beneficiary employment outcomes, are implemented. The TTW Survey is specifically designed to be a significant resource for the formal evaluation of TTW, but SSA anticipates that the survey will provide useful information for a variety of evaluation and policy analysis purposes, especially related to current efforts that attempt to improve return to work. The survey questionnaire focuses on information about beneficiaries and their work-related activities that cannot be obtained from SSA's administrative records. The survey will provide information about: (1) Beneficiaries who assign their Tickets to ENs, and their experience in the program; (2) beneficiaries who do not assign their Tickets, and the reasons why they do not, including involuntary non-participants; (3) the employment outcomes of Ticket users and other beneficiaries; and (4) the use of employment services by Ticket users and other beneficiaries. The respondents will be selected form SSI and OASDI disabled beneficiaries who meet the Ticket to Work program eligibility requirements.

*Type of Request:* New OMB Information Collection.

*Number of Respondents:* 6,557.

*Frequency of Response:* 1.

*Average Burden Per Response:* 45 minutes.

*Estimated annual Burden:* 4,918 hours.

**5. Record Of Supplemental Security Income Inquiry—0960–0140**

Form SSA–3462 is completed by SSA personnel via telephone or personal interview, and it is used to determine potential eligibility for SSI benefits. The respondents are individuals who inquire about SSI eligibility for themselves or someone else.

*Type of Request:* Extension of an OMB-Approved Information Collection.

*Number of Respondents:* 2,341,856.

*Frequency of Response:* 1.

*Average Burden Per Response:* 5 minutes.

*Estimated Annual Burden:* 195,155 hours.

**6. Public Information Campaign Collections—0960–0544**

SSA uses the information from public broadcasting systems to determine media interest in broadcasting SSA's public information materials. The respondents are radio and television stations.

*Type of Request:* Revision of an OMB-approved Information Collection.

*Number of Respondents:* 8,000.

*Frequency of Response:* 3.

*Average Burden Per Response:* 1 minute.

*Estimated Annual Burden:* 400.

**7. State Mental Institution Policy Review—0960–0110**

SSA uses the information collected on Form SSA–9584 to determine whether policies and practices of State mental institutions conform with SSA's regulations in the use of benefits and whether an institution is performing other duties and responsibilities required of a representative payee. The information also provides a basis for conducting an onsite review of the institution and is used in preparing the subsequent report of findings. The respondents are State mental institutions that serve as representative payees.

*Type of Request:* Revision of an OMB-approved Information Collection.

*Number of Respondents:* 125.

*Frequency of Response:* 1.

*Average Burden Per Response:* 60 minutes.

*Estimated Annual Burden:* 125 hours.

Dated: July 10, 2002.

**Elizabeth A. Davidson,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 02–18140 Filed 7–16–02; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice 4063]**

## Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

**DATES:** Transmittal dates: As shown on each of the forty-eight letters.

**FOR FURTHER INFORMATION CONTACT:** Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

**SUPPLEMENTARY INFORMATION:** Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: July 3, 2002.

**William J. Lowell,**

*Director, Office of Defense Trade Controls, Department of State.*

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, April 11, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Saudi Arabia of technical data, defense services and defense articles related to the training and maintenance required to operate E–3A and KE–3A Airborne Early Warning and Control Aircraft in Saudi Arabia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 132–01.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, April 11, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Turkey of technical data, defense services and defense articles for the manufacture of engine components of the TF39 and J79 Gas Turbine Aircraft Engines for return to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 172–01.

Hon J. Dennis Hastert,
*Speaker of the House of Representatives, April 11, 2002.*

Dear Mr. Speaker: Pursuant to section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export to Japan of technical data, defense services and defense articles for the manufacture of the T58–GE–8/14 and CT58–110 aircraft gas turbine engines for end-use by Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 011–02

Hon J. Dennis Hastert,
*Speaker of the House of Representatives, April 11, 2002.*

Dear Mr. Speaker: Pursuant to section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement with Japan.

The transaction described in the attached certification involves the export to Japan of technical data, assistance and defense articles for the manufacture and assembly of Propellant Actuated Devices for F–15J and XT–4 aircraft for end-use by Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 12–02.

Hon J. Dennis Hastert,
*Speaker of the House of Representatives, April 11, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance to Japan related to the launch support and testing of the MTSAT–1R satellite from French Guiana or Japan for end-use by Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 16–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, April 11, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to South Korea of technical data, defense services and defense articles related to AN/ALQ–165 (Lot II) Aircraft Self-Protection Jammers (ASPJs) for use by the South Korean Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 024–02.

The Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, April 11, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance to France, Germany, and the United Kingdom related to the launch of the INMARSAT–4 communications satellite from Cape Canaveral, Florida.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 030–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, April 11, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Germany of technical data, defense services and defense articles for the manufacture of Aircraft Fuel Gauging Systems, Fuel Level Sensing Systems and Asymmetry Systems for end-use by Germany and Saudi Arabia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 033–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, April 26, 2002.*

Dear Mr. Speaker: Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export to Australia of technical data, assistance and training for the design, development, manufacture and maintenance in Australia or the Multi-Role Electronically Scanned Array (MESA) Radar/IFF subsystem for the Royal Australian Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 028–01.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 1, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services for the design, manufacture and launch of the SpainSat communications satellite for Spain either an Ariane launch vehicle from French Guiana or a Sea Launch vehicle from the Pacific Ocean.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 014–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 1, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves ongoing activities associated with technical assistance agreements with Russia beyond those addressed in DTC 39–98 dated March 19, 1998, DTC 98–99 dated August 5, 1999, DTC 014–00 dated March 7, 2000, DTC 034–01 dated March 1, 2001, and DTC 038–01 dated April 30, 2001, providing for the marketing and sale of satellite launch services utilizing Proton rocket boosters and the performance of associated integration and launch services from Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 22–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 1, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a

proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves ongoing activities associated with technical assistance agreements with Russia, Ukraine, Cayman Islands, and Norway beyond those addressed in DTC 16–97 dated July 25, 1997, DTC 6–99 datedApril 16, 1999, DTC 124–99 dated November 10, 1999, DTC 026–00 dated May 19,2000, and DTC 048–01 dated April 30, 2001, providing for the Sea Launch joint venture, in which Norway, Ukraine and Russia will participate, to provide commercial space launch services for communications satellites from a modified oil platform in the Pacific Ocean.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 23–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 17, 2002.*

Dear Mr. Speaker: Consistent with Section 36(c) of the Arms Export Control Act and Title IX of Public Law 106–79, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act, and the Administration is treating authorization for the requested re-export consistent with these provisions.

The transaction described in the attached certification involves the transfer of: (1) Temporary export for demonstration purposes of an aircraft Ground Proximity WarningSystem, Personnel Locator System for downed airmen, and a hand-held survivor radio; (2) unclassified technical data related to a Mobile Combat Training Center; (3) a ten-year technical assistance agreement providing for employment in the U.S. of Indian national(s) in the design, manufacture and use of flight simulation devices for military and civilian applications.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 04–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 17, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services, and unclassified defense articles, including 31 F404/RM12 engines, to Sweden for incorporation into the Gripen Aircraft for end-use by South Africa.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 026–02.

May 17, 2002.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement with Taiwan.

The transaction described in the attached certification involves the transfer of naval architectural and marine engineering services to Taiwan for the basic and detailed development of the Taiwan Navy PFG2 program corvette.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 031–02.

May 17 2002.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Israel of technical data, defense services and defense articles for three Gulfstream V Special Electronic Mission Aircraft for end use by the Government of Israel.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 052–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 20, 2002.*

Dear Mr. Speaker: Consistent with Section 36(c) of the Arms Export Control Act and Title IX of Public Law 106–79, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act, and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the transfer of: (1) Six (6) magnetrons for use in the ground-based Flycatcher radar; (2) unclassified technical data for marketing proposals for the M109 series of self-propelled howitzers, ammunition support vehicles, and fire direction center vehicles; (3) propeller-driven target drones and spare parts for anti-aircraft artillery practice; (4) unclassified technical data for marketing an aircraft ground proximity warning system and a personnel locator system; (5) a technical assistance agreement allowing employment in the U.S. of an Indian national in support of carbon based braking systems for various military

and civilian aircraft; (6) fifty-five (55) Quartz Rate Sensors for incorporation in an Integrated Electronic Standby Instrument; (7) seventeen (17) high voltage power supply units and parts for use in the Jaguar aircraft; (8) spare parts for the Sea King Helicopters; and (9) driveshaft assemblies for the Indian Advanced Light Helicopter.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 05–02.

The Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 22, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves ongoing activities associated with technical assistance agreements with Russia, Ukraine, Cayman Islands and Norway beyond those addressed in DTC 16–97 dated July 25, 1997, DTC 6–99 dated April 16, 1999, DTC 124–99 dated November 10, 1999, DTC 026–00 dated May 19, 2000, DTC 048–01 dated April 30, 2001 and DTC 23–02 dated May 1, 2002, providing for the Sea Launch Joint Venture, to provide commercial space launch services from a modified oil platform in the Pacific Ocean.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 123–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives May 22, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves ongoing activities associated with technical assistance agreements with Russia beyond those addressed in DTC 39–98 dated March 19, 1998, DTC 98–99 dated August 5, 1999, DTC 014–00 dated March 7, 2000, DTC 034–01 dated March 1, 2001, DTC 038–01 dated April 30, 2001 and DTC 022–02 dated May 1, 2002, providing for the marketing and sale of satellite launch services utilizing Proton rocket boosters and the performance of associated integration and launch services from Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 124–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 23, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Egypt of technical data and assistance in the manufacture of upgrade components for the TPS–63 radar system for end-use by Egypt.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 144–01.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives May 23, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance to Japan and South Korea for the sale of one MBSAT commercial communications satellite.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 20–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 23, 2002*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to support the manufacture, sale and overhaul/repair of Auxiliary Power Units (APU) for the CH–47 and SH–60/UH–60 Helicopters in Japan for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 025–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 23, 2002.*

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of ten (10)

cathode ray tubes for use in helmet-mounted data display units to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 36–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 23, 2002.*

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the transfer of unclassified technical data for the employment in the U.S. of an Indian national as a project engineer working with various types of aircraft engines.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 40–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 23, 2002.*

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the temporary export of one handheld integrated directional receiver and homing system to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 41–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the temporary export of two (2) Viper E mixed-gas underwater breathing apparatus to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 42–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 23, 2002.*

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of unclassified technical data related to a command, control, communications, computers, intelligence and information system to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 47–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 23, 2002.*

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the

same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of six (6) tuner drives and four (4) servo amplifiers for an existing ship-borne radar system to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 48–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 23, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data, defense services and defense articles for the manufacture of the X300 transmission for use in the MCV–80 high mobility tracked vehicles of NATO countries and Austria, Australia, Egypt, Finland, Kuwait, Malaysia, New Zealand, South Korea, Sweden, Switzerland, Taiwan, Thailand, and the United Arab Emirates.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 053–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 23, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement with Italy.

The transaction described in the attached certification involves export to Italy of technical data and assistance in the manufacture of the LN–93 Inertial Navigation System for the Future Anti-Air Missile System Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 054–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 23, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Mexico of technical data, defense services and defense articles for the manufacture of Line Replaceable Module electrical connector backplanes for end use by the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 055–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 23, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture, assembly and testing of the Javelin Control Actuation Section for the Javelin missile for end-use by the United Kingdom's Ministry of Defence.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 057–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 23, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and defense articles to the Dominican Republic concerning the acquisition, maintenance and support of ten (10) AT–6 trainer aircraft for end-use by the Dominican Republic Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 058–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 23, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and defense articles to Denmark to integrate the Evolved SeaSparrow Missile system onto Danish ships for end-use by the Royal Danish Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 059–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 23, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance in the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 089–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 23, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed Manufacturing License Agreement with Japan.

The transaction described in the attached certification involves the export of technical data and assistance to Japan for the manufacture, repair, installation, maintenance and overhaul of the DF–301E Direction Finding Equipment for end-use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 090–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 23, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to Japan for the overhaul and repair of JFC–26 and JFC–54 fuel controls for aircraft in the inventory of the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 091–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, May 23, 2002.*

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to Pakistan.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on Pakistan in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to Pakistan pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of three (3) Glock 26 9mm pistols to Pakistan.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 102–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, June 4, 2002.*

Dear Mr. Speaker: Consistent with Section 36(c) of the Arms Export Control Act and Title IX of Public Law 106–79, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act, and the Administration is treating authorization for the requested re-export consistent with these provisions.

The transaction described in the attached certification involves the transfer of: (1) unclassified marketing data concerning a special mission military aircraft to the Indian Ministry of Defense; (2) seven (7) timers for use in ejection seats of the Kiran and Jaguar aircraft to the Indian Air Force; (3) unclassified marketing data pertaining to the M113 and Bradley family of vehicles to the Indian Ministry of Defense; (4) two (2) power supply parts for the Light Combat Aircraft Program to the Indian Ministry of Defense; (5) two (2) Traveling Wave Tubes for integration in the radar of the Light Combat Aircraft Program to the Indian Ministry of Defense; (6) amendment to an existing distribution agreement to add India to the approved sales/distribution territory for minor components for helicopters and fixed wing aircraft; (7) technical data concerning a command and control system for Corvette and Fast Patrol Boat size vessels to the Indian Ministry of Defense; (8) technical data concerning a Tethered Aerostat Surveillance System with L–88 (V3) and AN/APS–144 radar sensors to the Indian Ministry of Defense; (9) technical data concerning a Leading Edge Vortex Control (LEVCON) and a Nose Wheel Steering System for the Light Combat Aircraft Program to the Indian Ministry of Defense.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 02–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, June 4, 2002.*

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a

license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of twenty (20) cathode ray tubes for use in helmet-mounted data display units to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 08–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, June 4, 2002.*

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of unclassified technical data related to the marketing of upgrades to an existing CS–5060 electronics intelligence (ELINT) system in India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 09–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, June 4, 2002.*

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of technical data related to the MK 39 Mod 3A Inertial Navigation System for use aboard surface vessels to the Indian Navy.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 50–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, June 10, 2002.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Italy of technical data, defense services and defense articles related to delivery, final integration, test and assembly of major sub-systems for six Predator, Unmanned Aerial Vehicles (UAVs), for use by the Italian Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 147–01.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, June 12, 2002.*

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves: (1) unclassified technical data and hardware related to the design, analysis, manufacturing, and testing of single cell and dual cell antenna reflectors; (2) unclassified technical data related to the marketing of the TPS–70SS radar system; (3) twelve (12) spare parts kits for maintenance of Sikorsky S–61 Sea King helicopters; (4) an amendment to an existing manufacturing license agreement to re-instate India to the licensed territories for the Quick Fox software code; and (5) temporary export of Generation III single tube night vision goggles with a zoom laser Illuminator.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 06–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, June 12, 2002.*

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act,

Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the temporary export of an inertial measurement unit from Canada to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 39–02.

Hon. J. Dennis Hastere,
*Speaker of the House of Representatives, Jun 12 2002.*

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of technical data for fan blade design of the Kaveri jet engine test rig to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 43–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, *June 12, 2002.*

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of technical data related to the F124 propulsion engine for the Indian Light Combat Aircraft.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 44–02.

Hon. J. Dennis Hastert,
*Speaker of the House of Representatives, June 12, 2002.*

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of technical data related to the marketing of helicopters with self-sealing fuel cells, armor plating, AN/APX–100 transponder, weapons pylons, FLIR, and rocket pods to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 49–02

[FR Doc. 02–17586 Filed 7–16–02; 8:45 am]

**BILLING CODE 4710–25–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Implementation of Tariff-Rate Quota for Imports of Beef From Australia

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that USTR has determined that Australia, pursuant to its request, is a participating country for purposes of the export certification program for imports of beef under the tariff-rate quota.

**DATES:** The action is effective August 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Jason Bernstein, Senior Economist for Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508; telephone: (202) 395–6127.

**SUPPLEMENTARY INFORMATION:** The United States maintains a tariff-rate quota on imports of beef as part of its implementation of the Marrakesh Agreement Establishing the World Trade Organization. The in-quota quantity of that tariff-rate quota is allocated in part among a number of countries. As part of the administration of that tariff-rate quota, USTR provided, in 15 CFR part 2012, for the use of export certificates with respect to imports of beef from countries that have an allocation of the in-quota quantity. The export certificates apply only to those countries that USTR determines

are participating countries for purposes of 15 CFR part 2012.

On May 22, 2002, USTR received a request and the necessary supporting information from the government of Australia to be considered as a participating country for purposes of the export certification program. Accordingly, USTR has determined that, effective August 1, 2002, Australia is a participating country for purposes of 15 CFR part 2012. As a result, imports of beef from Australia entered on or after August 1, 2002, will need to be accompanied by an export certificate in order to qualify for the in-quota tariff rate; imports of beef from Australia entered prior to August 1, 2002, will not require an export certificate. In order for the export certificate to be valid, it must satisfy the requirements of 15 CFR part 2012, including being used in the calendar year for which it is in effect.

**Robert B. Zoellick,**

*United States Trade Representative.*

[FR Doc. 02–17992 Filed 7–16–02; 8:45 am]

**BILLING CODE 3190–01–U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Revised Noise Exposure Maps Roanoke Regional Airport

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the revised noise exposure maps submitted by the Roanoke Regional Airport Commission for Roanoke Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps is June 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** Maria Stanco, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530, (516) 227–3808.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Roanoke Regional Airport are in compliance with applicable requirements of Part 150, effective June 18, 2002.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Roanoke Regional Airport Commission. The specific maps under consideration are the noise exposure maps identified as Figure 5–1 (2000 DNL Contours) and Figure 5–2 (2005 DNL Contours) in the submission. The FAA has determined that these maps for the Roanoke Regional Airport are in compliance with applicable requirements. This determination is effective on June 18, 2002. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 621, Washington, DC 20591.

Federal Aviation Administration, Washington Airports District Office, 23723 Air Freight Lane, Cargo 5 Building–2nd Floor, Dulles, VA 20166.

Roanoke Regional Airport Commission, 5202 Aviation Drive, Roanoke, VA 24012.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued on June 18, 2002 in Jamaica, NY.

**Robert B. Mendez,**

*Manager, Airports Division, Eastern Region.*

[FR Doc. 02–18023 Filed 7–16–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent ot Prepare an Environmental Impact Statement and To Conduct Environmental Scoping for Improvements To the O'Hare International Airport, in Chicago, IL

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Issuance of A Notice of Intent (NOI) to Prepare an Environmental Impact Statement and to Conduct Public Scoping Meetings.

**SUMMARY:** This NOI announces the Federal Aviation Administration's (FAA) intention to prepare an Environmental Impact Statement and to conduct public scoping meetings for a number of potential modernization and improvement initiatives at Chicago's O'Hare International Airport. Due both to the anticipated high level of interest in matters pertaining to O'Hare International Airport, and a desire to

fully accommodate potentially interested persons, agencies, and other entities, the FAA will conduct two (2) agency scoping meetings and two (2) public scoping meetings. The agency scoping meetings will be conducted as follows: Monday, August 19, 2002 from 10 a.m. to 1 p.m. at the Illinois Department of Transportation's (IDOT) Auditorium Conference Room located in the IDOT Offices at 2300 South Dirksen Parkway in Springfield, Illinois; and on Tuesday, August 20, 2002 from 10 a.m. to 1 p.m. in the Metcalfe Federal Building's Lake Ontario Conference Room (12th floor) at 77 West Jackson Boulevard, in Chicago, Illinois. The public scoping meetings will be conducted as follows: Wednesday, August 21, 2002, from 4 p.m. to 8 p.m. in the Fountain Blue Banquets facility located at 2300 South Mannheim Road, in Des Plaines, Illinois; and on Thursday, August 22, 2002, from 4 p.m. to 8 p.m. in the Avalon Banquets facility located at 1905 East Higgins Road, in Elk Grove Village, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Michael W. MacMullen, Airports Environmental Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Mr. MacMullen can be contracted by phone at (847) 294–7522 (voice) and at (847) 294–7046 (facsimile).

**SUPPLEMENTARY INFORMATION:** The FAA has decided to prepare an Environmental Impact Statement (EIS) addressing specific improvements at and adjacent to O'Hare International Airport. As presently conceived, the runway construction component of the O'Hare Modernization Program would involve: a new North Runway 9–27, a relocation of existing Runway 18–36 (Arrival Runway 9R–27L), a relocation of existing Runway 14L–32R (arrival Runway 9L–27R), a relocation of existing Runway 14R–32L (South Runway 9–27), an extension of existing Runway 9R–27L, and an extension of existing Runway 9L–27R. Overall, the proposed project would result in O'Hare International Airport ultimately having a total of eight runways: six parallel east-west runways, and two parallel runways oriented in the northeast-southwest direction. In addition, the O'Hare Modernization Program would also potentially involve relocation of some or all existing navigation aids, placement of new navigation aids, revision to existing air traffic control procedures, provision of a new western access to the Airport, additional terminal facilities, and various roadway and rail line relocations. Finally, the potential acquisition of approximately 539 housing units, 109 businesses, and 433 acres of property outside of the Airport's present boundaries is also envisioned. The purpose and need for the above-identified improvements will be presented and reviewed in FAA's forthcoming EIS. In addition, reasonable alternatives, including the ''no-build,'' use of other existing/proposed airports, alternative O'Hare configurations, and a different number of O'Hare runways alternatives will all be considered.

Federal, State, local agencies, and other interested parties, are invited to make comments and suggestions in order to ensure that the full range of environmental issues related to the above-identified matters are identified. Copies of a scoping document providing additional detail can be obtained by contacting the FAA informational contact listed above. The FAA informational contact person identified above should also receive any scoping comments and suggestions by no later than close of business on Friday, September 13, 2002.

Dated: Issued in Des Plaines, Illinois on July 5, 2002.

**Philip M. Smithmeyer,**

*Manager, Chicago Airports District Office, Great Lakes Region.*

[FR Doc. 02–18014 Filed 7–16–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 159: Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 159 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS).

**DATES:** The meeting will be held August 12–16, 2002, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street NW., Suite 805, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://222.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting. **Note:** *Specific working group sessions will be held August 12–15.* The plenary agenda will include:

- April 16:
  - Opening Plenary Session (Welcome and Introductory Remarks, Approve Minutes of Previous Meeting)
  - Review Working Group (WG) Progress and Identify Issues for Resolution
  - Global Positioning System (GPS)/ 3rd Civil Frequency (WG–1)
  - GGPS/Wide Area Augmentation System (WAAS) (WG–2)
  - GPS/GLONASS (WG–2A)
  - GPS/Inertial (WG–2C)
  - GPS/Precision Landing Guidance (WG–4)
  - GPS/Airport Surface Surveillance (WG–5)
  - GPS/Interference (WG–6)
  - SC–159 Ad Hoc
- Review of EUROCAE activities
- Review/Approve revised DO–235, Assessment of Radio Frequency Interface Relevant to the GNSS, RTCA Paper No. 157–02/SC 159–896
  - Review/Approve Errata to DO–229C, RTCA Paper No. 082–02/ SC159–893.
  - Closing Plenary Session (Assignment/Review of Future Work, Other Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 11, 2002.

**Janice L. Peters,**

*FAA Special Assistant, RTCA Advisory Committee.*

[FR Doc. 02–18012 Filed 7–16–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 194: Air Traffic Management (ATM) Data Link Implementation

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 194 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 194: Air Traffic Management (ATM) Data Link Implementation.

**DATES:** The meeting will be held August 5–7, 2002, staring at 1 p.m. on August 5 and at 1 p.m. on August 7.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 194 meeting. The agenda will include:

- August 5:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda, Review/Approve Minutes of Previous Meeting, Working Group Reports)
  - Review and Update revised Controller-Pilot Data Link Communication (CPDLC)
  - Program Determine need for proposed changes, if any, to SC–194 Terms of Reference
  - Determine near and mid-term SC–194 activities
  - Other Business
- August 6:
  - Working Group Meetings as scheduled by WG Leaders
- August 7:
  - Working Group Meetings Continued
  - Closing Plenary Session (Review Agenda, Working Group Reports, Other Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 11, 2002.

**Janice L. Peters,**

*FAA Special Assistant, RTCA Advisory Committee.*

[FR Doc. 02–18013 Filed 7–16–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Docket Number: RSPA–98–4957**

### Pipeline Safety: Renewal of Information Collection: OMB Approval and Comment Request

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

**ACTION:** Request for public comments and OMB approval.

**SUMMARY:** This notice requests public participation in the Office of Management and Budget (OMB) approval process regarding the renewal of an existing RSPA/Office of Pipeline Safety (OPS) collection of information for Operator Qualification of Pipeline Personnel. RSPA/OPS published a notice requesting public comment on April 18, 2002 (67 FR 19312–13). RSPA/OPS is offering the public another opportunity to comment on this information collection. It is also requesting OMB approval for renewal of this information collection under the Paperwork Reduction Act of 1995. The public is invited to submit comments on ways to minimize the burden associated with collection of information related to the operator qualification requirements in the pipeline safety regulations, as well as other factors listed in the body of this notice.

**DATES:** Comments on this notice must be received within 30 days of the publication date of this notice to be assured of consideration.

**ADDRESS:** Interested persons are invited to send comments directly to The Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place Washington, DC 20503 ATTN: Desk Officer for the Department of Transportation.

Comments can be reviewed at the U.S. Department of Transportation Dockets Facility, Plaza 401, 400 Seventh Street, SW., Washington, DC which is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays, when the facility is closed. Documents pertaining to this notice can be viewed in this docket. The docket can also be viewed electronically at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Marvin Fell, (202) 366–6205, to ask questions about this notice; or write by e-mail to *marvin.fell@rspa.dot.gov.*

**SUPPLEMENTARY INFORMATION:** In response to the notice published on April 18, 2002 (67 FR 19312–13) one comment was received. A company which provides records management services for the pipeline industry suggested that RSPA/OPS overestimated the costs of this information collection. Because this was the only comment received, RSPA/OPS does not believe there is enough evidence to reduce the cost estimate of this information collection.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

*Title:* National Operator Qualification of Pipeline Personnel.

*Type of Request:* Renewal of existing information collection.

*Abstract:* Congressional concern with the lack of skills of some pipeline personnel was expressed in the Pipeline Safety and Reauthorization Act of 1988 (Pub. L. 100–561). It authorized the Secretary of Transportation to require all individuals responsible for the operation and maintenance of pipeline facilities to be properly qualified to safely perform tasks on pipeline facilities. The operator qualification requirements are described in the pipeline safety regulations at 49 CFR Part 192, subpart N and 49 CFR Part 195, subpart G.

*Respondents:* Gas and hazardous liquid pipeline operators.

*Estimated Number of Respondents:* 50,000.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 466,667 hours.

Issued in Washington, DC on July 12, 2002.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 02–18035 Filed 7–16–02; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Pipeline Safety: Revised Natural Gas Transmission Pipeline Incident and Annual Report Forms

**AGENCY:** Research and Special Programs Administration, Department of Transportation.

**ACTION:** Notice, Correction.

**SUMMARY:** In the **Federal Register** of June 5, 2002, (67 FR 38698) the Research and Special Programs Administration published a Notice document to owners and operators of natural gas transmission systems, issuing an Advisory Bulletin to inform gas transmission pipeline owners and operators that revised forms for incident reporting for gas transmission and gathering systems and annual reporting for gas transmission and gathering systems are ready and available for use. The document contained the wrong Advisory Bulletin number. This document corrects the Advisory Bulletin number from ADB–02–01 to the correct number ADB–02–02.

**EFFECTIVE DATE:** June 5, 2002.

**FOR FURTHER INFORMATION CONTACT:** Roger Little, (202) 366–4569, or by e-mail, *roger.little@rspa.dot.gov.* This document can be viewed at the OPS home page at *http://ops.dot.gov.*

Issued in Washington, DC on July 12, 2002.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 02–18034 Filed 7–16–02; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–473 (Sub-No. 1X)]**

### West Texas & Lubbock Railroad Company, Inc.—Abandonment Exemption—in Lubbock County, TX

West Texas & Lubbock Railroad Company (WTLR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.1-mile line of railroad from milepost 1.1, at University Avenue, eastward to milepost 0.0, at the interchange with The Burlington Northern and Santa Fe Railway Company near North Avenue U, in the City of Lubbock, Lubbock County, TX. The line traverses United States Postal Service Zip Code 79415.

WTLR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; [1] (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 16, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 29, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 6, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representatives: Gary A. Laakso, Vice President Regulatory Counsel, Rail America, Inc., 5300 Broken Sound Boulevard NW., Second Floor, Boca Raton, FL 33487; and Louis E. Gitomer, Ball Janik LLP, 1455 F St., NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

WTLR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by July 22, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), WTLR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by WTLR's filing of a notice of consummation by July 17, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

Decided: July 10, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 02–17806 Filed 7–16–02; 8:45 am]

**BILLING CODE 4915–00–P**

[1] WTLR states that it is rerouting the overhead traffic pursuant to a joint relocation project in *West Texas & Lubbock Railroad Company, Inc. and The Burlington and Northern and Santa Fe Railway Company—Joint Relocation Projection Exemption—in Lubbock, TX,* STB Finance Docket No. 34168 (STB served Mar. 4, 2002).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which is currently set at $1,100. *See* 49 CFR 1002.2(f)(25).

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

July 10, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995,

Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before August 16, 2002 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0024.

*Form Number:* IRS Form 843.

*Type of Review:* Extension.

*Title:* Claim for Refund and Request for Abatement.

*Description:* Internal Revenue Code (IRC) sections 6402, 6404, and sections 301.6404–2, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain action by the IRS. Form 843 is used by taxpayers to claim these refunds, credits, or abatements.

*Respondents:* Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.

*Estimated Number of Respondents/ Recordkeepers:* 545,500.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—26 min.

Learning about the law or the form—7 min.

Preparing the form—20 min.

Copying, assembling, and sending the form to the IRS—28 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 845,525 hours.

*OMB Number:* 1545–0177.

*Form Number:* IRS Form 4684.

*Type of Review:* Extension.

*Title:* Casualties and Thefts.

*Description:* Form 4684 is used by taxpayers to compute their gain or loss from casualties or thefts, and to summarize such gains and losses. The data is used to verify that the correct gain or loss has been computed.

*Respondents:* Individuals or households, Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 170,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—1 hr., 58 min.

Learning about the law or the form—26 min.

Preparing the form—1 hr., 4 min.

Copying, assembling, and sending the form to the IRS—34 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 691,900 hours.

*OMB Number:* 1545–0216.

*Form Number:* IRS Form 5713, Schedules A, B, and C.

*Type of Review:* Extension.

*Title:* International Boycott Report.

*Description:* Form 5713 and related Schedules A, B, and C are used by any entity that has operations in a ''boycotting'' country. If that entity cooperates with or participates in an international boycott it loses a portion of the foreign tax credit, or deferral of FSC and IC–DISC benefits. The IRS uses Form 5713 to determine if any of the above benefits should be lost. The information is also used as the basis for a report to the Congress.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents/ Recordkeepers:* 3,875.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| Form | Recordkeeping | Learning about the law or the form | Preparing and sending the form to the IRS |
|---|---|---|---|
| 5713 | 22 hr., 0 min | 2 hr., 21 min | 4 hr., 1 min. |
| Sch. A (5713) | 3 hr., 6 min | 12 min | 15 min. |
| Sch. B (5713) | 3 hr., 21 min | 1 hr., 59 min | 2 hr., 7 min. |
| Sch. C (5713) | 5 hr., 15 min | 1 hr., 47 min | 1 hr., 57 min. |

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 104,236 hours.

*OMB Number:* 1545–0748.

*Form Number:* IRS Form 2678.

*Type of Review:* Extension.

*Title:* Employer Appointment of Agent.

*Description:* 26 U.S.C. 3504 authorizes an employer to designate a fiduciary, agent, etc., to perform the same acts as required of employers for purposes of employment taxes.

*Respondents:* Business or other for-profit, Not-for-profit institutions, Farms, Federal Government.

*Estimated Number of Respondents:* 95,200.

*Estimated Burden Hours Per Respondent:* 30 minutes.

*Frequency of Response:* Other (as necessary).

*Estimated Total Reporting Burden:* 47,600 hours.

*OMB Number:* 1545–1783.

*Regulation Project Number:* REG–107184–00 NPRM and Temporary.

*Type of Review:* Extension.

*Title:* Guidance Necessary to Facilitate Electronic Tax Administration.

*Description:* The regulations provide a regulatory statement of IRS authority to prescribe what return information or documentation must be filed with a return, statement or other document required to be made under any provision of the internal revenue laws or regulations. In addition, the regulations eliminate regulatory impediments to electronic filing of Form 1040..

*Respondents:* Individuals or households, Business or other for-profit.

*Estimated Number of Respondents:* 1.

*Estimated Burden Hours Per Respondent:* 1 hour.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 1 hour.

*Clearance Officer:* Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget Room 10235, New Executive Office Building, Washington, DC 20503.

**Mary A. Able,**

*Departmental Reports, Management Officer.*

[FR Doc. 02–17919 Filed 7–16–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

## Bureau of Alcohol, Tobacco and Firearms

## Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Requisition For Forms or Publications, ATF F 1370.3 and Requisition For Firearms/Explosives Forms, ATF F 1370.2.

**DATES:** Written comments should be received on or before September 16, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Linda Barnes, Document Services Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**SUPPLEMENTARY INFORMATION:**

*Title:* Requisition For Forms or Publications and Requisition For Firearms/Explosives Forms.

*OMB Number:* 1512–0001.

*Form Number:* ATF F 1370.3 and ATF F 1370.2.

*Abstract:* These forms are used by the general public to request or order forms or publications from the ATF Distribution Center. The forms notify ATF of the quantity required by the respondent and provide a guide as to annual usage of ATF forms or publications by the general public.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 30,000.

*Estimated Total Annual Burden Hours:* 1,725.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 02–17995 Filed 7–16–02; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Personnel Questionnaire Alcohol and Tobacco Products.

**DATES:** Written comments should be received on or before September 16, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Personnel Questionnaire Alcohol and Tobacco Products.

*OMB Number:* 1512–0034.

*Form Number:* ATF F 5000.9.

*Abstract:* The information on ATF F 5000.9 enables ATF to determine whether or not an applicant for an alcohol or tobacco permit meets the minium qualifications. The form identifies the individual, residence, business background and financial sources for business and criminal records. If the applicant is found not qualified, the permit may be denied.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 5,000.

*Estimated Total Annual Burden Hours:* 10,000.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 02–17996 Filed 7–16–02; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid to the United States.

**DATES:** Written comments should be received on or before September 16, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid to the United States.

*OMB Number:* 1512–0057.

*Form Number:* ATF F 487–B (5170.7).

*Abstract:* ATF F 487–B (5170.7) is used to document the shipment of taxpaid Puerto Rican articles into the U.S. The form is verified by Puerto Rican and U.S. Treasury officials to certify that products are either taxpaid or deferred under the appropriate bond and serves as a method of protection of the revenue.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 20.

*Estimated Total Annual Burden Hours:* 100.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 02–17997 Filed 7–16–02; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Claim for Drawback of Tax on Cigars, Cigarettes, Cigarette Papers and Cigarette Tubes.

**DATES:** Written comments should be received on or before September 16, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Claim for Drawback of Tax on Cigars, Cigarettes, Cigarette Papers and Cigarette Tubes.

*OMB Number:* 1512–0117.

*Form Number:* ATF F 5620.7 (2147).

*Abstract:* ATF 5620.7 (2147) documents that cigars, cigarettes, cigarette papers and tubes were shipped to a foreign country, Puerto Rico, the Virgin Islands or a possession of the United States and that the tax was already paid on these tobacco articles. ATF F 5620.7 (2147) is the claim form that a person who paid the tax on the articles uses to file for a drawback or refund for the tax that has already been paid.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 288.

*Estimated Total Annual Burden Hours:* 144.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 02–17998 Filed 7–16–02; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Inventory—Export Warehouse Proprietor.

**DATES:** Written comments should be received on or before September 16, 2002 to be assured of consideration.

**ADDRESS:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Inventory—Export Warehouse Proprietor.

*OMB Number:* 1512–0171.

*Form Number:* ATF F 5220.3.

*Abstract:* ATF F 5220.3 is used by export warehouse proprietors to record inventories that are required by laws and regulations. The form provides a uniform format for recording inventories and establishes a contingent tax liability on tobacco products.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 10.

*Estimated Total Annual Burden Hours:* 50.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 02–17999 Filed 7–16–02; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Report of Theft or Loss of Explosives.

**DATES:** Written comments should be received on or before September 16, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Joe Angilloetta, Public Safety Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–4565.

**SUPPLEMENTARY INFORMATION:**

*Title:* Report of Theft or Loss of Explosives.

*OMB Number:* 1512–0185.

*Form Number:* ATF F 5400.5.

*Abstract:* Losses or theft of explosives must, by statute, be reported within 24 hours of the discovery of the loss of theft. This form contains the minimum information necessary for ATF to initiate criminal investigations.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 250.

*Estimated Total Annual Burden Hours:* 450.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 02–18000 Filed 7–16–02; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

**DATES:** Written comments should be received on or before September 16, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

*OMB Number:* 1512–0190.

*Form Number:* ATF F 5100.11.

*Abstract:* ATF F 5100.11 is completed by exporters to report the withdrawal of spirits, denatured spirits, and wines from internal revenue bonded premises, without payment of tax for direct exportation, transfer to a foreign trade zone, customs manufacturer's bonded warehouse or customs bonded warehouse or for use as supplies on vessels or aircraft.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 300.

*Estimated Total Annual Burden Hours:* 6,000.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 02–18001 Filed 7–16–02; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application For Operating Permit Under 26 U.S.C. 5171(d).

**DATES:** Written comments should be received on or before September 16, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application For Operating Permit Under 26 U.S.C. 5171 (d).

*OMB Number:* 1512–0195.

*Form Number:* ATF F 5110.25.

*Abstract:* ATF F 5110.25 is completed by proprietors of distilled spirits plants who engage in certain specified types of activities. ATF personnel use the information on the form to identify the applicant, the location of the business and the types of activities to be conducted.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 80.

*Estimated Total Annual Burden Hours:* 20.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 02–18002 Filed 7–16–02; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Special Tax Registration and Return (Alcohol and Tobacco) and the Special Tax Registration and Return (National Firearms Act).

**DATES:** Written comments should be received on or before September 16, 2002, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions

should be directed to Timothy DeVanney, Revenue Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

**SUPPLEMENTARY INFORMATION:**

*Title:* Special Tax Registration and Return (Alcohol and Tobacco) and Special Tax Registration and Return (National Firearms Act).

*OMB Number:* 1512–0472.

*Form Number:* ATF F 5630.5 and ATF F 5630.7.

*Abstract:* ATF F 5630.5 and ATF F 5630.7 are completed by persons engaged in certain alcohol, tobacco and firearms related businesses, respectively. Both forms are used to register and/or pay a special occupational tax, as required by statute. Upon receipt of the tax, a special tax stamp is issued.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit, individuals or households, and not-for-profit institutions.

*Estimated Number of Respondents:* 90,700.

*Estimated Total Annual Burden Hours:* 72,778.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

**William T. Earle,**

*Assistant Director (Management), CFO.*

[FR Doc. 02–18003 Filed 7–16–02; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Letterhead Request For Information in Regard to Federal Firearms Dealer's Records (Dealer's Records of Acquisition, Disposition and Supporting Data).

**DATES:** Written comments should be received on or before September 16, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to, Chief, Firearms Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7770.

**SUPPLEMENTARY INFORMATION:**

*Title:* Letterhead Request For Information in Regard to Federal Firearms Dealer's Records (Dealer's Records of Acquisition, Disposition and Supporting Data) OMB Number: 1512–0493 Form Number: ATF F 5300.3 Abstract: ATF F 5300.3 gives the user a simplified format to list the required information ATF needs to perform its functions in regard to the law. The respondent saves time because the questions are simple and a return address is supplied. The form is used to maintain a current status of firearms licensees.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension

*Affected Public:* Business or other for-profit, individuals or households

*Estimated Number of Respondents:* 28,000.

*Estimated Total Annual Burden Hours:* 2,380.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

**William T. Earle,**

*Assistant Director (Management), CFO.*

[FR Doc. 02–18004 Filed 7–16–02; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Marks on Wine Containers.

**DATES:** Written comments should be received on or before September 16, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Marks on Wine Containers.

*OMB Number:* 1512–0503.

*Recordkeeping Requirement ID Number:* ATF REC 5120/3.

*Abstract:* ATF requires that wine on wine premises be identified by statements of information on labels or contained in marks. ATF uses this information to validate the receipts of excise tax revenue by the Federal Government. All of the required information is drawn from cost accounting records maintained to establish the price of each product. These records are maintained by manufacturers on all products even in the absence of marking requirements. Therefore, ATF does not impose any burden on the respondent. The record retention period is only required as long as the container is used for storing wine. There is no retention period beyond the time the wine is stored in the container.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 1,560.

*Estimated Total Annual Burden Hours:* 1.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

**William T. Earle,**

*Assistant Director (Management), CFO.*

[FR Doc. 02–18005 Filed 7–16–02; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for National Firearm Examiner Academy.

**DATES:** Written comments should be received on or before September 16, 2002 to be assured of consideration.

**ADDRESS:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Thomas Cannon, Career Development Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 565–4570.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for National Firearm Examiner Academy.

*OMB Number:* 1512–0549.

*Form Number:* ATF F 6330.1.

*Abstract:* The Office of Training and Professional Development has a training program for entry level firearm and toolmark examiners. All law enforcement organizations who rely on ballistic and forensic firearms examinations require the services of this technical expertise. The application form allows ATF to process eligible candidates.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents:* 75.

*Estimated Total Annual Burden Hours:* 13.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

**William T. Earle,**

*Assistant Director (Management), CFO.*

[FR Doc. 02–18006 Filed 7–16–02; 8:45 am]

**BILLING CODE 4810–31–P**


Federal Register

**Wednesday,**
**July 17, 2002**

## Part II

# Environmental Protection Agency

**40 CFR Part 112**

**Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 112**

**[FRL–7241–5]**

**RIN 2050–AC62**

## Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or the Agency or we) is amending the Oil Pollution Prevention regulation promulgated under the authority of the Clean Water Act. This rule includes requirements for Spill Prevention, Control, and Countermeasure (SPCC) Plans, and for Facility Response Plans (FRPs). The final rule includes new subparts outlining the requirements for various classes of oil; revises the applicability of the regulation; amends the requirements for completing SPCC Plans; and makes other modifications. The final rule also contains a number of provisions designed to decrease regulatory burden on facility owners or operators subject to the rule, while preserving environmental protection. We expect that today's rule will reduce the paperwork burden associated with SPCC requirements by approximately 40%. We have also made the regulation easier to understand and use.

**DATES:** This rule is effective August 16, 2002.

**ADDRESSES:** The official record for this rulemaking is located in the Superfund Docket at 1235 Jefferson Davis Highway, Crystal Gateway 1, Arlington, Virginia 22202, Suite 105. The docket numbers for the final rule are SPCC–1P, SPCC–2P, and SPCC–7. The record supporting this rulemaking is contained in the Superfund Docket and is available for inspection by appointment only, between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to review the docket by calling 703–603–9232. You may copy a maximum of 100 pages from any regulatory docket at no cost. If the number of pages exceeds 100, however, we will charge you $0.15 for each page after 100. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

**FOR FURTHER INFORMATION CONTACT:** Hugo Paul Fleischman, Oil Program Center, U.S. Environmental Protection Agency, at 703–603–8769 (*fleischman.hugo@epa.gov*); or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, DC metropolitan area, 703–412–9810)(*epahotline@bah.com*). The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672 (in the Washington, DC metropolitan area, 703–412–3323). You may wish to visit the Oil Program's Internet site at *www.epa.gov/oilspill.*

**SUPPLEMENTARY INFORMATION:** The contents of this preamble are as follows:



### I. Entities Affected by This Rule

Entities Potentially Regulated by this Rule Include:

| CATEGORY | NAICS Codes |
|---|---|
| Crop and Animal Production | 111–112. |
| Crude Petroleum and Natural Gas Extraction | 211111. |
| Coal Mining, Non-Metallic Mineral Mining and Quarrying | 2121/2123/213114/213116. |
| Electric Power Generation, Transmission, and Distribution | 2211. |
| Heavy Construction | 234. |
| Petroleum and Coal Products Manufacturing | 324. |
| Other Manufacturing | 31–33. |
| Petroleum Bulk Stations and Terminals | 42271. |
| Gasoline Stations/Automotive Rental and Leasing | 4471/5321. |
| Heating Oil Dealers | 454311. |
| Transportation (including Pipelines), Warehousing, and Marinas | 482–486/488112–48819/4883/48849/492–493/71393. |
| Elementary and Secondary Schools, Colleges | 6111–6113. |
| Hospitals/Nursing and Residential Care Facilities | 622–623. |

''NAICS'' refers to the North American Industry Classification System, a method of classifying various facilities. The NAICS was adopted by the United States, Canada, and Mexico on January 1, 1997 to replace the Standard Industrial Classification (SIC) code. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. It lists the types of entities of which we are now aware that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility could be regulated by this action, you should carefully examine the criteria in §§ 112.1 and 112.20 of title 40 of the Code of Federal Regulations and of today's rule, which explain the applicability of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

## II. Introduction

### A. Statutory Authority

Section 311(j)(1)(C) of the Clean Water Act (CWA or Act), 33 U.S.C. 1251, requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. The President has delegated the authority to regulate non-transportation-related onshore facilities under section 311(j)(1)(C) of the Act to the U.S. Environmental Protection Agency. Executive Order 12777, section 2(b)(1), (56 FR 54757, October 22, 1991), superseding Executive Order 11735, 38 FR 21243. By this same Executive Order, the President has delegated similar authority over transportation-related onshore facilities, deepwater ports, and vessels to the U.S. Department of Transportation (DOT), and authority over other offshore facilities, including associated pipelines, to the U.S. Department of the Interior (DOI). A Memorandum of Understanding (MOU) among EPA, DOI, and DOT effective February 3, 1994, has redelegated the responsibility to regulate certain offshore facilities located in and along the Great Lakes, rivers, coastal wetlands, and the Gulf Coast barrier islands from DOI to EPA. *See* Executive Order 12777, section 2(i) regarding authority to redelegate. The MOU is included as Appendix B to 40 CFR part 112. An MOU between the Secretary of Transportation and the EPA Administrator, dated November 24, 1971 (36 FR 24080), established the definitions of non-transportation-related and transportation-related facilities. The definitions from the 1971 MOU are included as Appendix A to 40 CFR part 112.

### B. Background of This Rulemaking

Part 112 of 40 CFR outlines the requirements for both the prevention of and the response to oil spills. The prevention aspect of the rule requires preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans. This rulemaking affects SPCC and FRP requirements. The SPCC requirements were originally promulgated on December 11, 1973 (38 FR 34164), under the authority of section 311(j)(1)(C) of the Act. The regulation established spill prevention procedures, methods, and equipment requirements for non-transportation-related onshore and offshore facilities with aboveground storage capacity greater than 1,320 gallons (or greater than 660 gallons in a single container), or completely buried oil storage capacity greater than 42,000 gallons. Regulated facilities were also limited to those that, because of their location could reasonably be expected to discharge oil in harmful quantities into the navigable waters of the United States or adjoining shorelines.

We have amended the SPCC requirements a number of times, and those amendments are described in an October 22, 1991 **Federal Register** proposed rule. 56 FR 54612. In the October 1991 document, in addition to the description of past amendments, EPA proposed new revisions that involved changes in the applicability of the regulation and the required procedures for the completion of SPCC Plans, as well as the addition of a facility notification provision. The proposed rule also reflected changes in the jurisdiction of section 311 of the Act made by amendments to the Act in 1977 and 1978. We have finalized some of those proposed revisions, with modifications, in this rule.

On February 17, 1993, we again proposed clarifications of and technical changes to the SPCC rule. We also proposed facility response planning requirements to implement the Oil Pollution Act of 1990 (OPA). 58 FR 8824. The proposed changes to the SPCC rule included clarifications of certain requirements, response plans for facilities without secondary containment, prevention training, and methods of determining whether a tank would be subject to brittle fracture. We promulgated the facility response planning requirements of the 1993 proposal on July 1, 1994, (59 FR 34070), and they are codified at 40 CFR 112.20–112.21. We have finalized the proposed 1993 prevention requirements, with modifications, in this rule.

In 1996, EPA completed a survey and analysis of SPCC facilities. The survey was designed to ensure that data on the sampled facilities could be statistically extrapolated to the nation as a whole for all facilities regulated by EPA's SPCC regulation. We used the results of that survey and analysis to develop a proposed rule affecting SPCC facilities on December 2, 1997. 62 FR 63812. The survey and analytical results are part of the administrative record for this rulemaking.

The purpose of the 1997 proposal was to reduce the information collection burden imposed by the prevention requirements in the SPCC rule and the FRP rule without creating an adverse impact on public health or the environment. We also proposed changes in information collection requirements for facility response plans, but have withdrawn them in this rulemaking. Those changes would have affected the calculation of storage capacity at certain facilities for response plan purposes. 62 FR 63816. However, see new § 112.1(d)(6). The 1997 SPCC proposals, as modified, are finalized in this rule.

On April 8, 1999, we proposed revision to facility response plan requirements. 64 FR 17227. The main purpose of the proposal was to provide a more specific methodology for planning response resources that can be used by an owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils. We finalized that proposal on June 30, 2000. 65 FR 40776. The final rule included four new definitions that are applicable to all of part 112.

## III. Summary of Major Rule Provisions

For your convenience, we have developed a table showing a summary of the major revisions in this rule. The table does not always use exact rule text, but summarizes rule provisions. For exact rule text, see 40 CFR part 112 (2000) for text of the current rule; for exact text of the revised rule, see the rule text following this preamble.

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES

| Current SPCC rule | Revised SPCC rule | Comment |
|---|---|---|
| Section 112.1: General Applicability | | |

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

| Current SPCC rule | Revised SPCC rule | Comment |
|---|---|---|
| § 112.1(b): Explains that the SPCC rule applies to owners or operators of facilities that drill, produce, gather, store, process, refine, transfer, distribute, or consume oil and oil products, and might reasonably be expected to discharge oil in harmful quantities into or upon navigable waters of the United States or adjoining shorelines. | § 112.1(b): Explains that the SPCC rule applies to owners or operators of facilities that drill, produce, gather, store, process, refine, transfer, distribute, use, or consume oil and oil products, and might reasonably be expected to discharge oil in quantities that may be harmful into or upon navigable waters of the United States or adjoining shorelines, or waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or Deepwater Port Act, or affecting certain natural resources. | § 112.1(b): The revised rule clarifies that users of oil are also subject to the rule. It also expands the scope of the rule to conform with the expanded jurisdiction in the amended Clean Water Act. |
| § 112.1(d)(2)(i): Section 112.1(d)(2) exempts from the rule a facility which meets both criteria specified in § 112.1(d)(2)(i) and (ii). The first criterion, found in § 112.1(d)(2)(i) is: the completely buried storage capacity of the facility is 42,000 gallons or less of oil. The threshold applies to storage capacity contained in operating equipment as well as to storage capacity contained in tanks. | § 112.1(d)(2)(i): Section 112.1(d)(2) exempts from the rule a facility which meets both criteria specified in § 112.1(d)(2)(i) and (ii). The first criterion, § 112.1(d)(2)(i) is: the completely buried storage capacity of the facility is 42,000 gallons or less of oil. For purposes of this exemption, the completely buried storage capacity of a facility does not include the capacity of completely buried tanks, as defined in § 112.2, that are currently subject to all of the technical requirements of 40 CFR part 280 or all of the technical requirements of a State program approved under 40 CFR part 281. Also, the completely buried storage capacity of a facility does not include the capacity of completely buried tanks that are ''permanently closed,'' as defined in § 112.2. The threshold applies to storage capacity contained in operating equipment as well as to storage capacity contained in tanks. | § 112.1(d)(2)(i): The revised rule provides that completely buried tanks subject to all of the technical requirements of parts 280 or 281 do not count in the calculation of the 42,000 gallon threshold. It also clarifies that permanently closed tanks do not count in the calculation of that threshold. The threshold continues to apply to storage capacity contained in operating equipment as well as to storage capacity contained in tanks. |
| § 112.1(d)(2)(ii): The second criterion, found in § 112.1(d)(2)(ii) is: the storage capacity, which is not buried, of the facility is 1,320 gallons or less of oil, provided that no single container has a storage capacity of greater than 660 gallons. The threshold applies to storage capacity contained in operating equipment as well as to storage capacity in containers. | § 112.1(d)(2)(ii): The second criterion found in § 112.1(d)(2)(ii) is: the aboveground storage capacity of the facility is 1,320 gallons or less of oil. For purposes of this exemption, only containers of oil with a capacity of 55 gallons or greater are counted. The aboveground storage capacity of a facility does not include the capacity of containers that are ''permanently closed,'' as defined in 112.2. The threshold applies to storage capacity contained in operating equipment as well as to storage capacity in containers. | § 112.1(d)(2)(ii): The revised rule raises the threshold for aboveground storage capacity by eliminating the provision that triggers the requirement to prepare and implement an SPCC Plan if any single container has a capacity greater than 660 gallons. It maintains the greater than 1,320 gallon threshold. The revised rule also establishes a de minimis container capacity size to calculate aboveground storage capacity. Only containers with a capacity of 55 gallons or greater are counted in the calculation of aboveground storage capacity. The revised rule clarifies that permanently closed containers do not count in the calculation of aboveground storage capacity. The threshold continues to apply to storage capacity contained in operating equipment as well as to storage capacity in containers. |
| § 112.1(d)(4): No counterpart in current rule ..... | § 112.1(d)(4): Exempts from the SPCC requirements completely buried storage tanks, as defined in § 112.2, as well as connected underground piping, underground ancillary equipment, and containment systems, when such tanks are subject to all of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281, except that such tanks must be marked on the facility diagram as required by § 112.7(a)(3), if the facility is otherwise subject to this part. | § 112.1(d)(4): Completely buried storage tanks subject to all of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281 are no longer required to comply with SPCC provisions, except for the facility diagram. EPA estimates that under this new rule, most gasoline service stations will drop out of the SPCC program. |
| § 112.1(d)(5): No counterpart in current rule ..... | § 112.1(d)(5): The revised rule exempts containers with a storage capacity of less than 55 gallons of oil from all SPCC requirements. | § 112.1(d)(5): In response to comments, EPA has established a minimum size container for purposes of the regulatory threshold. Containers with a storage capacity of less than 55 gallons of oil are exempt from all SPCC requirements. |

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

| Current SPCC rule | Revised SPCC rule | Comment |
|---|---|---|
| § 112.1(d)(6): No counterpart in current rule ..... | § 112.1(d)(6): Exempts any facility or part thereof from the rule, if used exclusively for wastewater treatment and not used to meet any other requirement of part 112. The production, recovery, or recycling of oil is not wastewater treatment for purposes of this paragraph. | § 112.1(d)(6): A facility or part thereof used exclusively for wastewater treatment will no longer be subject to prevention planning unless it is used to meet part 112 requirements. |
| § 112.1(f): No counterpart in current rule ..... | § 112.1(f): Notwithstanding any regulatory exemptions, the Regional Administrator may require that the owner or operator of any facility subject to EPA jurisdiction under section 311(j) of the Clean Water Act (CWA), prepare and implement an SPCC Plan, or any applicable part, to carry out the purposes of the CWA. The rule includes notice and appeal provisions. | § 112.1(f): This amendment gives the Regional Administrator authority to require preparation of an entire SPCC plan, or applicable part, by an owner or operator of a facility exempted from SPCC requirements when it becomes necessary to achieve the purposes of the CWA. This authority will be exercised on a case-by-case basis. The decision to require a Plan could be based on the presence of environmental concerns not adequately addressed under other regulations, or other relevant environmental factors, for example, discharge history. |
| Section 112.2—Definitions | | |
| § 112.2—definition of *facility:* No counterpart in current rule. | § 112.2—definition of *facility:* ''Facility'' is defined as any mobile or fixed, onshore or offshore building, structure, installation, equipment, pipe, or pipeline used in oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil transfer, oil distribution, and waste treatment, or in which oil is used. . . .'' | § 112.2—definition of *facility:* The revised rule clarifies that a facility may be as small as a piece of equipment, for example, a tank, or as large as a military base. |
| Section 112.3: Requirement to prepare and implement Spill Prevention, Control, and Countermeasure Plan | | |
| § 112.3(a): An owner or operator of an onshore or offshore facility in operation on or before January 10, 1974, that has had a discharge to navigable waters or adjoining shorelines, or, due to its location, could reasonably be expected to have a discharge to navigable waters or adjoining shorelines, must prepare and fully implement an SPCC Plan, in writing and in accordance with § 112.7. The owner or operator must prepare the Plan within 6 months, and fully implement it as soon as possible, but not later than within 1 year. | § 112.3(a): An owner or operator (O/O) of an onshore or offshore facility in operation on or before August 16, 2002, that has had a discharge as described in § 112.1(b), or, due to its location, could reasonably be expected to have a discharge as described in § 112.1(b), must prepare a written Plan in accordance with § 112.7 and any other applicable section within 6 months of the effective date of the rule, and implement it as soon as possible, but not later than within 1 year of the effective date of the rule. The O/O of facility that becomes operational after August 16, 2002 through August 18, 2003 must prepare and implement a Plan not later than August 18, 2003. | § 112.3(a): For those facilities already in operation on the effective date of the rule, an owner or operator of a facility subject to the rule must prepare an SPCC Plan within the current time frame of six months. He may take up to an additional six months to implement the Plan. The revised rule extends this same time frame to amendments necessary to bring the Plan into compliance with rule revisions. An owner or operator of a facility becoming operational after August 16, 2002 through August 18, 2003 must prepare and implement a Plan not later than August 18, 2003. |
| § 112.3(b): The owner or operator of an onshore and offshore facility that becomes operational after January 10, 1974, and that has had a discharge to navigable waters or adjoining shorelines, or could reasonably be expected to have a discharge to navigable waters or adjoining shorelines, must prepare an SPCC Plan. Unless the owner or operator is granted an extension of time to prepare and implement the Plan by the Regional Administrator, he must prepare the Plan within 6 months and fully implement it as son as possible, but not later than within 1 year. | § 112.3(b): The owner or operator of an onshore or offshore facility that becomes operational after August 18, 2003, and could reasonably be expected to have a discharge as described in § 112.1(b), from that facility, must prepare and implement an SPCC Plan before beginning operations. | § 112.3(b): The owner or operator of a facility that becomes operational after August 18, 2003 must now prepare and implement an SPCC Plan before beginning operations. The time frame in the current rule is up to 6 months for Plan preparation and up to 6 months more for Plan implementation. |

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

| Current SPCC rule | Revised SPCC rule | Comment |
|---|---|---|
| § 112.3(d): No SPCC Plan is effective to satisfy the requirements of the SPCC rule unless it has been reviewed and certified by a Registered Professional Engineer (PE). By means of this certification the PE, having examined the facility and being familiar with the provisions of the SPCC rule, attests that the SPCC Plan has been prepared in accordance with good engineering practices. The PE's certification does not relieve the owner or operator of an onshore or offshore facility of his duty to prepare and fully implement the Plan in accordance with all applicable requirements. | § 112.3(d): No SPCC Plan is effective to satisfy the requirements of the SPCC rule unless it has been reviewed and certified by a PE. By means of this certification the PE attests that: (i) he is familiar with the requirements of the SPCC rule; (ii) he or his agent has visited and examined the facility; (iii) the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of the SPCC rule; (iv) procedures for required inspections and testing have been established; and, (v) the Plan is adequate for the facility. The PE's certification does not relieve the owner or operator of an onshore or offshore facility of his duty to prepare and fully implement the Plan in accordance with all applicable requirements. | § 112.3(d): The revised rule adds specificity to the PE's attestation. The specificity includes a requirement that the PE consider applicable industry standards and certify that the Plan is prepared in accordance with part 112 requirements. Presently, the PE must attest only that the Plan has been prepared in accordance with good engineering practice. The revised rule allows an agent of the PE to visit and examine the facility in place of the PE, but the PE must review the agent's work, and certify the Plan. |
| § 112.3(e): An owner or operator of a facility for which an SPCC Plan is required must maintain a complete copy of the Plan at the facility if the facility is attended as least 8 hours per day, or at the nearest field office if the facility is not so attended, and must make the Plan available to the Regional Administrator for on-site review during normal working hours. | § 112.3(e): An owner or operator of a facility for which an SPCC Plan is required must maintain a complete copy of the Plan at the facility if the facility is attended at least 4 hours per day, or at the nearest field office if the facility is not so attended, and must make the Plan available to the Regional Administrator for on-site review during normal working hours. | § 112.3(e): The revised rule requires the facility owner or operator to maintain a copy of the Plan at the facility if it is attended at least 4 hours a day, in contrast to the current requirement to maintain it at the facility if it is attended at least 8 hours a day. |
| § 112.3(f): The Regional Administrator may authorize an extension of time for the preparation and implementation of an SPCC Plan, when he finds that the owner or operator cannot comply with all SPCC requirements as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond his control and without his fault, or the fault of his agents or employees. The rule also specifies what the letter requesting an extension must contain. | § 112.3(f): The Regional Administrator may authorize an extension of time for the preparation and implementation of an SPCC Plan, or any amendment thereto, when he finds that the owner or operator cannot comply with all SPCC requirements as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond his control and without his fault, or the fault of his agents or employees. The rule also specifies what the letter requesting an extension must contain. | § 112.3(f): The revised rule provides for extension for amendments of the Plan, as well as the entire Plan. |
| Section 112.4: Amendment of Spill Prevention, Control, and Countermeasures Plan by Regional Administrator | | |
| § 112.4(a): Whenever an SPCC facility has: (1) discharged more than 1,000 U.S. gallons of oil into or upon the navigable waters of the United States or adjoining shorelines in a single discharge to navigable waters or adjoining shorelines, or (2) discharged oil in harmful quantities, as defined in 40 CFR part 110, into or upon the navigable waters of the United States or adjoining shorelines in each of 2 discharges to navigable waters or adjoining shorelines, reportable under section 311(b)(5) of the Clean Water Act, within any 12-month period, the owner or operator of the facility must submit to the Regional Administrator (RA), within 60 days from the time the facility becomes subject to this section, 10 different items of information, plus additional information pertinent to the Plan if the RA requests it. | § 112.4(a): Whenever an SPCC facility has: (1) discharged more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or (2) discharged more than 42 U.S. gallons of oil, as described in § 112.1(b), in each of 2 discharge, within any 12-month period, the owner or operator of the facility must submit to the RA, within 60 days from the time the facility becomes subject to this section, 8 different items of information, plus additional information pertinent to the Plan if the RA requests it. | § 112.4(a): We have revised the geographic scope of the rule in accordance with the CWA amendments, by using the phase ''discharge as described in § 112.1(b).'' We also raised the threshold for reporting two discharges as described in § 112.1(b), from a ''reportable'' quantity under the Clean Water Act, to a threshold of more than 42 U.S. gallons, or 1 barrel, in each of those discharges. The 1,000 gallon threshold for a single discharge as described in § 112.1(b) remains unchanged. We also reduced the amount of information that must minimally be submitted to the RA. |
| § 112.4(b): Section 112.4 does not apply until the expiration of the time permitted for the preparation and implementation of the Plan under § 112.3. | § 112.4(b): Section 112.4 does not apply until the expiration of the time permitted for the preparation and implementation of the Plan under § 112.3. | § 112.4(b): Section 112.3 in the revised rule allows more time for some facilities for preparation and implementation of a Plan, or any amendments thereto, than in the 1991 proposed rule. Therefore, the implementation of the requirements of § 112.4 is postponed until the new time frames in § 112.3 have passed. |

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

| Current SPCC rule | Revised SPCC rule | Comment |
|---|---|---|
| § 112.4(c): The owner or operator is required to provide the same information he provided to EPA, under § 112.4(a), to the State agency in charge of water pollution control activities in and for the State in which the facility is located at the same time he provides it to EPA. After receiving that information, the State agency may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment and other requirements for equipment necessary to prevent and to contain discharges of oil from the facility. | § 112.4(c): The owner or operator is required to provide the same information he provided to EPA, under § 112.4(a), to the State agency in charge of oil pollution control activities in the State in which the facility is located at the same time he provides it to EPA. After receiving that information, the State agency or agencies may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment and other requirements for equipment necessary to prevent and to contain discharges of oil from the facility. | § 112.4(c): The revised rule changes the requirement from notification to the State agency in charge of water pollution control activities to notification to the State agency in charge of oil pollution control activities. There may be more than one such agency in some States. |
| § 112.4(d): This section allows the Regional Administrator to require a facility owner or operator to amend his Plan after review of materials the owner or operator submits under § 112.4 (a) and (c). | § 112.4(d): This section allows the Regional Administrator to require a facility owner or operator to amend his Plan after review of materials the owner or operator submits under § 112.4 (a) and (c), or after on-site review of the Plan. | § 112.4(d): The revised rule provides that the Regional Administrator may require Plan amendment after on-site review of the Plan. |
| Section 112.5: Amendment of Spill Prevention, Control, and Countermeasures Plan by owners or operators | | |
| § 112.5(b): This section requires an owner or operator to review his Plan at least every 3 years from the date a facility becomes subject to the SPCC rule. As a result of this review and evaluation, the owner or operator must amend the SPCC Plan within 6 months of the review to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a discharge to navigable waters or adjoining shorelines from the facility; and (2) if such technology has been field-proven at the time of the review. | ≤§ 112.5(b): This section requires an owner or operator to review his Plan at least every 5 years from the date a facility becomes subject to the SPCC rule; or for an existing facility, 5 years from the date the last review was required under this part. The owner or operator must amend the SPCC Plan within 6 months of the review to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a discharge as described in § 112.1(b) from the facility; and (2) if such technology has been field-proven at the time of the review. Implementation of amendments is required within 6 months following amendment. The owner or operator must document completion of the review and evaluation, and must sign a statement as to whether he will amend the Plan, either at the beginning or end of the Plan or in a log or an appendix to the Plan. The following will suffice, ''I have completed review and evaluation of the SPCC Plan for (name of facility) on (date), and will (will not) amend the Plan as a result.'' | § 112.5(b): The revised rule changes the period of review for SPCC Plans from 3 to 5 years. It also requires documentation of completion of the review and evaluation. |
| § 112.5(c): This section requires that a Professional Engineer certify any amendments to an SPCC Plan. | § 112.5(c): This section requires that a Professional Engineer certify any technical amendments to an SPCC Plan. | § 112.5(c): The revised rule clarifies that a Professional Engineer must certify only technical amendments. PE certification is not required for non-technical amendments, like changes to phone numbers, names, etc. |
| Section 112.7: Spill Prevention, Control, and Countermeasure Plan general requirements. We have reorganized § 112.7 of the current regulation into §§ 112.7, 112.8, 112.9, 112.10, 112.11, 112.12, 112.13, 112.14, and 112.15 of the final rule based on facility type and type of oil. | | |

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

| Current SPCC rule | Revised SPCC rule | Comment |
|---|---|---|
| § 112.7: This section specifies that a Plan must be prepared in accordance with good engineering practices, and have the full approval of management at a level with authority to commit the necessary resources. The SPCC Plan must follow the sequence specified in the rule, and include a discussion of the facility's conformance with the requirements of the rule. | § 112.7: This section specifies that a Plan must be prepared in accordance with good engineering practices, and have the full approval of management at a level with authority to commit the necessary resources. The SPCC Plan must follow the sequence specified in the rule, and include a discussion of the facility's conformance with the requirements of the rule. If you do not follow the sequence specified in the rule, you must prepare an equivalent prevention Plan acceptable to the Regional Administrator that meets all applicable requirements, and you must supplement it with section cross-referencing the location of requirements listed in the SPCC rule to the equivalent requirements in the other prevention plan. | § 112.7: The revised rule allows differing formats for the Plan, other than the one format now specified. While you may use the format specified in the rule, you may also use other formats, such as State plans, Integrated Contingency Plans, and any other formats acceptable to the Regional Administrator. If you use another format, you must cross-reference its provisions to the requirement listed in the SPCC rule. Also, if you use another format, you must ensure that the format includes all applicable SPCC requirements, or you must supplement that format to include all applicable SPCC requirements. |
| § 112.7(a)(2): No counterpart in current rule ..... | § 112.7(a)(2): This provision explicitly allows deviations from most of the rule's substantive requirements (except for secondary containment requirements), provided that you explain your reasons for nonconformance with the requirement, and provide equivalent environmental protection with an alternate measure. If the Regional Administrator determines that the alternate measure described in your Plan does not provide equivalent protection, he may require that you amend the Plan. | § 112.7(a)(2): The revised rule explicitly allows deviations from most of the rule's substantive requirements (except for secondary containment requirements), provided that you explain your reasons for nonconformance with the requirement, and provide equivalent environmental protection with an alternate measure. If the Regional Administrator determines that the alternate measure described in your Plan does not provide equivalent protection, he may require that you amend your Plan. |
| § 112.7(a)(3): No counterpart in current rule ..... | § 112.7(a)(3): This section requires a facility owner or operator to describe the physical layout of the facility and include a facility diagram in the Plan. | § 112.7(a)(3): The facility diagram must include completely buried tanks exempted from other SPCC requirements. |
| § 112.7(c): This section is the general provision requiring secondary containment. | § 112.7(c): This section is the general provision requiring secondary containment. | § 112.7(c): The revised rule maintains the current standard that dikes, berms, or retaining walls must be ''sufficiently impervious'' to contain oil. We withdrew the proposed standard that such secondary containment must be impermeable for 72 hours. |
| § 112.7(d): When it is not practicable to install secondary containment at your facility, this section requires that you explain why and provide a strong oil spill contingency plan in your SPCC Plan. The contingency plan must follow the provisions of 40 CFR part 109. You must also provide in your SPCC Plan a written commitment to manpower, equipment and materials required to expeditiously control and remove any harmful quantity of oil discharged. | § 112.7(d): When it is not practicable to install secondary containment at your facility, this section requires that you explain why and provide a strong oil spill contingency plan in your SPCC Plan. The contingency plan must follow the provisions of 40 CFR part 109. You must also provide in your SPCC Plan a written commitment to manpower, equipment and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful; conduct periodic integrity testing of the containers; and, conduct periodic integrity and leak testing of the valves and piping. | § 112.7(d): The revised rule adds new requirements for periodic integrity testing of containers, and periodic integrity and leak testing of valves and piping. We clarify that if you have submitted a facility response plan under § 112.20 for a facility, you need not provide for that facility either a contingency plan following the provisions of part 109, nor a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful. |
| § 112.7(e)(8): This section requires that the owner or operator conduct required inspections in accordance with written procedures developed for the facility. The owner or operator must maintain these written procedures and a record of inspections, signed by the appropriate supervisor or inspector, as part of the SPCC Plan, and maintain them for a period of 3 years. | § 112.7(e): This section requires that the owner or operator conduct required inspections and tests in accordance with written procedures developed by him or by the certifying engineer for the facility. The owner or operator must maintain these written procedures and a record of inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan, and maintain them for a period of 3 years. Records of inspections and tests kept pursuant to usual and customary business practices are sufficient for purposes of the rule. | § 112.7(e): The revised rule allows use of usual and customary business records to serve as a record of tests or inspections, instead of keeping duplicate records. It also allows the owner or operator to keep those records as an appendix to the Plan, or in a separate log, etc., with the Plan, rather than requiring that those records be a part of the Plan. The rule also acknowledges that the certifying engineer, as well as the owner or operator, has a role in the development of inspection procedures. |

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

| Current SPCC rule | Revised SPCC rule | Comment |
|---|---|---|
| § 112.7(e)(10): The owner or operator of a facility is responsible for properly instructing personnel in the operation and maintenance of equipment to prevent the discharges of oil and applicable pollution control laws, rules, and regulations. An owner or operator must designate a person at each facility who is accountable for oil discharge prevention and who reports to facility management. An owner or operator must schedule and conduct discharge prevention briefings for operating personnel at intervals frequent enough to assure adequate understanding of the SPCC Plan for that facility. Such briefings must highlight and describe known discharges to navigable waters or adjoining shorelines, or failures, malfunctioning components, and recently developed precautionary measures. | § 112.7(f): The owner or operator of a facility, at a minimum, must train oil-handling personnel in the operation and maintenance of equipment to prevent the discharge of oil; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility Plan. An owner or operator must designate a person at each facility who is accountable for oil discharge prevention and who reports to facility management. An owner or operator must schedule and conduct discharge prevention briefings for oil-handling personnel at least once a year to assure adequate understanding of the SPCC Plan for that facility. Such briefings must highlight and describe known discharges as described in § 112.1(b), or failures, malfunctioning components, and recently developed precautionary measures. | § 112.7(f): The revised rule mandates training only for oil-handling employees, instead of all employees. It specifies additional topics for the training of these employees. It also specifies that discharge prevention briefings must be conducted at least once a year, instead of at ''intervals frequent enough to assure adequate understanding of the SPCC Plan for that facility.'' |
| § 112.7(i): No counterpart in current rule ..... | § 112.7(i): This section requires evaluation for field-constructed aboveground containers undergoing repair, alteration, reconstruction, or change in service that might affect the risk of a discharge or failure due to fracture or other catastrophe. It also requires such evaluation when there has actually been a discharge or failure due to brittle fracture or other catastrophe. | § 112.7(i): The brittle fracture requirement was triggered by the Ashland Oil tank collapse in 1988 due to brittle fracture. |
| Section 112.8: Requirements for onshore facilities (excluding production facilities). | | |
| § 112.7(e)(2)(iii): This section establishes substantive requirements for stormwater drainage from diked areas, and recordkeeping requirements for stormwater bypass events. | § 112.8(c)(3): This section establishes substantive requirements for stormwater drainage from diked areas, and recordkeeping requirements for stormwater bypass events. The revised rule provides that records required under permits issued in accordance with the National Pollutant Discharge Elimination Systems (NPDES) rules are sufficient for recording stormwater bypass events. | § 112.8(c)(3): The revised rule allows records required by NPDES permit regulations to record stormwater bypass events to be used for SPCC purposes in lieu of events records specifically prepared for purpose. |
| § 112.7(e)(2)(vi): This provision requires that aboveground containers be subject to periodic integrity testing, taking into account tank design (floating roof, etc.) and using such techniques as hydrostatic testing, visual inspection, or a system of non-destructive shell thickness testing. The owner or operator must keep comparison records where appropriate, and must include tank supports and foundations in these inspections. In addition, operating personnel must frequently inspect the outside of the container for signs of deterioration, leaks, or accumulation of oil inside diked areas. | § 112.8(c)(6): The revised rule requires that aboveground containers be tested for integrity on a regular schedule, and when material repairs are done. The frequently and type of testing must take into account container size and design (floating roof, skid-mounted, elevated, partially buried, for example). The owner or operator must combine visual inspection with another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or other system of non-destructive shell testing. The owner or operator must keep comparison records and must include tank supports and foundations in these inspections. In addition, operating personnel must frequently inspect the outside of the container for signs of deterioration, leaks, or accumulation of oil inside diked areas. Records of inspections and tests kept pursuant to usual and customary business practices are sufficient for purposes of the rule. | § 112.8(c)(6): The revised rule requires that an owner or operator test aboveground containers for integrity on a regular schedule, and when material repairs are done. The rationale for adding a testing requirement when material repairs are done is that material repairs might increase the potential for oil discharges. Usual and customary business records may be used for the purpose of integrity testing, instead of records specifically created for this purpose. |

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

| Current SPCC rule | Revised SPCC rule | Comment |
|---|---|---|
| § 112.7(e)(3)(i): This section requires that buried piping installations have protective wrapping and coating and cathodic protection, if soil conditions warrant. | § 112.8(d)(1): This section requires that buried piping that is installed or replaced on or after August 16, 2002 must have protective wrapping and coating and cathodic protection, or otherwise satisfy the corrosion protection provisions for piping in 40 CFR part 280 or a State program approved under 40 CFR part 281. | § 112.8(d)(1): The revised rule requires that all buried piping that is installed or replaced on or after August 16, 2002 must have protective wrapping and coating and cathodic protection, or otherwise satisfy the corrosion protection provisions for piping in 40 CFR part 280 or a State program approved under 40 CFR part 281, for all soil conditions. |
| Section 112.9: Requirements for onshore oil production facilities. | | |
| § 112.7(e)(5)(ii): This section provides requirements for stormwater drainage events. | § 112.9(b)(1): This section provides requirements for stormwater drainage events. | § 112.9(b)(1): The revised rule provides that records required by NPDES permit regulations are allowable to record stormwater bypass events for SPCC purposes in lieu of records specifically generated for that purpose. |
| § 112.7(e)(5)(iii)(B): This section requires secondary containment for onshore production facilities. | § 112.9(c)(2): This section requires secondary containment for onshore production facilities. | § 112.9(c)(2): The revised rule clarifies that the secondary containment must include sufficient freeboard to contain precipitation. |

## IV. Discussion of Issues

Below is a discussion of the major issues for which we solicited comments in the 1991, 1993, and 1997 proposals. We also discuss the use of industry standards to comply with the rule. Following these issues, we discuss the revisions to each section and the major comments received, as well as responses to those comments. A detailed Response to Comments document addressing all comments is also part of this rulemaking and may be found in the administrative record for this rule.

### *A. Reorganization of the Rule*

Background

In 1991, EPA proposed to reorganize the SPCC rule based on facility type. The purpose of that proposed reorganization was to clarify SPCC Plan requirements for different types of facilities. In this rulemaking, we are dividing the rule into subparts. Subpart A consists of an applicability section, definitions, and general requirements for all facilities. Subparts B and C outline the requirements for different types of facilities storing and using different types of oils. Subpart B is for facilities storing or using petroleum oils or other non-petroleum oils, except those oils covered by subpart C. Subpart C is for facilities storing or using animal fats and oils and greases, or fish and marine mammal oils; and, oils of vegetable origin, including oils from seeds, nuts, fruits, and kernels. Subpart D is for response requirements.

If you have already prepared an SPCC Plan, you were required to follow the sequence of § 112.7 of the current rule, prior to today's revisions. Today, we are reorganizing that portion of the rule into §§ 112.7 through 112.15, based on facility type and type of oil. Under the introduction to § 112.7 of today's rule, if your Plan does not follow the revised sequence, you must supplement it with a section cross-referencing the location of requirements listed in the revised rule and the equivalent requirements in your Plan. To assist you in preparing this cross-reference, the following table lists each requirement in the revised rule, provides the corresponding paragraph of the current rule, and leaves a space where you can show the location of the provision in your Plan. We have put this rule, including the table below, on our website for your convenience. You may download it for your use. *See* our Web site at *www.epa.gov/oilspill.*

Under the revised rule, § 112.7 sets out the general requirements for SPCC Plans for all facilities and all types of oil. Sections 112.8 to 112.11 set out the SPCC Plan requirements for petroleum oil and for non-petroleum oils other than animal fats and vegetable oils. Sections 112.12 to 112.15 set out the SPCC Plan requirements for animal fats and oils and greases, and fish and marine mammal oils; and for oils of vegetable origin, including oils from seeds, nuts, fruits, and kernels.

| Revised rule | Current rule | Description of rule | Page |
|---|---|---|---|
| § 112.7 | § 112.7 | General requirements for SPCC Plans for all facilities and all oil types. | |
| § 112.7(a) | § 112.7 | General requirements; discussion of facility's conformance with rule requirements; deviations from Plan requirements; facility characteristics that must be described in the Plan; spill reporting information in the Plan; emergency procedures. | |
| § 112.7(b) | § 112.7(b) | Fault analysis | |
| § 112.7(c) | § 112.7(c) | Secondary containment | |
| § 112.7(d) | § 112.7(d) | Contingency planning | |
| § 112.7(e) | § 112.7(e)(8) | Inspections, tests, and records | |
| § 112.7(f) | § 112.7(e)(10) | Employee training and discharge prevention procedures | |
| § 112.7(g) | § 112.7(e)(9) | Security (excluding oil production facilities) | |
| § 112.7(h) | § 112.7(e)(4) | Loading/unloading (excluding offshore facilities) | |
| § 112.7(i) | n/a | Brittle fracture evaluation requirements | |
| § 112.7(j) | § 112.7(e) | Conformance with State requirements | |

| Revised rule | Current rule | Description of rule | Page |
|---|---|---|---|
| § 112.8 § 112.12 | § 112.7(e)(1) | Requirements for onshore facilities (excluding production facilities). | |
| § 112.8(a), § 112.12(a) | n/a | General and specific requirements | |
| § 112.8(b), § 112.12(b) | § 112.7(e)(1) | Facility drainage | |
| § 112.8(c), § 112.12(c) | § 112.7(e)(2) | Bulk storage containers | |
| § 112.8(d), § 112.12(d) | § 112.7(e)(3) | Facility transfer operations, pumping, and facility process | |
| § 112.9, § 112.13 | § 112.7(e)(5) | Requirements for onshore production facilities | |
| § 112.9(a), § 112.13(a) | n/a | General and specific requirements | |
| § 112.9(b), § 112.13(b) | § 112.7(e)(5)(ii) | Oil production facility drainage | |
| § 112.9(c), § 112.13(c) | § 112.7(e)(5)(iii) | Oil production facility bulk storage containers | |
| § 112.9(d), § 112.13(d) | § 112.7(e)(5)(iv) | Facility transfer operations, oil production facility | |
| § 112.10, § 112.14 | § 112.7(e)(6) | Requirements for onshore oil drilling and workover facilities | |
| § 112.10(a), § 112.14(a) | n/a | General and specific requirements | |
| § 112.10(b), § 112.14(b) | § 112.7(e)(6)(i) | Mobile facilities | |
| § 112.10(c), § 112.14(c) | § 112.7(e)(6)(ii) | Secondary containment—catchment basins or diversion structures. | |
| § 112.10(d), § 112.14(d) | § 112.7(e)(6)(iii) | Blowout prevention (BOP). | |
| § 112.11, § 112.15 | § 112.7(e)(7) | Requirements for offshore oil drilling, production, or workover facilities. | |
| § 112.11(a), § 112.15(a) | n/a | General and specific requirements | |
| § 112.11(b), § 112.15(b) | § 112.7(e)(7)(ii) | Facility drainage | |
| § 112.11(c), § 112.15(c) | § 112.7(e)(7)(iii) | Sump systems | |
| § 112.11(d), § 112.15(d) | § 112.7(e)(7)(iv) | Discharge prevention systems for separators and treaters | |
| § 112.11(e), § 112.15(e) | § 112.7(e)(7)(v) | Atmospheric storage or surge containers; alarms | |
| § 112.11(f), § 112.15(f) | § 112.7(e)(7)(vi) | Pressure containers; alarm systems | |
| § 112.11(g), § 112.15(g) | § 112.7(e)(7)(vii) | Corrosion protection | |
| § 112.11(h), § 112.15(h) | § 112.7(e)(7)(viii) | Pollution prevention system procedures | |
| § 112.11(i), § 112.15(i) | § 112.7(e)(7)(ix) | Pollution prevention systems; testing and inspection | |
| § 112.11(j), § 112.15(j) | § 112.7(e)(7)(x) | Surface and subsurface well shut-in valves and devices | |
| § 112.11(k), § 112.15(k) | § 112.7(e)(7)(xi) | Blowout prevention | |
| § 112.11(l), § 112.15(l) | § 112.7(e)(7)(xiv) | Manifolds | |
| § 112.11(m), § 112.15(m) | § 112.7(e)(7)(xv) | Flowlines, pressure sensing devices | |
| § 112.11(n), § 112.15(n) | § 112.7(e)(7)(xvi) | Piping; corrosion protection | |
| § 112.11(o), § 112.15(o) | § 112.7(e)(7)(xvii) | Sub-marine piping; environmental stresses | |
| § 112.11(p), § 112.15(p) | § 112.7(e)(7)(xviii) | Inspections of sub-marine piping | |

In 1995, Congress enacted the Edible Oil Regulatory Reform Act (EORRA), 33 U.S.C. 2720. That statute mandates that most Federal agencies differentiate between and establish separate classes for various types of oils, specifically: animal fats and oils and greases, and fish and marine mammal oils; oils of vegetable origin; petroleum oils, and other non-petroleum oils and greases. In differentiating between these classes of oils, Federal agencies are directed to consider differences in the physical, chemical, biological, and other properties, and in the environmental effects, of the classes. In response to EORRA, as noted above, we have divided the requirements of the rule by subparts for facilities storing or using the various classes of oils listed in that act.

Because at the present time EPA has not proposed differentiated SPCC requirements for public notice and comment, the requirements for facilities storing or using all classes of oil will remain the same. However, we have published an advance notice of proposed rulemaking seeking comments on how we might differentiate among the requirements for the facilities storing or using various classes of oil. 64 FR 17227, April 8, 1999. If after considering these comments, there is adequate justification for differentiation among the requirements for those facilities, we will propose rule changes.

*B. Plain Language Format*

We have rewritten the SPCC rule in a plain language format to make it clearer and easier to use. A plain language format includes maximum use of the active voice; short, clear sentences; and, in this rule, a summary table of the major regulatory changes. This format is part of the Agency's ongoing efforts in regulatory reinvention. While we have made substantive changes in some provisions, the plain language changes are only editorial. The plain language format used in today's rule may appear different from other rules, but it establishes binding, enforceable legal requirements.

In this preamble, as in the rule text, we often use the pronoun ''he'' as a generic term. ''He'' does not necessarily mean a man; it may be a woman, or in some cases, a business organization when referring to an owner or operator.

*C. ''Should to Shall to Must'' Clarification*

Background

EPA has always considered that § 112.3 of the SPCC rule requires that SPCC Plans be prepared in accordance with § 112.7, which in turn requires that Plans be prepared in accordance with good engineering practice. However, clarification of the current rule is necessary because of confusion on the part of some facility owners or operators who have interpreted the current rule's use of the words ''should'' and ''guidelines'' in § 112.7 as an indication that compliance with the applicable provisions of the rule is optional. The rule used the words ''should'' and ''guidelines'' to provide flexibility for facilities with unique circumstances. Those circumstances might be such that mandated regulatory provisions would not be in accord with good engineering practice. Therefore, the rule gave facilities the opportunity to provide alternative methods that achieve equivalent environmental protection, or to show that the provisions were inapplicable based on specific circumstances.

In 1991, we proposed to clarify that misunderstanding by generally substituting ''shall'' in place of ''should'' throughout the reorganized rule. In today's final rule, we have editorially changed ''shall'' to ''must'' in furtherance of the Agency's ''plain language'' objectives. The ''shall'' to ''must'' is not a substantive change, but merely an editorial change. Nor will the change add to the information collection burden. We have always included requirements prefaced by ''should'' in the information collection burden for the rule. We will continue to provide flexibility for an owner or operator who can explain his reasons for nonconformance with rule requirements, and can provide alternate measures from those specified in the rule, which achieve equivalent environmental protection. Section 112.7(a)(2) will provide such flexibility. In the exercise of our authority to inspect facilities and SPCC Plans, we reserve the right to find that such alternate methods do not provide equivalent environmental protection. In such cases, we would require the owner or operator of the facility to amend the SPCC Plan to provide equivalent environmental protection.

*Comments. Guidance.* Several commenters supported the proposed change. One asked that discretionary provisions might be better placed in a separate guidance document. Several commenters were concerned that there are no guidance documents outlining equivalency as provided in proposed § 112.7(a)(2) and that it may be impossible to prove equivalency to EPA.

*PE certification.* Other commenters suggested that if the Professional Engineer (PE) certified the Plan as adequate for the facility, then the mandated requirements were unnecessary, as he would have determined that all appropriate equipment and planning is in place.

*Substantive change.* Some commenters argued that the proposal was a substantive change, contrary to legislative intent, and that we failed to give opportunity for proper notice and comment, as required by the Administrative Procedure Act.

*Small production facilities.* One commenter suggested that the clarification should not apply to small production facilities, defined as those with less than 3000 barrels of storage capacity, because those facilities would suffer severe hardship as a result.

*Response to comments. Guidance.* EPA agrees with the comment that recommendations have no place in this rule because we do not wish to confuse the regulated public as to what is mandatory and what is discretionary. Instead, some recommendations are discussed in the preamble to this document, while others can be found in separate guidance documents or policy statements. When the rule or preamble is silent, or no published guidance or policy documents exist, we will generally use industry standards as guidance for rule compliance.

*PE certification.* While we generally agree that certification by a PE should show that all necessary equipment and planning are in place, we reserve the right to make a determination that additional measures may be necessary to comply with the rule. EPA made it clear in proposed § 112.3(d), which is finalized today, that a PE certification does not relieve the owner or operator of the duty to prepare and fully implement an SPCC Plan in accordance with the rule's requirements.

*Substantive change.* We disagree that the change is either substantive or contrary to legislative intent. Section 311(j)(1)(C) of the Act authorizes the President and, through delegation, EPA, to establish ''procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.'' That authority is ample to provide the basis for a mandatory SPCC rule, that is, a rule that establishes ''requirements * * * to prevent discharges.''

We also disagree that the proposed rule failed to provide proper notice and comment. The preamble to the 1991 proposed rule fully explained the rationale for the proposed change (56 FR 54620, October 22, 1991), and numerous commenters responded. Furthermore, we have always interpreted and enforced our rules as mandatory requirements.

EPA recognizes, however, that this clarification may result in certain owners or operators of regulated facilities recognizing for the first time that they have been and are subject to various provisions of part 112. Such owners and operators should, of course, take all necessary steps to come into compliance with this part as soon as possible. In exercising its prosecutorial discretion, the Agency always takes into account the good faith and efforts to comply of an owner or operator who has been in noncompliance with applicable laws and regulations when deciding whether or not to take an enforcement action.

*Small production facilities.* We disagree that the ''should'' to ''must'' change will generally pose a severe hardship for small production facilities. As noted above, EPA has always interpreted the ''shoulds'' as ''musts.'' Further, when a particular requirement is not feasible for a particular facility, under § 112.7(a)(2) that facility may explain the reasons for nonconformance with the requirement, and provide alternate measures that achieve equivalent environmental protection.

*D. Professional Engineers (PEs)*

*Background.* In the preamble to the 1991 proposal (56 FR 54618), EPA posed several questions to commenters regarding how PEs could help to implement the SPCC Plan. An owner or operator of a facility is required to secure the certification of a PE on an SPCC Plan, and on technical amendments to the Plan. By means of this certification, the PE attests that the Plan or the amendment has been prepared in accordance with good engineering practice.

1. State Registration

*Background.* We solicited comments on the advantages and disadvantages associated with the PE being registered in the State in which the facility is located. EPA noted that ''a requirement that a PE be licensed in the State in which the facility is located would allow the State licensing board to more easily address the actions of the PE under its jurisdiction, and that the PE may have greater familiarity with the State and local requirements related to the facility under review.'' 56 FR 54619.

*Comments. Favorable comments.* Several commenters supported a requirement that the PE be registered in the State in which the facility is located. The rationales often expressed were that: (1) Letting any PE certify any SPCC Plan effectively removed the PE from the supervision of the State board; and, (2) familiarity with the State and local requirements related to the facility as well as the State itself are essential for viable SPCC Plans. One commenter suggested that when an out-of-State PE prepares the Plan, the Plan should bear the seal of the PE who prepared the Plan along with the seal of a PE registered in the State in which the facility is located, assuring that the proposed Plan conforms to any additional State requirements.

*Opposing comments.* Opposing commenters argued that: (1) A State licensing board will address the actions of an engineer regardless of the engineer's location when he applies his seal; (2) suggestions that the potential liability of the engineer might be limited if the engineer holds an out-of-State license are specious; (3) SPCC Plan

preparation is a Federal activity, therefore, it is unnecessary to have State registration; and, (4) such a requirement would reduce the available pool of qualified PEs. One commenter volunteered that the proposal was ''superfluous'' because the practice of engineering in a State without being professionally registered in that State is unlawful in most States.

*Response to comments.* We agree with commenters that it is unnecessary that the PE be registered or licensed in the State in which the facility is located because any abuses will be corrected by the licensing jurisdiction. We also agree that such a requirement might unnecessarily reduce the availability of PEs and increase the cost of certification without any tangible benefits. The professional liability of a PE would likely be unaffected by the place of his registration. When State law precludes a PE from applying his seal if he is not licensed in that State, the question of State registration becomes moot. However, that is not the case in every State.

We also disagree that if a PE is not licensed in the State, he will be unfamiliar with State and local requirements for the facility. Any PE may become familiar with both Federal and State and local requirements for a facility. Therefore, to require that the PE be registered in the State in which the facility is located would impose unnecessary financial burdens on the facility and would challenge the integrity of the PE. Such a requirement would also reduce the pool of PEs available for facilities.

2. PEs Employed by the Facility

*Background.* EPA asked whether the rule should specify that the PE not be an employee of the facility or have any other direct financial interest in the facility. This request for comment had its origin in a U.S. General Accounting Office (GAO) report issued on February 22, 1989, ''Inland Oil Spills: Stronger Regulation and Enforcement Needed to Avoid Future Incidents'' (GAO/RCED–89–65).'' The GAO report recommended that EPA evaluate the advantages and disadvantages of requiring facilities to obtain certifications from independent engineers. EPA noted that ''not having the PE otherwise associated with the facility may avoid any potential conflicts of interest or appearance of conflicts of interest that could arise from allowing an employee of a regulated party to certify a SPCC Plan.'' 56 FR 54619. On the other hand, for both the issues of whether to require State registration and whether to allow PEs employed by the facility to certify SPCC Plans, EPA noted that some organizations objected to the proposals as ''challenging the integrity of professional engineers.'' 56 FR 54619. We also pointed out that some professional organizations believe that such requirements ''would impose substantial costs without enhancing the integrity of the certification process.'' 56 FR 54619.

*Comments. Favorable comments.* Several commenters supported a requirement that the PE not be an employee of the facility or not have a direct financial interest in it. The rationales most often asserted were: (1) A Plan would better satisfy regulatory objectives and better serve the public; (2) the Plan would be less subject to compromise by other factors; (3) Plan certification is less likely to be a coerced or superficial effort, and undue economic and moral pressures would be avoided; (4) more cooperative efforts among regulatory bodies, engineers, and the facility would be possible; (5) more economic and effective Plan development is assured; and, (6) more competent and more professional Plan development is guaranteed.

*Opposing comments.* Opposing commenters asserted that: (1) Such a proposal would limit the availability of PEs, leading to delays in Plan certification; (2) administrative action to correct abuses would be a better approach; and, (3) such an approach insults the ethical integrity of PE. One commenter suggested that ''to suppose a facility employee would break the law and jeopardize his license to practice his profession and do it more willingly than an ''independent'' engineer has no basis in fact'; (4) an in-house PE may be the person most familiar with the facility; (5) the proposal would place an undue and unnecessary financial burden on the owner or operator of a facility by forcing him to hire an outside engineer; and, (6) it is uncertain whether an independent PE can afford the insurance necessary to certify his work given that the liability incurred might run into the millions of dollars.

*Compromise position.* One commenter suggested that a compromise position might be that the PE who certifies the Plan would be required to disclose in the Plan certification his relationship to the facility owner, the facility improvements owner, and the facility landowner.

*Response to comments.* We agree that a proposal to restrict certification by a PE employed by a facility or having a financial interest in it would limit the availability of PEs, possibly leading to delays in Plan certification. Therefore, we will not adopt it. Nor do we favor the proposal to require the PE to disclose his relationship to the facility owner, the facility improvements owner, or the facility landowner. Such disclosure would add no environmental protection to the SPCC certification process. Administrative action to correct abuses would be a better approach. We believe that most PEs, whether independent or employees of a facility, being professionals, will uphold the integrity of their profession and only certify Plans that meet regulatory requirements. We also agree that an in-house PE may be the person most familiar with the facility. EPA believes that a restriction of in-house PE certification might place an undue and unnecessary financial burden on owners or operators of facilities by forcing them to hire an outside engineer.

3. Completion of Testing

*Background.* The Agency proposed that the PE must attest that required testing has been completed and the Plan meets the requirements of the regulation for the facility. This proposal was advanced to ''promote the Agency's intent in the original promulgation of § 112.3(d) that SPCC Plans be certified by a Registered Professional Engineer exercising independent judgment.'' 56 FR 54619. These new requirements were to be met when a new Plan is prepared after promulgation of the rule, or when an existing Plan is amended, under § 112.5.

*Comments. Favorable comments.* One commenter supported a requirement that the PE attest to the completion of testing and that the Plan meets regulatory requirements.

*Opposing comments.* Some opposing commenters believed that the PE should ''enumerate all the inspections and tests that have been completed, plus those that should be completed before the facility commences operations and those that should be undertaken periodically after it commences operations.'' Others believed that completion of required testing is the responsibility of the operator and not the PE. Another commenter believed such a requirement would be impossible, because ''required testing may take up to a year to complete.''

*Response to comments.* EPA agrees that the PE is not responsible for certifying that all required testing has been completed. Rather, such responsibility belongs to the owner or operator of the facility. Testing may be ongoing long after the Plan is certified. The PE is responsible for certifying that the Plan is adequate and meets all regulatory requirements, including enumeration of all tests that have been

completed, plus those that should be completed before the facility commences operations and those that should be undertaken periodically after it commences operations. Therefore, we are changing the proposed requirement to a requirement in which the PE attests that the procedures for required inspections and testing have been established, and the Plan is adequate for the facility. *See* the discussion of § 112.3(d), below.

4. Site Visits

*Background.* We stated that EPA ''believes the current regulatory language (*e.g.,* requiring the engineer to examine the facility) clearly requires the certifying Engineer to visit the facility prior to certifying the SPCC Plan.'' We added that the proposed change ''clarifies this requirement by specifying that the Professional Engineer must be physically present to examine the facility.'' 56 FR 54619.

*Comments. Favorable comments.* Many commenters favored the requirement that the PE make a site visit prior to certifying a Plan. Those commenters called such a visit ''absolutely necessary.'' Some argued that a generic plan prepared by an engineer who has never seen the facility is unacceptable.

*Opposing comments.* Opposing commenters asserted that such visits only involve additional costs and duplication of efforts without any tangible benefits. Many opposing commenters argued that customary engineering practice includes the use of engineering technicians, technologists, graduate engineers, and others to prepare preliminary reports, studies, and evaluations. After preparation of these documents, the PE would then perform a careful review of all pertinent material and then sign and seal the appropriate plans and drawings. Other commenters argued that such a requirement would be impractical, particularly at electrical substations, due to their large number.

*Particular cases.* One commenter urged that small facilities be exempted from the site visit requirement where ''a determination is made that sufficient documentation of site characteristics is available for plan certification.'' That commenter noted that in many instances sufficient information is available from topographic maps, aerial photographs, soil surveys, hydrologic studies, engineering and construction reports, and local operating personnel to eliminate the need for site visits prior to certification. Another commenter urged an exemption for temporary storage facilities because given their emergency nature, certification is impractical. One commenter asked for clarification that the certification of an existing Plan is sufficient until the Plan update is required. Another suggested that the rule should only require that the PE be familiar with the operation and design of the type of facility, and that he would have visited and examined one or more facilities of this type.

*Response to comments. In general.* EPA agrees that the rule should not necessarily require a site visit by a certifying PE, but we believe that a site visit should occur before the PE certifies the Plan. We have modified proposed § 112.3(d)(ii) to reflect this position. The PE's agent may perform the visit. We agree that customary engineering practice allows someone under the PE's employ such as an engineering technician, technologist, graduate engineer, or other qualified person to prepare preliminary reports, studies, and evaluations after visiting the site. Then the PE could legitimately certify the Plan. Nevertheless, in all cases the PE must ensure that his certification represents an exercise of good engineering judgment. If that requires a personal site visit, the PE must visit the facility himself before certifying the Plan.

*Particular cases.* EPA agrees that a PE site visit requirement might be impractical at electrical substations, due to their large number. However, the PE need not go. One of his agents may go, and he may review the agent's work. We disagree with commenters who believe that a site visit is unnecessary at small facilities and temporary storage facilities. Site visits are necessary for those facilities to ensure Plan adequacy and to prevent discharges.

EPA has interpreted the current rule language to contain a requirement that the PE examine the facility. Because of the uncertainty concerning the nature of this requirement, however, we will not require documentation of a site visit by a PE or his agent until after the effective date of this rule. We disagree that the rule should only require that the PE be familiar with the operation and design of the type of facility. We also disagree that merely because the PE has visited and examined one or more facilities of a particular type that no site visit is necessary. A facility may have individual characteristics that differ from those of its type in general, and a site visit by a PE or agent may be necessary to detect those characteristics and accommodate them in the Plan. Such individual characteristics include geographic conditions, possible flow paths, facility design and construction, type of containers, product stored, particular equipment, and the integrity of containment at the facility. Therefore, even if a PE has inspected many facilities of a particular type, that fact does not eliminate the need for a site visit at each facility. After the site visit, the PE will have to devise appropriate inspection and testing standards based on the facility's unique characteristics.

*E. Electrical Facilities and Other Operational Users of Oil*

*Background.* In 1991, we proposed that certain facilities having equipment containing oil that is used for operational purposes, such as electrical transformers, would not have to comply with secondary containment requirements and certain other provisions proposed in §§ 112.8(c) and 112.9(d) because such facilities are not bulk storage facilities. EPA asked for comment on this and also asked commenters to identify other possible operational uses of oil, other than electrical transformers, that may not currently use secondary containment as a common industry practice and that should not be subject to bulk storage provisions. 56 FR 54623.

*Comments. Use of oil.* Numerous commenters, especially in the electric utility industry, asserted that EPA has no jurisdiction to regulate the operational use of oil generally, or specifically in electrical transformers, substations, and other equipment. Some manufacturers of other products agreed. They argued that the legislative history of the Act showed no Congressional intent for such regulation. However, many commenters asked EPA specifically to clarify this jurisdictional issue.

*Response to comments. Use of oil.* We disagree that operational equipment is not subject to the SPCC rule. We have amended § 112.1(b) to clarify that using oil, for example operationally, may subject a facility to SPCC jurisdiction as long as the other applicability criteria apply, for example, oil storage capacity, or location. Such a facility might reasonably be expected to discharge oil as described in § 112.1(b). Therefore, the prevention of discharges from such facility falls within the scope of the statute.

However, we have distinguished the bulk storage of oil from the operational use of oil. We define ''bulk storage container'' in the final rule to mean any container used to store oil. The storage of oil may be prior to use, while being used, or prior to further distribution in commerce. For clarity, we have specifically excluded oil-filled electrical, operating, or manufacturing equipment from the definition.

Facilities that use oil operationally include electrical substations, facilities containing electrical transformers, and certain hydraulic or manufacturing equipment. The requirements for bulk storage containers may not always apply to these facilities since the primary purpose of this equipment is not the storage of oil in bulk. Facilities with equipment containing oil for ancillary purposes are not required to provide the secondary containment required for bulk storage facilities (§ 112.8(c)) and onshore production facilities (§ 112.9(c)), nor implement the other provisions of § 112.8(c) or § 112.9(c). Oil-filled equipment must meet other SPCC requirements, for example, the general requirements of this part, including § 112.7(c), to provide appropriate containment and/or diversionary structures to prevent discharged oil from reaching a navigable watercourse. The general requirement for secondary containment, which can be provided by various means including drainage systems, spill diversion ponds, etc., will provide for safety and also meet the needs of section 311(j)(1)(C) of the CWA. EPA will continue to evaluate whether the general secondary containment requirements found in § 112.7(c) should be modified for small electrical and other types of equipment which use oil for operating purposes. We intend to publish a notice asking for additional data and comment on this issue.

In addition, a facility may deviate from most SPCC requirements, if the owner or operator explains his reasons for nonconformance and provides equivalent environmental protection by some other means. *See* § 112.7(a)(2). *See also* § 112.7(d).

*F. Discretionary Provisions*

*Background.* In the preamble to the 1991 proposal (at 56 FR 54616), we asked for comments as to whether the provisions proposed as recommendations in rule text should be made requirements. We then noted that we were ''particularly interested in receiving comments and information on the advisability of establishing'' certain provisions as ''requirements for large facilities, but as recommendations for small facilities.'' These provisions were: (1) Proposed § 112.8(d)(4)—''that facilities have all buried piping tested for integrity and leaks annually or have buried piping monitored monthly in accordance with the provisions of 40 CFR part 280.'' We also recommended that records of testing or monitoring be kept for five years.; and, (2) proposed § 112.8(d)(5)—''that facilities post vehicle weight restrictions to prevent damage to underground piping.'' Individual proposals will be discussed under their relevant sections in this preamble. Large facilities were defined for this purpose as facilities with more than 42,000 gallons of SPCC-regulated storage capacity. Conversely, we asked whether such provisions should be discretionary for smaller facilities. The rationale expressed in the question was EPA believes that ''larger volumes of oil stored at a facility increase the chances of a spill occurring, and that spills from large-capacity facilities may be greater in magnitude than those from smaller facilities, thus posing a greater potential threat to the waters of the United States.''

EPA also requested comments on two other practices it proposed as recommendations, but did not include in rule text. Those practices were: (1) ''That owners and operators of facilities affix a signed and dated statement to the SPCC Plan indicating that the revision has taken place and whether or not amendment of the Plan is required;'' and, (2) ''That owners and operators of onshore facilities other than production facilities state the design capabilities of their drainage system in the SPCC Plan if the system is relied upon to control spills or leaks.'' Concerning the first practice, see also the discussion under § 112.5(b) of today's rule. The rationale for these recommendations was that ''these provisions may not for all facilities achieve the standard of provisions based on good engineering practice, which is the basic standard of the regulation. EPA, however believes that implementation of these provisions at most facilities would contribute to the facilities' overall effort to prevent oil discharge and to mitigate those spills that may occur.'' The Agency also asked whether some of these provisions should be mandatory.

*Comments. Large or small facility regulation, in general.* EPA received a number of comments on this issue, some directed towards regulation of larger and smaller facilities in general, and others toward specific provisions proposed. Some commenters believed that larger facilities could better bear the costs of regulation than smaller facilities, some of which were financially marginal and might go out of business as a result of environmental regulation.

*Storage capacity level.* Commenters suggested different storage capacity levels at which to differentiate large from small facilities. Those suggestions ranged from 10,000 to 100,000 gallons in storage capacity. Many, however, supported the 42,000-gallon level.

*Other factors.* One commenter suggested that other factors such as proximity to navigable waters or environmentally sensitive areas, as well as the use of good engineering practices should be considered in the regulation of facilities. The commenter argues that these factors might avoid overburdening a large facility with a low potential for impact on a navigable water or exempting a small facility with a high potential for impact on a navigable water.

*Discretionary provisions. Favorable commenters.* Numerous commenters favored discretionary provisions in the interest of maintaining flexibility in the program, noting that what may be appropriate for one facility may not be appropriate for another. Some commenters favored applying discretionary provisions to small facilities only, leaving the provisions as requirements for larger facilities.

*Discretionary provisions. Opposing commenters.* Some commenters argued that discretionary provisions are inappropriate in a rule as a matter of principle because they complicate mandatory rule documents and enforcement, and they confuse the regulated community. Yet others urged that such provisions were unnecessary in any case because they believe that no risks exist for which the discretionary provisions were proposed.

*Response to comments.* We will discuss specific comments under the discussion of specific sections. See section IV.G of today's preamble for a discussion of the ''Design Capabilities of Drainage Systems, other than Production Facilities.'' Our general discussion follows.

*Large or small facility regulation, in general.* We have decided not to regulate facilities differently based merely on storage capacity, provided that the capacity is above the regulatory threshold of over 1,320 gallons. This decision is based on environmental reasons. Small discharges of oil that reach the environment can cause significant harm. Sensitive environments, such as areas with diverse and/or protected flora and fauna, are vulnerable to small spills. EPA noted in a recent denial of a petition for rulemaking: ''Small spills of petroleum and vegetable oils and animal fats can cause significant environmental damage. Real-world examples of oil spills demonstrate that spills of petroleum oils and vegetable oils and animal fats do occur and produce deleterious environmental effects. In some cases, small spills of vegetable oils can produce more environmental harm than numerous large spills of petroleum

oils.'' 62 FR 54508, 54530, October 20, 1997. Describing the outcome of one small spill of 400 gallons of rapeseed oil into Vancouver Harbor, we noted that '' * * * 88 oiled birds of 14 species were recovered after the spill, and half of them were dead. Oiled birds usually are not recovered for 3 days after a spill, when they become weakened enough to be captured. Of the survivors, half died during treatment. The number of casualties from the rapeseed oil spills was probably higher than the number of birds recovered, because heavily oiled birds sink and dying or dead birds are captured quickly by raptors and scavengers.'' 62 FR 54525.

A small discharge may also cause harm to human health or life through threat of fire or explosion, or short-or long-term exposure to toxic components.

*Other factors.* Finally, EPA notes that the rule affords flexibility to an owner or operator of a facility to design a Plan based on his specific circumstances. It allows him to choose methods that best protect the environment. It permits deviations from most of the mandatory substantive requirements of the rule when the facility owner or operator can demonstrate a reason for nonconformance, and can provide equivalent environmental protection by other means. Consequently, both small and large facilities have the opportunity to reduce costs by alternative methods if they can maintain environmental protection. Because smaller facilities may require less complex plans than larger ones, their costs may be less.

*Discretionary provisions.* We agree that discretionary provisions have no place in this rule because we do not wish to confuse the regulated community and complicate enforcement by blurring what is mandatory and what is discretionary. We will provide guidance or policy statements on various issues, as necessary, that will incorporate some or all of these recommendations. In the absence of such guidance or policy statements, you should look to current industry standards for guidance on technical issues. See also our discussion of industry standards and good engineering practice under section IV.K of today's preamble and under § 112.3(d) in section V of today's preamble.

### *G. Design Capabilities of Drainage Systems, Other than Production Facilities*

*Background.* In the 1991 preamble, we asked for comments on, but did not propose, a provision that owners or operators of onshore facilities other than production facilities describe the design capabilities of their drainage systems in the SPCC Plan if the system is relied upon to control spills or leaks. 56 FR 54616, October 22, 1991. See also section IV.F of today's preamble for a discussion of other ''Discretionary Provisions.''

*Comments. Favorable comments.* Commenters favoring such a requirement asserted that such a description would help identify all paths of escape for discharges at a facility, assess the spill retention capacity of the facility's containment system, and identify the risks to the public of a discharge. Those commenters generally believed that the Professional Engineer should develop the description for the Plan.

*Opposing comments.* Commenters opposing making the recommendation a requirement argued that it was unnecessary because the rules already require certain descriptions of design capabilities of drainage systems. They asserted that such a requirement would be redundant in that if a drainage system is relied upon to control spills or leaks, then it must have design capabilities to control such spills or leaks.

*Response to comments.* The question of description of the design capabilities of drainage systems for onshore facilities other than production facilities is adequately covered by rules pertaining to drainage. *See*, for example, §§ 112.7(a)(3) and (4), 112.7(b), 112.8(b), and 112.10(c). Therefore, we will not promulgate any additional requirements on this subject. These provisions generally require that a facility owner or operator design the facility drainage system to prevent discharges, or if prevention fails, to contain the discharge within the facility.

### *H. Compliance Costs*

*Background.* We provided an extensive discussion of the costs and benefits of the proposed 1991 rule. 56 FR 54628–54629, October 22, 1991. We requested comments in the 1991 preamble concerning the new compliance costs associated with the proposed rule.

*Comments.* EPA received numerous comments on this issue. The overwhelming majority of commenters asserted that the proposed rule would impose costs that few could bear. Many argued that such costs were unnecessary or should be applied to large facilities only.

*Response to comments.* EPA considered cost factors in finalizing the requirements in this rule. We believe that facilities in compliance with the current rule will incur minimal additional cost due to the revisions in this rule. Many of the provisions we proposed in 1991 that commenters believed were too costly were not finalized in this rule. In addition, in today's rule, we have provided flexibility in several ways. Many of the provisions we proposed in 1991 that commenters believed were too costly were not finalized in this rule. In addition, in the deviation provision, § 112.7(a)(2), we permit you to substitute alternate measures that provide equivalent environmental protection if you can explain a reason for nonconformance with the prescribed requirement. We also rely on the use of industry standards in many provisions, rather than mandating any particular procedure, or any particular monitoring or inspection schedule. We assume that most facilities follow industry standards, and therefore will not incur additional costs for many provisions where they do. We recognize, however, that to the extent any facility does not follow current industry standards, it might incur additional costs. Furthermore, we are finalizing other provisions in this rule which will reduce burden in other ways and will exempt certain facilities from having to prepare an SPCC or FRP Plan. EPA has also prepared an assessment of the costs of rule compliance, which is discussed in part VI.F (Regulatory Flexibility Act) of this preamble, and we have included the specific comments related to costs and our responses in relevant sections of this preamble.

### *I. Contingency Planning and Notification*

*Background.* We requested comments in the 1991 preamble on spill contingency planning needs (at 56 FR 54615) and on proposed facility notification requirements (at 56 FR 54614). You will find a detailed discussion of contingency requirements and facility notification requirements (§ 112.7(d) and proposed § 112.1(e)) in Section V of today's preamble. On those subjects, we briefly summarize the comments and our responses below.

*Comments. Contingency planning.* Many commenters supported the 1991 proposal. Opposing commenters suggested that such planning should be discretionary because not all facilities need such planning, or that facilities be allowed to use contingency plans prepared for other purposes. Others thought the proposal was premature as we had not at the time finalized response planning requirements in § 112.20. Some said that contingency planning was not practicable because

the costs are too high, but these commenters did not provide specific cost estimates.

*Notification.* A number of commenters favored the proposal, including some industry commenters. Most industry commenters opposed the proposal either in part or in its entirety. Commenters who opposed the proposal in its entirety asserted that it was unnecessary, largely because they believed the information sought might be better obtained from other sources, such as State sources or SARA Title III reports.

*Response to comments. Contingency planning.* Contingency planning is necessary whenever you determine that a secondary containment system for any part of the facility that might be the cause of a discharge as described in § 112.1(b) is not practicable. This requirement applies whether the facility is manned or unmanned, urban or rural, and for large and small facilities. Because we have not finalized either the 1991 or 1993 contingency plan proposals, there are no new costs. We note that we finalized response planning requirements in 1994. Contingency plans prepared for other purposes are acceptable for SPCC purposes if they satisfy all SPCC requirements.

*Notification. Withdrawal of proposal.* We have decided to withdraw the proposed facility notification requirement because we are still considering issues associated with establishing a paper versus electronic notification system, including issues related to providing electronic signatures on the notification. Should the Agency in the future decide to move forward with a facility notification requirement, we will repropose such requirement.

*J. Reproposal*

*Background:* In the 1997 proposal, we stated that we would finalize the 1991 and 1993 proposals without seeking additional comments on those proposals.

*Comments:* Some commenters suggested that we repropose the 1991 proposal ''so that the public can view the proposed changes in a comprehensive manner.'' Other commenters suggested that the time that has elapsed, the changes in operational procedures of the oil and gas industry which have improved the degree of environmental protection, and the new information EPA obtained from its tank survey, justified reproposal. Others cited changes in oil industry personnel as a reason to repropose the rule. Some commenters believed that the implementation of the Facility Response Plan (FRP) rule alone requires us to solicit additional comments concerning the SPCC proposals.

*Response: Additional comments or reproposal.* We believe it is unnecessary to repropose the 1991 and 1993 proposals because of mere passage of time. We received numerous comments on every side of most issues. In developing this final rule, we have considered changes that have taken place in the oil industry, industry standards, and regulations that may affect the SPCC rule. We have also considered changes in the various industries which comprise the universe of SPCC facilities which have occurred since our original proposals. We encourage the use of industry standards to implement the rule, without incorporating any particular standard into the rule, thereby averting possible obsolescence of those standards. We used the results of our 1995 SPCC facility survey to develop our 1997 proposed rule. These results are also part of the administrative record for this rulemaking. We considered all the comments we received in 1997, even if they dealt with issues proposed in 1991 or 1993. We have also considered and responded to all of the comments received in 1991 and 1993 in their respective Comment Response Documents or in the preamble to today's final rule.

*Personnel changes.* In developing this final rule, as noted above, we have considered changes that have taken place in the oil industry, industry standards, and regulations that may affect the SPCC rule. For the past 26 years, owners and operators of regulated facilities have been responsible for training their personnel in applicable regulations, such as 40 CFR part 112. Such responsibility is in effect now, and will continue under the revised rule. New companies and new personnel of those companies are on notice as to applicable rules and proposals. They have also had the opportunity to comment on the 1997 proposal. Furthermore, we have considered cost implications for all three proposals which we are finalizing today.

*Response plan requirements.* We have no plans to require SPCC facilities for which secondary containment is not practicable to develop response plans. However, we have withdrawn § 112.7(d) as proposed in 1993. Only a contingency plan following the provisions of 40 CFR part 109 and compliance with other provisions of § 112.7(d) is necessary when secondary containment is impracticable. Only onshore facilities that meet the criteria of substantial harm and/or significant and substantial harm facilities need to comply with the FRP requirements in 40 CFR 112.20–21.

*K. Industry Standards*

Throughout the rule we generally allow for the application of industry standards where the standards are both specific and objective, and their application may reduce the risk of discharges to and impacts to the environment. We recognize that as technology advances, specific standards change. By referencing industry standards throughout the preamble, we anticipate that the underlying requirements of the rule itself will change as new technology comes into use without the need for further amendments. We believe that industry standards today represent good engineering practice and generally are environmentally protective. However, as under the current rule, if an industry standard changes in a way that would increase the risk of a discharge as described in § 112.1(b), EPA will apply and enforce standards and practices that protect the environment, rather than the less protective industry standard.

Under the terms of this rule, when there is no specific and objective industry standard that applies to your facility (for example, whether there is no standard or a standard that uses the terms ''as appropriate,'' ''often,'' ''periodically,'' and so forth), you should instead follow any specific and objective manufacturer's instructions for the use and maintenance or installation of the equipment, appurtenance, or container. If there is neither a specific and objective industry standard nor a specific and objective manufacturer's instruction that applies, then it is the duty of the PE under § 112.3(d) to establish such specific and objective standards for the facility and, under § 112.3(d), he must document these standards in the Plan. If the PE requires the use of a specific standard for implementation of the Plan, the owner or operator must also reference that standard in the Plan.

Throughout this preamble, we list industry standards that may assist an owner or operator to comply with particular rules. The list of those standards is merely for your information. They may or may not apply to your facility, but we believe that their inclusion is helpful because they generally are applicable to the topic referenced. The decision in every case as to the applicability of any industry standard will be one for the PE.

For your convenience, we are including a list of organizations below

that may be helpful in the identification and explanation of industry standards.

| Name | Address | Phone # | Web Site/E-mail |
|---|---|---|---|
| American National Standards Institute (ANSI). | 11 West 42nd Street, New York, NY 10036. | 212–642–4900<br>212–398–0023 fax. | *www.ansi.org*<br>*ansionline@ansi.org* |
| American Petroleum Institute (API) ..... | 1220 L Street, NW Washington, DC 20005. | 202–682–8000<br>202–682–8232 fax. | *www.api.org*<br>*standards@api.org*<br>*standards2@api.org* |
| American Society of Mechanical Engineers (ASME). | Three Park Avenue New York, NY 10016–5990. | 800–843–2763<br>973–882–1717 fax. | *www.asme.org*<br>*infocentral@asme.org* |
| American Society for Nondestructive Testing (ASNT). | PO Box 28518, 1711 Arlingate Lane Columbus, OH 43228–0518. | 800–222–2768<br>614–274–6899 fax | *www.asnt.org* |
| American Society for Testing and Materials (ASTM). | 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. | 610–832–9585<br>610–832–9555 fax. | *www.astm.org*<br>*webmastr@astm.org.* |
| Building Officials and Code Administrators (BOCA) International. | 4051 West Flossmoor Road Country Club Hills, IL 60478. | 708–799–2300 ..<br>708–799–4981 fax. | *www.bocai.org*<br>*webmaster@bocai.org.* |
| International Code Council (ICC) ..... | 5203 Leesburg Pike, Suite 708 Falls Church, VA 22041. | 703–931–4533<br>703–379–1546 fax. | *www.intlcode.org*<br>*staff@intlcode.org.* |
| International Conference of Building Officials (ICBO). | 5360 Workman Mill Road Whittier, CA 90601–2298. | 888–699–0541<br>888–329–4220 fax. | *www.icbo.org* |
| International Fire Code Institute (IFCI) ... | 5360 Workman Mill Road Whittier, CA 90601–2298. | 562–699–0124<br>562–699–8031 fax. | *www.ifci.org*<br>*webmaster@icbo.org* |
| Manufacturers Standardization Society of The Valve and Fittings Industry Inc. (MSS). | 127 Park Street, N.E. Vienna, VA 22180–4602. | 703–281–6613<br>703–281–6671 fax. | *www.mss-hq.com*<br>*info@mss-hg.com* |
| National Association of Corrosion Engineers (NACE). | 1440 South Creek Drive Houston, TX 77084. | 281–228–6200<br>281–228–6300 fax | *www.nace.org* |
| National Fire Protection Association (NFPA). | 1 Batterymarch Park PO Box 9101 Quincy, MA 02269–9101. | 617–770–3000<br>617–770–0700 fax. | *www.nfpa.org*<br>*hazchem@nfpa.org* |
| Petroleum Equipment Institute (PEI) ..... | P.O. Box 2380 Tulsa, OK 74101–2380 | 918–494–9696<br>918–491–9895 fax. | *www.pei.org*<br>*pei@peinet.org.* |
| Southern Building Code Congress International (SBCCI). | 900 Montclair Road Birmingham, AL 35213–1206. | 205–591–1853<br>205–591–0775 fax. | *www.sbcci.org*<br>*info@sbcci.org* |
| Southwest Research Institute (SwRI) ..... | P.O. Box Drawer 28510 San Antonio, TX 78228–0510. | 210–684–5111 | *www.swri.org*<br>*action67@swri.org* |
| Steel Tank Institute (STI) ..... | 570 Oakwood Road Lake Zurich, IL 60047. | 847–438–8265 ..<br>847–438–8766 fax. | *www.steeltank.com*<br>*ankiefer@steeltank.com* |
| Underwriters Laboratories (UL) ..... | 333 Pfingsten Road Northbrook, IL 60062–2096. | 847–272–8800<br>847–272–8129 fax. | *www.ul.com*<br>*northbrook@ul.com* |
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## V. Section by Section Analysis (Includes: Background, Comments, and Response to Comments)

*Subpart A—Applicability, definitions, and general requirements for all facilities*

*Background.* In the reformatted rule, subpart A defines the applicability of part 112, provides definitions applicable to all subparts, and prescribes general requirements that are applicable to all facilities subject to part 112.

*Section 112.1(a)(1)—General Applicability of the Rule*

*Background.* We have redesignated § 112.1(a) as § 112.1(a)(1) due to the addition of a new paragraph (a)(2). In 1991, we proposed changes in § 112.1(a) to conform to the 1977 CWA amendments. Those amendments extended the geographic scope of EPA's authority under CWA section 311. Formerly the geographic scope of the rule extended only to navigable waters of the United States and adjoining shorelines. The final rule extends the geographic scope of EPA's authority beyond discharges to navigable waters and adjoining shorelines to include a discharge into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or 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). Hereinafter, a discharge as described above in quantities that may be harmful is also referred to as ''a discharge as described in § 112.1(b).''

*Comments. Geographic scope of rule.* One commenter wrote to support the geographic extension of the rule, noting that the extended definition ''will allow for more clarity in determining which facilities are subject to SPCC requirements.''

*Natural resources.* Another commenter was concerned that the extension of the rule to facilities with the potential to affect natural resources ''would bring under the scope of 40 CFR 112 a significant number of operating facilities which did not previously require SPCC plans.'' Still another commenter proposed limiting the scope of natural resource jurisdiction under the rule to resources under the Magnuson Fishery and Conservation Act to avoid ''another unnecessary workload on the judicial system over the years.''

*Response to comments. Geographic scope of rule.* EPA believes that the geographic extension of the rule to agree with statutory amendments is the proper course, and has finalized the rule as proposed.

*Natural resources.* Limiting the scope of natural resource jurisdiction under the rule to natural resources under the Magnuson Fishery Conservation and Management Act would be inconsistent with this statutory language. We also believe that few, if any new facilities, will be subject to the rule because of its extension to facilities with the potential to affect certain natural resources. We believe that most affected facilities are either already subject to the rule, or not subject to our jurisdiction due to a Memorandum of Understanding between EPA, the U.S. Department of Transportation (DOT), and the U.S. Department of the Interior (DOI), which assigns jurisdiction over most of those facilities to DOT or DOI. See 40 CFR part 112, Appendix B.

*Editorial changes and clarifications.* While revisions to the rule published today are not retroactive, any violation of the current rule which occurs before the effective date of today's rule is subject to enforcement and penalties.

*Section 112.1(a)(2)—Number and Gender*

*Background.* We added a new § 112.1(a)(2) to make clear that words in the singular include the plural, and words in the masculine include the feminine, and vice versa. This amendment is for clarification purposes only.

*Section 112.1(b)—Facilities Covered by the Rule—Non-Transportation-Related Facilities*

*Background.* We have redesignated this section to add four new paragraphs. This section describes generally the type of facilities which are subject to the SPCC rule.

In 1991, EPA proposed changes in § 112.1(b) to reflect changes in the geographic scope of EPA's authority under CWA section 311, as described in the discussion under § 112.1(a)(1). EPA also proposed to change the phrase ''harmful quantities'' to ''quantities that may be harmful, as described in part 110.'' Amendments to the CWA also reflected the broadening of quantities that may be harmful to include those not only harmful to the ''public health or welfare,'' but also to the environment.

*Comments. Facilities.* Several commenters argued that EPA jurisdiction, under statutory authority, does not extend to facilities, merely to requirements for oil spill prevention and containment equipment. The commenters' argument noted that the statute doesn't mention jurisdictional criteria relating to proximity to water or oil storage capacity, only EPA rules do. Therefore, the commenters argued, if EPA is successful in its assertion of facility regulation, then every pipe, valve, meter, and flange on the wellsite along with tubing and casing in the hole, stock tanks, drainage ditches, and roads are all subject to EPA jurisdiction and specifications. More importantly, they argued, every facility, in every industry, which at some time or other handles oil or hazardous substances could be subject to EPA rules concerning its spill prevention and containment procedures, methods, or equipment.

*Use of oil.* Numerous commenters, especially in the electric utility industry, asserted that EPA has no jurisdiction to regulate the operational use of oil generally, or specifically in electrical transformers, substations, and other equipment. Some manufacturers of other products agreed. They argued that the legislative history of the Act showed no Congressional intent for such regulation. However, many commenters asked EPA specifically to clarify this jurisdictional issue.

*Distance to navigable waters.* Two commenters proposed that we exempt from the rule facilities more than one mile from surface waters or those located outside the coastal zone.

*Response to Comments: Facilities.* We disagree that our authority does not extend to facilities. Section 311(j)(1)(C) of the statute authorizes and requires the President (and EPA, through delegation in Executive Order 12777, 56 FR 54757, October 22, 1991) to issue regulations consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, and consistent with maritime safety and with marine and navigation laws, which establish ''procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore and offshore facilities, and to contain such discharges.'' This language authorizes the President to issue oil spill prevention rules which pertain to onshore facilities and offshore facilities and not just ''equipment.''

In order to fulfill the statutory mandate, it is necessary to regulate the facilities from which discharges emanate. Moreover, although the term ''facility'' is not defined in the statute, both ''onshore facility'' and ''offshore facility'' are defined terms in CWA section 311. They have also been defined terms in the SPCC rule since its inception in 1974. In the 1991 proposal, EPA proposed a definition of ''facility'' to implement the CWA. That definition was based on a Memorandum of Understanding (MOU) between the Secretary of Transportation and the EPA Administrator dated November 24, 1971 (36 FR 24080). The MOU, which has been published as Appendix A to part 112 since December 11, 1973 (38 FR 34164, 34170), defines in detail what constitutes a facility. Thus, there has long been a common understanding of the term. That understanding has been reinforced by frequent use of the term in context within the SPCC rule since it became effective in 1974. To promote clarity and to maintain all definitions in one place, the proposed definition has been finalized in this rulemaking.

While section 311(j)(1)(C) of the Act may not explicitly mention jurisdictional criteria, section 311(b) of the Act does. Section 311(b) establishes as the policy of the United States that there shall be ''no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which 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).'' Thus, the location or ''jurisdictional'' criteria contained in § 112.1(b) are appropriate for inclusion in the rule.

*Use of oil.* We disagree that operational equipment is not subject to the SPCC rule. We have amended § 112.1(b) to clarify that using oil, for example operationally, may subject a facility to SPCC jurisdiction as long as the other applicability criteria apply, for example, oil storage capacity, or location. Such a facility might reasonably be expected to discharge oil as described in § 112.1(b). Therefore, the prevention of discharges from such facility falls within the scope of the statute.

However, we have distinguished the bulk storage of oil from the operational use of oil. We define ''bulk storage container'' in the final rule to mean any container used to store oil. The storage of oil may be prior to use, while being used, or prior to further distribution in commerce. For clarity, we have specifically excluded oil-filled electrical, operating, or manufacturing equipment from the definition.

Facilities that use oil operationally include electrical substations, facilities containing electrical transformers, and certain hydraulic or manufacturing equipment. The requirements for bulk storage containers may not always apply to these facilities since the primary purpose of this equipment is not the storage of oil in bulk. Facilities with equipment containing oil for ancillary purposes are not required to provide the secondary containment required for bulk storage facilities (§ 112.8(c)) and onshore production facilities (§ 112.9(c)), nor implement the other provisions of § 112.8(c) or § 112.9(c). Oil-filled equipment must meet other SPCC requirements, for example, the general requirements of this part, including § 112.7(c), to provide appropriate containment and/or diversionary structures to prevent discharged oil from reaching a navigable watercourse. The general requirement for secondary containment, which can be provided by various means including drainage systems, spill diversion ponds, etc., will provide for safety and also the needs of section 311(j)(1)(C) of the CWA.

In addition, a facility may deviate from any inappropriate SPCC requirements, if the owner or operator explains his reasons for nonconformance and provides equivalent environmental protection by some other means. See § 112.7(a)(2). See also § 112.7(d).

*Distance to navigable waters.* We do not believe that any rule which exempts facilities beyond any particular distance meets the intent of the statute. The locational standard in the rule is whether there is a reasonable possibility of discharge in quantities that may be harmful from the facility. A facility that is more than one mile from navigable waters might well fit within that standard. For example, piping or drainage from that facility might lead directly to navigable water. If discharged oil may reach or does reach navigable waters, adjoining shorelines, or protected resources, the distance which the discharged oil travels is irrelevant.

*Editorial changes and clarifications.* In the proposed rule, this paragraph was designated as §§ 112.1(b) and 112.1(b)(1). We have combined the paragraphs and added two new paragraphs. The new paragraphs describe the types of containers subject to the rule, which in addition to the two paragraphs we already proposed, better describe those containers. We also changed plural references in the proposal to singular throughout the section.

*Section 112.1(b)(1)—Aboveground Storage Containers*

*Background.* We added this paragraph to clarify that aboveground storage containers are a subset of the containers subject to the rule. In 1991, we noted that containers used for standby storage, temporary storage, or containers that are not permanently closed, are subject to the rule. We also noted that bunkered tanks and partially buried tanks are subject to the rule. The inclusion of this paragraph and paragraph (b)(2), which refers to completely buried tanks, completes the universe of containers subject to the rule.

*Section 112.1(b)(2)—Completely Buried Tanks*

*Background.* We added this paragraph to clarify that completely buried tanks are a subset of the containers subject to the rule. See also the discussion under § 112.1(b)(1).

*Section 112.1(b)(3)—Standby, Temporary, or Seasonal Storage Facilities*

*Background.* We proposed in 1991 to clarify that tanks used for standby, temporary, or seasonal storage, or that are not otherwise permanently closed, are subject to the SPCC rule. The Agency noted that such tanks are not permanently closed and can reasonably be expected to experience a discharge as described in § 112.1(b). 56 FR 54617. The facilities described in § 112.1(b)(3) are a subset of the facilities described in § 112.1(b)(1) and (b)(2).

*Comments.* One commenter asserted that temporarily closed tanks should be exempted from the rules because they are required to be drained and, while awaiting temporary closure, are no threat to the environment through oil spills. Another commenter urged that temporary storage facilities should be exempted from the SPCC rule, and handled under the Facility Response Plan (FRP) rules, found at 40 CFR 112.20–21. A third commenter argued that frac tanks, used to store oil for the short periods of time while maintenance or workover operations are underway, should be exempted from the rule because their use is of short duration and does not necessarily increase the potential for discharge. Another commenter stated that it would be impractical to maintain an up-to-date SPCC Plan for temporary storage at remote parts of a large mining operation.

*Response to comments.* If a tank is not permanently closed, it is still available for storage and the possibility of a discharge as described in § 112.1(b), remains. Nor does a short time period of storage eliminate the possibility of such a discharge. Therefore, a prevention plan is necessary. A tank closed for a temporary period of time may contain oil mixed with sludge or residues of product which could be discharged. Discharges from these facilities could cause severe environmental damage during such temporary storage and are therefore subject to the rule. As to the argument that it is impractical to maintain an up-to-date Plan for temporary facilities at remote parts of mining sites, we disagree. Plans for such storage are analogous to or may be Plans for mobile facilities, which may be general Plans, but still provide environmental protection against a discharge as described in § 112.1(b).

*Editorial changes and clarifications.* In the proposed rule, this paragraph was designated as § 112.1(b)(2). We have redesignated it as § 112.1(b)(3).

*Section 112.1(b)(4)—Bunkered, Partially Buried, and Vaulted Tanks*

*Background.* In 1991, we proposed to clarify that bunkered tanks, partially buried tanks, and tanks in subterranean vaults are considered aboveground tanks for purposes of the SPCC rule. The tanks or containers in these facilities are a subset of the facilities described in § 112.1(b)(1). The Agency explained that compared to completely buried tanks, discharges from these tanks are more likely to enter surface waters regulated under the CWA. 56 FR 54626.

*Comments. Partially buried and bunkered tanks.* A commenter suggested that partially buried and bunkered tanks should be considered underground storage tanks (USTs) and regulated under that program because ten percent

or more of the product is below grade either in the tank or in the pipeline. The commenter argued that tanks in compliance with the UST program, found at 40 CFR part 280, would not pose a significant threat to the environment. In fact, the commenter argued, they might be less likely to cause a spill than one in compliance with the SPCC rule. The commenter further argued that dual regulation would be unnecessarily burdensome without providing any additional environmental protection.

*Vaulted tanks.* Several commenters asserted that since vaulted tanks are already regulated by fire and safety authorities, they should not be regulated under the SPCC program. Others argued that vaulted tanks meeting the technical requirements of 40 CFR part 280, or which have engineering controls designed to contain product released from failure or overfill, should likewise be exempted from the SPCC rule. These commenters asserted that a discharge from such tanks would not reach water.

*Response to comments. Partially buried and bunkered tanks.* We disagree that partially buried tanks and bunkered tanks should be considered completely buried tanks, and therefore excluded from SPCC provisions. The rules differ in important aspects. Tanks which are partially underground pose a risk of a discharge as described in § 112.1(b), which could have an adverse impact on navigable water, adjoining shorelines, or affected resources. Some tanks that are not completely buried contain engineering controls designed to prevent discharges. However, such controls may fail due to human or mechanical error and cause severe environmental damage. Such tanks may suffer damage caused by differential corrosion of buried and non-buried surfaces greater than completely buried tanks, which could cause a discharge as described in § 112.1(b).

Such tanks are also not subject to secondary containment requirements under part 280 or a State program approved under 40 CFR part 281. There may also be accidents during loading or unloading operations, or overfills resulting in a discharge to navigable waters and adjoining shorelines. Furthermore, a failure of such a tank (caused by accident or vandalism) would be more likely to cause a discharge as described in § 112.1(b). We will, however, accept UST program forms, e.g., the Notification for Underground Storage Tanks, EPA Form 7530–1, or approved State program equivalents, insofar as such forms contains information relevant to the SPCC program. For example, the UST form (item 12) contains information regarding corrosion protection for steel tanks and steel piping which would be relevant for SPCC purposes. Other items on the form may also be relevant for SPCC purposes. We are, however, excluding from the rule completely buried storage tanks (including connected underground piping, underground ancillary equipment, and containment systems) that are currently subject to all of the technical requirements of 40 CFR part 280 or 281. *See* § 112.1(d)(4).

*Vaulted tanks.* Vaulted tanks are generally excluded from the scope of 40 CFR part 280. The definition of ''underground storage tank'' at 40 CFR 280.12(i) excludes from its scope a ''storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.'' These tanks might reasonably experience a discharge as described in § 112.1(b). Therefore, it is reasonable that they be within the scope of part 112. Merely because these tanks are the subject of local fire and safety regulations does not guarantee that there will be adequate environmental protection to prevent a discharge as described in § 112.1(b), because that is not the purpose of those regulations. Such codes may provide lesser protection than part 112. For example, NFPA 30:2–3.4.3(b) specifically indicates that a dike need only provide containment for the largest tank, while part 112 requires freeboard for precipitation.

*Editorial changes and clarifications.* In the proposed rule, this paragraph was designated as § 112.1(b)(3). We have redesignated it as § 112.1(b)(4). Section 112.1(b)(3) of the proposed rule uses the term ''aboveground storage containers,'' in place of ''aboveground storage tanks.'' *See 56* FR 54630. We continue to use ''containers'' in the final rule. We deleted the word ''subterranean,'' which modified vaulted tanks in the proposed rule, because vaulted tanks are considered aboveground tanks under this rule whether they are subterranean or not.

*Section 112.1(c)—Federal Agencies—Applicability of Rule*

*Background.* In 1991, we republished the already existing provisions of § 112.1(c), which provide that agencies, departments, and instrumentalities of the Federal government are subject to the rule to the same extent as any person, except for the provisions relating to civil penalties. The provision relating to civil penalties was rescinded on March 11, 1996, because it no longer accurately reflected the penalties provided for under section 311(b) of the Act, as amended by OPA. 61 FR 9646. Therefore, we have reserved § 112.6 for future use.

*Comments.* One commenter suggested that Federal agencies are subject to civil penalties which are imposed under the CWA—including fines.

*Response to comments.* EPA disagrees that Federal agencies are subject to penalties or fines under the CWA because the Federal government is not a ''person'' under sections 311(a)(7) or 502 of the CWA. Only ''persons'' (including owners or operators and persons in charge) are subject to such penalties. Therefore, although Federal agencies must comply with requirements of a CWA section 311 rule in accordance with CWA section 313, they are not subject to civil or criminal penalties or fines. *See U.S. Department of Energy* v. *Ohio,* 503 U.S. 607, 618 (1992) (because the CWA does not define ''person'' to include the United States, the civil penalty provisions are not applicable).

*Section 112.1(d)—Exemptions From Applicability*

*Section 112.1(d)(1)—Exemptions Based on Jurisdiction*

*Section 112.1(d)(1)(i)—Exemptions Based on Location*

*Background.* In 1991, we described the facilities, equipment, and operations that are exempt from the SPCC rule because they are not subject to the jurisdiction of EPA under section 311(j)(1)(C) of the Act. These facilities include those which, due to their location, could not be reasonably expected to have a discharge as described in § 112.1(b).

In making the determination of whether there is a reasonable possibility of a discharge as described in § 112.1(b), we proposed that you may consider only the geographical and locational aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, *etc.*). We proposed that you could not consider manmade structures such as dikes, equipment, or other structures which may serve to restrain, hinder, or otherwise contain a discharge as described in § 112.1(b), in making that same determination.

*Comments. Geographic scope of rule.* One commenter agreed that the extension of the geographic scope of the rule will allow for more clarity in determining which facilities are subject to SPCC requirements. The commenter added that the inclusion of natural

resources sets the stage for the implementation of Natural Resource Damage Assessments, as required by the Oil Pollution Act of 1990.

*Manmade structures.* Other commenters argued that EPA should modify its rules to provide that a facility with no reasonable possibility of discharge because of some combination of natural and manmade features, which are present for operational rather than pollution prevention purposes, should be excluded from the scope of the rule. Another commenter urged that the rule allow consideration of manmade structures where the structures are inherent in the design of the facility and serve functional and operational purposes distinct from the containment of oil spills.

*Groundwater.* Another commenter argued that Congress intended for EPA to develop SPCC requirements that prevent releases to groundwater, in addition to requirements that prevent releases to navigable water. At a minimum, that commenter argued, § 112.1(d)(1)(i) should contain language stating that clear hydrologic connections between groundwater underlying a facility and navigable waters require a facility to develop and implement an SPCC Plan. Yet another commenter, in opposing exemption of USTs from the SPCC program noted that groundwater eventually becomes surface water. The commenter added that, hydrologically, oil released into underground waters may migrate to surface water within minutes or months. The commenter argued that in the absence of emergency response provisions, some USTs could damage the nation's ground and surface water resources.

*Response to comments. Geographic scope of rule.* We also believe that few, if any, new facilities will be subject to the rule because of its extension to facilities with the potential to affect certain natural resources. We believe that most affected facilities are either already subject to the rule, or not subject to our jurisdiction due to a Memorandum of Understanding between EPA, the U.S. Department of Transportation (DOT), and the U.S. Department of the Interior (DOI), which assigns jurisdiction over most of those facilities to DOT or DOI. See 40 CFR part 112, Appendix B.

We have amended this provision to be consistent with the revised statutory language found in sections 311(b)(1) and (c)(1)(A) of the CWA. This rule focuses on preventing discharges to navigable waters, adjoining shorelines, the exclusive economic zone, and natural resources belonging to, appertaining to, or under the exclusive jurisdiction of the United States. Once a prohibited discharge of oil occurs and affects such natural resources, the NRDA provisions of OPA sections 1002(b)(2)(A) and 1006 apply. The National Oceanographic and Atmospheric Administration has promulgated a set of regulations which govern the process for conducting NRDAs under the OPA. 15 CFR part 990.

*Manmade structures.* To allow consideration of manmade structures (such as dikes, equipment, or other structures) to relieve a facility from being subject to the rule would defeat its preventive purpose. Because manmade structures may fail, thus putting the environment at risk in the event of a discharge, there is an unacceptable risk in using such structures to justify relieving a facility from the burden of preparing a prevention plan. Secondary containment structures should be part of the prevention plan.

*Groundwater.* EPA agrees with the commenter that groundwater underlying a facility that is directly connected hydrologically to navigable waters could trigger the requirement to produce an SPCC Plan based on geographic or locational aspects of the facility. *See* the discussion below for tanks regulated under 40 CFR part 280 or under a State program approved under 40 CFR part 281.

EPA does not agree with the commenter that 40 CFR part 280 and a State program approved under 40 CFR part 281 (the rules governing most completely buried tanks) lack adequate emergency response provisions for regulated tanks and piping. 40 CFR part 280 and State programs approved under 40 CFR part 281 require corrective action, reporting, and recordkeeping requirements for any release from regulated tanks and piping. Also, 40 CFR parts 280 and 281 require various measures intended to prevent contamination that could result from releases from regulated tanks and piping. Although groundwater underlying a facility may eventually connect hydrologically to navigable waters, the requirements of 40 CFR part 280 and State programs approved under 40 CFR part 281 are intended to address the prevention of releases from underground storage tanks that might have an impact on groundwater and to require rapid response and corrective action at such sites if they compromise groundwater quality.

*Editorial changes and clarifications.* The proposed phrase in the first sentence which read, ''* * * could not reasonably be expected to discharge oil as described in § 112.1(b)(1) of this part,'' becomes ''* * * could not reasonably be expected to have a discharge as described in § 112.1(b).'' The proposed phrase in the last sentence of the paragraph which read, ''* * * which may serve to restrain, hinder, contain, or otherwise prevent a discharge of oil from reaching navigable waters of the United States or adjoining shorelines. * * *'' becomes ''* * * which may serve to restrain, hinder, contain, or otherwise prevent a discharge as described in § 112.1(b).''

*Section 112.1(d)(1)(ii)—Exemptions Based on Function—DOT*

*Background.* In 1991, we republished, without substantive change, the current exemption for equipment or operations of vessels or transportation-related onshore and offshore facilities that are subject to the authority and control of the U.S. Department of Transportation (DOT). While we received no comments on the proposal, we believe that this provision merits a few words to clarify the understanding of the regulated community. The Executive Order (EO) implementing the Act assigns regulatory jurisdiction to three Federal agencies based on the function of facilities. Section 2(b)(1) of EO 12777 (56 FR 54757, October 22, 1991) delegates to the Administrator of EPA authority in section 311(j)(1)(C) relating to the establishment of procedures, methods, and equipment, and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from non-transportation-related onshore facilities. Section 2(b)(2) of the EO delegates similar authority to contain discharges of oil and hazardous substances from vessels and transportation-related onshore facilities and deepwater ports to the Secretary of Transportation. Section 2(b)(3) of the EO delegates similar authority for offshore facilities, including associated pipelines, other than deepwater ports, to the Secretary of the Interior. A Memorandum of Understanding (MOU) among EPA, DOT, and the U.S. Department of the Interior (DOI), found at Appendix B to part 112, redelegated from DOI to EPA the responsibility for non-transportation-related offshore facilities located landward of the coastline. Similarly the MOU redelegated from DOI to DOT the responsibility for transportation-related offshore facilities, including pipelines, landward of the coastline.

In 1993, we proposed a definition for the term ''complex,'' which is a facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section

311(j) of the Clean Water Act. We published that definition on July 1, 1994. 59 FR 34097. A commenter on the definition of ''breakout tank'' (*see also* discussion below on ''breakout tank'') asked for guidance as to which agency, DOT or EPA, regulates such tanks. Because of confusion in the regulated community over which Federal agencies have jurisdiction in complexes, we discuss the issue below.

*Complexes.* ''Complex'' is defined at § 112.2 as a ''facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the Clean Water Act.'' The jurisdiction over a component of a complex is determined by the activity occurring at that component. An activity might at one time subject a facility to one agency's jurisdiction, and a different activity at the same facility using the same structure or equipment might subject the facility to the jurisdiction of another agency.

Equipment, operations, and facilities are subject to DOT jurisdiction when they are engaged in activities subject to DOT jurisdiction. If those facilities are also engaged in activities subject to EPA jurisdiction, such activities would subject the equipment, operation, or facility to EPA jurisdiction. An example of an activity subject to EPA jurisdiction would be the loading or unloading of oil into a tank truck or railcar. Under an MOU between EPA and DOT (See Appendix A of part 112), transportation-related activities regulated by DOT and non-transportation-related activities regulated by EPA are defined. The MOU provides that highway vehicles and railroad cars which are used for the transport of oil in interstate or intrastate commerce and the equipment and appurtenances related thereto, and equipment used for the fueling of locomotive units, as well as the rights-of-way on which they operate, are considered transportation-related activities, subject to DOT jurisdiction.

Another example of activities that might be considered a complex and therefore subject to both sets of rules is that of a breakout tank which is used for both transportation and non-transportation purposes. It is the activity to which the tank is put that determines jurisdiction. If you are an owner or operator of a complex, while you may not choose which agency will regulate your facility, you may choose not to engage in activities which would subject your facility to the jurisdiction of a particular agency if you do not wish to comply with that agency's rules. Otherwise, if you engage in activities subjecting your facility to the jurisdiction of two agencies, your facility would be subject to the more stringent of rules if there were to be a conflict or an inconsistency in those rules. For example, a facility with breakout tanks used solely to relieve surges in a pipeline, and not having another non-transportation-related activity or component, would not be required to have an SPCC Plan.

Which activity would be subject to DOT jurisdiction and which activity which would be subject to EPA jurisdiction is defined by the MOU in Appendix A to part 112. The definitions in the MOU are keyed to the delegations of authority in EO 12777.

Because regulatory jurisdiction is predicated upon the owner's or operator's activities at the facility, an owner or operator might have questions concerning that jurisdiction at his facility. To clarify regulatory jurisdiction, in February 2000, EPA and DOT signed a policy memorandum that described how the two agencies would work together to bring their respective regulations into alignment and, ultimately, to eliminate overlapping jurisdiction over tanks when possible.

Recently, DOT informed EPA of a voluntary initiative to collect information from industry on breakout tanks, beginning in December 2001. In anticipation of receiving the new tank information, DOT is considering updating the National Pipeline Mapping System (NPMS) data standards to reflect the guidelines for tank data submissions. Operators' data submissions will include the location of each tank farm with breakout tanks, information about each tank, and information about the accuracy of the data. The data will be depicted as a geospatial location in a digital file or a point located on a USGS 1:24,000 topographic quad map.

In addition to upgrading the NPMS, DOT is training its inspectors in tank inspection. In the President's Fiscal Year 2002 budget request, DOT expressed its intent to make tanks a priority in its compliance program, particularly where the tanks are in sensitive areas. DOT and EPA have agreed to provide cross-training of their respective personnel. As the two agencies proceed with tank oversight plans, the goal is to ensure that every tank is regulated and no tank is subject to overlapping regulations from two agencies.

*Editorial changes and clarifications.* ''EPA Administrator'' becomes ''Administrator of EPA.'' Another revision corrects an incorrect citation to the 1971 MOU between EPA and DOT.

*Section 112.1(d)(1)(iii)—Exemptions Based on Function—DOT and DOI*

*Background.* We have added a new paragraph to the applicability section of the rule to note the jurisdictional changes resulting from an MOU between DOT, DOI, and EPA redelegating certain functions. The MOU was published on July 1, 1994 (at 59 FR 34102). The addition of this paragraph is not a substantive change in the rules, but merely an editorial revision to mark the jurisdiction of the respective agencies in this rule. It complements the other paragraphs in § 112.1(d)(1) that describe facilities which are not subject to EPA jurisdiction. Due to the MOU, the referenced facilities, equipment, and operations of DOT and DOI in § 112.1(d)(1)(iii), like the facilities, equipment, and operations described in § 112.1(d)(1)(i) and (ii), are not subject to EPA jurisdiction under section 311(j)(1)(C) of the Act. They are not subject to EPA jurisdiction either because of their location, in the case of DOI facilities, or because of their activities, which are strictly transportation-related, in the case of DOT facilities.

EO 12777 (56 FR 54757, October 22, 1991) delegates to DOI, DOT, and EPA various responsibilities identified in section 311(j) of the CWA. Sections 2(b)(3), 2(d)(3), and 2(e)(3) of EO 12777 assigned to DOI spill prevention and control, contingency planning, and equipment inspection activities associated with offshore facilities. Section 311(a)(11) of the CWA defines the term ''offshore facility'' to include facilities of any kind located in, on, or under navigable waters of the United States. By using this definition, the traditional DOI role of regulating facilities on the Outer Continental Shelf was expanded by EO 12777 to include inland lakes, rivers, streams, and any other inland waters.

Under section 2(i) of EO 12777, DOI redelegated, and EPA and DOT accepted, the functions vested in DOI by sections 2(b)(3), 2(d)(3), and 2(e)(3) of the EO. DOI redelegated to EPA the responsibility for non-transportation-related offshore facilities located landward of the coastline. To DOT, DOI redelegated responsibility for transportation-related facilities, including pipelines, located landward of the coastline. DOT retained jurisdiction for deepwater ports and the associated seaward pipelines. DOI retained jurisdiction over facilities, including pipelines, located seaward of

the coastline, except for deepwater ports and associated seaward pipelines. For purposes of the MOU, the term ''coastline'' means ''the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters.''

*Section 112.1(d)(2)—Other Exemptions*

*Section 112.1(d)(2)(i)—Completely Buried Storage Tanks Currently Subject to all of the Technical Requirements of 40 CFR PART 280 or State Programs Approved under 40 CFR PART 281*

*Background. Part 280 and approved State programs.* In 1991, we proposed to exempt from the underground storage capacity of facilities in the SPCC rule the storage capacity of buried underground storage tanks (USTs) currently subject to all of the technical requirements of 40 CFR part 280. We proposed this change as § 112.1(d)(2)(i) in 1991. We did not at the time include approved State programs in the proposal because in 1991 few if any States had such programs. In 40 CFR part 281 (published on September 23, 1988 at 53 FR 37212), EPA established regulations whereby a State could receive EPA approval for its State program to operate in lieu of the Federal program. In order to obtain EPA program approval under part 281, a State program must demonstrate that its requirements are no less stringent than the corresponding Federal regulations set forth in part 280, and that it provides adequate enforcement of these requirements. Thus, we have decided to exempt also the storage capacity of USTs subject to all of the technical requirements of State UST programs which EPA has approved. By January 2000, EPA had approved 27 State programs, plus programs in the District of Columbia and Puerto Rico. The rationale for exempting the storage capacity of these facilities from the SPCC regime is because 40 CFR part 280 and the approved State programs under 40 CFR part 281 provide comparable environmental protection for the purpose of preventing discharges as described in § 112.1(b).

*Facilities with storage capacity not subject to part 280 or deferred from its provisions.*

*Storage capacity not subject to part 280.* Some UST facilities have storage capacity that is not subject to part 280, for example: any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous wastes and other regulated substances; wastewater treatment tank systems that are part of a wastewater treatment facility regulated under section 307(b) or 402 of the Clean Water Act; equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks; and, UST systems whose capacity is 110 gallons or less. Also, part 280 does not provide for regulation of USTs storing animal fats and vegetable oils. All of these facilities remain potentially subject to the SPCC program.

*Tanks deferred from compliance with part 280 rules.* Other facilities with storage capacity subject to part 280 are deferred from current compliance with most of the technical requirements of that part, including: wastewater treatment tank systems; any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*); any UST system that is part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under 10 CFR part 50, Appendix A; airport hydrant fuel distribution systems; UST systems with field-constructed tanks; and, any UST system that stores fuel solely for use by an emergency power generator. All of these facilities remain potentially subject to the SPCC program.

*Tanks excluded from part 280 UST definition.* Excluded from the definition of ''underground storage tank'' or ''UST'' in part 280 are a: (1) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes; (2) tank used for storing heating oil for consumptive use on the premises where stored; (3) septic tank; (4) pipeline facility (including gathering lines) regulated under: (a) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, *et seq.*), (b) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, *et seq.*), or (c) which is an intrastate pipeline facility regulated under State law comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979; (5) surface impoundment, pit, pond, or lagoon; (6) storm-water or wastewater collection system; (7) flow-through process tank; (8) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or, (9) storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor. An UST system includes the tank itself, connected underground piping, underground ancillary equipment, and containment system. Therefore, any of these tank systems may be potentially subject to the SPCC program.

*Definitions.* EPA proposed to define an UST as any tank which is completely covered with earth. Part 280 includes a broader definition of underground storage tanks, and includes partially buried and bunkered tanks. Partially buried tanks and bunkered tanks are excluded from the definition of ''completely buried tank'' in part 112, and are considered aboveground storage tanks (ASTs) for purposes of the rule, as are tanks in vaults. These tanks are not included in today's exemption because compared to completely buried tanks, partially buried and bunkered tanks are more likely to cause a discharge as described in § 112.1(b).

Although most USTs will be exempt from the SPCC rule (see the above discussion on § 112.1(d)(4)), a facility might have non-exempt USTs for which it must prepare a facility SPCC Plan. If part of your facility is subject to the rule, you must mark the location and contents of all containers, including exempt and non-exempt USTs, on the facility diagram. 40 CFR 112.1(d)(4). The rationale for this requirement is to help response personnel to easily identify dangers from either fire or explosion, or physical impediments during spill response activities. In addition, facility diagrams may be referred to in the event of design modifications. 56 FR 54626.

*Capacity calculations.* To calculate the 42,000-gallon threshold which subjects a facility operating a completely buried tank to the SPCC rule, you may exclude the storage capacity of any completely buried tank currently subject to all of the technical requirements of 40 CFR part 280 or of an approved State program under 40 CFR part 281. Thus we expect you will count few completely buried tanks containing petroleum products in that calculation. You must count the capacity of completely buried tanks containing products which are not regulated under part 280 or an approved State program under part 281, or which are not currently subject to all of its technical requirements.

*Permanently closed tanks.* In 1991, EPA proposed that the underground storage capacity of a facility does not include the capacity of underground tanks that are ''permanently closed'' as defined in § 112.2. Under today's rule, you may exclude the capacity of tanks that are permanently closed, as defined in § 112.2, in completely buried tank capacity calculations.

*Comments. Completely buried storage tanks.* Favorable comments. Commenters overwhelmingly favored eliminating dual regulation of ASTs and USTs. Most agreed that the UST program provides protection comparable to the SPCC program. Several argued that all USTs as defined in part 280, which includes partially buried and bunkered tanks, should be exempted. Others argued that tanks deferred under the UST program should be exempted from the SPCC program. Another commenter suggested that piping connecting exempted USTs to regulated ASTs should be exempted from the SPCC rules. The commenter added that if such piping is subject to leak detection requirements for USTs under 40 CFR part 280, then it should remain exclusively under UST rules and be exempted from SPCC rules.

*Opposing comments.* Several commenters, however, opposed the proposed exemption of USTs from the SPCC program. Those commenters argued that the SPCC rules are not duplicative. They asserted that UST rules lack provisions concerning contingency planning; emergency response; periodic training of personnel to deal with emergencies; maintenance of records regarding inspections and tests; maintenance of records regarding discharges to navigable waters or adjoining shorelines; diking of fuel transfer areas; fuel transfer area operational procedures; illumination of fuel transfer areas; stormwater drainage system design; posting of vehicle weight restrictions in areas where there is underground piping and/or design of underground piping to withstand vehicular loadings; a requirement for an application of ''good engineering practice,'' in other words, no requirements that the design and construction of a UST system be overseen by a Professional Engineer; a requirement that management sign the Plan; and, ''other topics enumerated in 40 CFR 112.7.'' One commenter noted that since groundwater becomes surface water eventually, whether within minutes or months, the absence of emergency provisions in the UST program might cause environmental problems. Another commenter argued that the new regulatory scheme would be confusing because a facility might have some containers subject to SPCC and some that are not, as well as containers that may be subject to State regulation.

*Response to comments. Completely buried storage tanks.* As we noted above, in the discussion of § 112.1(d)(1)(i), the UST program provides comparable environmental protection to the SPCC program. While not all aspects of the programs are identical, the UST program ensures protection against discharges as described in § 112.1(b), and protection of the environment. Therefore, dual regulation is unnecessary. In response to commenters asserting that UST rules lack provisions concerning contingency planning; emergency response; certain recordkeeping requirements; and other alleged deficiencies, we disagree. The UST rules have numerous safeguards addressing the commenter's issues.

*Partially buried tanks and bunkered tanks.* We disagree that partially buried tanks and bunkered tanks should be considered completely buried tanks, and therefore excluded from SPCC provisions. Such tanks may suffer damage caused by differential corrosion of buried and non-buried surfaces greater than completely buried tanks, which could cause a discharge as described in § 112.1(b). Such tanks are also not subject to secondary containment requirements under part 280 or a State program approved under 40 CFR part 281. There may also be accidents during loading or unloading operations, or overfills resulting in a discharge to navigable waters and adjoining shorelines. Furthermore, a failure of such a tank (caused by accident or vandalism) would be more likely to cause a discharge as described in § 112.1(b).

*Contingency planning.* While it is true that UST rules do not require contingency planning, spills and overfills of USTs resulting in a discharge to the environment are much less likely as a result of those rules. An owner or operator of an underground storage tank subject to 40 CFR part 280 or a State program approved under 40 CFR part 281 was required to install spill and overfill prevention equipment no later than December 22, 1998. 40 CFR 280.20 and 280.21. The use of this equipment will greatly reduce the likelihood of both small and large releases or discharges of petroleum to the environment through surface spills or overfilling underground storage tanks. In addition, the UST rules place a general responsibility on the owner or operator to ensure that discharges due to spilling and overfilling do not occur. See 40 CFR 280.30.

*Emergency response and release reporting.* The UST rules also have several requirements related to emergency response and release or discharge reporting. The UST rules generally require that releases of regulated substances be reported to the implementing agency within 24 hours. As part of the initial response requirements (found at 40 CFR 280.61), an owner or operator must take immediate action to prevent further release of the regulated substance and must identify and mitigate fire, explosion, and vapor hazards.

*Reporting and recordkeeping.* In addition to the reporting requirements mentioned above, there are numerous reporting and recordkeeping requirements in the rules governing underground storage tanks. Among these are: corrective action plans; documentation of corrosion protection equipment; documentation of UST system repairs; and, information concerning recent compliance with release detection requirements. Thus, the UST rules have significant reporting and recordkeeping requirements, including specific requirements related to spills and overfills.

*Transportation rules.* In addition to the EPA UST rules, the U.S. Department of Transportation has hazardous material regulations related to driver training, emergency preparation, and incident reporting and emergency response. Training regulations, for example, can be found at 49 CFR part 172, and loading and unloading regulations can be found at 49 CFR 177.834 and 49 CFR 177.837. These regulations apply, for example, to truck drivers delivering gasoline or diesel fuel to gas stations with underground storage tanks.

*Section 112.1(f).* Finally, as a safeguard, today's rule (*see* § 112.1(f) in today's preamble) provides the Regional Administrator with the authority to require any facility subject to EPA jurisdiction under section 311 of the CWA, regardless of threshold or other regulatory exemption, to prepare and implement an SPCC Plan when necessary to further the purposes of the Act.

*Regulatory jurisdiction.* To eliminate any possible confusion over regulatory jurisdiction, we explain in this preamble (see the above background discussion) which containers in a facility are subject to 40 CFR part 280 or a State program approved under 40 CFR part 281 and which are subject to part 112.

*Piping, ancillary equipment, and containment systems.* EPA has modified the scope of the proposed exemption for completely buried tanks (which are excluded from the scope of the SPCC rule if they are subject to all of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281) by clarifying that the exemption includes the connected underground piping, underground ancillary equipment, and containment

systems, in addition to the tank itself. This modification is consistent with the definition of underground storage tank system found at 40 CFR 280.12. In addition, this clarification is responsive to the comment which asked that the piping be included in the exemption.

*Deferred tanks.* We disagree that we should not regulate tanks which are deferred from compliance with any of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281. These are containers from which a discharge as described in § 112.1(b) may occur, and thus are properly subject to the SPCC rule. Furthermore, if they were not regulated by SPCC rules, they may, in some instances, not be regulated at all.

*Effect on Facility Response Plan facilities.* The exemption for completely buried tanks subject to all the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281 applies to the calculation of storage capacity both for SPCC purposes and for Facility Response Plan (FRP) purposes because the exemption applies to all of part 112. Therefore, a few FRP facilities with large capacity completely buried tanks subject to 40 CFR part 280 or a State program approved under 40 CFR part 281 might no longer be required to have FRPs. Calculations for planning levels for worst case discharges will also be affected. However, the Regional Administrator retains authority to require the owner or operator of any non-transportation-related onshore facility to prepare and submit a FRP after considering the factors listed in § 112.20(f)(2). *See* § 112.20(b)(1).

*Editorial changes and clarifications.* ''Underground storage tanks'' becomes ''completely buried storage tanks.'' The phrase ''does not include'' becomes ''excludes.'' We have amended the rule to clarify that facilities must be subject to ''all of'' the technical requirements of 40 CFR part 280 or of a State program approved under 40 CFR part 281 to qualify for the SPCC exemption. If a facility is subject to some, but not all of the UST requirements, it may be subject to the SPCC rule. Facilities in this category include those which are excluded from UST requirements, or deferred from compliance with some or all of those requirements.

*Section 112.1(d)(2)(ii)—AST Threshold, Minimum Container Size, Permanently Closed Tanks*

*Background. Regulatory thresholds.* In the 1997 preamble, we asked for comment as to whether any change in the level of storage capacity which subjects a facility to this rule is justified. 62 FR 63813. We noted that we were considering eliminating the provision in the current rule that requires a facility having an aboveground container in excess of 660 gallons to prepare an SPCC Plan, as long as the total aboveground capacity of the facility remained at 1,320 gallons or less. The effect of such a change would be to raise the threshold for regulation to an aboveground storage capacity greater than 1,320 gallons.

In 1991, EPA also proposed that the aboveground storage capacity of a facility does not include the capacity of aboveground storage containers that are ''permanently closed'' as defined in § 112.2.

*Comments. Minimum size container.* Numerous commenters suggested a *de minimis* size for containers to be used for AST capacity calculations. Most of the suggestions came in the context of the discussion of the proposed definition of ''bulk storage tank.'' Suggestions for a minimum size ranged from over 55 gallons to 25,000 gallons. The bulk of the commenters favored either a greater than 55-gallon number, or a greater than 660-gallon figure.

*Regulatory thresholds. Higher threshold.* Commenters offered numerous threshold levels in both 1991 and 1997. Suggestions for the regulatory threshold in 1991 ranged from greater than 1,320 gallons to 120,000 gallons. Many commenters, particularly utilities, favored thresholds in the 10,000–42,000-gallon range. In 1997, when EPA suggested it might consider a greater than 1,320-gallon threshold, many commenters favored that suggestion. Others urged thresholds ranging up to 15,000 gallons.

*Lower threshold.* A few commenters suggested lowering the threshold. Commenters suggested threshold levels of 110 and 250 gallons. The general rationale for these suggestions was that oil spills causing even a sheen can be devastating. Therefore, these commenters reasoned that sheens from home heating oil tanks of 110 gallons, i.e., two 55-gallon drums, are every bit as important as sheens from crude oil tanks. An advocate for a lower threshold noted that manufacturers now sell, market, and produce fuel containers of 650 gallons designed to avoid compliance with the rule, whether the site is adjacent to navigable waterways or not. The commenter added that most manufacturers market or sell a ''listed'' tank of 250 gallons, and that under current rules, five of these tanks would not subject a facility to the SPCC rule, yet the risk would be nearly identical to one larger tank of 1,250 gallons depending upon the design of the tank.

*Response to comments. Minimum container size.* In response to comments, we are introducing a minimum container size. The 55 gallon container is the most widely used commercial bulk container, and these containers are easily counted. Containers below 55 gallons in capacity are typically end-use consumer containers. Fifty-five gallon containers are also the lowest size bulk container that can be handled by a human. Containers above that size typically require equipment for movement and handling. We considered a minimum container size of one barrel. However, a barrel or 42 gallons is a common volumetric measurement size for oil, but is not a common container size. Therefore, it would not be appropriate to institute a 42 gallon minimum container size.

You need only count containers of 55 gallons or greater in the calculation of the regulatory threshold. You need not count containers, like pints, quarts, and small pails, which have a storage capacity of less than 55 gallons. Some SPCC facilities might therefore drop out of the regulated universe of facilities. You should note, however, that EPA retains authority to require any facility subject to its jurisdiction under section 311(j) of the CWA to prepare and implement an SPCC Plan, or applicable part, to carry out the purposes of the Act.

While some commenters had suggested a higher threshold level, we believe that inclusion of containers of 55 gallons or greater within the calculation for the regulatory threshold is necessary to ensure environmental protection. If we finalized a higher minimum size, the result in some cases would be large amounts of aggregate capacity that would not be counted for SPCC purposes, and would therefore be unregulated, posing a threat to the environment. We believe that it is not necessary to apply SPCC or FRP rules requiring measures like secondary containment, inspections, or integrity testing, to containers smaller than 55 gallons storing oil because a discharge from these containers generally poses a smaller risk to the environment. Furthermore, compliance with the rules for these containers could be extremely burdensome for an owner or operator and could upset manufacturing operations, while providing little or no significant increase in protection of human health or the environment. Many of these smaller containers are constantly being emptied, replaced, and relocated so that serious corrosion will likely soon be detected and undetected leaks become highly unlikely. While we realize that small discharges may harm

the environment, depending on where and when the discharge occurs, we believe that this measure will allow facilities to concentrate on the prevention and containment of discharges of oil from those sources most likely to present a more significant risk to human health and the environment.

*Effect on Facility Response Plan facilities.* The exemption for containers of less than 55 gallons applies to the calculations of storage capacity both for SPCC purposes and for FRP purposes because the exemption applies to all of part 112. Therefore, a few FRP facilities might no longer be required to have FRPs. The calculations for planning levels for worst case discharges would also be affected.

*Regulatory thresholds.* We have decided to raise the current regulatory threshold, as discussed in the 1997 preamble, to an aggregate threshold of over 1,320 gallons. We believe that raising the regulatory threshold is justified because our Survey of Oil Storage Facilities (published in July 1996, and available on our Web site at *www.epa.gov/oilspill*) points to the conclusion that several facility characteristics can affect the chances of a discharge. First, the Survey showed that as the total storage capacity increases, so does the propensity to discharge, the severity of the discharge, and the costs of cleanup. Likewise, the Survey also pointed out that as the number of tanks increases, so does the propensity to discharge, the severity of the discharge, and the costs of cleanup. Finally, the Survey showed that as annual throughput increases, so does the propensity to discharge, the severity of the discharge, and, to a lesser extent, the costs of the cleanup.

The threshold change will have several benefits. The threshold increase will result in a substantial reduction in information collection associated with the rule overall. Some smaller facilities will no longer have to bear the costs of an SPCC Plan. EPA will be better able to focus its regulatory oversight on facilities that pose a greater likelihood of a discharge as described in § 112.1(b), and a greater potential for injury to the environment if a discharge as described in § 112.1(b) results.

We raise the regulatory threshold realizing that discharges as described in § 112.1(b) from small facilities may be harmful, depending on the surrounding environment. Among the factors remaining to mitigate any potential disasters are that small facilities no longer required to have SPCC Plans are still liable for cleanup costs and damages from discharges as described in § 112.1(b). We encourage those facilities exempted from today's rule to maintain SPCC Plans. Likewise, we encourage facilities becoming operable in the future with storage or use capacity below the regulatory threshold to develop Plans. We believe that SPCC Plans have utility and benefit for both the facility and the environment. But, we will no longer by regulation require Plans from exempted facilities.

While we believe that the Federal oil program is best focused on larger risks, State, local, or tribal governments may still decide that smaller facilities warrant regulation under their own authorities. In accord with this philosophy, we note that this Federal exemption may not relieve all exempted facilities from Plan requirements because some States, local, or tribal governments may still require such facilities to have Plans. While we are aware that some States, local, or tribal governments have laws or policies allowing them to set requirements no more stringent than Federal requirements, we encourage States, local, or tribal governments to maintain or lower regulatory thresholds to include facilities no longer covered by Federal rules where their own laws or policies allow. We believe that CWA section 311(o) authorizes States to establish their own oil spill prevention programs which can be more stringent than EPA's program.

*Regulatory safeguard.* When a particular facility that is below today's threshold becomes a hazard to the environment because of its practices, or when needed for other reasons to carry out the Clean Water Act, the Regional Administrator may, under a new rule provision, require that facility to prepare and implement an SPCC Plan. See § 112.1(f). This provision acts as a safeguard to an environmental threat from any exempted facility.

*Editorial changes and clarifications.* The reference to ''underground storage tanks'' was deleted because it is unnecessary. A reference to the exemption of certain ''completely buried'' storage tanks from the rules is contained in § 112.1(d)(4).

*Section 112.1(d)(3)—Minerals Management Service Facilities*

*Background.* In 1991, EPA proposed to exempt from the SPCC rule facilities subject to Minerals Management Service (MMS) Operating Orders, notices, and regulations. The rationale for the 1991 proposal was to avoid redundancy in regulation, based on EPA's analysis that MMS Operating Orders require adequate spill prevention, control, and countermeasures that are directed more specifically to the facilities subject to MMS requirements. Until October 22, 1991, the date of the 1991 proposed rule, responsibility for the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil from offshore facilities, including associated pipelines, other than deepwater ports subject to the Deepwater Ports Act, was delegated to EPA. Under EO 12777 (56 FR 54747, October 22, 1991), responsibility for the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil from offshore facilities, including associated pipelines, other than deepwater ports subject to the Deepwater Ports Act, was redelegated to the U.S. Department of the Interior (DOI). These facilities are generally offshore oil production or exploration facilities.

In 1994, in another Memorandum of Understanding (MOU) found in Appendix B of part 112, EPA, DOI, and DOT redelegated the responsibility to regulate non-transportation-related offshore facilities located in and along the Great Lakes, rivers, coastal wetlands, and the Gulf Coast barrier islands from DOI to EPA.

Because of the redelegation of responsibility, some DOI facilities again became subject to the jurisdiction of EPA under section 311(j)(1)(C) of the Act. We added a reference to the MOU in the rule.

*Comments.* Most commenters favored the proposed exemption because they believed that MMS orders, notices, and regulations require oil spill prevention and contingency planning equivalent to the environmental protection envisioned by EPA's rules. Two commenters, both States, opposed the proposal. One was concerned with MMS' ''historic treatment of identified violations.'' The other suggested that the more stringent of EPA or MMS regulations apply.

*Response to comments.* We have retained our original proposal, except for the editorial revision, because we believe that MMS will provide equivalent environmental protection for the facilities under its jurisdiction. MMS regulations require adequate spill prevention, control, and countermeasures that are directed more specifically to the facilities subject to MMS requirements.

*Editorial changes and clarifications.* The term ''Operating Orders'' becomes ''regulations.''

*Section 112.1(d)(4)—Completely Buried Storage Tanks*

*Background.* This paragraph is a companion paragraph to § 112.1(d)(2)(i) for purposes of SPCC exemption. As in § 112.1(d)(2)(i), we have also exempted connected underground piping, underground ancillary equipment, and containment systems subject to all of the technical requirements of part 280 or a State program approved under 40 CFR part 281. We also added a clause noting that these exempted tanks must be marked on the facility diagram as provided in § 112.7(a)(3), if the facility is otherwise subject to this part. See the discussion above concerning § 112.1(d)(2)(i).

*Editorial changes and clarifications.* ''Underground storage tanks'' becomes ''completely buried storage tanks.'' We also reference 40 CFR part 281.

*Section 112.1(d)(5)—Minimum Size Exemption*

*Background.* This is a new section we added in response to comments pertaining to the regulatory threshold/minimum container size issue discussed above. This section clarifies that any aboveground or completely buried container with capacity of less than 55 gallons is not subject to the rule. It is a companion rule to § 112.1(d)(2)(ii) for purposes of SPCC exemption. See the discussion above concerning § 112.1(d)(2)(ii).

*Section 112.1(d)(6)—Wastewater Treatment Facility Exemption*

*Background.* In 1991, EPA proposed various changes to § 112.1(d) concerning exemptions to part 112, and received comments on its proposals. Among those comments was one suggesting an exemption for certain treatment systems.

*Comments.* One commenter suggested that the ''§ 112.1 exceptions should be expanded to include facility storage and treatment tanks associated with 'non-contact cooling water systems' and/or 'storm water retention and treatment systems.' Although these tanks are designed to remove spilled oil from manufacturing operations and parking lot runoff, the concentration of oil in the water at any given time would be insignificant. These tanks are typically very large, *i.e.,* in excess of 100,000 gallons, and are typically not contained by diked walls or impervious surfaces. GM believes the cost to contain these structures could be better spent on other SPCC regulatory requirements.''

*Response to comments.* We agree with the commenter that certain wastewater treatment facilities or parts thereof should be exempted from the rule, if used exclusively for wastewater treatment and not used to meet any other requirement of part 112. We have therefore amended the rule to reflect that agreement. No longer subject to the rule would be wastewater treatment facilities or parts thereof such as treatment systems at POTWs and industrial facilities treating oily wastewater.

Many of these wastewater treatment facilities or parts thereof are subject to NPDES or state-equivalent permitting requirements that involve operating and maintaining the facility to prevent discharges. 40 CFR 122.41(e). The NPDES or state-equivalent process ensures review and approval of the facility's: plans and specifications; operation/maintenance manuals and procedures; and, Stormwater Pollution Prevention Plans, which may include Best Management Practice Plans (BMP).

Many affected facilities are subject to a BMP prepared under an NPDES permit. Some of those plans provide protections equivalent to SPCC Plans. BMPs are additional conditions which may supplement effluent limitations in NPDES permits. Under section 402(a)(1) of the CWA, BMPs may be imposed when the Administrator determines that such conditions are necessary to carry out the provisions of the Act. *See* 40 CFR 122.44(k). CWA section 304(e) authorizes EPA to promulgate BMPs as effluent limitations guidelines. NPDES rules provide for BMPs when: authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances; numeric limitations are infeasible; or, the practices are reasonably necessary to achieve effluent limitations and standards to carry out the purposes of the CWA. In addition, each NPDES or state equivalent permit for a wastewater treatment system must contain operation and maintenance requirements to reduce the risk of discharges. 40 CFR 122.41(e).

Additionally, some wastewater is pretreated prior to discharge to a permitted wastewater treatment facility. The CWA authorizes EPA to establish pretreatment standards for pollutants that pass through or interfere with the operation of POTWs. The General Pretreatment Regulations (GPR), which set for the framework for the implementation of categorical pretreatment standards, are found at 40 CFR part 403. The GPR prohibit a user from introducing a pollutant into a POTW which causes pass through or interference. 40 CFR 403.5(a)(1). More specifically, the GPR also prohibit the introduction into of POTW of ''petroleum, oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through. 40 CFR 403.5(b)(6). EPA believes that the GPR and the more specific categorical pretreatment standards, some of which allow indirect dischargers to adopt a BMP as an alternative way to meet pretreatment standards, will work to prevent the discharge of oil from wastewater treatment systems into navigable waters or adjoining shorelines by way of a POTW.

However, if a wastewater facility or part thereof is used for the purpose of storing oil, then there is no exemption, and its capacity must be counted as part of the storage capacity of the facility. Any oil storage capacity associated with or incidental to these wastewater treatment facilities or parts thereof continues to be subject to part 112. At permitted wastewater treatment facilities, storage capacity includes bulk storage containers, hydraulic equipment associated with the treatment process, containers used to store oil which feed an emergency generator associated with wastewater treatment, and slop tanks or other containers used to store oil resulting from treatment. Some flow through treatment such as oil/water separators have a storage capacity within the treatment unit itself. This storage capacity is subject to the rule. An example of a wastewater treatment unit that functions as storage is a treatment unit that accumulates oil and performs no further treatment, such as a bulk storage container used to separate oil and water mixtures, in which oil is stored in the container after removal of the water in the separation/treatment process.

We do not consider wastewater treatment facilities or parts thereof at an oil production, oil recovery, or oil recycling facility to be wastewater treatment for purposes of this paragraph. These facilities generally lack NPDES or state-equivalent permits and thus lack the protections that such permits provide. Production facilities are normally unmanned and therefore lack constant human oversight and inspection. Produced water generated by the production process normally contains saline water as a contaminant in the oil, which might aggravate environmental conditions in addition to the toxicity of the oil in the case of a discharge.

Additionally, the goal of an oil production, oil recovery, or oil recycling facility is to maximize the production or recovery of oil, while eliminating impurities in the oil, including water, whereas the goal of a wastewater

treatment facility is to purify water. Neither an oil production facility, nor an oil recovery or oil recycling facility treats water, instead they treat oil. For purposes of this exemption, produced water is not considered wastewater and treatment of produced water is not considered wastewater treatment. Therefore, a facility which stores, treats, or otherwise uses produced water remains subject to the rule. At oil drilling, oil production, oil recycling, or oil recovery facilities, treatment units subject to the rule include open oil pits or ponds associated with oil production operations, oil/water separators (gun barrels), and heater/treater units. Open oil pits or ponds function as another form of bulk storage container and are not used for wastewater treatment. Open oil pits or ponds also pose numerous environmental risks to birds and other wildlife.

Examples of wastewater treatment facilities or parts thereof used to meet a part 112 requirement include an oil/water separator used to meet any SPCC requirement. Oil/water separators used to meet SPCC requirements include oil/water separators used as general facility secondary containment (*i.e.,* § 112.7(c), secondary containment requirements for loading and unloading (*i.e.,* § 112.7(h)), and for facility drainage (*i.e.,* § 112.8(b) or § 112.9(b)).

Whether a wastewater treatment facility or part thereof is used exclusively for wastewater treatment (i.e., not storage or other use of oil) or used to satisfy a requirement of part 112 will often be a facility specific determination based on the activity associated with the facility or part thereof. Only the portion of the facility (except at an oil production, oil recovery, or oil recycling facility) used exclusively for wastewater treatment and not used to meet any part 112 requirement is exempt from part 112. Storage or use of oil at such a facility will continue to be subject to part 112.

Although we exempt wastewater treatment facilities or parts thereof from the rule under certain circumstances, a mixture of wastewater and oil still is ''oil'' under the statutory and regulatory definition of the term (33 U.S.C. 1321(a)(1) and 40 CFR 110.2 and 112.2). Thus, while we are excluding from the scope of the rule certain wastewater treatment facilities or parts thereof, a discharge of wastewater containing oil to navigable waters or adjoining shorelines in a ''harmful quantity'' (40 CFR part 110) is prohibited. Thus, to avoid such discharges, we would expect owners or operators to comply with the applicable permitting requirements, including best management practices and operation and maintenance provisions.

*Proposed § 112.1(e)—Facility Notification*

*Background.* In 1991, EPA proposed to require that any facility subject to its jurisdiction under the Clean Water Act which also meets the regulatory storage capacity threshold notify the Agency on a one-time basis of its existence. CWA section 311(m) provides EPA with the authority to require the owner or operator of a facility subject to section 311 to make reports and provide information to carry out the objectives of section 311. Any owner or operator who failed to notify or knowingly submitted false information in a notification would be subject to a civil penalty. This type of notice is separate from the notice required at 40 CFR 110.3 of discharges which may be harmful to the public health or welfare or the environment. We did not propose any changes to the notice requirements in § 110.3.

We proposed that facility notification include, among other items, information concerning the number, size, storage capacity, and locations of ASTs. The proposal would have exempted information regarding the number and size of completely buried tanks, as defined in § 112.2, from the notification requirement. The rationale for notification was that submission of this information would be needed to help us identify our universe of facilities and to help us administer the Oil Pollution Prevention Program by creating a data base of facility-specific information. We also asked for comments regarding the form on which notification would be submitted, and on various possible items of information that could be included besides the ones proposed. Lastly, we asked for comments on alternate forms of facility notification. 56 FR 54614–15.

*Comments. Favorable comments.* A number of commenters favored the proposal, including some industry commenters. These commenters stated that there was generally no current procedure whereby EPA can identify the universe of sites subject to the SPCC rule, and that an inventory of these facilities is necessary.

*Opposing comments.* Most industry commenters opposed the proposal either in part or in its entirety.

*Sources of information.* Commenters who opposed the proposal in its entirety asserted that it was unnecessary, largely because they believed the information sought might be better obtained from other sources, such as State sources or SARA Title III reports. Some States wanted copies of the notifications EPA would receive, and at least one suggested requiring updates. One commenter suggested that we gather the information through representative sampling at on-site surveys. Another commenter suggested that we use spill reports already submitted because it makes more sense to regulate those facilities whose practices have led to a spill.

*Applicability.* Other commenters criticized the fact that the proposal would have been applicable to facilities which were not subject to the SPCC rule. Their solution was to limit applicability to facilities currently regulated under part 112.

*Terrorism.* One commenter suggested that the aggregation of such strategic information in an easily accessed data base like a facility notification data base could provide an intelligence windfall to terrorists and other enemies of our nation.

*Small facilities.* Commenters for small facilities argued that facility notification would cause a deluge of notifications to be sent to EPA with little or no environmental benefit. Some of these commenters suggested exempting small facilities at various levels of storage capacity, for example, 42,000 gallons or 100,000 gallons.

*Notification time line.* In particular, commenters questioned various aspects of the proposal. Many questioned the necessity of providing the information within the proposed two months time frame. Some commenters suggested other time periods ranging from ''more than two months'' to 18 months. However, the bulk of the commenters favored a six month period for facility notification if notification were to be required. Others favored a ''phase-in'' of the requirements.

*Who must notify.* Some commenters asked who must notify, the owner or operator. They noted that these might be different persons. One commenter suggested that the operator of the facility, the owner of any improvements at the facility, and the owner of the land at the facility should be required to submit facility notification. The commenter argued that the United States government is the landowner most prejudiced by the absence of a requirement of landowner involvement in the preparation of an SPCC plan because an owner or operator can prepare a minimal SPCC Plan and not even inform the landowner of it.

*Location issues.* Others questioned the proposed requirement for the name, address, and zip code of the facility, arguing that provision of such information was not always possible,

especially in remote rural areas. Some noted that drilling rigs move from location to location as often as every few months. Commenters suggested alternatives such as use of longitude and latitude, or the Universal Transverse Mercator system, or a mailing address.

*Storage capacity.* A number of commenters had concerns about the requirement for the total number and size of ASTs, and the total AST capacity of the facility. Commenters noted that there was no space on the form for containers less than 250 gallons. Other commenters asked if additions to storage capacity would trigger a new notification. Some commenters believed that storage capacity could be measured by SARA Title III information.

*Distance to navigable waters.* The proposed requirement to detail the distance to the nearest navigable water elicited many comments. Some commenters noted that there was no definition of navigable waters on the form, making it difficult for some responders to answer the question. Others asserted that making the determination on distance to navigable waters was a difficult one due to litigation concerning the definition of the term. Yet other commenters thought that we should specify a minimum distance to navigable waters, on the theory that only facilities within a certain distance would have a reasonable possibility of discharge to such waters.

*Classification of facilities.* One commenter noted that exploration and production facilities rarely have Dun & Bradstreet numbers, and that the information received from Dun & Bradstreet might be irrelevant for our purposes. Regarding the reporting of Standard Industrial Classification codes (SIC) (now replaced by North American Industry Classification System (NAICS) codes), commenters asserted that EPA used inaccurate codes, that no codes were listed for edible oil facilities, and that the codes listed were misleading in that they did not cover all possible industries regulated.

*Use of oil. Permanently closed containers.* Facilities using primarily oil-filled equipment, not bulk storage containers, asked whether they too were covered by the notification proposal. Other commenters asked for clarification as to whether permanently closed tanks were covered by the proposal.

*Possible additional items.* There were numerous comments on various additional items for which EPA had requested comment, but which were not included in the proposal. Possible additional items included: latitude and longitude of the facility; location of environmentally sensitive areas and potable water supplies; presence of secondary containment; spill history; leak detection equipment and alarms; age of the tanks; potential for adverse weather; and, for field verification purposes, a requirement to have storage facilities placarded or similarly identified. Most commenters opposed the inclusion of additional items. Several supported these additions as well as the addition of other information, particularly information concerning tank materials, methods of construction (for example, field-or shop-erected) and substance stored.

*Response to comments. Withdrawal of proposal.* We have decided to withdraw the proposed facility notification requirement because we are still considering issues associated with establishing a paper versus electronic notification system, including issues related to providing electronic signatures on the notification. Should the Agency in the future decide to move forward with a facility notification requirement, we will repropose such requirement.

*Section 112.1(e)—Proposed as § 112.1(f)—Compliance With Other Laws*

*Background.* While today's rule is substantially similar to the current one, EPA suggested in the 1991 preamble that facility owners consider industry standards in preparing SPCC Plans. 56 FR 54617.

*Comments. State rules.* Several States wrote to ask EPA to be as consistent with current State rules as possible. One industry commenter complained that EPA rules were more stringent than some State rules. Other industry commenters opposed either State or Federal regulation, or both.

*Industry standards.* Several commenters wrote to urge that EPA incorporate industry standards into the rule, on the theory that if EPA wants to require these standards, they must be incorporated into the rule. Others wrote to urge the inclusion of specific standards, such as fire codes or steel tank codes.

*Response to comments. State rules.* Section 311(o)(2) of the CWA specifically provides that nothing in section 311 ''shall be construed as preempting any State or political subdivision thereof from imposing any requirements or liability with respect to the discharge of oil * * *.'' We are aware that Federal rules often set the standard for State rules, and at least set a floor for State rules. Under CWA section 311(o)(2), States are free to impose more stringent standards relating to prevention of oil discharges, or none at all. EPA encourages States to set up their own oil pollution prevention programs because we believe that oil pollution prevention efforts should be a joint Federal-State effort.

*Industry standards.* Under this rule, a facility is required to at least consider the use of all relevant measures, including the use of industry standards, as a way to implement those measures. The requirement comes in the language of revised § 112.3(d)(1)(iii) requiring the PE to attest that ''the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part.'' A facility should use industry standards whenever possible in preparing and implementing its SPCC Plan, and should discuss their use in Plans. While facility owners or operators should look to specific industry standards as a guide for preparing SPCC Plans, we do not believe that incorporating specific standards into this rule is appropriate. Such incorporation freezes standards into rules, which may swiftly become outdated or obsolete.

*Editorial changes and clarifications.* The new introductory language is, ''This part establishes requirements for the preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans.'' The new language covers all SPCC requirements, both general and specific. That language replaces ''This part provides for * * *.'' The phrase ''Plans prepared in accordance with §§ 112.7, 112.8, 112.9, 112.10, and 112.11'' was eliminated because new introductory language makes it unnecessary.

*Section 112.1(f)—Proposed as § 112.1(g)—Plans for Exempted Facilities*

*Background.* This is a new section, proposed in 1993, that allows the Regional Administrators (RAs) to require preparation of entire an SPCC Plan, or applicable part, by the owner or operator of an otherwise exempted facility, that is subject to the jurisdiction of EPA under section 311(j) of the CWA. The proposal stems from the 1988 Interagency SPCC Task Force and subsequent GAO report, ''Inland Oil Spills'' (GAO/RCED–89–65).

*Comments. Authority.* One commenter called the proposal ''arbitrary and capricious'' and feared political use of the authority. Some commenters questioned EPA authority for the proposal.

*Standard to use authority.* One commenter favored the proposal and suggested that we look at additional physical characteristics of the facility in order to make a determination to require the owner or operator to prepare an SPCC Plan. Other commenters asserted that the standards for requiring Plans need to be specified, or that ''good cause'' be the standard.

*Response Plans.* One commenter urged a ''vastly abbreviated'' version of this section in the event that the Regional Administrator requires a small Appalachian facility to prepare a facility response plan in addition to an SPCC Plan, because the ''extensive requirements outlined in the appendices and attachments have little applicability'' to a small Appalachian oil field storage facility. The commenter added that the availability of secondary containment at most Appalachian facilities mitigates many of the requirements of the complete response plan which is directed towards large oil storage tanks.

*Appeals process.* Other commenters called for an appeals process, and specification of time frames within which the RA must act.

*Response to comments. Authority.* EPA believes that it has adequate authority under section 311 of the CWA to require any facility within its jurisdiction to prepare a Plan that could because of its location, cause a discharge as described in § 112.1(b). This authority is broad enough to encompass the storage or use capacity of any exempted facility within EPA's jurisdiction, regardless of size.

*Standard to use authority.* RAs may invoke this section to carry out the purposes of the Act on a case-specific basis when it is needed to prevent a discharge as described in § 112.1(b), and thus protect the environment. While we expect to use this section sparingly, it is necessary to address gaps in other regulatory regimes that might best be remedied by requiring a facility to have an SPCC Plan. Factors the RAs may consider in making a determination that a facility needs an SPCC Plan include, but are not limited to, the physical characteristics of the facility, the presence of secondary containment, the discharge history of the facility, and the proximity of the facility to sensitive environmental areas such as wetlands, parks, or wildlife refuges. An example of the use of this section might be when a facility is exempted from SPCC rules because its storage capacity is below the regulatory threshold, but the facility has been the cause of repeated discharges as described in § 112.1(b). The RA might require an entire Plan, or might only require a partial Plan addressing secondary containment, for example, to prevent future discharges as described in § 112.1(b).

*Partial Plans.* We clarify that the RA may require partial Plans to cover situations where the preparation of only a partial Plan may be necessary, such as to supplement an existing document other than a Plan or to address a particular environmental threat. The decision to require a Plan (or partial Plan) could be based on the presence of environmental concerns not adequately addressed under UST or NPDES regulations, or due to other relevant environmental factors. The section may be invoked when the RA determines it is necessary to ''carry out the purposes of the Act.''

The decision to require a partial Plan is separate from a decision to require an amendment to a Plan. In one case, the assumption is that a Plan doesn't exist; in the other, that an existing Plan needs amendment.

*Response Plans.* Section 112.1(f) applies only to the total or partial preparation of an SPCC Plan. It does not authorize the Regional Administrator to require you to prepare a facility response plan. We have withdrawn a proposal (see 1993 proposed § 112.7(d)(1)) which would have required you to prepare a response plan when your SPCC facility lacked secondary containment. Therefore, most facilities will incur no response planning costs. Instead, if your facility lacks secondary containment, you must prepare a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d). As a result, requirements to prepare a facility response plan are contained solely in § 112.20, and not § 112.1(f).

*Appeals process.* We agree that an appeals process is appropriate for this section. Therefore we have added a new paragraph (f)(5) to include such a process, and have provided time frames for the process. The appeals process is modeled upon current § 112.4(f), which we reproposed in 1991 and have finalized today.

*Editorial changes and clarifications.* We deleted the proposed requirement to ''submit'' a Plan in paragraph (f)(2), because we only require submission of Plans in certain circumstances, such as when there has been a discharge(s) as described in § 112.1(b) over the threshold amount provided for in § 112.4(a), and the RA believes that submission of the Plan is necessary. We do not require Plan submission as a general rule.

*Section 112.2—Definitions*

*Background.* Definitions proposed in 1993 and 1999, and promulgated in the Facility Response Plan rule of 1994 and 2000 are reprinted in the rule for the convenience of the reader. No substantive changes were made to those definitions and they are not discussed further in this preamble, except where we made editorial changes in today's rule. The discussion for those editorial changes, and for proposed definitions that were not already finalized in the 1994 and 2000 FRP rule, follows.

Adverse Weather

*Editorial changes and clarifications.* We have made slight editorial changes to this definition, none of which are substantive. In the first sentence, the phrase ''will be considered'' becomes ''must be considered.'' In the second sentence, the phrase ''as appropriate'' is placed in parentheses.

Alteration

*Background.* In 1993, we proposed a definition of ''alteration'' in conjunction with the proposed rule for ensuring against brittle fracture. We proposed the definition of ''alteration'' to mean ''any work on a tank or related equipment involving cutting, burning, welding, or heating operations that changes the physical dimensions or configuration of a tank.''

*Comments.* One commenter suggested that we conform the proposed definition of ''alteration'' with the API 653 definition, specifically deleting the phase ''or related equipment.''

*Response to comments. Related equipment.* We agree with the commenter and will not include the term ''or related equipment'' in the definition to conform with API Standard 653, which does not include alterations of related equipment as a criterion for brittle fracture evaluation. In the preamble to the 1993 proposal, we gave examples of alteration that included the addition of manways and nozzles greater than 12-inch nominal pipe size and an increase or decrease in tank shell height. 58 FR 8843.

*Industry Standards.* An industry standard that may be helpful in understanding the definition of ''alteration'' is API Standard 653, ''Tank Inspection, Repair, Alteration, and Reconstruction.''

*Editorial changes and clarifications.* ''Tank'' becomes ''container.''

Breakout tank

*Background.* We proposed this definition and the definition of ''bulk storage tank'' in 1991 to clarify the distinction between facilities regulated

by DOT and EPA. Breakout tanks are used mainly to compensate for pressure surges or to control and maintain pressure through pipelines. They are also sometimes used for bulk storage. These tanks are frequently in-line, and may be regulated by EPA, DOT, or both. When a breakout tank is used for both storage and for pipeline control, it becomes in itself a ''complex,'' and is regulated as such. See the discussion on ''complexes'' in today's preamble at § 112.1(d)(1)(ii).

*Comments.* A number of commenters suggested that EPA adopt the DOT definition of breakout tank. Another commenter asked for guidance as to which agency, DOT or EPA, regulates such tanks.

*Response to comments.* On the suggestion of commenters, EPA has adopted a modified version of the DOT definition in 49 CFR 195.2. This revision promotes consistency in the DOT and EPA definitions to aid the regulators and regulated community. We modified the DOT definition by substituting the word ''oil'' for ''hazardous liquid,'' because our rules apply only to oil. We also use in the definition the term ''container'' rather than just ''tank'' to cover any type of container. This terminology is consistent with other terminology used in this rule.

A breakout tank that is used only to relieve surges in an oil pipeline system or to receive and store oil transported by a pipeline for reinjection and continued transportation by pipeline is subject only to DOT jurisdiction. When that same breakout tank is used for other purposes, such as a process tank or as a bulk storage container, it is no longer solely within the definition of breakout tank, and may be subject to EPA or other jurisdiction with the new use.

EPA and DOT also signed a joint memorandum dated February 4, 2000, clarifying regulatory jurisdiction on breakout tanks. That memorandum is available to the public upon request. It is also available on our Web site at *http://www.epa.gov/oilspill* under the ''What's New'' section.

Bulk Storage Container—Formerly Bulk Storage Tank

*Background.* Along with ''breakout tank,'' we proposed this definition in 1991 to help clarify the distinctions between facilities regulated by EPA and those regulated by DOT. The proposed definition was originally for ''bulk storage tank.'' As explained below, we changed the definition to ''bulk storage container.''

*Comments.* Many electric utility commenters urged that EPA explicitly exclude electrical equipment from the definition because such equipment is not bulk storage. Other commenters asked for a minimum size to which the definition should apply.

*Response to comments.* We agree that electrical equipment is not bulk storage. See the above discussion on the applicability of the rule to electrical and other operating equipment under § 112.1(b). See also the definition of ''bulk storage container'' in § 112.2. For a discussion of minimum size containers to which the rule applies, see the discussion under § 112.1(d)(2)(ii).

*Editorial changes and clarifications.* ''Tank'' becomes ''container'' because ''container'' is more accurate. Many containers storing oil are not tanks, but provide bulk storage. A bulk storage container may be either aboveground, partially buried, bunkered, or completely buried.

The definition of ''bulk storage container'' adopted in today's rule should not be confused with the definitions of ''container'' used in several fire codes. Sometimes those codes limit a container to one below a certain size. See for example, the BOCA National Fire Prevention Code, section F–2302.1 (1999) and NFPA 30 section 1–6 (1996). The definition adopted in today's rule is broader than the definitions in the codes in that it is not limited to a particular amount of storage capacity.

We also clarify in today's rule that oil-filled electrical, operating, or manufacturing equipment is not a bulk storage container.

Bunkered Tank

*Background.* We proposed this definition in 1991 to clarify that bunkered tanks are a subset of partially buried tanks, and as such, subject to part 112 as aboveground tanks.

*Comments.* One commenter wrote that the definition is ''undecipherable and should be rewritten.'' The commenter wrote that the definition should be, ''Bunkered tank means a partially buried tank, the portion of which lies above grade is covered with earth, sand, gravel, asphalt, or other material.''

*Response to comments.* EPA agrees that the commenter's proposed definition is clearer, and we have used it with slight editorial changes.

*Editorial changes and clarifications.* We added a sentence to the definition noting that bunkered tanks are a subset of aboveground storage containers for purposes of this part.

Completely Buried Tank—Proposed as ''Underground Storage Tank''

*Background.* In 1991, we proposed adding a definition for ''underground storage tank.'' It differed from the Underground Storage Tank (UST) program definition in 40 CFR part 280 because it excluded tanks which are partially buried or bunkered, as well as some other tanks or containers included within the part 280 definition, such as containers storing certain hazardous substances. Partially buried and bunkered tanks still have a potential to discharge oil into navigable waters, adjoining shorelines, or affecting natural resources. Therefore, we proposed to retain those tanks within our regulatory jurisdiction, while we proposed to exclude all completely buried tanks storing petroleum that are subject to all of the technical requirements of the UST program (40 CFR part 280 or a State program approved under 40 CFR part 281).

*Comments. Consistency with the definition of underground tanks in 40 CFR part 280.* One commenter supported the proposal. A number of commenters thought that the definitions of underground tanks in parts 112 and 280 should be consistent.

*Vaulted tanks.* Commenters divided on whether subterranean vaulted tanks should be considered ASTs or USTs. The commenter opposing the treatment of subterranean vaulted tanks as ASTs in the UST definition argued that discharges from those tanks pose no threat to the environment or public health.

*Response to comments. Consistency with the definition of underground tanks in 40 CFR part 280.* We disagree that the scope of the part 112 exclusion for underground tanks should be consistent with the scope of the definition of ''underground storage tank'' in part 280. The programs are designed for different purposes, therefore, the definitions used will necessarily differ. To eliminate confusion with the part 280 definition, we have changed the proposed part 112 definition of ''underground storage tank'' to ''completely buried tank'' in this final rule.

Part 280 includes within its UST definition tanks which have a volume up to ninety percent above the surface of the ground, which are considered aboveground tanks for part 112 purposes. Part 280 also regulates underground storage tanks containing hazardous substances, while the SPCC program regulates only facilities storing or using oil as defined in CWA section 311. The SPCC program regulates

facilities with relatively large completely buried storage capacity, while the bulk of facilities regulated under part 280 are small capacity facilities such as gasoline filling stations. The SPCC program also regulates other types of containers and facilities which part 280 excludes, such as: tanks used for storing heating oil for consumptive use on the premises where stored; certain pipeline complexes where oil is stored; and, oil-water separators.

*Vaulted tanks.* Aboveground vaulted tanks are clearly ASTs. While subterranean vaulted tanks may be completely below grade, they may not be completely covered with earth. Because of their design, they pose a threat of discharge into the environment, and are thus excluded from our definition of completely buried tank. Subterranean vaulted tanks are also excluded from the part 280 UST definition of underground tank if the storage tank is situated upon or above the surface of the floor in an underground are providing enough space for physical inspection of the exterior of the tank. Therefore, if subterranean tanks were excluded from our definition of completely buried tank, they would likely not be regulated at all, and thereby be likely to pose a greater threat to the environment.

*Other completely buried tanks excluded from the part 280 UST definition.* Tanks in underground rooms or above the floor surface, or in other underground areas such as basements, cellars, mine workings, drifts, shafts, or tunnels are also not considered USTs for purposes of the part 280 definition. The purpose of the part 112 definition is to clarify that these are tanks that are technically underground but that, in a practical sense, are no different from aboveground tanks. They are situated so that, to the same extent as tanks aboveground, physical inspection for leaks is possible. Also, some of these tanks are designed such that in case of a discharge, oil would escape to navigable waters or adjoining shorelines, a result which our program seeks to prevent.

*Editorial changes and clarifications.* The words ''completely below grade and * * *'' were added to the first sentence of the definition. The purpose of that revision was to distinguish completely buried tanks from partially buried and bunkered tanks, which break the grade of the land, but are not completely below grade. We further clarify that such tanks may be covered not only with earth, but with sand, gravel, asphalt, or other material. The clarification brings the definition into accord with the coverings noted in the definition of ''bunkered tank.'' In the second sentence, the word ''subterranean'' was deleted from ''subterranean vaults'' because all vaulted tanks, whether subterranean or aboveground, are counted as aboveground tanks for purposes of this rule.

Contiguous Zone

*Background.* The definition of ''contiguous zone'' was proposed in 1991 to conform with 1978 amendments to the CWA, and the 1990 amendments to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) dealing with the scope of discharges. EPA received no substantive comments. Thus, we have finalized the proposed definition.

The contiguous zone is the area that extends nine miles seaward from the outer limit of the territorial sea. A presidential proclamation of December 17, 1988 (No. 5928, 54 FR 777, January 9, 1989) extended the territorial seas of the United States to 12 nautical miles from the baselines of the United States as determined in accordance with international law. However, the proclamation provided that nothing therein ''extends or otherwise alters existing federal or state law or any jurisdiction, rights, legal interests, or obligations derived therefrom * * *.''

Contract or Other Approved Means

*Editorial changes and clarifications.* We corrected the title of the definition to read ''contract or other approved means,'' in place of ''contract or other approved.'' We also changed some plural references to singular ones.

Discharge

*Background.* The 1991 proposed changes to the definition of ''discharge'' reflected changes to the statutory definition in the 1978 amendments to the CWA. For clarity, the words ''of oil'' were added in the first sentence because the definition applies only to discharges of oil.

*Comments.* One commenter asked for a clarification of the term ''discharge.'' The commenter asked whether a drop of diesel fuel that fell onto the outside casing of a tank during refilling would be considered a ''discharge,'' even if the oil did not reach the ground. Other commenters recommended that the definition include at least an imminent danger that the spilled material would reach a navigable waterway. Another commenter asked EPA to exempt from the definition those discharges regulated under the CWA, such as National Pollutant Discharge Elimination System (NPDES) discharges. The rationale was that any potential environmental impacts of these discharges have been considered in the issuance of a facility's NPDES permit and there is no reason to subject such facilities to dual regulation.

*Response to comments.* A discharge includes, but is not limited to, any ''spilling, leaking, pumping, pouring, emitting, emptying, or dumping,'' of oil. A discharge as described in § 112.1(b) need not reach the level of an imminent danger to affected lands, waters, or resources to be a discharge. It includes any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of any amount of oil no matter where it occurs. It may not be a reportable discharge under 40 CFR part 110 if oil never escapes the secondary containment at the facility and is promptly cleaned up. If the discharge escapes secondary containment, it may become a discharge as described in § 112.1(b), and if that happens, the discharge must then be reported to the National Response Center.

Foreseeable or chronic point source discharges that are permitted under section 402 of the CWA, and that are either due to causes associated with the manufacturing or other commercial activities in which the discharger is engaged or due to the operation of the treatment facilities required by the NPDES permit, are to be regulated under the NPDES program. Other oil discharges in reportable quantities are subject to the requirements of section 311 of the CWA. Such spills or discharges are governed by section 311 even where the discharger holds a valid and effective NPDES permit under CWA section 402. Therefore, a discharge of oil to a publicly owned treatment work (POTW) would not be a discharge under the § 112.2 definition if the discharge is in compliance with the provisions of the permit; or resulted from a circumstance identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402; or if it were a continuous or anticipated intermittent discharge from a point source, identified in a permit or permit application under section 402, which is caused by events occurring within the scope of relevant operating or treatment systems. 33 U.S.C. 1321(a)(2); 40 CFR 117.12. Otherwise, the discharge is subject to the provisions of section 311 of the CWA as well as the unpermitted discharge prohibition of section 301(a) of the CWA. 33 U.S.C. 1311(a).

*Editorial changes and clarifications.* We have revised the citation for the River and Harbor Act of 1899 so that it refers only to the U.S. Code, and have

deleted the reference to the Statutes at Large.

Facility

*Background.* Because we regulate facilities in the SPCC rule, we proposed a definition of ''facility'' in 1991. It is based on the Memorandum of Understanding (MOU) between the Secretary of DOT and the EPA Administrator, dated November 24, 1971 (36 FR 24080). A discussion of the types of facilities covered is found in Appendix A to this rule.

*Comments. Facility boundaries.* One commenter asked for clarification as to whether the facility is the petroleum storage site or a single tank at the site.

*Electrical or operational equipment.* Utility commenters argued that electrical equipment is not a facility because no oil is being stored in the equipment.

*Buried pipelines, gathering lines, flowlines, waste treatment equipment.* One commenter urged that buried pipelines at mining sites should be excluded from the definition because such pipelines are often put in place without recording their location. The commenter added that typically the lines are emptied and abandoned as part of final reclamation. Other commenters urged the exclusion of gathering lines and flowlines from the definition because of the cost of providing secondary containment and contingency planning for such lines. Another commenter protested the inclusion of waste treatment as a possible activity covered under the definition, and therefore the rule.

*Mobile or fixed facilities.* One commenter urged that mobile equipment be excluded from the definition because the commenter believed that the SPCC Plan would otherwise have to be amended each time the mobile equipment is moved.

*Response to Comments. Facility boundaries.* A facility includes any building, structure, installation, equipment, pipe or pipeline in oil well drilling operations, oil production, oil refining, oil storage, and waste treatment, or in which oil is used at a site, whether it is mobile or fixed. It may also include power rights of way connected to the facility. The extent of the facility will vary according to the circumstances of the site. It may be as small as a single container or as large as all of the structures and buildings on a site. Some specific factors to use in determining the extent of a facility may be the ownership or operation of those buildings, structures, equipment, installations, pipes or pipelines, or the types of activities being carried on at the facility.

*Electrical or operational equipment.* We disagree with commenters who maintained that electrical equipment ''using'' oil as opposed to ''storing'' it should not fall within the definition of ''facility'' in part 112. Section 311(j)(1)(C) of the CWA, which authorizes EPA to promulgate the SPCC rule, does not distinguish between the storage and the usage of oil. The section simply authorizes EPA, as delegated by the President, to establish ''requirements to prevent discharges of oil * * * from onshore and offshore facilities, and to contain such discharges * * *.'' 33 U.S.C. 1321(j)(1)(C). Nor do the definitions of ''onshore facility'' or ''offshore facility'' in sections 311(a)(10) of the CWA distinguish between the use or storage of oil. Although the definition of ''facility'' in section 1001(9) of the OPA is limited by the ''purpose'' of the facility, no such limitation appears in CWA section 311. Moreover, EPA believes that although much of the electrical equipment may arguably ''use'' oil, in effect the oil is ''stored'' in the equipment because it remains in the equipment for such long time frames. We added language to the definition to clarify that such types of equipment are facilities subject to the SPCC rule whether they are storing or using oil. Therefore, we revised the definition to include the words ''or in which oil is used.'' However, we note that a facility which contains only electrical equipment is not a bulk storage facility.

*Buried pipelines, gathering lines, flowlines, waste treatment equipment.* Buried pipelines that carry oil at mining sites are part of a facility unless they are permanently closed as defined in § 112.2. Such pipelines may otherwise be the source of a discharge as described in § 112.1(b). Likewise, the same rationale applies to gathering lines and flowlines, and waste treatment equipment. Note that any facility or part thereof used exclusively for wastewater treatment and not to satisfy any part 112 requirement is exempted from the rule. The production, recovery, or recycling of oil is not considered wastewater treatment for purposes of the rule. *See* § 112.1(d)(6).

While such gathering lines, flowlines, and waste treatment equipment are subject to secondary containment requirements, the appropriate method of secondary containment is an engineering question. Double-walled piping may be an option, but is not required by these rules. The owner or operator and Professional Engineer certifying the Plan should consider whether pursuant to good engineering practice, double-walled piping is the appropriate method of secondary containment according to good engineering practice. In determining whether to install double-walled piping versus an alternative method of secondary containment, you could consider such factors as the additional effectiveness of double-walled piping in preventing discharges, the technical aspects of cathodically protecting any buried double-walled piping system, the cost of installing double-walled pipe, and the potential fire and safety hazards of double-walled pipes. Earthen or natural structures may be acceptable if they contain and prevent discharges as described in § 112.1(b), including containment that prevents discharge of oil through groundwater that might cause a discharge as described in § 112.1(b). What is practical for one facility, however, might not work for another.

*Mobile or fixed facilities.* Either mobile or fixed equipment might be the source of a discharge as described in § 112.1(b), and therefore both are included within the definition of ''facility.'' Section 112.3(c) of this rule already provides that it is not necessary to amend your Plan each time a mobile facility moves to a new site.

*Editorial changes and clarifications.* In the first sentence we added the words ''oil gathering, oil processing, oil transfer, oil distribution'' to the list of activities listed. The added activities track the activities listed in § 112.1(b). We also clarify that a vessel or a public vessel is not a facility or part of a facility. We deleted the word ''may'' in the second sentence of the definition regarding site-specific factors of facility boundaries, because it is redundant with the inclusion of the words, ''including, but not limited to.''

Fish and Wildlife and Sensitive Environments

*Editorial changes and clarifications.* We made four editorial changes. We deleted the word ''either'' in the first sentence because it is unnecessary. ''Endangered/threatened species'' becomes ''endangered or threatened species.'' We also deleted the colon in the last sentence because it is unnecessary. ''Discharges of oil'' becomes ''discharges.''

Maximum Extent Practicable

*Editorial changes and clarifications.* In the first sentence the phrase ''the limitations used to determine'' becomes ''within the limitations used to determine.'' In the beginning of second sentence, ''It considers * * *.'' becomes ''It includes* * *.''

Navigable Waters

*Background.* We proposed a revision of the definition of ''navigable waters'' in 1991. The rationale was to have the part 112 definition track the definition of ''navigable waters'' in 40 CFR part 110, which deals with the discharge of oil.

*Comments. Clarification of the meaning of navigable waters, maps.* A number of commenters asked for a clarification of the definition of navigable waters because of the difficulty of determining which waters fall within the definition. Some asked for EPA maps to aid in this determination.

*Navigability, legal authority.* Other commenters believed that the definition related to navigability. Some thought the definition was legally unsupportable because it is so broad. One commenter suggested that the term be limited to unobstructed streams that free flow at least fourteen consecutive days per year.

*Wetlands.* Another commenter believed that the definition should not apply to wetlands because SPCC protections are not needed when wetlands are regulated under a permit program.

*Response to comments. Clarification of the meaning of navigable waters, maps.* In this definition, we clarify what we mean by navigable waters by describing the characteristics of navigable waters and by listing examples of navigable waters. We also note in the definition that certain waste treatment systems are not navigable waters.

We are unable to provide a map to identify all navigable waters because not all such waters have been identified on a map. However, the rule provides guidelines as to where such waters may be found.

*Navigability, legal authority.* Navigable waters are not only waters on which a craft may be sailed. Navigable waters include all waters with a past, present, or possible future use in interstate or foreign commerce, including all waters subject to the ebb and flow of the tide. Navigable waters also include intrastate waters which could affect interstate or foreign commerce. The case law supports a broad definition of navigable waters, such as the one published today, and that definition does not necessarily depend on navigability in fact.

*Wetlands.* We disagree that SPCC regulation of wetlands is redundant. The definition includes wetlands, as defined in § 112.2 and discussed below, because wetlands are waters of the United States. Different programs serve different purposes, and merely because an activity or function is regulated for one purpose (for example, NPDES) does not mean that regulation for another purpose is redundant. The purpose of a permit discharge system is waste treatment and management. The purpose of the SPCC rule is oil pollution prevention.

Offshore Facility

*Background.* EPA proposed in 1991 to revise the definition of ''offshore facility'' to conform with the CWA and NCP definitions.

*Comments. EPA or DOI jurisdiction.* One commenter noted that if the definition of offshore facility is taken in context with the definition of navigable waters, then many facilities traditionally subject to EPA jurisdiction would become subject to DOI authority.

*CWA definition.* Another commenter suggested that the EPA definition should instead be that contained in CWA section 311(a)(11).

*Response to comments. EPA or DOI jurisdiction.* The 1994 Memorandum of Understanding between DOI, DOT, and EPA addresses the jurisdictional issue to which the commenter refers, transferring to EPA those non-transportation-related offshore facilities landward of the coastline.

*CWA definition.* EPA agrees with the commenter urging that the EPA definition track the statutory definition. The part 112 definition, except for minor editorial changes, is identical to the CWA definition. There is no difference between the substance of the part 112 definition and the CWA definition.

*Editorial changes and clarifications. Permanently moored vessels and other former transportation equipment.* We also note that barges which store oil, and have been determined by the Coast Guard to be permanently moored, are no longer vessels, but storage containers that are part of an offshore facility. Likewise, a container, whether onshore or offshore, which was formerly used for transportation, such as a truck or railroad car, which now is used to store oil, is no longer used for a transportation purpose, and is a bulk storage container.

Oil

*Background.* In 1991, EPA reprinted the definition of oil without suggesting any changes. In response to Edible Oil Regulatory Reform Act (EORRA) of 1995 (33 U.S.C. 2720) requirements, we have reworded the definition to include the categories of oil included in EORRA. Those categories are: (1) Petroleum oils, (2) animal fats and vegetable oils; and, (3) other non-petroleum oils and greases. Animal fats include fats, oils, and greases of animal origin (for example, lard and tallow), fish (for example, cod liver oil), or marine mammal origin (for example, whale oil). Vegetable oils include oils of vegetable origin, including oils from seeds, nuts, fruits, and kernels. Examples of vegetable oils include: corn oil, rapeseed oil, coconut oil, palm oil, soy bean oil, sunflower seed oil, cottonseed oil, and peanut oil. Other non-petroleum oils and greases include coal tar, creosote, silicon fluids, pine oil, turpentine, and tall oils. Petroleum oils include crude and refined petroleum products, asphalt, gasoline, fuel oils, mineral oils, naphtha, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

EORRA requires that Federal agencies establish separate classes for at least these three types of oils. It further requires agencies to differentiate between those classes of oil in relation to their environmental effects, and their physical, chemical, biological, and other characteristics. EPA has provided new subparts within part 112 to facilitate differentiation between the categories of oil listed in EORRA. In an advance notice of proposed rulemaking, published on April 8, 1999 (64 FR 17227), we requested ideas on how to differentiate among the SPCC requirements for facilities storing or using the various categories of oil. These ideas for further differentiation will be considered in a future rulemaking.

Today's amendments to the definition and the creation of subparts have no effect on information collection, because we already include all types of oil in our information collection burden calculations. Similarly, the definition imposes no new requirements, because all oils have always been subject to the substantive requirements of the rule.

*Comments. What is oil.* Several commenters favored the proposed 1991 definition, which is identical to the current definition. Some asked for clarification as to its scope, particularly in reference to animal and vegetable oils, synthetic oils, mineral oils, and petroleum derivatives.

*Specific substances.* Others asked about specific substances like aromatic hydrocarbons and asphaltic cement. One commenter asked if bilge water is oil.

*Authority.* Some commenters suggested that EPA's authority did not extend beyond petroleum-based oils.

*Exclusions.* Some commenters sought exclusions from the definition, generally based on contentions that certain oils (such as vegetable oils) are not harmful

to the environment if discharged. One commenter suggested a definition based on the liquidity of oil, founded on a rationale that solid or gaseous oils do not pose a threat to waters of the United States when discharged at a fixed facility. Another commenter urged that we exempt refined petroleum products from the definition because releases from many of these products are regulated by other statutes, such as the Solid Waste Disposal Act. One State commenter noted that animal and vegetable oils are not subject to regulation under that State's statutes regulating oil.

*Oil mixed with wastes or hazardous substances.* Others asked for clarification as to whether mixed substances, used oil, and waste oils were oil.

*Part 280 definition.* One commenter noted the difference in definitions between the part 112 definition and the definition in 40 CFR part 280.

*Response to comments. What is oil.* EPA interprets the definition of oil to include all types of oil, in whatever form, solid or liquid. That includes synthetic oils, mineral oils, vegetable oils, animal fats, petroleum derivatives, etc.

*Specific substances.* As to certain specific substances, asphaltic cement is oil because it is a petroleum-based product and exhibits oil-like characteristics. A discharge of asphaltic cement may violate applicable water quality standards, or cause a film or sheen or discoloration of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. Aromatic hydrocarbons may or may not be oil, depending on their physical characteristics and environmental effects. Some aromatic hydrocarbons are hazardous substances. Bilge water that contains sufficient oil such that its discharge would violate the standards set out in 40 CFR 110.3 is considered oil. The percentage of oil concentration in the water is not determinative for the purpose of the definition or the discharge standards.

*Authority.* We disagree that our authority only extends to petroleum-based oils. Our interpretation is consistent with Congressional intent as expressed in section 311(a)(1) of the CWA, which extends to all types of oils in any form. EPA's definition tracks that statutory definition. Our revised definition also reflects EORRA requirements for differentiation. EORRA did not expand or contract the universe of substances that are oils, it only required differentiation, when necessary, between the requirements for facilities storing or using different types of oil.

*Exclusions.* While States may choose to regulate all oils or some oils, the CWA definition is designed to prevent the discharge of all oils.

A definition based on liquidity would exclude solid oils, such as certain animal fats, a result that would be inconsistent with Congressional intent. Concerning gaseous oils, see our discussion on *Highly volatile liquids* below.

While releases or discharges of some refined petroleum products may be regulated under the Solid Waste Disposal Act as waste products, that program is dedicated more to waste management, and does not regulate storage of non-waste oil.

All oils, including animal fats and vegetable oils, can harm the environment in many ways. Oil can coat the feathers of birds, the fur of mammals and cause drowning and hypothermia and increased vulnerability to starvation and predators from lack of mobility.

Oils can act on the epithelial tissue of fish, accumulate on gills, and prevent respiration. The oil coating of surface waters can interfere with natural processes, oxygen diffusion/reaeration and photosynthesis. Organisms and algae coated with oil may settle to the bottom with suspended solids along with other oily substances that can destroy benthic organisms and interfere with spawning areas.

Oils can increase biological or chemical oxygen demand and deplete the water of oxygen sufficiently to kill fish and other aquatic organisms.

Oils can cause starvation of fish and wildlife by coating food and depleting the food supply. Animals that ingest large amounts of oil through contaminated food or preening themselves may die as a result of the ingested oil. Animals can also starve because of increased energy demands needed to maintain body temperature when they are coated with oil.

Oils can exert a direct toxic action on fish, wildlife, or their food supply. Oils can taint the flavor of fish for human consumption and cause intestinal lesions in fish from laxative properties. Tainted flavor of fish used for human consumption and the causation of rancid odors are public health or welfare concerns within the scope of our rules. Tainted flavor of fish used for human consumption may indicate a disease in the fish which could render them inedible and thus have a substantial impact on the fishermen who harvest them and communities who may rely on them for a food supply.

Oils can foul shorelines and beaches. Oil discharges can create rancid odors. Rancid odors may cause both health impacts and environmental impacts. For example, the 1991 Wisconsin Butter Fire and Spill resulted in a discharge of melted butter and lard. After the cleanup was largely completed, the Wisconsin Department of Natural Resources declared as hazardous substances the thousands of gallons of melted butter that ran offsite and the mountain of damaged and charred meat products spoiling in the hot sun and creating objectionable odors. The Wisconsin DNR stated that these products posed an imminent threat to human health and the environment. 62 FR 54526.

*Highly volatile liquids.* We do not consider highly volatile liquids that volatilize on contact with air or water, such as liquid natural gas, or liquid petroleum gas, to be oil. Such substances do not violate applicable water quality standards, do not cause a reportable film or sheen or discoloration upon the surface of water or adjoining shorelines, do not cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines, and are not removable. Therefore, there would be no reportable discharge as described in 40 CFR 110.3.

*Oil mixed with wastes or hazardous substances. Oil* means oil of any kind or in any form, including, but not limited to: fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and, other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil.

*Part 280 definition.* The definition of petroleum in 40 CFR part 280 is a subset of the part 112 definition of ''oil.'' The part 112 definition of oil is broader than the part 280 definition of petroleum because part 112 regulates all types of oils, whereas part 280 regulates only petroleum.

Oil drilling, production, or workover facilities (offshore)

*Background.* See the definition of ''production facility,'' into which this definition has been merged.

Oil Production Facilities (Onshore)

*Background.* See the definition of ''production facility,'' into which this definition has been merged.

Onshore Facility

*Background.* As proposed, we deleted as unnecessary surplus the reference to the facility not being transportation-

related. There were no substantive comments.

Partially Buried Tank

*Background.* In 1991, EPA proposed the definition of ''partially buried tank'' to clarify the distinction between partially buried tanks and underground storage tanks. We have renamed underground tanks in this rule as ''completely buried tanks,'' i.e., those tanks completely covered with earth. Partially buried tanks are subject to the SPCC rule the same as aboveground containers.

*Comments.* One commenter wrote that the definition as proposed was ''undecipherable'' and should be rewritten. That commenter suggested another definition for clarity. Two other commenters suggested that we adopt the part 280 UST definition for partially buried tank, which includes any tank system such as tank and piping which has a volume of 10 percent or more beneath the surface of the ground.

*Response to comments.* We agree that the definition could be clearer and have clarified it. We decline to adopt the part 280 UST definition (at 40 CFR 280.12) and to classify partially buried tanks as completely buried tanks, because they are not. The UST definition might also exclude some tanks or containers which would be covered by the SPCC definition. The UST definition includes tanks whose volume (including the volume of underground pipes connected thereto) are 10 percent or more beneath the surface of the ground. The SPCC definition of ''partially buried tank'' contains no volume percentage and applies to any tank that is partially inserted or constructed in the ground, but not entirely below grade, and not completely covered with earth.

*Editorial changes and clarifications.* We clarify that partially buried tanks may be covered not only with earth, but with sand, gravel, asphalt, or other material. The clarification brings the definition into accord with the coverings noted in the definition of ''bunkered tank.'' We added a sentence to the definition noting that partially buried tanks are considered aboveground storage containers for purposes of this part.

Permanently Closed

*Background.* EPA proposed a definition of ''permanently closed'' in 1991 to clarify the scope of facilities and tanks or containers excluded from coverage under the SPCC rule. Permanently closed containers are those containers which are no longer capable of storing or using oil. Permanently closed facilities are those facilities which are no longer capable of storing or using oil.

In permanently closed containers and facilities, physical changes have been made so that storage capacity or use is rendered impossible. Therefore, the definition describes those changes which must have occurred before a container or facility is ''permanently closed.''

*Comments. In general.* Several commenters favored the proposed definition. Others opposed it as unnecessary, believing that ''if a tank is not used for the storage of oil, it simply is not subject to the provisions of the SPCC regulations.'' Finally, several commenters suggested that the definition specifically exclude temporarily closed tanks.

*Waste disposal.* Several commenters urged that the part of the proposal that dealt with waste disposal be deleted because waste disposal is already covered under other programs and should not be a concern of spill prevention unless flowable oil is part of the waste.

*Non-oil products.* One commenter asked for clarification that a container which is no longer used for oil but is used for some non-oil product be considered permanently closed.

*Connecting lines.* Another commenter asked for clarification as to the meaning of connecting lines. The commenter assumed that connecting lines means the sections of pipe that run between the tank and the nearest block valve.

*Explosive vapors.* Numerous commenters urged that EPA delete any rules dealing with explosive vapors on the theory that such vapors are regulated by the Occupational Health and Safety Administration (OSHA) program and other programs. Many of these same commenters suggested that placing a sign on a tank indicating that it has been freed of gas is not a good safety practice because gas might subsequently build up within the tank with catastrophic results.

*Retroactivity.* Several commenters suggested that the requirements for a tank to be permanently closed should not be applied retroactively to tanks previously removed from service. The rationale was that the cost would be prohibitive, although commenters did not provide specific cost estimates, and that it might cause confusion as to which tanks would have to be included in facility capacity calculations. These commenters also asserted that such tanks have been abandoned and empty, sometimes for many years, and pose no threat of discharge.

*Response to comments. In general.* A definition is necessary to clarify when a container is permanently closed and no longer used for the storage of oil. Containers that are only closed temporarily may be returned to storage purposes and thus may present a threat of discharge. Therefore, they will continue to be subject to the rule.

*Waste disposal.* Reference to waste disposal in accordance with Federal and State rules in proposed § 112.2(o)(1) was deleted as unnecessary surplus. EPA agrees that other programs adequately handle waste disposal.

*Non-oil products.* Containers that store products other than oil and never store oil, are not subject to the SPCC rule whether they are ''permanently closed'' as defined or not. If the containers sometimes store oil and sometimes store non-oil products, they are subject to the rule.

*Connecting lines.* We agree with the commenter's assumed definition of connecting lines. Connecting lines that have been emptied of oil, and have been disconnected and blanked off, are considered permanently closed.

*Explosive vapors.* We deleted proposed § 112.2(o)(2) on the suggestion of commenters that references to explosive vapors are an OSHA matter and inappropriate for EPA rules. We modified proposed § 112.2(o)(3) to eliminate the reference to signs warning that ''vapors above the LEL are not present,'' because the operator cannot guarantee that warning remains correct. To help prevent a buildup of explosive vapors, we have revised the definition to provide that ventilation valves need not be closed. We agree with commenters that a sign might be misleading and dangerous.

*Retroactivity.* We believe that containers that have been permanently closed according to the standards prescribed in the rule qualify for the designation of ''permanently closed,'' whether they have been closed before or after the effective date of the rule. Containers that cannot meet the standards prescribed in the rule will not qualify as permanently closed. We disagree that the cost of such closure is prohibitive. We have simplified the proposal and deleted the proposed requirement to render the tank free of explosive vapor. Therefore, costs are lower. To clarify when a container has been closed, we have amended the rule to require that the sign noting closure show the date of such closure. The date of such closure must be noted whether it occurred before or after the effective date of this provision. Some States and localities require a permit for tank closure. A document noting a State closure inspection may serve as

evidence of container closure if it is dated.

*Industry standards.* Industry standards that may be useful to effect the permanent closure of containers or facilities include: (1) National Fire Protection Association (NFPA) 30, ''Flammable and Combustible Liquids Code''; (2) Building Officials and Code Administrators International (BOCA), ''National Fire Prevention Code''; (3) American Petroleum Institute (API) Standard 2015, ''Safe Entry and Cleaning of Petroleum Storage Tanks''; and, (4) API Recommended Practice 1604, ''Removal and Disposal of Used Underground Petroleum Storage Tanks.''

*Editorial changes and clarifications.* ''Tank'' becomes ''container.'' We revised the introduction to the definition to remove the phrase ''that has been closed'' because the definition would have been circular with that language. Instead the introduction references the events which must have occurred in order for a container to meet the definition.

Person

*Background.* The definition of ''person'' proposed in 1991 was substantively unchanged from the current rule.

*Comments.* We received one comment which urged that we should make clear that the United States is bound by every provision of these rules.

*Response to comments.* See the discussion above (at § 112.1(c)) for the applicability of the rule to Federal agencies and facilities.

Production Facility

*Background.* The definition of ''production facility'' replaces two definitions in the proposed rule, i.e., Oil drilling, production, or workover facilities (offshore), proposed § 112.2(j), and Oil production facilities (onshore), proposed § 112.2(k). We replaced the two proposed definitions with the revised definition for editorial brevity as the proposed definitions contained many identical elements. This editorial effort effects no substantive changes in the requirements for the particular types of production facilities. Each facility must follow the requirements applicable to that facility, which is generally based on its operations, for example, a workover facility.

*Comments.* Flowlines and gathering lines. Several commenters suggested that flowlines and gathering lines should be deleted from the definition because they believed that the installation of structures and equipment to prevent discharged oil from reaching navigable waters is not practicable for flowlines and gathering lines.

*Wells and separators.* Other commenters also argued for the exemption of wells and separators.

*DOT definition.* Another commenter urged consistency between the proposed EPA definition and the DOT definition found at 49 CFR 195.2.

*Single oil or gas field, single operator.* One commenter asserted that the inclusion of the phrases ''in a single oil or gas field'' and ''operated by a single operator'' in the definition is confounding. The commenter urged that the producing segment of the industry needs to be able to combine facilities into one SPCC Plan with an identification of the wells to which that Plan applies. The commenter questioned whether the inclusion of the word ''single'' would preclude an operator's ability to do so.

*Natural gas.* Another commenter asked for clarification that natural gas processing facilities are not subject to rules for oil facilities.

*Response to comments. Flowlines and gathering lines.* Wells and separators. EPA disagrees that flowlines and gathering lines, as well as wells and separators, should be excluded from the definition. These structures or equipment are integral parts of production facilities and should therefore be included in the definition. We also disagree with the argument that because the installation of structures and equipment to prevent discharges around gathering lines and flowlines may not be practicable, EPA will be flooded with contingency plans. First of all, secondary containment may be practicable. In § 112.7(c), we list sorbent materials, drainage systems, and other equipment as possible forms of secondary containment systems. We realize that in many cases, secondary containment may not be practicable. If secondary containment is not practicable, you must provide in your SPCC Plan a contingency plan following the provisions of part 109, and otherwise comply with § 112.7(d). We have deleted the proposed 1993 provision that would have required you to provide contingency plans as a matter of course to the Regional Administrator. Therefore, you will rarely have to submit a contingency plan to EPA. The contingency plan you do provide in your SPCC Plan when secondary containment is not practicable for flowlines and gathering lines should rely on strong maintenance, corrosion protection, testing, recordkeeping, and inspection procedures to prevent and quickly detect discharges from such lines. It should also provide for the quick availability of response equipment.

*DOT definition.* We changed the proposed definition to be more consistent with the DOT definition, found at 49 CFR 195.2, in response to a commenter who urged consistency in EPA and DOT definitions. We added the uses of the piping and equipment detailed in DOT rule to our proposal, for example, ''production, extraction, recovery, lifting, stabilization, separation, or treating'' of oil. The terms ''separation equipment,'' used in the proposed definition of ''oil production facilities (onshore)'', and ''workover equipment,'' used in the proposed definition of ''oil drilling, production, or workover facilities (offshore)'', were combined into a generic ''equipment.'' However, we also modified the proposed definition to reflect EPA jurisdiction. We added the word ''structure,'' which was not in the DOT definition, to cover necessary parts of a production facility. We also added examples of types of piping, structures, and equipment. These examples are not an exclusive list of the possible piping, structures, or equipment covered under the definition. The new definition encompasses all those facilities that would have been covered under both former proposed definitions. As we proposed in 1991, and as in the current rule, we have retained geographic and ownership limitations.

*Single oil or gas field, single operator.* ''A single geographical oil or gas field'' may consist of one or more natural formations containing oil. The determination of its boundaries is area-specific. Such formation may underlie one or many facilities, regardless of whether any natural or man-made physical geographical barriers on the surface intervene such as a mountain range, river, or road. We disagree that the term ''a single operator'' is confusing. An ''owner'' or ''operator'' is defined in § 112.2 as any ''person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated or maintained such facility immediately prior to abandonment.'' A ''person'' is not restricted to a single natural person. ''Person'' is a defined term in the rule (at § 112.2) which includes an individual, firm, corporation, association, or partnership.

Nothing in the definition would preclude an owner or operator from combining elements of a production facility into one SPCC Plan with an identification of the wells to which that Plan applies.

*Natural gas.* Because natural gas is not oil, natural gas facilities that do not store or use oil are not covered by this rule. However, you should note, that drip or condensate from natural gas production is an oil. The storage of such drip or condensate must be included in the calculation of oil stored or used at the facility.

*Editorial changes and clarifications.* One commenter suggested that the definitions proposed were ambiguous because of the use of the words ''may include.'' We have eliminated the potential ambiguity caused by the words ''may include'' by revising the definition with the words ''Production facility means.''

Regional Administrator

*Background.* In 1991, we proposed a definition of ''Regional Administrator'' that was substantively unchanged from the current rule. In the final rule, we have deleted language concerning the ''designee'' of the EPA Regional Administrator because the language is unnecessary. Since the Regional Administrator has authority to delegate most functions, the term ''designee'' is almost always implied. When he does not have authority to delegate a function, the term ''designee'' is likewise unnecessary. We received no substantive comments.

Repair

*Background.* In 1993, we proposed a definition of ''repair'' in conjunction with the proposed rule for brittle fracture evaluation.

*Comments. Ordinary maintenance.* Two commenters asked for clarification of the term ''repair,'' so that it would exclude ordinary day-to-day maintenance activities which are conducted to maintain the functional integrity of the tank. Another asked that the infinitive ''to maintain'' be deleted from the definition of repair so that evaluation for brittle fracture would not be required after ordinary, day-to-day maintenance.

*Related equipment.* Another commenter suggested that we conform the proposed definition of ''repair'' with the API 653 definition, specifically deleting the phase ''or related equipment.''

*Response to comments. Ordinary maintenance.* Some repairs in the nature of ordinary maintenance that do not weaken the integrity of the container might not necessitate brittle fracture evaluation. ''Repair'' means any work necessary to maintain or restore a container or related equipment to a condition suitable for safe operation. Typical examples of a repair that would trigger a brittle fracture evaluation include the removal and replacement of material (such as roof, shell, or bottom material, including weld metal) to maintain tank integrity; the re-leveling or jacking of a tank shell, bottom, or roof; the addition of reinforcing plates to existing shell penetrations; and the repair of flaws, such as tears or gouges, by grinding or gouging followed by welding. The definition of ''repair'' also includes reconstruction. Reconstruction means the work necessary to reassemble a container that has been dismantled and relocated to a new site. We have amended the definition to reflect that ordinary, day-to-day maintenance that does not weaken the integrity of the container will not trigger the brittle fracture evaluation requirement.

*Related equipment.* We agree with the commenter and will not include the term ''or related equipment'' in the definition to conform with API Standard 653, which does not include repairs of related equipment as a criterion for a brittle fracture evaluation.

*Industry standards.* Industry standards that may be helpful in understanding the definition of repair (and reconstruction) include API Standard 653, ''Tank Inspection, Repair, Alteration, and Reconstruction.''

*Editorial changes and clarifications.* ''Tank'' becomes ''container.''

Spill Event

*Background.* In 1991, we proposed to modify the definition of ''spill event'' to correspond to the changes described in the applicability section of this rule (i.e., § 112.1(b)) relating to the expanded scope of CWA jurisdiction.

*Comments.* One commenter opposed the definition without explaining why. Several commenters argued that the definition should apply only to discharges to navigable waters.

*Response to comments.* We have withdrawn the proposed definition of ''spill event,'' and have also deleted the term from the rule. We take this action because the term is not mentioned in the CWA and is unnecessary. The term is unnecessary because the word ''discharge'' is adequate. ''Discharge'' is the term used in the CWA. A discharge as described in § 112.1(b) is the same as a spill event. As to the comment on EPA jurisdiction, we disagree that our jurisdiction should apply only to discharges to navigable waters because the CWA establishes our jurisdiction beyond navigable waters (see the discussion under § 112.1(b)), and we have the responsibility to protect the environment within the scope of our statutory jurisdiction.

Spill Prevention, Control, and Countermeasure Plan, SPCC Plan or Plan

*Background.* In 1997, we reproposed the definition of ''SPCC Plan'' and withdrew the 1991 proposal. The 1997 proposal would broaden the acceptable formats of SPCC Plans, eliminating the requirement that the Plan meet the format or sequence formerly specified in the rule.

*Comments. Editorial changes and clarifications.* One commenter suggested that the last two sentences in the proposed definition should be deleted because they contain substantive requirements, and relocated to § 112.7. Another commenter thought that the SPCC definition should be revised to say that the Plan documents spill prevention measures and not compliance with the rule, because compliance is determined by comparing the contents of the Plan with the rules.

*Response Plan.* A few commenters opposed the definition on the theory that it constitutes a type of response plan. Those commenters argued that the thrust of the definition should be on spill containment, not paperwork.

*Acceptable formats.* Many commenters favored the proposal. Several suggested various formats that might qualify such as Integrated Contingency Plans, State Plans, Electrical Equipment Area Response Plans, Stormwater Pollution Prevention Plans, and others. One commenter thought that EPA should specify acceptable formats. Several commenters suggested that various formats such as Integrated Contingency Plans and State Plans are presumptively acceptable.

*Response to comments. Response Plan.* We disagree that the proposed definition constitutes a ''response plan.'' The definition results in no substantive changes in response planning requirements.

*Acceptable formats.* We agree that any equivalent prevention plan acceptable to the Regional Administrator qualifies as an SPCC Plan as long as it meets all Federal requirements (including certification by a Professional Engineer), and is cross-referenced from the requirement in part 112 to the page of the equivalent plan. We do not agree that we should specify acceptable formats. We will give examples of those acceptable formats, but those examples are not meant to be exhaustive.

Examples of an ''equivalent prevention plan'' might be, for instance, an Integrated Contingency Plan (ICP), a State plan, a Best Management Practice Plan (which is a component of the Stormwater Pollution Prevention Plan),

or other plan that meets all the requirements of part 112 and is supplemented by a cross-reference section identifying the location of elements in part 112 to the equivalent requirement in the other plan. We repeat EPA's commitment to the ICP format, and encourage owners or operators to use it. If the equivalent prevention plan has no requirement that a Professional Engineer certify it, it will be necessary to secure proper certification from the Professional Engineer to comply with the SPCC rule.

An equivalent Plan might be a Plan following the SPCC sequence in effect before this final rule became effective. If you choose to use the sequence of the rule currently in effect, you may do so, but you must cross-reference the requirements in the revised rule to the sequence used in your Plan. We have provided a table in section IV.A of today's preamble to help you cross-reference the requirements more easily. If the only change you make is the addition of cross-referencing, you need not have a Professional Engineer certify that change.

Another example of an equivalent plan might include a multi-facility plan for operating equipment. This type of plan is intended for electrical utility transmission systems, electrical cable systems, and similar facilities which might aggregate equipment located in diverse areas into one plan. Examples of operating equipment containing oil include electrical equipment such as substations, transformers, capacitors, buried cable equipment, and oil circuit breakers.

A general, multi-facility plan for operational equipment used in various manufacturing processes containing over the threshold amount of oil might also be acceptable as an SPCC Plan. Examples of operating equipment used in manufacturing that contains oil include small lube oil systems, fat traps, hydraulic power presses, hydraulic pumps, injection molding machines, auto boosters, certain metalworking machinery and associated fluid transfer systems, and oil based heaters. Whenever you add or remove operating equipment in your Plan that materially affects the potential for a discharge as described in § 112.1(b), you must amend your Plan. 40 CFR 112.5(a).

Multi-facility plans would include all elements required for individual plans. Site-specific information would be required for all equipment included in each plan. However, the site-specific information might be maintained in a separate location, such as a central office, or an electronic data base, as long as such information was immediately accessible to responders and inspectors. If you keep the information in an electronic data base, you must also keep a paper or other backup that is immediately accessible for emergency response purposes, or for EPA inspectors, in case the computer is not functioning. Where you place that site-specific information would be a question of allowable formatting, as is the question of what is an ''equivalent'' plan; an issue subject to RA discretion.

Still another example of an equivalent plan might be a Best Management Practice Plan (BMP) plan prepared under an NPDES permit, if the plan provides protections equivalent to SPCC Plans. Not all BMP plans will qualify, as some BMP plans might not provide equivalent protection. NPDES permits without BMP plans would not qualify.

BMP plans are additional conditions which may supplement effluent limitations in NPDES permits. Under section 402(a)(1) of the CWA, BMP plans may be imposed when the Administrator determines that such conditions are necessary to carry out the provisions of the Act. *See* 40 CFR 122.44(k). CWA section 304(e) authorizes EPA to promulgate BMP plans as effluent limitations guidelines. NPDES rules provide for BMP plans when: authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances; numeric limitations are infeasible; or, the practices are reasonably necessary to achieve effluent limitations and standards to carry out the purposes of the CWA.

Any format that contains all the required elements of an SPCC Plan and provides equivalent environmental protection would be presumptively acceptable. The final decision on what is an ''equivalent'' plan, however, would be at the discretion of the Regional Administrator. ''Equivalence'' would not mean that an alternate format would be the mirror image of an SPCC Plan, but it would have to contain all the required elements of an SPCC Plan. Required elements include, but are not limited to, provisions for a written plan, secondary containment or a contingency plan following 40 CFR part 109, equivalent inspections and tests, security, personnel training, and certification of the plan by a Professional Engineer. Acceptance of an equivalent plan does not, however, imply any type of approval or submission process. As before, SPCC Plans are generally not submitted to the Regional Administrator. The Regional Administrator could accept an equivalent prevention plan if it: (1) meets all regulatory requirements in the SPCC rule; and (2) is supplemented by a cross-reference section identifying requirements listed in part 112 to the equivalent requirements in the other prevention plan. Partial use of other equivalent prevention plans is also acceptable, if the plan is supplemented by elements that meet the remainder of the EPA requirements contained in part 112.

*Written Plans.* We agree that a ''written'' Plan might also include texts, graphs, charts, maps, photos, and tables, on whatever media, including floppy disk, CD, hard drive, and tape storage, that allows the document to be easily accessed, comprehended, distributed, viewed, updated, and printed. Whatever medium you use, however, must be readily accessible to response personnel in an emergency. If it is produced in a medium that is not readily accessible in an emergency, it must be also available in a medium that is. For example, a Plan might be electronically produced, but computers fail and may not be operable in an emergency. For an electronic Plan or Plan produced in some other medium, therefore, a backup copy must be readily available on paper. At least one version of the Plan should be written in English so that it will be readily understood by an EPA inspector.

*Editorial changes and clarifications.* The word ''guidelines'' was replaced with ''requirements,'' as proposed in 1991. EPA agrees with the relocation of the last two sentences of the definition. Therefore, we have transferred those sentences to the introduction of § 112.7, in order to maintain the principle that definitions should not contain substantive requirements. We have also changed the last sentence which was proposed as ''* * * provide adequate countermeasures to an oil spill'' to read ''* * * provide adequate countermeasures to a discharge.'' We agree that the Plan does not document compliance, but merely spill prevention measures and have deleted the sentence noting that the Plan documents compliance with the rules. Compliance is determined by comparing the contents of the Plan with the regulations.

Storage capacity

*Background.* In 1991, we proposed a definition of ''storage capacity'' to clarify that it includes the total capacity of a container capable of storing oil or oil mixtures. We explained that because the percentage of oil in a mixture is determined by the operator and can be changed at will, the total capacity of a container is considered in determining applicability under this part, regardless of whether the container is filled with

oil or a mixture of oil and another substance, as long as a discharge from such container could violate the harmful quantity standards in 40 CFR part 110.

*Comments. In general.* One commenter strongly favored the proposal.

*Standard of measurement.* One commenter asserted that volume was the proper measure of storage capacity, not total capacity. Another commenter suggested a ''working capacity'' standard. Other commenters argued that the definition should apply only to containers meeting the definition of a bulk storage tank, and that only the oil storage capacity of the container be considered. Similarly, a commenter asserted that the ''design capacity'' of a container is what should count as storage capacity because electrical equipment or other interior components might reduce the volume of oil capable of being stored.

*Exclusions—small containers; waste treatment facilities, secondary containment containers. Small containers.* Most commenters were opposed to the proposed definition because they either wanted an exclusion for small containers or because they wanted an exclusion for containers containing de minimis amounts of oil. These commenters argued that small containers would not present a significant threat of discharge.

*Waste treatment facilities.* The rationale of commenters supporting an exemption for waste treatment containers was that some containers had non-usable space at the top of the container; also some containers contain only trace amounts of oil. Therefore, for example, storage tanks used to store or treat wastewaters are likely to have to be considered when determining storage capacity since many wastewaters have incidental oil content prior to treatment. They also argued that the definition would subject publicly owned treatment works (POTWs) to the rule because tanks used to control stormwater surges might contain small amounts of oil from runoff from parking lots and city streets.

*Secondary containment containers.* Some commenters argued that the definition would apply to tanks used to provide secondary containment when determining the storage capacity of a facility.

*Response to comments. Standard of measurement.* In most instances the shell capacity of a container will define its storage capacity. The shell capacity (or nominal or gross capacity) is the amount of oil that a container is designed to hold. If a certain portion of a container is incapable of storing oil because of its integral design, for example electrical equipment or other interior component might take up space, then the shell capacity of the container is reduced to the volume the container might hold. When the integral design of a container has been altered by actions such as drilling a hole in the side of the container so that it cannot hold oil above that point, shell capacity remains the measure of storage capacity because such alteration can be altered again at will to restore the former storage capacity. When the alteration is an action such as the installation of a double bottom or new floor to the container, the integral design of the container has changed, and may result in a reduction in shell capacity. We disagree that operating volume should be the measurement, because the operating volume of a tank can be changed at will to below its shell capacity.

The keys to the definition are the availability of the container for drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil, and whether it is available for one of those uses or whether it is permanently closed. Containers available for one of the above described uses count towards storage capacity, those not used for these activities do not. Types of containers counted as storage capacity would include some flow-through separators, tanks used for ''emergency'' storage, transformers, and other oil-filled equipment.

*Exclusions—small containers; waste treatment facilities. Small containers.* This definition is applicable to both large and small storage and use capacity. Owners or operators of small facilities above the regulatory threshold are subject to the rule, and need to know how to calculate their storage or use capacity.

However, in the applicability section of the rule, we have excluded containers of less than 55 gallons from the scope of the SPCC rule, addressing the comments of those commenters who argued for a minimum container size. See § 112.1(d)(5). A container above that size that is available for use or storage containing even small volumes of oil must be counted in storage capacity.

*Waste treatment facilities.* We agree with the commenter that a facility or part thereof (except at an oil production, oil recovery, or oil recycling facility) used exclusively for wastewater treatment system and not to meet any part 112 requirement should not be considered storage capacity because wastewater treatment is neither use nor storage of oil. Therefore, we have exempted such facilities or parts thereof from the rule. However, note that certain parts of such facilities may continue to be subject to the rule. *See* the discussion under § 112.1(d)(6).

*Secondary containment containers.* Containers which are used for secondary containment and not storage or use, are not counted as storage capacity.

*Editorial changes and clarifications.* We use the word ''container'' instead of ''tank or container,'' because a tank is a type of container. We have clarified the definition to provide that the storage capacity of a container is the volume of oil that the container could hold, and have therefore substituted the words ''shell capacity'' of the container for ''total capacity.'' This is merely a clarification, and not a substantive change. We also deleted the words ''for purposes of determining applicability of this part,'' because the words were unnecessary. We also deleted the last phrase of the proposed definition, ''whether the tank or container is filled with oil or a mixture of oil and other substances,'' because the contents of the container do not affect the definition of its shell capacity.

Transportation-related and non-transportation-related

*Background.* In 1991, we reproposed the current definition of ''transportation-related and non-transportation-related.'' We received no comments on the proposal. Therefore, we have promulgated the definition as proposed.

United States

*Background.* In 1991, we proposed to revise the definition of ''United States'' to conform to the definition enacted in the 1978 amendments to the CWA. We received no comments on this proposal. Therefore, we have promulgated the definition as proposed.

Vessel

*Background.* In 1991, we reproposed the current definition of vessel. We received no comments on this proposal. Therefore, we have promulgated the definition as proposed. We note that a barge or other watercraft that has been determined by the Coast Guard to be permanently moored to the shore, and used for storage, is no longer being used as a vessel, and does not fit within the definition of vessel. Rather, it becomes a bulk storage container counted as storage capacity. The same concept is found in the rules for mobile facilities at § 112.3(c), which provides that SPCC Plans apply to mobile facilities only

''while the facility is in a fixed (non-transportation) operating mode.''

Wetlands

*Background.* In 1991, we proposed a definition of ''wetlands'' to define the term as used in the definition of ''navigable waters.'' The definition of wetlands conforms to the definition in 40 CFR part 110 relating to the discharge of oil.

*Comments.* Several commenters opposed the definition because they believe that it includes a series of examples which may or may not be correct. They also alleged that the definition fails to implement the 1987 U.S. Army Corps of Engineers Wetlands Manual or the documents implementing that Manual. Another commenter asked for EPA clarification of what is a wetland, given the ''vague and arguable notion of a wetland.''

*Response to comments.* The examples listed in the definition are intended to help the reader with guidelines to identify wetlands. While the examples generally represent types of wetlands, they are not intended to be a categorical listing of such wetlands. There may be examples listed that under some circumstances do not constitute wetlands. We believe that the 1987 Wetlands Manual is a useful source material for wetlands guidance. It would be impossible to specify in a rule every type of situation where wetlands occur. The examples listed in the definition are not exclusive, but provide help in clarifying what may be a wetland.

*Section 112.3 Introduction*

*Background.* We have added an introduction to § 112.3 as an editorial device to simplify the language in the paragraphs of this section.

*Section 112.3(a)—Time Line for Preparation and Implementation of Plans for Existing Facilities*

*Background.* In 1991, we proposed to require owners or operators of onshore and offshore facilities in operation 60 days after the effective date of this final rule to ''maintain a prepared and fully implemented facility SPCC Plan. . . . '' We proposed giving these owners or operators 60 days from the date the final rule was published to revise their existing Plans and implement the revisions. The proposed rule also reflected the expanded geographic scope of the rule provided by CWA amendments.

*Comments. Time period to prepare and implement a Plan.* A number of commenters favored the proposal. Many more favored a ''phase-in'' period, or a longer period within which to comply. Commenters suggested compliance periods ranging from 60 days to 7 years. Many commenters clustered around the suggestion that a 6 month phase-in period be allowed. Many others suggested compliance by the next three-year review, as required by § 112.5(b) at that time.

*Extensions.* Several commenters asked that extensions of time to prepare and implement Plans be automatic if Plans must be in effect prior to the commencement of operations. Another suggested that extension requests be considered ''routine.''

*Acquired facilities.* One commenter asked how we would treat acquired facilities, whether as new or continuing operation facilities.

*Start of operations.* One commenter asked when operations start, stating that is not always a clearly defined time. The commenter suggested that instead of requiring a prepared and implemented Plan, we should allow that a response team be in place.

*Small facilities.* One commenter asserted that the time line for Plan preparation and implementation was unreasonable for small facilities, and asked that facilities with under 10,000-gallon capacity be allowed to operate while developing and implementing a Plan.

*Response to comments. Time period to prepare and implement a Plan.* We have been persuaded by commenters that a longer phase-in period than 60 days is required for facilities currently in operation or about to become operational within one year after the effective date of this rule.

*Facilities currently in operation.* For a facility in operation on the effective date of this rule, we changed the dates in the proposed rule for preparation and implementation of plans from 60 days to a maximum of one year to accord with the time frames in the current rule. The owner or operator of a facility in operation on the effective date of this rule will have 6 months to amend his Plan and must fully implement any amendment as soon as possible, but within one year of the effective date of the rule at the latest. The owner or operator of a facility which has had a discharge as described in § 112.1(b), or reasonably could be expected to have one, already has an obligation to prepare and implement a Plan.

For example, an owner or operator whose facility became operational four years before the effective date of this rule is the owner or operator of a facility currently in operation on the effective date of this rule. He is therefore subject to current § 112.3(b), and should have prepared his Plan no later than three and one half years before the effective date of this rule, and fully implemented it no later than three years before the effective date of this rule. Assuming that he still has not prepared a Plan on the effective date of the rule, he must prepare and fully implement a Plan immediately that meets the requirements of the revised rule. He is subject to penalties for violation of current § 112.3(b) until he does so, and the penalties would accrue from the time the original deadlines passed before the effective date of this rule. The owner or operator of a facility which became operational four years before the effective date of the rule, and who prepared and fully implemented his Plan in compliance with current § 112.3(b), must amend his Plan within 6 months of the effective date of this rule to meet the requirements of the revised rule, and fully implement the amended Plan as soon as possible, but no later than one year after the effective date of the rule.

An owner or operator whose facility became operational 7 months before the effective date of the rule is an owner or operator of a facility currently in operation and is therefore subject to current § 112.3(b). He should have prepared his Plan one month before the effective date of this rule. If he did, he will have 6 months from the effective date of this rule to amend that Plan to meet the requirements of the revised rule, and must fully implement the amended Plan as soon as possible, but within one year of the effective date of this rule. If he has not prepared a Plan by the effective date of the current rule as required, then he must prepare and fully implement a Plan immediately that meets the requirements of the revised rule. He is subject to penalties for violation of current § 112.3(b) until he does so.

An owner or operator whose facility became operational 4 months before the effective date of this rule is also an owner or operator of a facility currently in operation on the effective date of this rule and therefore subject to the current rule. However, in this case, the 6-month deadline to prepare a Plan under the current § 112.3(b) has not yet passed. Therefore, the owner or operator is subject to the Plan preparation and implementation deadlines in § 112.3(a) of the revised rule. He now has 6 months from the effective date of this rule to prepare a Plan that meets the requirements of this rule. If he had already prepared a Plan under current § 112.3(b), he has 6 months from the effective date of this rule to amend that Plan. In either case, he must fully implement the Plan (or amended Plan)

as soon as possible after the 6-month Plan preparation deadline of this rule, but no later than one year after the effective date of this rule.

The owner or operator of a facility in operation on the effective date of this rule who is required to have prepared or implemented an SPCC Plan, but has not, remains subject to penalties for violation of current SPCC regulations. Such owner or operator is consequently subject to civil penalties for a violation of current § 112.3 if the time has expired for preparation or implementation of his Plan.

Facilities becoming operational within one year after the effective date of the rule August 13, 2003. If you begin operations after the effective date of the rule through one year after the effective date of this rule August 16, 2002, you will have until one year from the effective date of this rule to prepare and implement your Plan. In other words, if the rule becomes effective on January 1, and you begin operations on January 2, you must prepare and implement your Plan by January 1 of the following year. If you begin operations on June 30, you still have until January 1 of the following year to prepare and implement your plan. If you begin operations on December 31, you still have until January 1 (the next day) of the following year to prepare and implement your Plan. The rationale for the time frame in the rule is that you will have had notice of the Plan preparation and implementation requirements from the publication date of the rule, a period of 30 days plus one year. In addition, you would already have had notice of the general requirement for preparation of an SPCC Plan from the current part 112 regulations. Therefore, the owner or operator of a facility planning to become operational within one year after the effective date of this rule should start working on his Plan in time to have it fully implemented within the year.

*New facilities.* The owner or operator of a facility that becomes operational more than one year after the effective date of this rule must prepare and implement a Plan before beginning operations.

A year phase-in period is in line with legitimate business and investment expectations. It allows a reasonable period of time for facilities to undertake necessary constructions, purchases of equipment, or to effect changes of procedures. And again, the general requirement for preparation of a Plan already exists in part 112, so new facilities should already have been aware of the need for a Plan.

*Extensions.* While we have extended the time period for compliance, we understand that some facilities may still need extensions of time to comply. Extensions may be necessary to secure necessary manpower or equipment, or to construct necessary structures. If you are an owner or operator and an extension is necessary, you may seek one under § 112.3(f). If no Plan amendments are necessary after you review today's rule, you must maintain your current Plan and cross-reference its elements to the redesignated requirements.

*Acquired facilities.* For SPCC purposes, we consider acquired facilities as facilities that are already operating rather than new facilities because these facilities must already have SPCC Plans if they exceed applicable thresholds.

*Start of operations.* Start of operations is when you begin to store or use oil at a facility. Often this may be a testing or calibration period prior to start up of normal operations. With the extended time line we have provided, no response team is required, but such a team may be a good engineering practice. At a minimum, you must prepare and implement a Plan as required by this rule.

*Small facilities.* With the extended time line we have provided, all facilities, large or small, have adequate notice and time in which to prepare and implement a Plan.

*Editorial changes and clarifications.* We deleted the first sentence of the proposed rule from the final rule because it is unnecessary. It is unnecessary because the obligation to have prepared a Plan is incurred under current section § 112.3(b) for the owner or operator of a facility in operation before the effective date of this rule. For the owner or operator of a facility that becomes operational on or after the effective date of this rule, revised § 112.3 provides the time period within which he must prepare and implement a Plan. The deleted sentence read, ''Owners or operators of onshore facilities that become operational after September 16, 2002, and could be reasonably be expected to discharge oil as described in § 112.1(b)(1) of this part, shall prepare a facility SPCC Plan in accordance with § 112.7, and in accordance with any of the following sections that apply to the facility: §§ 112.8, 112.9, 112.10, and 112.11.''

*Section 112.3(b)—Time Line for Preparation and Implementation of Plans for New Facilities*

*Background.* In 1991, we proposed that new facilities contemplating the start of operations be required to prepare and fully implement Plans before beginning operations. Our rationale was that our experience showed that many types of failures occur during or shortly following facility startup and virtually all prevention, containment, and countermeasure practices are a part of the facility design or construction.

*Comments.* Many commenters suggested various phase-in periods, as discussed above.

*Response to comments.* We believe that our original rationale is still correct. Experience with the implementation of this regulation shows that many types of failures occur during or shortly following startup and that virtually all prevention, containment, and countermeasure practices are part of the facility design or construction. Therefore, it can be beneficial to the environment and carries out the intent of the statute if a facility Plan is prepared and implemented before startup. However, to provide sufficient notice to new facilities that a Plan must be prepared and implemented before beginning operations, we have delayed implementation of this section until one year after the effective date this rule. If you begin operations within one year of the effective date of this rule, you must comply with the requirements in § 112.3(a). However, if you begin operations more than one year after the effective date of this rule, your facility would be ''new'' and you would have to prepare and implement an SPCC Plan before you begin operations. If you need an extension to comply, you may seek one under § 112.3(f).

*Editorial changes and clarifications.* The phrase ''* * * could reasonably be expected to discharge oil, as described in § 112.1(b) of this part* * *'' becomes ''could reasonably be expected to have a discharge as described in § 112.1(b).''

*Section 112.3(c)—Time Line for Preparation and Implementation of Plans for Mobile Facilities*

*Background.* In 1991, we proposed that owners or operators of onshore and offshore mobile facilities be required to have a prepared and implemented Plan before beginning operations. Since existing mobile facilities are a subset of existing facilities, we generally assume that these facilities already have a Plan in place, as the rule now requires. 40 CFR 112.3(c). Both new and existing mobile facilities would therefore have to comply with the rule requiring a fully prepared and implemented Plan before beginning operations.

*Comments. In general.* One commenter believed that requiring Plans

for mobile facilities is unworkable because their physical surroundings are subject to change. Another commenter supported our proposal to allow general Plans for mobile facilities.

*Multi-well drilling programs.* One commenter asked if Plan updates would be required in a field where a multi-well drilling program is underway. The commenter suggested that updates should be required only after the drilling program is complete.

*Response to comments. In general.* We agree that the physical surroundings of mobile facilities are subject to change. However, we disagree that changing physical surroundings should exempt mobile facilities from the rule. Mobile facilities may have ''general'' Plans and need not prepare a new Plan each time the facility is moved to a new site. When a mobile facility is moved, it must be located and installed using the spill prevention practices outlined in the Plan for the facility.

Mobile facilities currently in operation are assumed to have implemented Plans already, because they are currently legally required to do so. Both new and existing mobile facilities must have Plans prepared and fully implemented before operations may begin. If after your review of today's rule, you decide that no amendment to your Plan is necessary, except for cross-referencing, you may continue to operate under your existing Plan, but you must promptly cross-reference the provisions in the Plan to the new format. Extension requests under § 112.3(f) are also available for mobile facilities under the proper conditions.

*Multi-well drilling programs.* It is not necessary to amend the Plan every time you drill a well in a field containing multiple wells. A general Plan will suffice.

*Editorial changes and clarifications.* We deleted the phrase ''using good engineering practice,'' in the third sentence of the paragraph because good engineering practice is required of all Plans. See the introduction to § 112.7. Therefore, the phrase was unnecessary.

*Section 112.3(d)—Certification by Professional Engineers*

*Background.* The current rule only requires that the Professional Engineer (PE), having examined the facility and being familiar with the provisions of part 112, attest by means of his certification that the Plan has been prepared in accordance with good engineering practices. In 1991, we proposed to add specificity to the meaning of the certification requirements for a PE. We proposed that the PE attest that he is familiar with the requirements of part 112, that he has visited the facility, that the Plan has been prepared in accordance with good engineering practice and the requirements of part 112, that required testing has been completed, and that the Plan is adequate for the facility.

*Comments. Certification requirement.* Most commenters supported a certification requirement for PEs. Some opposed it on grounds that if all the components of the Plan were specified by rule, then certification is unnecessary. One U.S. territory, U.S. Samoa, noted that it doesn't register PEs, arguably making compliance with the rule difficult for owners or operators of facilities in Samoa.

Other commenters thought a PE certification requirement was unnecessarily burdensome and costly for small facilities, but did not provide cost estimates. One commenter asserted that PE certification should not be required for small facilities, due mainly to the prohibitive cost. The commenter also maintained that most small facilities have tanks that are required by State or local law to have the Underwriters Laboratory Seal of Approval and to have submitted a detailed plan for review and approval to the fire marshal prior to installation.

*Certification by other environmental professionals.* Several commenters suggested that certification could be effected by another environmental professional, rather than a PE, or by another environmental professional with PE oversight.

*Good engineering practice.* One commenter noted that EPA specified in the 1991 preamble that the application of good engineering practice will require that appropriate provisions of applicable codes, standards, and regulations be incorporated into the SPCC Plan for a particular facility. 56 FR 54617–18. The commenter added, however, that we do not define ''good engineering practice'' for this program, and urged EPA to specify in more detail as to its understanding of the term.

*Testing.* Some commenters wrote that it would be better for the PE to enumerate all the inspections and tests that have been completed, plus those that should be completed before the facility commences operations and those that should be undertaken periodically after it commences operations. A few commenters objected to the proposed requirement that the PE attest that required testing has been completed, suggesting instead that the operator is responsible for completion of testing. Another commenter suggested that the PE be allowed to attest to the presence of those written procedures which require testing.

*Non-technical changes.* Most supported the idea that non-technical changes to a Plan (for example, the emergency contact list, phone numbers, or names) need not have PE certification.

*Time limit for PE certification.* One commenter suggested a time limit of three years or less on PE certification, suggesting that the PE should be required to reinspect the premises periodically, preferably annually, to ascertain that the Plan continues to be implemented.

*PE costs.* Some commenters argued that requiring an independent or outside PE for Plan certification would be extremely expensive for facilities located in remote areas. These commenters were principally concerned that we did not fully account for the cost to a facility owner or operator for a PE to visit each facility before certifying a Plan. Requiring the use of an independent or outside PE could be burdensome to facility owners or operators.

*Response to Comments. Certification requirement.* PE certification of all facilities, both large and small, is necessary because a discharge as described in § 112.1(b) from any size facility may be harmful, and PE review and certification of a Plan may help prevent that discharge. We disagree that PE certification is prohibitively costly for small facilities. A Plan certified by a PE may well save the owner or operator money due to improved facility operations and decreased likelihood of discharge, thus averting potentially costly cleanups. Because a Plan for a smaller facility is likely to be less complicated than a Plan for a larger facility, PE certification costs should likewise be lower for a smaller facility. In our Information Collection Request, estimated total costs for a new facility to prepare and begin implementation of a Plan, including PE certification costs, are $2,201 for a small facility, $2,164 for a medium facility, and $2,540 for a large facility. This cost is incurred only in the year that the facility first becomes subject to the rule. This one-time cost incurred by a small facility is less than 1.5 percent of the average annual revenue for small facilities in all industry categories. The cost for the PE certification alone would represent even less than that. As shown in Chapter 5 of the Economic Analysis for this rulemaking, the average annual revenue for the smallest regulated facilities (under the current rule) ranges from $150,000 to $6,833,000, depending on the industry category. For example,

farms with annual revenue between $100,000 and $249,999 have an average annual revenue per farm of $161,430, and $2,201 (the one-time cost to prepare and implement a Plan) represents only 1.36 percent of that annual revenue. Of course, under the revised rule many of these small facilities will not be regulated by the SPCC program at all.

A PE's certification of a Plan means that the PE is certifying that the facility's equipment, design, construction, and maintenance procedures used to implement the Plan are in accordance with good engineering practices. And this is important because good engineering practices are likely to prevent discharges. PE certification, to be effective for SPCC purposes, must be completed in accordance with the law of the State in which the PE is working. For example, some States require a PE to apply his seal to effectuate a certification. Others do not.

We also disagree that small facilities need not have PE certification for SPCC Plans when the tanks are certified by the Underwriters Laboratory. A Plan consists of more than a certified tank. It contains provisions for secondary containment, integrity testing, and other measures to prevent discharges. Those provisions require PE certification to ensure that they meet the requirements of the rule and that the Plan is effective to prevent discharges.

Finally, by modifying the applicability provision in § 112.1(d)(2), we are today exempting many small facilities from the requirement to prepare and implement a Plan at all, thus saving all prospective PE costs.

In response to the commenter from Samoa, who noted that territory does not register PEs, the rule would allow an SPCC facility there to hire a PE licensed in some other State or U.S. territory.

*Certification by other environmental professionals.* Certification by a PE, rather than by another environmental professional is necessary to ensure the application of good engineering judgment. A PE must obtain a Bachelor of Engineering degree from an accredited engineering program, pass two comprehensive national examinations, and demonstrate an acceptable level (usually four additional years) of engineering experience. A licensed engineer is also required to practice engineering solely within his areas of competence and to protect the public health, safety, and welfare. All licensed PEs, no matter who their employer, are required by State laws and codes of ethics to discharge their engineering responsibilities accurately and honestly. Furthermore, State governments have and do exercise the authority to discipline licensed PEs who fail to comply with State laws and requirements. Other environmental professionals may not have similar expertise nor be held to similar standards as the licensed PE.

It is not always necessary for a PE to visit the facility. Therefore, we have revised § 112.3(d) to a allow site visit by either the PE or his agent. Often it will be sufficient if the PE reviews the work of other engineering professionals who have visited the facility. Someone would have to visit the facility, but not necessarily the PE. Nevertheless, in all cases the PE must ensure that his certification represents an exercise of good engineering judgment. If that requires a personal site visit, the PE must visit the facility himself before certifying the Plan.

*Good engineering practice.* As we noted in the 1991 preamble (at 56 FR 54617–18), good engineering practice ''will require that appropriate provisions of applicable codes, standards, and regulations be incorporated into the SPCC Plan for a particular facility.'' We agree with the commenter that the rule needs more specificity in this regard. Therefore, we have amended § 112.3(d)(1)(iii) to specifically include consideration of applicable industry standards as an element of the PE's attestation that the Plan has been prepared in accordance with good engineering practice. We reiterate today, as we did in 1991, that consideration of applicable industry standards is an essential element of good engineering practice. Industry standards include industry regulations, standards, codes, specifications, recommendations, recommended practices, publications, bulletins, and other materials. (See § 112.7(a)(1) and (j).) The owner or operator must specifically document any industry standard used in a Plan to comply with this section. The documentation should include the name of the industry standard, and the year or edition of that standard. However, as discussed above, we have chosen not to incorporate specific industry standards into the rule.

*Testing.* The proposed rule would have required the PE to certify that required testing was completed. We have been persuaded by comments that the requirement should be that procedures for inspections and tests have been established, not necessarily completed, because the PE is not normally present at time of completion. Nor do we believe it is necessary to impose a requirement that the PE oversee all testing because the PE only shares responsibility with the owner or operator for establishing procedures, not for their implementation, which is the sole responsibility of the owner or operator. However, the PE may include in the Plan a schedule for testing, with specific time frames for the completion of that testing. See also the discussion in today's preamble (at section IV.D.3) on ''Completion of Testing.''

*Non-technical changes.* PE certification is not required for items that do not require engineering judgment, such as telephone numbers; names on lists; some, but not all, product changes (see the response to comments of § 112.5(a)); ownership changes; or, any other changes not requiring engineering judgment.

*Time limit for PE certification.* We disagree that there should be a time limit on PE certification because the rule ensures that the PE reviews the Plan at appropriate times. Thus, current PE certifications remain valid. But new certifications after the effective date of this rule must include the required attestations. If you are an owner or operator you must review your Plan at least every five years (under revisions made in today's rule), and amend it if new technology is warranted. Also, you must amend your Plan to conform with any applicable rule requirements, or at any time you make any change in facility design, construction, operation, or maintenance that materially affects its potential for a discharge as described in § 112.1(b). All material amendments require PE certification. Therefore, because a Plan will likely require one or more amendments requiring PE review and certification, a time limit on PE certifications is unnecessary. *See* § 112.5(c).

*Other PE issues.* As to other PE issues, as noted above (see section IV.D.2 of this preamble), the PE need not be independent of the facility. Nor is there a requirement that he not have a financial interest in it. We believe the professional integrity of a PE and the professional oversight of boards licensing PEs are sufficient to prevent any abuses.

It is not necessary that the PE be licensed in the same State as the facility because the SPCC program is national in scope and therefore State expertise is unnecessary. While States may prescribe more stringent requirements than EPA, a PE may familiarize himself with any particular requirements a State may impose and address them in the Plan. *See* § 112.7(j). Furthermore, violations of PE ethics may be handled by the licensing board of the PE's state no matter where the work is done.

EPA maintains that a site visit is necessary, but the visit may be by either the PE or his agent, so long as a visit by

an agent is consistent with good engineering practice. A visit by the PE's agent can generally be sufficient given that the PE will oversee and be responsible for his agent's work.

*PE costs.* We note that we did not propose a requirement for an independent PE, but requested comments on it. In the final rule, we require either the PE or the PE's agent to visit and examine the facility before the PE certifies the Plan. An agent might include an engineering technician, technologist, graduate engineer, or other qualified person to prepare preliminary reports, studies, and evaluations after visiting the site. The PE, after reviewing the agent's work, could then legitimately certify the Plan. Also, in the final rule, we allow the PE to be an employee of the facility as well as registered in a different State than the facility is located, in order to approve a Plan. The rationale is that SPCC work is national in scope and therefore State expertise is unnecessary.

*Editorial changes and clarifications.* ''Registered Professional Engineer'' becomes ''licensed Professional Engineer.'' The first sentence of the paragraph was proposed as, ''No SPCC Plan shall be effective to satisfy the requirements of this part unless it has been reviewed by a Registered Professional Engineer.'' We revised it to read, ''A licensed Professional Engineer must review and certify a Plan for it to be effective to satisfy the requirements of this part.'' This revision is due to the fact that PEs are licensed by States.

*Section 112.3(e)—Location and Availability of Plan*

*Background.* In 1991, we proposed that the Plan be available at the facility if the facility is normally manned at least four hours a day, in lieu of the current requirement that the Plan be available if the facility is manned eight hours a day. If the facility is not attended at least four hours a day, the Plan would have to be available at the nearest field office.

The rationale for the change is that some facilities interpreted the eight hour requirement not to apply to a facility that is only operating seven and one-half hours per day, with a half an hour deducted for lunch. The availability of a Plan can be extremely useful in preventing and mitigating discharges, therefore it must be available most of the time at attended facilities.

*Comments. Editorial changes and clarifications.* Several commenters questioned the meaning of ''normal working hours,'' asking whose hours that meant, those of EPA or those of the facility. Several commenters questioned the meaning of ''nearest field office.''

*Plan availability.* Several commenters favored the proposal. One commenter suggested that we amend the rule to provide that the Plan be available ''without advance notice,'' so that it would be fully implemented at all times, not just when an inspection is impending. One commenter thought that the Plan should always be located at the facility, whether manned or not, perhaps protected by a laminated cover, and at ''appropriate control centers.''

*State and local agencies.* Another commenter suggested that the Plan be filed with the local fire department and LEPC (Local Emergency Planning Committee) to facilitate public review. One State suggested there be a Federal requirement that the Plan also be filed with the State.

*Response to comments. Nearest field office, normal working hours.* The term ''nearest field office'' in paragraph (e)(1) means the office with operational responsibility for the facility, or the emergency response center for the facility, because those locations ensure accessibility for personnel who need to respond in case of a discharge. The term ''normal working hours'' in paragraph (e)(2) refers to the working hours of the facility or the field office, not EPA.

*Plan availability.* Today we have finalized the 1991 proposal that the Plan must be available at the facility if it is normally attended at least four hours per day, or at the nearest field office if it is not so attended. A Plan must always be available without advance notice, because an inspection might not be scheduled. You are not required to locate a Plan at an unattended facility because of the difficulty that might ensue when emergency personnel try to find the Plan. However, you may keep a Plan at an unattended facility. If you do not locate the Plan at the facility, you must locate it at the nearest field office.

*State and local agencies.* You are not required to file or locate a Plan with a State Emergency Response Commission or Local Emergency Planning Committee or other State or local agency because the distribution would unjustifiably increase the information collection burden of the rule, and not all committees or agencies may want copies of SPCC Plans. Should a State wish to require filing of a Federal SPCC Plan with a State or local committee or agency, it may do so. No Federal requirement is necessary.

*Editorial changes and clarifications.* In paragraph (e)(2), we deleted the term ''or authorized representative'' after ''Regional Administrator,'' because the Regional Administrator may delegate his duties. Therefore, the term is unnecessary.

*Section 112.3(f)—Extension of Time*

*Background.* In 1991, we proposed to allow only new facilities to apply for extensions of time to comply with the requirements of part 112. The current rule allows any facility to apply for an extension, including existing fixed and mobile facilities. The rationale for limiting extension requests to new facilities was that existing fixed and mobile facilities have had since 1974 to comply with the rule.

*Comments. Automatic extensions.* Several commenters suggested that we automatically grant extension requests if we are to require a Plan to be in effect prior to commencement of operations.

*Existing Plan requirements.* Another commenter criticized the proposed requirement to submit the existing Plan with each extension request, because EPA's review of the Plan cannot practically be an element of the extension granting process. Another commenter suggested that the language in paragraph (f)(3) would be better if it said that the existing Plan's provisions remain in effect until they are superseded by changes proposed by the facility, because these words better reflect the intention of the rule.

*Amendments.* Several commenters urged EPA to allow extensions for preparation and implementation of Plan amendments.

*Response to comments. Automatic extensions.* Automatic extension requests are not justifiable because we have extended the time within which most facilities have to prepare and implement Plans. *See* § 112.3(a), (b), and (c). Also, under the revised rule, you may request an extension for the preparation and implementation of any Plan, or amendment to any Plan. *See* § 112.3(f).

*Existing Plan requirements.* We have broadened the scope of extension requests to any facility that can justify the request, because for every type of facility there may be cases in which an extension can be justified. Existing fixed and mobile facilities may experience delays in construction or equipment delivery or may lack qualified personnel, and these circumstances may be beyond the control of, and without the fault of, the owner or operator. We also agree with the commenter that the submission of the entire Plan as a matter of course is unnecessary to evaluate each extension request. Therefore, we have amended the rule to provide that the Regional Administrator may request your Plan if he deems it appropriate. But we do not believe that he will

always do so. It may be necessary under some circumstances. The Regional Administrator also retains discretion to request the Plan after on-site review, or after certain discharges. *See* § 112.4(a)(9) and (d). We disagree with the commenter's proposed rewrite of the owner or operator's obligations while the request is pending because the better policy is to require compliance with the rest of the rule that is not affected by the extension request, rather than saying that the existing Plan continues in effect.

*Amendments.* We have also added a provision for an extension of time to prepare and implement an amendment to the Plan, as well as an entire Plan. We believe that there may be cases in which an extension can be justified for a Plan amendment because the same extenuating circumstances may apply.

*Editorial changes and clarifications.* In paragraph (f)(3), ''letter of request'' becomes ''written extension request.'' In the last sentence of that paragraph, ''with respect to'' becomes ''related to.''

*Section 112.4(a)—Reporting Certain Discharges to EPA*

*Background.* In 1991, we proposed to require more information than is currently required in the rule for reporting certain discharges. If your facility discharged more than 1,000 gallons in a discharge as described in § 112.1(b), or discharged oil in quantities that may be harmful in more than two discharges as described in § 112.1(b) within any consecutive twelve month period, you would have been required to submit certain information to the Regional Administrator.

In 1993, we proposed a modification to § 112.4(d)(1) which would allow the Regional Administrator to require the submission of the listed information in § 112.4(a)(1) at any time, whether or not there had been a discharge as described in § 112.1(b).

In 1997, we proposed a reduction of the amount of information currently required by § 112.4(a). We proposed to eliminate the following information, unless the Regional Administrator specifically requested it: (1) The date and year of initial facility operation; (2) maximum storage or handling capacity of the facility and normal daily throughput; and, (3) a complete copy of the SPCC Plan with any amendments.

*Comments. In general.* Most commenters favored the 1997 proposal. Several commenters opposed the proposal.

*Information submission at any time.* One commenter argued that the 1993 proposal allowing EPA to require submission of the information required in § 112.4(a)(1) and to require Plan amendments at any time is vague and does not provide adequate notice to the regulated community.

*Submission of entire Plan.* One commenter thought that meaningful review of the information submitted was impossible without the entire Plan. Two commenters believed that EPA would always request the information it proposed to eliminate.

*Discharge threshold.* Other commenters proposed a higher threshold for having to report a discharge than is currently required by § 112.4(a). Those thresholds ranged from 25–55 gallons. One commenter suggested that we relax the reporting requirement for very minor releases of petroleum products. Another suggested that if the discharge causes a sheen that dissipates within 24 hours, there should be no obligation to report.

*Maps, flow diagrams, and charts.* Several commenters suggested that we eliminate the requirement to submit maps, flow diagrams, and charts because those documents ''add nothing useful to the inquiry.''

*Off-site category.* Another commenter suggested that we create an ''off-site'' category of spill reports for discharges reported by a facility that are in a water body adjacent to the reporter's facility, or for discharges that originate off-site, but migrate to the facility.

*Calculation of time for discharge reports required by § 112.4(a).* Several commenters suggested that we calculate the time for the submission of discharge reports required by § 112.4(a) on a ''block'' basis, rather than a ''rolling'' basis.

*Response to Comments*

*Information submission at any time.* We agree with the commenter that the 1993 proposal to give the Regional Administrator authority to require submission of the requested information in this section at any time is vague, and have therefore withdrawn that part of the proposal. We will only require such information after the discharges specified in this section.

*Submission of entire Plan.* CWA section 311(m) provides EPA with the authority to require an owner or operator of a facility subject to section 311 to make reports and provide information to carry out the objectives of section 311; and CWA section 308(a) provides us with authority to require the owner or operator of any ''point source'' to make such reports as the Administrator may reasonably require. Therefore, we disagree that submission of the entire Plan is always necessary when reporting discharges under § 112.4(a). We believe the information now required to be submitted is adequate to assess the cause of discharge and the ability of the facility to prevent future discharges. If the RA believes that the entire Plan has utility, he can request it. However, we disagree that RAs will always require submission of the Plan, or other information not required, as a matter of course. RAs may use their administrative discretion not to require the submission of Plan information or other additional information.

*Discharge threshold. 42 gallons.* We agree that a higher threshold of reporting discharges is justifiable because we believe that only larger discharges should trigger an EPA obligation to review a facility's prevention efforts. We also agree that a higher threshold should trigger a facility's obligation to submit information and possibly have to take further prevention measures. Therefore, we have changed the threshold for reporting after two discharges as described in § 112.1(b). Under the revised rule, if you are the owner or operator of a facility subject to this part, you must only submit the required information when in any twelve month period there have been two discharges as described in § 112.1(b), in each of which more than 42 U.S. gallons, or one barrel, has been discharged. We adopted the 42 gallon threshold on a commenter's suggestion. We believe that a 42 gallon threshold is the appropriate one to trigger a facility's information and possibly to have to take further prevention measures. When multiple discharges occur at a facility subject to the SPCC program, such as a generating station, they often involve the discharge of very small amounts of oil, and these discharges tend to come randomly from a lube pipe, an oil level sight glass crack, or some other apparatus, and do not normally indicate a recurring problem with the container. Having two or more of these small discharges does not indicate that the facility's SPCC Plan requires revision. The other reporting threshold of 1,000 gallons in any a single discharge as described in § 112.1(b) remains the same.

We disagree that a sheen caused by a discharge as described in § 112.1(b) over the threshold amount that disappears within 24 hours should not require submission of information. The discharge itself may indicate a serious problem at the facility which needs to be corrected. The discharge report may give us the information necessary to require specific correction measures.

*''Sheen'' rule.* The duty imposed by the CWA to report to the National Response Center all discharges that may be harmful, further described by 40 CFR 110.3, is unchanged. Those discharges include discharges that violate applicable water quality standards; or, cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

*Maps, flow diagrams, and charts.* In response to comments which questioned the usefulness of such information, we have modified the provision regarding maps, flow diagrams, topographical maps (now required by paragraph (a)(6) of the current rule) to clarify that only the information necessary to adequately describe the facility and discharge, such as maps, flow diagrams, or topographical maps is necessary—not necessarily all of the information listed in the paragraph. To effect this change, we added the words ''as necessary'' after ''topographical maps.'' ''As necessary'' means as determined by the owner or operator, subject to the obligations of this rule, unless the RA requests more information. There might be circumstances in which the owner or operator would submit only a brief description of the facility or a map, for example, because flow diagrams and topographical maps were unnecessary to describe the discharge, and would not help the RA to determine whether any amendment to the Plan was necessary to prevent future discharges as described in § 112.1(b).

*Off-site category.* There is no necessity for an ''off-site'' category of discharges as described in § 112.1(b) because only a discharge as described in § 112.1(b) that originates in a facility subject to this part counts for purposes of § 112.4(a).

*Calculation of time for discharge reports required by § 112.4(a).* We believe a ''rolling'' basis is the appropriate method to calculate a discharge as described in § 112.1(b) for purposes of the rule because discharges as described in § 112.1(b) that are closer in time are more likely to be related in cause. Discharges that are more proximate in time may indicate a problem that needs to be remedied. A ''rolling basis'' means that each discharge as described in § 112.1(b) triggers the start of a new twelve month period. For example, if discharge #1 occurred on January 1, and if discharge #2 occurred on June 2, discharge #2 would trigger the regulatory submission and would start a new twelve month period. If discharge #3 occurred on the following February 3, it would again trigger a submission, because discharge #3 would be within 12 months of discharge #2. While the ''rolling basis'' would trigger more regulatory submissions than the ''block basis,'' we believe that it would enhance environmental protection because it would call potential problems to the attention of the Regional Administrator sooner, and allow them to be remedied sooner by a Plan amendment where necessary.

*''Block'' basis.* The other approach would be to use a ''block'' period. Under this type of calculation, each third discharge as described in § 112.1(b) would not trigger a submission if it occurred within 12 months of discharge #2, but it would start the beginning of a new 12 month period. For example, if discharge #1 occurred on January 1, and discharge #2 on June 2, discharge #2 would trigger a submission. Discharge #3 on the following February 3 would not trigger a submission, but would start a new 12 month period. The principal justification for block reporting is also that discharges more closely related in time are more likely to be related. Our concern with this method is that if the February 3 discharge (i.e., discharge #3) is within twelve months of discharge #2, this situation could indicate that there is a problem that has not been remedied, so the February 3 discharge should trigger a reporting submission.

*Maximum storage or handling capacity.* In 1997, we proposed deletion of current paragraph (5) (renumbered as paragraph (4) in today's final rule), concerning the maximum storage or handling capacity of the facility and normal daily throughput. We have reconsidered this proposal and decided to withdraw it because the referenced information is necessary information. We have therefore retained the language in the rule. Storage capacity and normal daily throughput are important indicators of the impact of a potential discharge as described in § 112.1(b).

*Additional information.* If the Regional Administrator requires other information, for example, concerning the spill pathway, or any response measures taken, this request is authorized under renumbered § 112.4(a)(9), current § 112.4(a)(11).

*Adjoining shorelines, natural resources, affected natural resources.* Discharges into navigable waters are not the only discharges reportable for purposes of this section. We note that any discharge as described in § 112.1(b) is also within the scope of this section's reportable discharges.

*Editorial changes and clarifications.* If a particular information request is inapplicable, you may omit it, but must explain why it is inapplicable. Several plural nouns like ''names'' and ''causes'' become singular. Wherever the phrase ''and/or'' appears, we have revised the phrase to read ''and.'' In 1997's proposed § 112.4(a)(6), redesignated as § 112.4(a)(7), ''spill'' becomes ''discharge as described in § 112.1(b).'' In 1997's proposed § 112.4(a)(8), redesignated as § 112.4(a)(9), ''spill event'' becomes ''discharge.''

*Section 112.4(b)—Applicability of § 112.4*

*Background.* Under current § 112.4(b), the § 112.4 requirements for spill reporting do not apply until the expiration of the time permitted for the preparation and implementation of a Plan pursuant to § 112.3(a), (b), (c), and (f). In 1991, we proposed that § 112.4 would not apply until the expiration of the time permitted for the preparation and implementation of a Plan under § 112.3(f) only. Section 112.3(f) is the time period in which you are permitted to prepare and implement a Plan under an extension request.

We proposed to delete the references to § 112.3(a), (b) and (c) because the current time periods allowed in these paragraphs for the preparation and implementation of the Plan (before commencement of operation for new facilities or mobile facilities, or after the effective date of the rule for other existing facilities) were proposed for deletion. Because future facilities would generally have a Plan prepared and implemented before beginning operations, there was no longer a need to temporarily relieve facilities of spill reporting obligations under § 112.4(a), unless the Regional Administrator granted an extension under § 112.3(f) to prepare and implement a Plan. We received no comments on this proposal.

In today's rule, however, we have revised § 112.3 to extend the time lines for certain facilities to prepare and implement Plans. To accord with this change, we are maintaining the approach under current § 112.4(b) to provide that the § 112.4 spill reporting requirements will not apply until the expiration of the time permitted for the initial preparation and implementation of a Plan under § 112.3(a), (b), (c), and (f). Today, we have also revised § 112.3(a) to provide an extended time line for preparing a Plan amendment and § 112.3(f) to provide for an extension request for an amendment to a Plan. Therefore, we have also revised § 112.4(b) to provide that the obligation to submit information as required by

§ 112.4(a) does not arise until the expiration of the time permitted for the initial preparation and implementation of the Plan under § 112.3, but not for any amendments to the Plan. We did not previously propose to relieve facilities of § 112.4 reporting requirements during Plan amendments or extensions for Plan amendments. An amendment may or may not be directly related to the cause of the discharge as described in § 112.1(b), and therefore may have little relevance to the duty to submit discharge reports to EPA.

*Section 112.4(c)—Supplying Discharge Information to the States*

*Background.* In 1991, we proposed that you must provide the same discharge information that you submit to the Regional Administrator under § 112.4(a) to the State agency in charge of oil pollution control activities. The current rules require that you provide that information to the State agency in charge of water pollution control activities.

*Comments. Legal authority.* One commenter suggested that we have no legal authority for the proposal. Another commenter asserted that EPA could only implement State agency recommendations if those recommendations fell within the scope of the SPCC rule.

*In general.* Several commenters suggested the proposal was redundant and unnecessary, because only EPA regulates the SPCC program, not the States.

*State agency review.* One commenter, a State, favored the proposal and noted that more than one State agency has statutory jurisdiction over oil pollution control in that State. That State and another suggested that all relevant State agencies receive the information. One commenter suggested that EPA should identify the appropriate State agency to which notice is due. One commenter thought the proposed change was misleading. Another commenter, a State, suggested that EPA provide the States money to review the submitted discharge information.

*Response to comments. Legal authority.* We have ample legal authority to finalize this rule. A similar rule has been in effect since 1974. Section 311(j)(1) of the CWA authorizes the Federal government (and EPA through delegation) to establish ''procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil. * * *'' Section 112.4(c) of this rule is a procedure to help prevent discharges that fall within the scope of that statutory provision. It enables States to learn of discharges reported to EPA and to make recommendations as to further procedures, methods, equipment, and other requirements that might prevent such discharges at the reporting facility.

We can only implement State agency suggestions that are within the scope of our authority under section 311 of the CWA.

*In general.* The commenter is correct that the SPCC program is a Federal program, but we believe that in working with the States, we can improve the Federal program through coordination with State oil pollution prevention programs. Therefore, we believe that the information provided to States is neither redundant nor unnecessary. Nor is the section misleading; it clearly states the obligation of the owner or operator.

*State agency review.* We modified the 1991 proposal on the commenters' suggestion to include notice to any appropriate State agency in charge of oil pollution control activities, since there may be more than one such agency in some States and all may have need for the information. We do not list such agencies in the rule, as a commenter suggested, because the names and jurisdiction of the State agencies are subject to change. It is the reporter's obligation to learn which State agencies receive the discharge reports. Most States publish documents on an ongoing basis, similar to the **Federal Register**, which publicize relevant regulatory information.

We do not provide State agencies funds to review these discharge reports due to budgetary constraints. While we assume that many States review these reports carefully, we cannot require them to do so. Thus, this action is not an unfunded mandate from the Federal government to the States. But if States do review the reports, they do so at their own expense.

*Editorial changes and clarifications.* In the last sentence of the paragraph, ''discharges of oil'' becomes ''discharges.''

*Section 112.4(d)—Amendment of Plans Required by the Regional Administrator*

*Background.* In 1991, we proposed that after review of materials under 112.4(a), the Regional Administrator (RA) might require amendment of the SPCC Plan. We also proposed that the RA might require Plan amendment after reviewing contingency plan materials submitted for approval. See proposed § 112.7(d), 1991.

In 1993, we proposed that the RA would also have authority to require Plan amendment after on-site review of the Plan. In addition, we proposed a clause empowering the RA to approve the Plan or require amendment.

We also proposed in 1993 allowing the RA to require submission of the information listed in § 112.4(a) at any time. The rationale to get this information was to prevent discharges from happening, in addition to seeking to correct the conditions that may have caused the discharge. See the background and response to comments under § 112.4(a) for a discussion of this proposal.

*Comments. Regional Administrator approval of Plans.* Several commenters criticized the idea of RA approval of the Plan on the theory that it is an unwarranted intrusion into the manner in which operators do business. Another urged an appeal process if EPA approval of Plans is required.

*Plan information and amendments.* One commenter argued that allowing EPA to require submission of the information required in § 112.4(a) at any time and to require Plan amendments at any time is vague and does not provide adequate notice to the regulated community. Several commenters were concerned that EPA would inconsistently require overly stringent measures in some Plans or might require amendments unrelated to discharge potential or which were financially unreasonable. Two commenters urged a time limit on EPA decision making following submission of required information. Another commenter was concerned that no provision required PE certification of amendments required by EPA.

*Response to comments. Regional Administrator approval of Plans.* We have deleted the provision that would have allowed RA approval of Plans. We have decided not to create a new class of SPCC Plans which require EPA approval, either Plans submitted following certain discharges as required by § 112.4(a) or Plans with contingency plans, because we do not believe such approval is necessary in order to ensure effective Plans.

*Plan information and amendments.* We agree that allowing EPA to require submission of the information required in § 112.4(a) at any time, and thereafter to require Plan amendments, is vague, and therefore we have withdrawn that part of the proposal. Furthermore, it is unnecessary because sections 308 and 311(m) of the CWA already provides us with adequate authority to request necessary Plan information.

While the RA will not have authority under this section to approve Plans, he has authority to require Plan amendment. We will strive to be as timely as possible in reviewing the

information when submitted, and making decisions on any required amendments. A time limit on the RA's decision making authority would be unnecessary because a facility may continue to operate under its existing Plan while the RA's decision is pending. While we will consider cost in our decision making, amendments may be required on a case-specific basis to help prevent discharges. Any technical amendment required would require PE certification. *See* § 112.5(c) .

*Editorial changes and clarifications.* We have deleted reference to the RA's approval of the submitted Plan in proposed paragraph (d)(2), because the RA will not have authority to approve a Plan. He does, however, have authority to require Plan amendment under today's revision of § 112.4(d).

*Section 112.4(e)—Notification and Implementation of Required Amendments*

*Background.* In 1991, we reproposed the current notification provision concerning required Plan amendments, and the time lines for implementation of those amendments.

*Comments. Who receives notice.* One commenter wanted EPA to notify railroads directly, instead of their registered agents, because of the time lag that might occur between the time the agent received notice and the owner or operator of the facility received notice. Another commenter urged that we also provide notice to the facility operator, the facility improvement owner, and the facility landowner. His rationale for such expanded notice was that a major problem may be addressed by the operator or EPA, without the knowledge and/or consent of the facility improvements owner and the facility landowner.

*Appeals procedure.* One commenter suggested that we include a reference to the appeal procedure for amendments in this section.

*Response to comments. Who receives notice.* In reply to the railroad commenter, the rule requires notice only to the owner or operator of the facility, and the registered agent, if any and if known. Notice from EPA to the facility improvements owner and landowner is unnecessary because these matters can and should be handled between the facility owner or operator and the owner or operator of the improvements or the landowner.

*Appeals procedure.* We have not included a reference to the appeals procedures for required amendments in this section because the appeals procedures follow immediately in the next paragraph, making such reference redundant.

*Editorial changes and clarifications.* We have changed the proposed requirement to mail a copy of the notice to the registered agent of a corporation to a requirement that such notice be effected only if the registered agent is known to EPA. The notification requirement for registered agents now tracks the notification requirement for registered agents in § 112.1(f). Because we have withdrawn the proposed requirement that a corporation submit that agent's name or address in the submission of information required by § 112.4(a), such agent may not be known to EPA. In the last sentence of the final rule, ''amendment of the Plan'' becomes ''amended Plan.''

*Section 112.4(f)—Appeals of Required Amendments*

*Background.* In 1991, we reproposed the current appeals procedures for required Plan amendments. We received no substantive comments. Therefore, we have promulgated the procedures as proposed.

*Editorial changes and clarifications.* We deleted language concerning the ''designee'' of the EPA Administrator because it is unnecessary. Current delegations allow the Administrator to delegate this function.

*Section 112.5(a)—Plan Amendment by an Owner or Operator*

*Background.* In 1991, we proposed to require that an owner or operator amend the Plan before making any change in facility design, construction, operation, or maintenance materially affecting the facility's potential for the discharge of oil into the waters of the United States unless the RA granted an extension. We also listed some examples of facility changes which would require Plan amendment, noting that these examples were not an exclusive list.

*Comments. When amendment is necessary.* Several commenters favored the proposal. Others provided differing standards for amending Plans. A number of commenters suggested that no amendments should be necessary when a facility change results in a decrease in the volume stored or a decrease in the potential for an oil spill. Another suggested a standard that amendments should be made ''when there are indicia of problems.'' A commenter suggested a standard that no amendments would be required except for those changes which would cause the spill potential to exceed the Plan's capabilities because day-to-day changes do not affect the worst case spill and the Plan should not have to be amended on a day-to-day basis. One commenter suggested that small facilities with less than 5,000 gallon-capacity should be exempted from the need to amend their Plans for the listed acts. Another commenter asserted that instead of being required to amend their Plans before changes are made, operators should be encouraged to incorporate new procedures into their SPCC Plans to prevent and contain potential discharges which might result from performing needed repairs and replacements. The rationale for the suggestion was that operators will then not ''save up'' potential amendments due to the burden of preparing an amendment.

*Material changes.* Many commenters offered opinions on the examples of material changes listed in the rule for which amendments would be required. Some suggested that the rule should read that these are only examples of changes that may trigger amendment. Several commenters suggested that decommissioning a tank should not trigger an amendment because ''as a tank is removed, so is the requirement for an SPCC Plan.'' Another commenter noted that changing a product in a tank or cleaning a tank should not be considered commissioning or decommissioning a tank. One commenter suggested that an amendment to the Plan should be required when there is a change of product stored within the tank.

*Documenting no change or certain activities.* Another commenter suggested that a log book might be used instead of a Plan amendment to document ''routine activities'' and measures taken to maintain the spill prevention and response integrity of the facility. Several commenters suggested that an identical replacement of tanks or other equipment should not be considered a material change and therefore amendment should not be required. A utility commenter asked that facilities be allowed to accumulate minor modifications for a period of 6 months, then update the Plan.

*EPA approval.* Another commenter suggested that we clarify that EPA approval of an amendment made under this section is not required.

*Time line for amendment implementation.* Numerous commenters opposed the proposed requirement that a Plan be amended before any material changes are made. Commenters suggested various alternative amendment time lines ranging from 90 days to six months following such changes, with a cluster of commenters around the six months alternative. Others suggested that the Plan be

amended at fixed time points such as before a design is physically implemented, before startup of operations, after modifications, before new or modified equipment is in operation, or when changes are made. One commenter said that rule language should be clarified to note that the RA may specify a time period longer than six months to implement an amendment.

*Response to comments. When amendment is necessary.* We agree with the commenter who suggested that we maintain the current standard for amendments, i.e., when there is a change that materially affects the facility's potential to discharge oil. This position accords with our stance on when Plans should be prepared and implemented. *See* § 112.3. The other suggested standards too narrowly limit the changes which would trigger Plan amendment. We believe that an amendment is necessary when a facility change results in a decrease in the volume stored or a decrease in the potential for an oil spill because EPA needs this information to determine compliance with the rule. For example, the amount of secondary containment required depends on the storage capacity of a container. Decreases might also affect the way a facility plans emergency response measures and training procedures. A lesser capacity might require different response measures than a larger capacity. The training of employees might be affected because the operation and maintenance of the facility might be affected by a lesser storage capacity.

Likewise, a standard requiring amendment ''when there are indicia of problems'' is too vague and leaves problems unaddressed which may result in a discharge as described in § 112.1(b). A standard requiring an amendment only when the change would cause the spill potential to exceed the Plan's capabilities (because day-to-day changes do not affect the worst case spill) would have the effect of leaving no documentation of amendments which might affect discharges which do not reach the standard of ''worst case spill.'' While we encourage facilities to incorporate new procedures into Plans which would help to prevent discharges, amendments are still necessary when material changes are made to document those new procedures, and thus facilitate the enforcement of the rule's requirements. We disagree that a small facility should be exempt from making amendments for material changes. Amendments may be necessary at large or small facilities alike to prevent discharges after material changes.

*Material changes.* A material change is one that may either increase or decrease the potential for a discharge. We agree with the commenter that the rule should be worded to indicate that the examples are for illustration only, because the items in the list may not always trigger amendments, and because the list is not exclusive. Only changes which materially affect operations trigger the amendment requirement. Ordinary maintenance or non-material changes which do not affect the potential for the discharge of oil do not.

We disagree that decommissioning of a container that results in permanent closure of that container is not a material amendment. Decommissioning a container could materially decrease the potential for a discharge and require Plan amendment, unless such decommissioning brings the facility below the regulatory threshold, making the preparation and implementation of a Plan no longer a requirement. We also believe that the oversight of a Professional Engineer is necessary to ensure that the container is in fact properly closed.

We agree that replacement of tanks, containers, or equipment may not be a material change if the replacements are identical in quality, capacity, and number. However, a replacement of one tank with more than one identical tank resulting in greater storage capacity is a material change because the storage capacity of the facility, and its consequent discharge potential, have increased.

*Changes of product.* We have added to the list of examples, on a commenter's suggestion, ''changes of product.'' We added ''changes of product'' because such change may materially affect facility operations and therefore be a material change. An example of a change of product that would be a material change would be a change from storage of asphalt to storage of gasoline. Storage of gasoline instead of asphalt presents an increased fire and explosion hazard. A switch from storage of gasoline to storage of asphalt might result in increased stress on the container leading to its failure. Changes of product involving different grades of gasoline might not be a material change and thus not require amendment of the Plan if the differing grades of gasoline do not substantially change the conditions of storage and potential for discharge.

A change in service may also be a material change if it affects the potential for a discharge. A ''change in service'' is a change from previous operating conditions involving different properties of the stored product such as specific gravity or corrosivity and/or different service conditions of temperature and/or pressure. Therefore, we have amended the rule to add ''or service'' after the phrase ''changes of product.''

*Documenting no change or certain activities.* We agree that a log book may be used to document non-material, routine activities. However, this is not an appropriate substitute for amendment when you make material changes at the facility.

*EPA approval.* We agree with the commenter's suggestion that EPA approval of an amendment is not required. However, if the RA is not satisfied that your amendment satisfies the requirements of these rules, he may require further amendment of your Plan.

*Time line for amendment implementation.* We agree with commenters that we should not require Plan amendment before material changes are made. Therefore, we have revised the proposed rule to provide a maximum of six months for Plan amendment, and a maximum of six more months for amendment implementation. This is the current standard. We note that § 112.3(f) allows the RA to authorize an extension of time to prepare and implement an amendment under certain circumstances.

*Editorial changes and clarifications.* The phrase in the first sentence which read, ''potential to discharge oil as described in § 112.1(b) of this part,'' becomes ''potential for a discharge as described in § 112.1(b). ''Tanks'' becomes ''containers.'' ''Commission or decommission'' becomes ''commissioning or decommissioning.''

*Section 112.5(b)—Periodic Review of Plans*

*Background.* In 1991, we reproposed the current rule, which requires that the owner or operator review the Plan at least every three years, and amend it if more effective control and prevention technology would significantly reduce the likelihood of a spill, and if the technology had been field-proven at the time of the review.

In 1997, we withdrew the 1991 proposal, and instead proposed a five-year review time frame, with the same technological conditions. In 1997, we also proposed that the owner or operator certify that he had performed the review.

*Comments. Five-year review.* Most commenters favored the change from three-to five-year review. Some

commenters noted that a five-year review period would make it easier to coordinate reviews of related plans, such as facility response plans required by part 112. A few opposed it, preferring the current three-year review period. They believed that five-year review might lead to reduced maintenance and consequent environmental harm, especially in the absence of any requirements for a facility to ensure that personnel are familiar with planning goals and proposed response actions, including personnel who are rotated. One commenter suggested that the longevity of a tank warranty should be the determining factor in the length of review time. Another suggested that there should be no particular time period prescribed because the requirement for an amendment whenever a material change is made is sufficient.

*Completion of review.* Commenters split almost evenly on the proposed requirement for certification of completion of the review. Opponents of the certification proposal believed generally that it is unnecessary paperwork that will not benefit the environment. One commenter suggested that instead of documenting completion of review, a facility might instead date the Plan to show review and date each amendment. One commenter thought that the certifications should have to be forwarded to the Regional Administrator. Others asked whether the certification could be documented in a log book, instead of in the Plan. Another commenter asked at what management level certification should be required. One commenter believed that Plans amended due to five-year reviews should not require owner or operator certification because any amendments to the Plan have to be reviewed and certified by a PE. Another commenter noted that no specific language was provided for the certification. One commenter urged that the PE should be allowed to document that no change is necessary after reviewing planned changes, or that further study is required, or that an amendment is necessary.

*Response to comments. Five-year review.* We agree that a five-year review period will make coordination of review of related plans, such as facility response plans required by part 112, easier. We disagree that a five-year review period will lead to reduced maintenance or increased environmental harm. Amendment of a Plan will still be necessary when a material change is made affecting the facility's potential to discharge oil, perhaps after certain discharges as required by the RA under § 112.4(a), and perhaps after on-site review of a Plan (*see* § 112.4(d)). Plus the Plan must be implemented at all times. These opportunities ensure that Plans will be current. We also disagree that the length of the tank warranty should be the determining factor for a technological review. Technology changes enough within a five-year period to warrant required review within such time period whether or not other changes occur. Amendments other than the five-year review amendments may not be based on the need to learn of improved technology. Those amendments might result from deficiencies in the Plan, on the need to make repairs, or to remedy the cause of a discharge.

*Calculation of time between reviews.* The change in the rule from three-year to five-year reviews requires some explanation as to when a review must be conducted. For example, a facility became subject to the rule on January 1, 1990. The first three-year review should have been conducted by January 1, 1993, the second by January 1, 1996, and the third by January 1, 1999. The next review must be conducted by January 1, 2004, due to the rule change. In other words, an existing facility must complete the review within 5 years of the date the last review must have been completed. A facility becoming operable on or after the effective date of the rule will begin a five-year cycle at the date it becomes subject to part 112.

*Completion of review.* We disagree that documentation of completion of review has no environmental benefit. Its benefit lies in the fact that it shows that someone reviewed the Plan to determine if better technology would benefit the facility and the Plan is current. Documentation of completion of review is necessary whether or not any amendments are necessary in order to clearly show that the review was done. Mere dating of the Plan or of an amendment does not show that you performed the required review. Documentation of completion of review is a function of the owner or operator, whereas certification of any resulting technical amendment is a function of the PE. We disagree that documentation of completion should be forwarded to the Regional Administrator because it would increase the information collection burden without an environmental benefit. It is sufficient that the review be done. When the Regional Administrator wishes to verify completion of review, he may do so during an on-site inspection.

*How to document completion of review.* You must add documentation of completion of review either at the beginning or the end of the Plan, or maintain such documentation in a log book appended to the Plan or other appendix to the Plan. You may document completion in one of two ways. If amendment of the Plan is necessary, then you must state as much, and that review is complete. This statement is necessary because Plan amendments may result either from five-year review or from material changes at the facility affecting its potential for discharge, or from on-site review of the Plan. There is no way to know which circumstance causes the amendment without some explanation. If no amendments are necessary, you must document completion of review by merely signing a statement that you have completed the review and no amendments are necessary. You may use the words suggested in the rule to document completion, or make any similar statement to the same effect.

*Who documents review.* The owner or operator of the facility, or a person at a management level with sufficient authority to commit the necessary resources, must document completion of review.

*Time line for amendment implementation.* We agree with commenters (see comments on proposed § 112.5(a)) that the preparation and implementation of Plan amendments require more time than proposed. The same rationale applies to the preparation and implementation of amendments required due to five-year reviews. Therefore, we will require adherence to the time lines laid down in § 112.5(b) for amendments. Currently, § 112.5(b) requires that Plan amendments be prepared within six months. It is silent as to time lines for implementation. Therefore, we have revised the rule to clarify that amendments must be implemented as soon as possible, but within the next six months. This is the current standard for implementation of certain other amendments. *See,* for example, §§ 112.3(a) and 112.4(e). We note that § 112.3(f) allows you to request an extension of time to prepare and implement an amendment.

*Editorial changes and clarifications.* We have changed the word ''certification'' to a requirement to document completion of the review to avoid the legal effect a certification may have. The intent of the certification proposal was merely to show that an owner or operator performed a review of the Plan every five years. 62 FR 63814, December 2, 1997. A false documentation of completion of review of the Plan is a deficiency in the Plan and may be cited as a violation of these

rules. ''Spill event,'' in the second sentence, becomes ''discharge as described in § 112.1(b).

*Section 112.5(c)—PE Certification of Technical Amendments*

*Background.* In 1991, we proposed that all amendments to the Plan must be certified by a PE with the exception of changes to the contact list. The current rule requires certification of all amendments.

*Comments.* A few commenters suggested that the value of PE certification for amendments does not justify the cost. Another commenter questioned when recertification of the entire Plan was required, rather than just the amendment in question. Several commenters suggested that the recertification requirement be limited to those changes that materially affect the facility's potential to discharge oil.

*Response to comments.* It is the responsibility of the owner or operator to document completion of review, but completion of review and Plan amendment are two different processes. PE certification is not necessary unless the Plan is amended.

We believe that PE certification is necessary for any technical amendment that requires the application of good engineering practice. We believe that the value of such certification justifies the cost, in that good engineering practice is essential to help prevent discharges. Therefore, we have amended the rule to require PE certification for technical changes only. Non-technical changes not requiring the exercise of good engineering practice do not require PE certification. Such non-technical changes include but are not limited to such items as: changes to the contact list; more stringent requirements for stormwater discharges to comply with NPDES rules; phone numbers; product changes if the new product is compatible with conditions in the existing tank and secondary containment; and, any other changes which do not materially affect the facility's potential to discharge oil. If the owner or operator is not sure whether the change is technical or non-technical, he should have it certified.

*Former Section 112.7(a)(1)—Certain pre-1974 Discharges*

*Background.* In 1991, we proposed to delete § 112.7(a), which required a description of certain discharges to navigable waters or adjoining shorelines which occurred prior to the effective date of the rule in 1974, because that information was no longer relevant. 56 FR 54620. We received several comments supporting the proposed deletion of this provision, and have deleted it.

*Section 112.7 Introduction and (a)(1)—General Eequirements*

*Background.* In 1991, we reproposed the introduction to § 112.7 to clarify that the rule requires mandatory action, and that it is not just a guideline. In 1997, we reproposed a definition of SPCC Plan that included some substantive requirements. As noted above (*see* the ''SPCC Plan'' definition in § 112.2), those substantive requirements have been transferred from the definition of ''SPCC Plan'' in § 112.2 to this section.

Section 112.7(a)(1) requires a discussion of the facility's conformance with the listed requirements in the rule.

*Comments.* For a discussion of the ''should to shall to must'' comments and response to those comments, see the discussion above under that topic in section IV.C of this preamble.

*Cross-referencing.* Several commenters criticized the requirement for sequential cross-referencing set forth in the 1997 proposed definition of ''SPCC Plan,'' alleging that it is confusing and provides no benefit. Another commenter asked how detailed the cross-referencing must be.

*Written Plans.* Another commenter proposed that a ''written'' Plan might also include texts, graphs, charts, maps, photos, and tables, on whatever media, including floppy disk, CD, hard drive, and tape storage that allows the document to be easily accessed, comprehended, distributed, viewed, updated, and printed.

*Response to comments. Cross-referencing.* We agree that the term ''sequential'' cross-referencing may be confusing, and have therefore deleted it in favor of a requirement to provide cross-referencing. We disagree that cross-referencing provides no benefit. With the wide variation now allowed in differing formats, we need cross-referencing so that an inspector can tell whether the Plan meets Federal requirements, and whether it is complete. In addition, in order for an owner or operator to do his own check to ensure that his facility meets all SPCC requirements, he must go through the exercise of comparing his Plan to each SPCC requirement. Cross-referencing in the context of the rule means indicating the relationship of a requirement in the new format to an SPCC requirement. The cross-referencing must identify the Federal section and paragraph for each section of the new format it fulfills, for example, § 112.8(c)(3). Note the cross-referencing table we have provided for your convenience in section II.A of this preamble.

*Written Plans.* We agree that a ''written'' Plan might also include texts, graphs, charts, maps, photos, and tables, on whatever media, including floppy disk, CD, hard drive, and tape storage, that allows the document to be easily accessed, comprehended, distributed, viewed, updated, and printed. Whatever medium you use, however, must be readily accessible to response personnel in an emergency. If it is produced in a medium that is not readily accessible in an emergency, it must be also available in a medium that is. For example, a Plan might be electronically produced, but computers fail and may not be operable in an emergency. For an electronic Plan or Plan produced in some other medium, therefore, a backup copy must be readily available on paper. At least one version of the Plan should be written in English so that it will be readily understood by an EPA inspector.

*Editorial changes and clarifications.* We have transferred all of the proposed substantive requirements in the 1997 proposed definition of ''SPCC Plan'' to the introduction of this section. We did this because we agree with commenters (*see* the comments on the definition of ''SPCC Plan'' in § 112.2) that definitions should not contain substantive requirements.

We have revised the introduction to § 112.7 to facilitate use of the active voice and to clearly note that the owner or operator, except as specifically noted, is responsible for implementing the rule.

We also deleted language requiring a ''carefully thought-out'' SPCC Plan. Such language is unnecessary because the Plan must be prepared in accordance with good engineering practices. Another editorial revision in the introduction is the change from ''level with authority'' in the last sentence of proposed § 112.7(a) to ''level of authority.'' A third revision is a change from ''format'' to ''sequence.'' We have transferred the part of the sentence proposed in 1991 dealing with the sequence of the Plan in § 112.7(a)(1) to the introduction of § 112.7.

For consistency with response plan language in § 112.20(h), the language in the introduction referring to alternative SPCC formats has been revised to read ''equivalent Plan acceptable to the Regional Administrator.'' The response plan language in § 112.20(h) on ''equivalent response plans'' has also been revised to include the ''acceptable to the Regional Administrator'' language included in the introduction to § 112.7. For a discussion of possible SPCC formats, see the discussion under the definition of ''SPCC Plan,'' above.

We deleted the term ''sequentially cross-referenced'' because we agree that it may be misunderstood, and instead use the term ''cross-referencing'' in the revised rule. As noted above, cross-referencing means identifying the requirement in the new format to the section and paragraph of the SPCC requirement. We have also substituted the word ''part'' for ''section'' where ''cross-referencing'' and meeting ''equivalent requirements'' are mentioned. We make this change because the rule requires compliance with any applicable provision in the part, not merely § 112.7. We also clarify that the discussion of your facility's conformance with the requirements listed (see § 112.7(a)(1)) means the requirements listed in part 112, not merely the requirements listed in § 112.7.

We also note that if the Plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, you must discuss these items in separate paragraphs, and must explain separately the details of installation and operational start-up. The discussion must include a schedule for the installation and start-up of these items.

*Section 112.7(a)(2)—Deviations from Plan Requirements*

*Background.* In 1991, we proposed to allow deviations from the requirements listed in § 112.7(c) and in §§ 112.8, 112.9, 112.10, and 112.11, as long as the owner or operator explained the reason for nonconformance and provided equivalent environmental protection by another means. The proposal was intended to implement the requirement for ''good engineering practice'' which is a cornerstone of the rule, and to provide flexibility in meeting the rule's requirements. We clearly noted in the rule that the Regional Administrator would have the authority to overrule any deviation.

In 1993, we reproposed the section, eliminating language referring to the Regional Administrator's (RA's) authority to overrule deviations. Instead, we proposed that whenever you proposed a deviation, you would have to submit the entire Plan to the RA with a letter explaining how your Plan contained equivalent environmental protection measures in lieu of those explicitly required in the rule. The RA would have authority under the 1993 proposal to require amendment of the Plan if he determined that the measures described in the deviation did not provide equivalent protection.

*Comments.* Some commenters supported the 1991 proposal. But others had concerns.

*Applicability—1991.* Some commenters suggested that the Agency should add language to the rule making clear that a facility may deviate from the express requirements of the rule and may substitute alternatives based on good engineering practice. The commenters added that we should make clear that the equivalency provision in § 112.7(a)(2) does not require mathematical equivalency of every requirement, but merely the achievement of substantially the same level of overall protection from the risk of discharge at the facility as the specific requirement seeks to achieve. Another commenter was concerned that proving the equivalence of measures to the satisfaction of Regional officials may be difficult. One commenter urged us to expressly state that PEs may substitute alternatives based on good engineering practice.

*RA oversight—1991.* One commenter opposed the provision allowing the RA to overrule waivers/equivalent measures. As noted above, we withdrew the proposal to allow the RA to explicitly overrule waivers. Instead we substituted a proposed procedure whereby the RA could require you to amend your Plan. One commenter feared that PEs would be reluctant to certify alternate technologies due to the threat of potential liability.

*Deviation submission.* One commenter opposed the proposed requirement to submit a Plan deviation and urged its deletion to make it consistent with the rest of the SPCC rule. The commenter argued that the deviation and Plan have already been certified by a PE, and there is no reason for EPA to be asked to second guess that certification in every case. The commenter also asserted that it is unduly burdensome to require regulated facilities to prepare a justification and submit a Plan to EPA for every waiver of the technical requirements. Another commenter questioned why the entire Plan should be submitted to the RA for review. The commenter suggested that only the portion or portions of the Plan that do not conform to the standard requirements should be submitted, adding that this step would help EPA to minimize the resources needed to review such waivers. One commenter suggested that the choice of preventive systems in the design and implementation of spill prevention measures should be left to the facility owner or operator. The commenter opposed giving the RA authority to require equivalent protection because he questioned how the RA will determine if the deviation will cause harm to the environment, and therefore lack equivalency. If such a provision is included, the commenter asked for an appeals process similar to the one suggested in § 112.20(c).

*RA oversight—1993.* One commenter favored the 1993 proposal. Opposing commenters believed that submission of deviations to the RA is unnecessary because PE certification ensures the application of good engineering practice.

*Secondary containment.* Several commenters suggested that we explicitly say that equivalent protection should be defined to allow a compacted earthen floor and compacted earthen dike to provide secondary containment. The rationale for the comment was that other methods of secondary containment may be prohibitively expensive and unnecessary to protect against spills in primarily rural areas. One commenter suggested that we should clarify that the language of § 112.7(c) applies only to oil storage areas.

*Response to comments. Applicability.* We generally agree with the commenter that an owner or operator should have flexibility to substitute alternate measures providing equivalent environmental protection in place of express requirements. Therefore, we have expanded the proposal to allow deviations from the requirements in § 112.7(g), (h)(2) and (3), or (i), as well as subparts B, and C, except for the listed secondary containment provisions in § 112.7 and subparts B and C. The proposed rule already included possible deviations for any of the requirements listed in §§ 112.7(c), 112.8, 112.9, 112.10, and 112.11. We have expanded this possibility of deviation to include the new subparts we have added for various classes of oils. We take this step because we believe that the application of good engineering practice requires the flexibility to use alternative measures when such measures offer equivalent environmental protection. This provision may be especially important in differentiating between requirements for facilities storing, processing, or otherwise using various types of oil.

A deviation may be used whenever an owner or operator can explain his reasons for nonconformance, and provide equivalent environmental protection. Possible rationales for a deviation include when the owner or operator can show that the particular requirement is inappropriate for the facility because of good engineering practice considerations or other reasons, and that he can achieve equivalent

environmental protection in an alternate manner. For example, a requirement that may be essential for a facility storing gasoline may be inappropriate for a facility storing asphalt; or, the owner or operator may be able to implement equivalent environmental protection through an alternate technology. An owner or operator may consider cost as one of the factors in deciding whether to deviate from a particular requirement, but the alternate provided must achieve environmental protection equivalent to the required measure. The owner or operator must ensure that the design of any alternate device used as a deviation is adequate for the facility, and that the alternate device is adequately maintained. In all cases, the owner or operator must explain in the Plan his reason for nonconformance. We wish to be clear that we do not intend this deviation provision to be used as a means to avoid compliance with the rule or simply as an excuse for not meeting requirements the owner or operator believes are too costly. The alternate measure chosen must represent good engineering practice and must achieve environmental protection equivalent to the rule requirement. Technical deviations, like other substantive technical portions of the Plan requiring the application of engineering judgment, are subject to PE certification.

In the preamble to the 1991 proposal (at 56 FR 54614), we noted that ''* * * aboveground storage tanks without secondary containment pose a particularly significant threat to the environment. The Phase One modifications would retain the current requirement for facility owners or operators who are unable to provide certain structures or equipment for oil spill prevention, including secondary containment, to prepare facility-specific oil spill contingency plans in lieu of the prevention systems.'' In keeping with this position, we have deleted the proposed deviation in § 112.7(a)(2) for the secondary containment requirements in §§ 112.7(c) and (h)(1); and for proposed §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c); as well as for the new sections which are the counterparts of the proposed sections, *i.e.,* §§ 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c), because a more appropriate deviation provision already exists in § 112.7(d). Section § 112.7(d) contains the measures which a facility owner or operator must undertake when the secondary containment required by § 112.7(c) or (h)(1), or the secondary containment provisions in the rule found at §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c), are not practicable. Those measures are expressly tailored to address the lack of secondary containment at a facility. They include requirements to: explain why secondary containment is not practicable; conduct periodic integrity testing of bulk storage containers; conduct periodic integrity and leak testing of valves and piping; provide in the Plan a contingency plan following the provisions of 40 CFR part 109; and, provide a written commitment of manpower, equipment, and materials to expeditiously control and remove any quantity of oil discharged that may be harmful. Therefore, when an owner or operator seeks to deviate from secondary containment requirements, § 112.7(d) will be the applicable ''deviation'' provision, not § 112.7(a)(2).

*Deviation submission.* We agree with the commenter that submission of a deviation to the Regional Administrator is not necessary and have deleted the proposed requirement. We take this step because we believe that the requirement for good engineering practice and current inspection and reporting procedures (for example, § 112.4(a)), followed by the possibility of required amendments, are adequate to review Plans and to detect the flaws in them. Upon submission of required information, or upon on-site review of a Plan, if the RA decides that any portion of a Plan is inadequate, he may require an amendment. See § 112.4(d). If you disagree with his determination regarding an amendment, you may appeal. See § 112.4(e).

*RA oversight.* Once an RA becomes aware of a facility's SPCC Plan as a result of an on-site inspection or the submission of required information, he is to follow the principles of good engineering practice and not overrule a deviation unless it is clear that such deviation fails to afford equivalent environmental protection. This does not mean that the deviation must achieve ''mathematical equivalency,'' as one commenter pointed out. But it does mean equivalent protection of the environment. We encourage innovative techniques, but such techniques must also protect the environment. We also believe that in general PEs will seek to protect themselves from liability by only certifying measures that do provide equivalent environmental protection. But the RA must still retain the authority to require amendments for deviations, as he can with other parts of the Plan certified by a PE.

*Not covered under the deviation rule.* Deviations under § 112.7(a)(2) are not allowed for the general and specific secondary containment provisions listed above because § 112.7(d) contains the necessary requirements when you find that secondary containment is not practicable. We have amended both this paragraph and § 112.7(d) to clarify this. Instead, the contingency planning and other requirements in § 112.7(d) apply. Deviations are also not available for the general recordkeeping and training provisions in § 112.7, as these requirements are meant to apply to all facilities, or for the provisions of § 112.7(f) and (j). We already provide flexibility in the manner of recordkeeping by allowing the use of ordinary and customary business records. Training and a discussion of compliance with more stringent State rules are essential for all facilities. Therefore, we do not allow deviations for these measures.

*Secondary containment.* Regarding the secondary containment requirements, the requirement in § 112.7(c) applies not only to oil storage areas, but also to operational areas of the facility where a discharge may occur. Section 112.7(c) may apply to any area of the facility where a discharge is possible. Other secondary containment provisions in this part have more particular applicability, *e.g.,* §§ 112.7(h)(1), 112.8(c)(2), 112.8(c)(11), 112.9(c)(2),112.10(c), and their counterparts in subpart C. We decline to specify that a compacted earthen floor and compacted earthen dike will always satisfy the secondary containment requirements. Those methods may, however, be acceptable if there is no potential for oil to migrate through the compacted earthen floor or dike through groundwater to cause a discharge as described in § 112.1(b).

*Editorial changes and clarifications.* ''Equivalent protection'' becomes ''equivalent environmental protection'' throughout the paragraph.

*Section 112.7(a)(3)—Facility Characteristics That Must be Described in the Plan*

*Background.* In 1991, we proposed a new section that would require you to describe the essential characteristics of your facility in the Plan. Those characteristics are discussed below. In the description, you would also be required to provide a facility diagram that included the location and contents of all tanks, regardless of whether the tanks are subject to all the provisions of 40 CFR part 280 or a State program approved under 40 CFR part 281, or otherwise subject to part 112. The rationale for the diagram was that it would assist in response actions.

Responders would have a means to know where all containers are, to help ensure their safety in conducting a response action and aid in the protection of life and property.

*Comments. General description of characteristics.* Two commenters asked that the requirements proposed for Plan characteristics be listed on a facility basis rather than a tank basis because otherwise the proposal would be too resource intensive. The commenters did not provide cost estimates.

*Facility diagram.* Two commenters supported the proposal. Opposing commenters asserted that the diagram would be too costly and add little to the Plan. One commenter said that the requirement was redundant because many States require the same thing. Two commenters opposed marking the contents of the tanks because those contents may change frequently, requiring Plan amendment each time. One commenter suggested that instead the facility maintain a separate list of tank contents when changes occur frequently over a short span of time to eliminate the need to constantly amend the diagram. Other commenters requested a *de minimis* exemption for small containers for the diagram, suggesting levels of 660 gallons or less. Some of these commenters suggested that the diagram be discretionary for storage volumes of less than 10–15,000 gallons. Other commenters asked whether exempt materials would have to be marked as to content, for example, products which are not oil. Some believed that the inclusion of otherwise exempt containers in the diagram was unreasonable. One commenter suggested the diagram should include transfer stations and connecting pipes. Another commenter asked for clarification that underground tanks, whether subject to SPCC or not, need to be included in the diagram.

*Unit-by-unit storage capacity.* Several commenters asked for clarification of the meaning of the term ''unit-by-unit storage capacity.'' Many commenters asked for specification of a minimum size, and some suggested sizes, ranging from 660 gallons to 10,000 gallons.

*Type and quantity of oil stored.* We received one comment on this item. The commenter opposed the information requirement because ''the way a tank is used changes often and the adequacy of response to an accidental discharge does not depend on the type of oil stored.''

*Estimates of quantity of oils potentially discharged.* The few comments we received opposed this information requirement. One commenter argued that the item requests a ''prediction'' of future events. Another asserted that it would not be possible to give estimates of oil potentially discharged from flowlines or gathering systems. One commenter argued that mobile facilities should be exempt from this requirement because the exact site information changes with the movement of equipment.

*Possible spill pathways.* Two commenters wrote that the proposed requirement ''could be an infinite number and serves no useful purpose.'' One commenter asked that the requirement be replaced by a requirement to describe the most likely spill pathways to navigable water.

*Spill prevention measures (including loading areas and transfers).* One commenter suggested that the beginning of the paragraph be revised to read, ''Secondary containment'' instead of ''Spill prevention measures. . . .'' See also the discussion on loading areas under § 112.7(h).

*Spill controls and secondary containment.* One commenter thought that this paragraph should refer to ''other drainage control features and the equipment they protect.''

*Spill countermeasures.* One commenter suggested that this paragraph be revised to read, ''Prevention, control, or countermeasure features, other than secondary containment and drainage control, and the equipment which they protect.'' Another commenter argued that mobile drilling and workover rigs either on or off shore should be exempt from this requirement because supplying site specific spill and clean-up information for a mobile source that will move from one site to another is not feasible. One commenter suggested that the contingency planning requirements in this paragraph, as well as in § 112.7(b) and (d)(1), seem unnecessarily complex because the same basic information seems to be required in several different places in the proposed regulation. The commenter went on to suggest that EPA consolidate these requirements. Another commenter suggested that this paragraph should be deleted and removed to a response plan section which he suggested, because the information called for requires response information.

*Disposal of recovered materials.* Two commenters supported the proposal in general, but one suggested that it is not feasible nor useful to discuss particular alternatives. One of the favorable commenters suggested that we should encourage recycling of spilled oil rather than mere disposal. Another commenter argued that mobile drilling and workover rigs either on or off shore should be exempt from this requirement because supplying site specific spill and clean-up information for a mobile source that will move from one site to another is not feasible.

Some opposing commenters believed that the proposal would preclude bioremediation. Others believed that it was too costly. One commenter suggested that the ''costs associated with off-site disposal of oil-saturated soil from a typical secondary containment facility after a contained spill event will cost an operator as much as $4,700, calculated at the cost of $90 per ton of removed soil for transportation and disposal fees and the associated leachate and waste analysis but *excluding* the internal costs associated with the actual excavation work.'' Other commenters believed that we have no authority to ask the question because the subject matter is regulated either by State law or another Federal program, such as the solid waste program. One commenter asked for an exemption for mobile facilities from this requirement.

*Contact list.* Several commenters favored the proposal. One commenter suggested that the list name the cleanup contractor with whom the facility has a relationship, not merely the name of any cleanup contractor.

One commenter favored the inclusion of local emergency planning contacts in the required information. Another opposed it as duplicative of information in the HAZWOPER Plan. A commenter requested an exemption for mobile facilities. Another commenter believed we lack authority to request the information. One commenter suggested that the list be restricted to Federal or State agencies that must be notified in case of the accidental discharge of oil. Another commenter argued that mobile drilling and workover rigs either on or off shore should be exempt from this requirement because supplying site specific spill and clean-up information for a mobile source that will move from one site to another is not feasible. One commenter suggested that this paragraph should be deleted and removed to a response plan section which he suggested, because the information called for requires response information.

*Downstream water suppliers.* Several commenters suggested that the proposed requirement to include information on downstream water suppliers who must be contacted in case of a discharge to navigable waters should be limited to those ''who might reasonably be affected by a discharge.'' Others asked that the downstream distance be specified. They added that private wells should be excluded from the notice. Several

commenters asked how they might identify such suppliers. Yet others believed that such notification was the responsibility of local emergency response agencies.

*Response to comments. General description of characteristics.* The following characteristics must be described on a per container basis: the storage capacity of the container, type of oil in each container, and secondary containment for each container. The other characteristics may be described on a facility basis. We disagree that these requirements are too resource intensive. The major new requirement in § 112.7(a)(3) is the facility diagram. Based on site inspections and professional judgment, we estimate unit costs for compliance with this section to be $33 for a small facility, $39 for a medium facility, and $5 for a large facility. Large facilities are assumed to already have a diagram that may be attached to the SPCC Plan. The other items mentioned in § 112.7(a)(3)—storage capacity of each container, prevention measures, discharge controls, countermeasures, disposal methods, and the contact list—are already required under the current rule or required by good engineering practice. As described in the Information Collection Request for this rule, the cost of Plan preparation includes these items, e.g., field investigations to understand the facility design and to predict flow paths and potential harm, regulatory review, and spill prevention and control practices.

Providing information on a container-specific basis helps the facility to prioritize inspections and maintenance of containers based on characteristics such as age, capacity, or location. It also helps inspectors to prioritize inspections of higher-risk containers at a facility. Container-specific information helps an inspector verify the capacity calculation to determine whether a Plan is needed; and, helps to formulate contingency planning if such planning is necessary.

*Facility diagram.* The facility diagram is important because it is used for effective prevention, planning, management (for example, inspections), and response considerations and we therefore believe that it must be part of the Plan. The diagram will help the facility and emergency response personnel to plan for emergencies. For example, the identification of the type of oil in each container may help such personnel determine the risks when conducting a response action. Some oils present a higher risk of fire and explosion than other less flammable oils.

Inspectors and personnel new to the facility need to know the location of all containers subject to the rule. The facility diagram may also help first responders to determine the pathway of the flow of discharged oil. If responders know possible pathways, they may be able to take measures to control the flow of oil. Such control may avert damage to sensitive environmental areas; may protect drinking water sources; and may help responders to prevent discharges to other conduits leading to a treatment facility or navigable waters. Diagrams may assist Federal, State, or facility personnel to avoid certain hazards and to respond differently to others.

The facility diagram is necessary for all facilities, large or small, because the rationale is the same for both. While some States may require a diagram, others do not. SPCC is a Federal program specifying minimum requirements, which the States may supplement with their own more stringent requirements. We note that State plans may be used as SPCC Plans if they meet all Federal requirements, thus avoiding any duplication of effort if the State facility diagram meets the requirements of the Federal one.

*Facility diagram—container contents.* The facility diagram must include all fixed (*i.e.,* not mobile or portable) containers which store 55 gallons or more of oil and must include information marking the contents of those containers. If you store mobile containers in a certain area, you must mark that area on the diagram. You may mark the contents of each container either on the diagram of the facility, or on a separate sheet or log if those contents change on a frequent basis. Marking containers makes for more effective prevention, planning, management, and response. For example, a responder may take one type of emergency measure for one type of oil, and another measure for another type. As noted above, oils differ in their risk of fire and explosion. Gasoline is highly flammable and volatile. It presents the risk of fire and inhalation of vapors when discharged. On the other hand, motor oil is not highly flammable, and there is no inhalation of vapors hazard associated with its discharge.

In an emergency, the responder may not have container content information unless it is clearly marked on a diagram, log, or sheet. For emergency response purposes, we also encourage, but do not require you to mark on the facility diagram containers that store CWA hazardous substances and to label the contents of those containers. When the contents of an oil container change, this may or may not be a material change. See the discussion on § 112.5(a).

*Facility diagram—De minimis containers.* We have established a de minimis container size of less than 55 gallons. You do not have to include containers less than 55 gallons on the facility diagram.

*Facility diagram—Transfer stations, connecting pipes, and USTs.* We agree that all facility transfer stations and connecting pipes that handle oil must be included in the diagram, and have amended the rule to that effect. This inclusion will help facilitate response by informing responders of the location of this equipment. The location of all containers and connecting pipes that store oil (other than de minimis containers) must be marked, including USTs and other containers not subject to SPCC rules which are present at SPCC facilities. Again, this is necessary to facilitate response by informing responders of the location of these containers.

*Unit-by-unit storage capacity.* For clarity, we have changed the term in § 112.7(a)(3)(i), ''unit-by-unit'' storage capacity, to ''type of oil in each container and its storage capacity.'' As noted earlier, this requirement applies only to containers of 55 gallons or greater.

*Type and quantity of oil stored.* We have eliminated proposed § 112.7(a)(3)(ii) because it repeats information requested in revised § 112.7(a)(3)(i). We ask for information concerning storage capacity and type of oil stored in each container in that paragraph.

*Estimates of quantity of oils potentially discharged.* We have eliminated proposed § 112.7(a)(3)(iii) because it repeats information sought in § 112.7(b) regarding ''a prediction of the direction, rate of flow, and total quantity of oil which could be discharged* * * .'' We will address the substantive comments under the discussion of that paragraph.

*Possible spill pathways.* We have eliminated proposed § 112.7(a)(3)(iv) because the proposal repeats information sought in § 112.7(b) regarding ''a prediction of the direction, rate of flow, and total quantity of oil which could be discharged.* * *'' Again, we will address the substantive comments under the discussion of that paragraph.

*Spill prevention measures.* We have revised this paragraph to read ''discharge prevention measures.'' We disagree with the commenter that the paragraph should be labeled ''secondary containment.'' The term ''discharge prevention measures'' is better because

it encompasses both secondary containment and other discharge prevention measures.

*Spill controls and secondary containment.* We have revised this paragraph to refer to ''discharge'' controls. In response to a commenter, we have also included a reference to drainage controls in the paragraph because drainage systems or diversionary ponds might be an alternative means of secondary containment. See § 112.7(c)(1)(iii) and (v).

*Spill countermeasures.* We disagree that the paragraph should be revised to read, ''Prevention, control, or countermeasure features, other than secondary containment and drainage control, and the equipment which they protect,'' because we believe that the language we proposed, as revised, better captures the information we are seeking. Our revised language refers to discovery, response, and cleanup, which are features that are absent from the commenter's suggestion, and for which a discussion in the Plan is necessary in order to be prepared for any discharges.

We disagree that either onshore or offshore mobile drilling and workover rigs should be exempted from this requirement because the information necessary to this requirement is not always site specific, and may be included in a general plan for a mobile facility.

We also disagree that the information required in this paragraph is redundant of information required in §§ 112.7(b) and 112.7(d)(1). Each of the sections mentioned requires discrete and different information. Section 112.7(a)(3)(iv) requires information concerning a facility's and a contractor's capabilities for discharge discovery, response, and cleanup. Section 112.7(b) requires information concerning the potential consequences of equipment failure. Section 112.7(d)(1) requires a contingency plan following the provisions of part 109, which includes coordination requirements with governmental oil spill response organizations.

We disagree that the information should be placed in a response section, because most SPCC facilities are not required to have response plans, and the information is necessary to prepare for discharge discovery, response, and cleanup.

*Disposal of recovered materials.* This provision applies to all facilities, including mobile facilities, because proper disposal of recovered materials helps prevent a discharge as described in § 112.1(b) by ensuring that the materials are managed in an environmentally sound manner. Proper disposal also assists response efforts. If a facility lacks adequate resources to dispose of recovered oil and oil-contaminated material during a response, it limits how much and how quickly oil and oil-contaminated material is recovered, thereby increasing the risk and damage to the environment.

We disagree that this paragraph would preclude bioremediation efforts, as some commenters suggested. Bioremediation may be a method of proper disposal. The paragraph merely requires that you discuss the methods employed to dispose of recovered materials; it does not require that materials recovered be ''disposed'' of in any particular manner nor is it an independent requirement to properly dispose of materials. Thus, there is no infringement on or duplication of any other State or Federal program or regulatory authority. Because it does nothing more than require that you explain the method of disposal of recovered materials, we also disagree that this provision is too costly. Also, we assume that good engineering practice will in many cases include a discussion of such disposal already. By describing those methods in the Plan, you help ensure that the facility has done the appropriate planning to be able to dispose of recovered materials, should a discharge occur. We support the recycling of spilled oil to the extent possible, rather than its disposal. For purposes of this rule, disposal of recovered materials includes recycling of those materials.

We disagree that either onshore or offshore mobile drilling and workover rigs should be exempted from this requirement because the information necessary to this requirement is not always site specific, and may be included in a general plan for a mobile facility.

*Contact list.* In response to a comment, we have amended the rule to require that the cleanup contractor listed must be the one with whom the facility has an agreement for response that ensures the availability of the necessary personnel and equipment within appropriate response times. An agreement to respond may include a contract or some less formal relationship with a cleanup contractor. No formal written agreement to respond is required by the SPCC rule, but if you do have one, you must discuss it in the Plan.

We have ample authority to ask for information concerning emergency contacts under the CWA because it is relevant to the statute's prevention, preparedness, and response purposes. Furthermore, it is an appropriate question for all facilities, including mobile facilities, because it is necessary to prepare for discharges and to aid in prompt cleanup when they occur. Having a Plan which contains a contact list of response organizations is a procedure and method to contain a discharge of oil as specified in CWA section 311(j)(1)(C). However, we have eliminated references to specific State and local agencies in the event of discharges in favor of a reference to ''all appropriate State and local agencies.'' ''Appropriate'' means those State and local agencies that must be contacted due to Federal or State requirements, or pursuant to good engineering practice. You may not always be required to notify fire departments, local emergency planning committees (LEPCs), and State emergency response commissions (SERCs), nor as an engineering practice do they always need to receive direct notice from the facility in the event of a discharge as described in § 112.1(b). At times they might, but they might also receive notice from other sources, such as the National Response Center. Other State and local agencies might also need notice from you.

We have added the word ''Federal'' to the list of all appropriate contact agencies because there are times when you must notify EPA of certain discharges. See § 112.4(a). There might also be requirements under Federal statutes other than the CWA, for notice in such emergencies.

We disagree that either onshore or offshore mobile drilling and workover rigs should be exempted from this requirement because the information necessary to this requirement is not always site specific, and may be included in a general plan for a mobile facility.

We disagree that the information should be placed in a response section, because most SPCC facilities are not required to have response plans, and the information is necessary to prepare for response to an emergency.

*Downstream water suppliers.* We have deleted the reference to ''downstream water suppliers'' (i.e., intakes for drinking and other waters) because facilities may have no way to identify such suppliers. We agree with commenters that identifying such suppliers is more a function of State and local emergency response agencies. We note, however, that facilities that must prepare response plans under § 112.20 must discuss in those plans the vulnerability of water intakes (drinking, cooling, or other).

*Editorial changes and clarifications.* In the introduction to paragraph (a)(3), ''physical plant'' becomes ''physical layout.'' ''Tanks'' becomes ''containers.'' In proposed paragraph (a)(3)(vi), redesignated as paragraph (a)(3)(iii), ''spill controls'' becomes ''discharge or drainage controls.'' In proposed paragraph (a)(3)(vii), redesignated as paragraph (a)(3)(iv), ''spill countermeasures for spill discovery'' becomes ''countermeasures for discharge discovery.'' In proposed paragraph (a)(3)(ix), redesignated as paragraph (a)(3)(vi), ''discharge to navigable waters'' becomes ''discharge as described in § 112.1(b).''

*Section 112.7(a)(4)—Spill Reporting Information in the Plan*

*Background.* In 1991, we proposed that documentation in this paragraph be sufficient to enable a person reporting a spill to provide essential information to organizations on the contact list.

*Comments.* Several commenters had editorial comments, suggesting the rule refer to ''information'' rather than ''documentation'' on the theory that documentation refers to a past event, whereas the rule contemplates a future event. One commenter suggested that the section be qualified to indicate that a form for collecting spill report information be included in the Plan, or for ''small size facilities'' in the HAZWOPER reporting matrix. Another commenter suggested that a properly prepared SPCC Plan would assist the person reporting the spill to provide the requested information. One commenter asserted the proposed rule was duplicative of State requirements. Several commenters suggested that not all of the information will be available or applicable for a person reporting a discharge. One commenter suggested that this paragraph should be deleted and removed to a response plan section which he suggested, because the information called for requires response information.

*Response to comments. Documentation.* We agree with commenters that the word ''documentation'' is inappropriate because it refers to a past event. Accordingly, as suggested by commenters, we have revised the rule to provide for ''information and procedures'' that would assist the reporting of discharges as described in § 112.1(b). ''Information'' refers to the facts which you must report, and ''procedures'' refers to the method of reporting those facts. Such procedures must address whom the person relating the information should call, in what order the caller should call potential responders and others, and any other instructions necessary to facilitate notification of a discharge as described in § 112.1(b). If properly noted, the information and procedures in the Plan should enable a person reporting a discharge to accurately describe information concerning that occurrence to the proper persons in an emergency. Any information or procedure not applicable will not have to be used. Available information on a discharge must be reported. Applicable procedures must be followed. And of course, any information that is not available cannot be reported.

*State requirements.* While it is possible that this information may be duplicative of State requirements, the duplication is eliminated to the extent that you use your State SPCC Plan for Federal SPCC purposes. Where there is no State requirement, there is no duplication.

*Response plan exemption.* We disagree that this paragraph should be placed in a response section, because most SPCC facilities are not required to have response plans, and the information is necessary to prepare for response to an emergency. However, if your facility has prepared and submitted a response plan to us under § 112.20, there is no need to document this information in your SPCC Plan, because it is already contained in the response plan. See § 112.20(h)(1)(i)-(viii). Therefore, we have amended the rule to exempt those facilities with response plans from the requirements of this paragraph.

*Editorial changes and clarifications.* We changed ''address'' to ''address or location'' because some facilities do not have an exact address. ''Spill'' and ''spilled'' becomes ''discharge as described in § 112.1(b)'' or ''discharged'' as appropriate in the context, ''discharge'' being a defined term. ''Spill'' or ''spilled'' are not defined terms. ''The affected medium'' becomes ''all affected media.''

*Section 112.7(a)(5)—Emergency Procedures*

*Background.* In 1991, we proposed this paragraph to ensure that portions of the Plan describing procedures to be used in emergency circumstances are organized in a manner to make them readily usable in an emergency.

*Comments.* One commenter suggested that this paragraph should be deleted and removed to a response plan section which he suggested, because the information called for requires response information.

*Response to comments.* We disagree this paragraph should be deleted because most SPCC facilities are not required to have a response plan, and the procedures to be used when a discharge occurs are necessary to prepare for an emergency. Because this information would repeat information contained in a response plan submitted under § 112.20, we have excluded from the requirements of this paragraph those facilities which have submitted response plans. *See* § 112.20(h)(3)(i)-(ix).

*Section 112.7(b)—Fault Analysis*

*Background.* In 1991, we proposed only editorial changes to this paragraph dealing with fault analysis. The proposal would require an analysis of the major types of failures possible in a facility, including a prediction of the direction, rate of flow, and total quantity of oil that could be discharged as a result of each such failure.

*Comments. Applicability.* One commenter wrote that the language in the first sentence of the proposed rule is less clear than current regulations. The commenter asserted that the proposed revision, perhaps inadvertently, does not specify the sections to which the certain ''situations'' apply. The commenter suggested that current language is clearer and specifically focuses limited resources on situations for which there is a reasonable potential for discharge. The commenter argued that limited resources should not be consumed in developing flow rate, direction and quantity predictions in the SPCC Plan for situations without a reasonable potential for discharge to navigable waters.

Several commenters asserted that the fault analysis required by this paragraph is ''too involved for small operators.'' They suggested that only development of responses to obvious scenarios, such as tank rupture, should be required. Commenters from the utility industry suggested that electrical equipment facilities should be exempt from the requirements in this paragraph. One commenter believed that mobile facilities should be exempt from the requirements in the paragraph because the exact site information changes with the movement of equipment.

*Failure factors.* One commenter suggested that the rule should also focus on small discharges, not just ''major'' discharges. Another commenter asked for clarification as to what is a ''major failure'' and to what degree of sophistication the pathway prediction must be made. Another commenter suggested that the rule should adequately describe how detailed the analysis of potential spill pathways

should be. Another suggested that it would be impossible to give estimates of oil potentially discharged from flowlines or gathering systems.

*Response to comments. Applicability.* We agree with the commenter that current language is clearer and will retain it. We therefore modified the first sentence contained in the proposed rule. We agree that the Plan must only discuss potential failure situations that might result in a discharge from the facility, not any failure situation. The rule requires that when experience indicates a reasonable potential for failure of equipment, the Plan must contain certain information relevant to those failures. ''Experience'' includes the experience of the facility and the industry in general.

We disagree that the requirement is too difficult for owners or operators of small or mobile facilities, or of flowlines or gathering lines, or of electrical equipment facilities, or other users of oil. We believe that a Professional Engineer may evaluate the potential risk of failure for the aforementioned facilities and equipment and predict with a certain degree of accuracy the result of a failure from each. We note that since we have raised the regulatory threshold, this requirement will not be applicable to many smaller facilities.

*Failure factors.* To comply with this section, you need only address ''major equipment'' failures. A major equipment failure is one which could cause a discharge as described in § 112.1(b), not a minor failure possibility. To help clarify the type of equipment failures the rule contemplates, we have added examples of other types of failures that would trigger the requirements of this paragraph. Such other equipment failures include failures of loading/unloading equipment, or of any other equipment known to be a source of a discharge. The analysis required will depend on the experience of the facility and how sophisticated the facility equipment is. If your facility has simpler equipment, you will have less to detail. If you have more sophisticated equipment, you will have to conduct a more detailed analysis. If your facility's experience or industry experience in general indicates a higher risk of failure associated with the use of that equipment, your analysis will also have to be more detailed. This rationale and analytic detail are also applicable to electrical equipment facilities and other facilities that do not store oil, but contain it for operational use. Again, the required explanation will be tailored to the type of equipment used and the experience with that equipment.

*Spill pathways.* The level of analysis concerning spill pathways will depend on the geographic characteristics of the facility's site and the possibility of a discharge as described in § 112.1(b) that equipment failure might cause. However, the Professional Engineer should focus on the most obvious spill pathways.

Because this information is facility specific, the owner or operator of a mobile facility will not be able to detail spill pathways in the general Plan for the facility each time the facility moves. However, the owner or operator must provide management practices in the general Plan that provide for containment of discharges in spill pathways in a variety of geographic conditions likely to be encountered. In case of a discharge at a particular facility, the owner or operator would then take appropriate action to contain or remove the discharge. For example, the Plan may provide that a rig must be positioned to minimize or prevent discharges as described in § 112.1(b); or it may provide for the use of spill pans, drip trays, excavations, or trenching to augment discharge prevention.

*Editorial changes and clarifications.* We made minor editorial changes in the proposal's second sentence that reflect a plain language format. We revised the phrase in the proposed second sentence of the paragraph from ''each major type of failure'' to ''each type of major equipment failure.''

*Section 112.7(c)—Secondary Containment.*

*Background.* The SPCC Task force concluded that aboveground storage tanks without secondary containment could pose a particularly significant threat to the environment. We noted in the 1991 preamble that the proposed rule modifications would ''retain the current requirement for facility owners or operators who are unable to provide certain structures or equipment for oil spill prevention, including secondary containment, to prepare facility-specific contingency plans in lieu of prevention systems.'' 56 FR 54614.

In 1991, we proposed to modify the current standard that dikes, berms, or retaining walls must be ''sufficiently impervious.'' We proposed that the current ''sufficiently impervious'' standard for secondary containment be replaced with a standard requiring that the entire containment system, including walls and floor, must be impervious to oil for 72 hours. The rationale was that a containment system that is impervious to oil for 72 hours would allow time for discovery and removal of an oil discharge in most cases.

We also noted that for some facilities such as electrical substations, compliance with this section might not be practicable. We said that since their purpose was not the storage of oil in bulk, they did not need to comply with the secondary containment requirements designed for bulk storage tanks in §§ 112.8(c) and 112.9(d), but only the secondary containment requirements in § 112.7(c), and that the § 112.7(c) requirement for secondary containment might be satisfied by various means including drainage systems, spill diversion ponds, etc. We added that the alternative requirements contained in proposed § 112.7(d) would fulfill the intent of the CWA when a facility could not provide secondary containment due to the impracticability of installation. 56 FR 54621.

*Comments. Editorial changes and clarifications.* Several commenters suggested that the reference to prevention of discharges to ''surface waters'' be changed to prevention of discharges to ''navigable waters.''

*Contingency planning.* One commenter suggested revising the rules to allow the use of the contingency plan contemplated in § 112.7(d) instead of secondary containment measures. Another commenter asserted that a contingency plan is not an acceptable substitute for secondary containment and advocated that all facilities be required to have secondary containment.

*Applicability of requirement.* Numerous electric utility commenters suggested that secondary containment was impractical for their facilities because it might cause a safety hazard. Instead, they argued for the use of contingency planning. One commenter asserted that secondary containment at sites used for the maintenance and operation of the air traffic control system was also impracticable because those sites are often very small, isolated, unmanned, and visited only on a quarterly basis. Another commenter asked that wastewater treatment tanks be exempted from the secondary containment requirement because their use is not to store oil, but to treat water. Other containers not used for storage, but other purposes might include stormwater surge tanks, activated sludge aeration tanks, equalization basins, dissolved and inducted air floatation tanks, oil/water separators, sludge digesters, etc. Another commenter urged that all oil-filled equipment located in a 25-year floodplain be required to have secondary containment.

One commenter asked that we clarify that the secondary containment requirement in this section does not apply to the following equipment at onshore production facilities: flowlines because of the prohibitive cost of construction for miles of lines; fired vessels because of the danger of pooling spilled oil around an ignition source; and, pressurized vessels because a leak from such vessel might be sprayed beyond the area that a reasonable dike might enclose. One commenter suggested that all in-use hydraulic equipment such as cranes, jacks, elevators, forklifts, etc., be exempted from the secondary containment requirement because it would be impractical to provide structures for such equipment. Others suggested that mobile facilities should be exempt from the secondary containment requirement because it would be infeasible to provide it. Similarly, one commenter suggested that the requirement was infeasible for production facilities due to their sometimes remote locations or difficult terrain and soil conditions. Yet another commenter wanted us to clarify that underground piping is not subject to the rule's secondary containment provisions.

One commenter asserted that mining sites should be exempted from the secondary containment requirement because the containment requirements would be ''excessive'' for such sites and result in ''little resultant net environmental benefit.'' A commenter representing various small facilities asked for exemption from the requirement on the basis that the risk is lower for those facilities.

*Methods of secondary containment.* As to methods of secondary containment, several commenters urged that the existence of ''natural'' structures and/or drainage could meet this requirement. Other commenters suggested that vaulted tanks or double-walled tanks in themselves meet the secondary containment requirement. One commenter suggested that we remove sorbent materials or booms from the list of acceptable secondary containment structures because they are not a substitute for impervious dikes and impoundment floors.

*72-hour impermeability standard.* We received numerous comments on the proposed 72-hour impermeability standard. Several commenters favored the standard. Many were opposed. Of the opponents, some favored the current standard that the dikes, berms or retaining walls be ''sufficiently impervious'' to contain spilled oil. Other commenters thought that the proposed requirement to prevent escape of oil to surface waters should be replaced with a standard of preventing the escape of oil to ''the environment'' or to ''navigable waters.'' Others asked for clarification of the term ''impervious,'' asserting that it is a qualitative term that requires definition by engineering standards. One commenter requested that if an impervious containment system cannot be provided, that facilities be required to assure that conduits that may cause substantial migration of free products are appropriately monitored for discharges. Another commenter asked us to specify acceptable liner materials, in lieu of a total imperviousness requirement.

*Costs.* One commenter suggested that our industry cost estimate for the proposed 1991 regulations—of $441 million in the first year and $71.8 million each subsequent year—was erroneously low, but did not provide his own cost estimates. The commenter came to this conclusion by calculating compliance cost estimates for the following requirements: 72-hour impermeability for secondary containment and diked areas, and installation of containment systems at all truck loading locations. The commenter estimated the cost of the effects of two proposed items for New York oil and gas producers, not all us producers, at in excess of $78 million; he estimated the cost of the proposed 72 hour oil impermeability requirement at $48 million, and if earthen dikes and diked areas cannot meet the secondary containment standards at truck loading areas, at least $30 million.

*Alternate impermeability standards.* Commenters suggested a number of alternate impermeability standards. One commenter suggested a standard that the containment system be impervious to oil and water for 72 hours. Another commenter suggested that the standard apply only in environmentally sensitive areas. Some suggested that the standard should be inapplicable at facilities that are staffed around the clock, seven days a week. One commenter suggested a phase-in of the requirement. Some thought that the impermeability standard should not apply to heavier oils, particularly number 5 and 6 oils.

*Alternate time frames.* Others suggested differing time standards in lieu of 72 hours such as 24 hours at manned facilities, 36 hours or increased inspections, ''as soon as practicable,'' ''for the duration of the response,'' or no time limit at all. One commenter asked when the 72 hours begins to run, whether it begins at the time of the discovery of the discharge or the time of occurrence.

*Containment or impermeability.* Other commenters asserted that the rule should address containment rather than impermeability because they assert that the point of a containment structure is ''to keep the discharge from reaching the waters of the United States.'' In the same vein, two commenters asked EPA to clarify that the leaching of small amounts of oil that does not reach the water table or surface waters meets the impermeability requirement, while a third asked that we clarify that we are concerned only with horizontal rather than vertical discharges of oil.

*Sufficient freeboard. See* the comments to § 112.8(c)(2) under this topic.

*Response to comments. Contingency planning.* A contingency plan should not be used routinely as a substitute for secondary containment because we believe it is normally environmentally better to contain oil than to clean it up after it has been discharged. Secondary containment is intended to contain discharged oil so that it does not leave the facility and contaminate the environment. The proper method of secondary containment is a matter of good engineering practice, and so we do not prescribe here any particular method. Under part 112, where secondary containment is not practicable, you may deviate from the requirement, provide a contingency plan following the provisions of 40 CFR part 109, and comply with the other requirements of § 112.7(d). For bulk storage containers, those requirements include both periodic integrity testing of the containers and periodic integrity and leak testing of the valves and piping. You must also provide a written commitment of manpower, equipment, and materials to expeditiously control and remove any quantity of oil discharged that may be harmful.

*Applicability of requirement.* Secondary containment is best for most facilities storing or using oil because it is the most effective method to stop oil from migrating beyond that containment. We believe that secondary containment is preferable to a contingency plan at manned and unmanned facilities because it prevents discharges as described in § 112.1(b). At unmanned facilities, it may be even more important because of the lag in time before a discharge may be discovered. Notwithstanding what may be difficult terrain, we believe that some form of secondary containment is practicable at most facilities, including remote production facilities. In fact, it may often be more feasible in remote or rural areas because there are fewer space limitations in such areas. For example,

at some remote mobile or production facilities, owners or operators dig trenches and line them for containment or retention of drilling fluids. Technologies used at offshore facilities to catch or contain oil may also sometimes be used onshore.

While some types of secondary containment (for example, dikes or berms) may not be appropriate at certain facilities, other types (for example, diversionary systems or remote impounding) might. However, we recognize and repeat, as we noted in the 1991 preamble, that some or perhaps all types of secondary containment for certain facilities with equipment that contain oil, such as electrical equipment, may be contrary to safety factors or other good engineering practice considerations. There might be other equipment, like fired or pressurized vessels, for which safety considerations also preclude some or all types of secondary containment.

Some facilities or equipment that use but do not store oil may or may not, as a matter of good engineering practice, employ secondary containment. Such facilities might include wastewater treatment facilities, whose purpose is not to store oil, but to treat water. Other facilities that may not find the requirement practicable are those that use oil in equipment such as hydraulic equipment. Similarly, flowlines must have a program of maintenance to prevent discharges. *See* § 112.9(d)(3). The maintenance program may or may not include secondary containment. Owners or operators of underground piping must have some form of corrosion protection, but do not necessarily have to use secondary containment for that purpose.

As stated above, for a facility where secondary containment is not practicable, the owner or operator is not exempt from the requirement, but may instead provide a contingency plan and take other measures required under § 112.7(d). For most facilities, however, including small facilities, mobile facilities, production facilities, mining sites, and any other facilities that store or use oil, we believe that secondary containment is generally necessary and appropriate to prevent a discharge as described in § 112.1(b). Without secondary containment, discharges from containers would often reach navigable waters or adjoining shorelines, or affect natural resources.

*Methods of secondary containment.* The appropriate method of secondary containment is an engineering question. Earthen or natural structures may be acceptable if they contain and prevent discharges as described in § 112.1(b), including containment that prevents discharge of oil to groundwater that is connected to navigable water. What is practical for one facility, however, might not work for another. If secondary containment is not practicable, then the facility must provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d).

*Double-walled or vaulted tanks.* The term ''vaulted tank'' has been used to describe both double-walled tanks (especially those with a concrete outer shell) and tanks inside underground vaults, rooms, or crawl spaces. While double-walled or vaulted tanks are subject to secondary containment requirements, shop-fabricated double-walled aboveground storage tanks equipped with adequate technical spill and leak prevention options might provide sufficient equivalent secondary containment as that required under § 112.7(c). Such options include overfill alarms, flow shutoff or restrictor devices, and constant monitoring of product transfers. In the case of vaulted tanks, the Professional Engineer must determine whether the vault meets the requirements for secondary containment in § 112.7(c). This determination should include an evaluation of drainage systems and of sumps or pumps which could cause a discharge of oil outside the vault. Industry standards for vaulted tanks often require the vaults to be liquid tight, which if sized correctly, may meet the secondary containment requirement.

There might also be other examples of such alternative systems.

*Completely buried tanks.* Completely buried tanks, other than those exempted from this rule because they are subject to all technical Federal or State UST requirements, are subject to the secondary containment requirement. We realize that the concept of freeboard for precipitation is inapplicable to secondary containment for completely buried tanks. The requirement for secondary containment may be satisfied in any of the ways listed in the rule or their equivalent.

*72-hour impermeability standard.* We are withdrawing the proposal for the 72-hour impermeability standard and will retain the current standard that dikes, berms, or retaining walls must be sufficiently impervious to contain oil. We agree with commenters that the purpose of secondary containment is to contain oil from escaping the facility and reaching the environment. The rationale for the 72-hour standard was to allow time for the discovery and removal of an oil spill. An owner or operator of a facility should have flexibility in how he prevents a discharge as described in § 112.1(b), and any method of containment that achieves that end is sufficient. Should such containment fail, the owner or operator must immediately clean up any discharged oil.

Similarly, because the purpose of the ''sufficiently impervious'' standard is to prevent discharges as described in § 112.1(b), dikes, berms, or retaining walls must be capable of containing oil and preventing such discharges. Discharges as described in § 112.1(b) may result from direct discharges from containers, or from discharges from containers to groundwater that travel through the groundwater to navigable waters. Effective containment means that the dike, berm, or retaining wall must be capable of containing oil and sufficiently impervious to prevent discharges from the containment system until it is cleaned up. The same holds true for container floors or bottoms; they must be able to contain oil to prevent a discharge as described in § 112.1(b). However, ''effective containment'' does not mean that liners are required for secondary containment areas. Liners are an option for meeting the secondary containment requirements, but are not required by the rule.

If you are the owner or operator of a facility subject to this part, you must prepare a Plan in accordance with good engineering practice. A complete description of how secondary containment is designed, implemented, and maintained to meet the standard of sufficiently impervious is necessary. In order to document that secondary containment is sufficiently impervious and sufficiently strong to contain oil until it is cleaned up, the Plan must describe how the secondary containment is designed to meet that standard. A written description of the sufficiently impervious standard is not only necessary for design and implementation, but will aid owners or operators of facilities in determining which practices will be necessary to maintain the standard of sufficiently impervious. Control and/or removal of vegetation may be necessary to maintain the impervious integrity of the secondary containment. Repairs of excavations or other penetrations through secondary containment will need to be conducted in accordance with good engineering practices in order to maintain the standard of sufficiently impervious. The owner or operator should monitor such imperviousness for effectiveness, in order to be sure that the method chosen remains impervious to contain oil.

*Costs.* We note that we have withdrawn the proposed 72 hour standard, and afford various secondary containment options, including earthen dikes and diked areas, if they contain and prevent discharges as described in § 112.1(b). Therefore, there are no new costs. We disagree with the commenters who asserted that we underestimated the cost to comply with the secondary containment and truck loading and unloading area requirements. The revised rule, like the current rule, does not require a specific impermeability for dikes and does not require a specific method of secondary containment at loading and unloading areas, and this flexibility is reflected in our cost estimates. We noted in our 1991 Supplemental Cost/Benefit Analysis that secondary containment for bulk storage tanks is estimated to cost $1,000 for small facilities; $6,400 for medium facilities; and $63,000 for large facilities. Unit cost estimates were developed for a broad mix of facilities (*e.g.,* farms, bulk petroleum terminals) in each size category by experienced engineers with firsthand knowledge of the Oil Pollution Prevention Regulation and the operations of onshore SPCC-regulated facilities. Because our cost estimates must be representative of the many types of facilities that are regulated, they will underestimate the costs for some facility types and overestimate the costs for others. Facilities were assumed to construct secondary containment systems of impervious soil capable of holding 110 percent of the largest tank. In that analysis, we estimated that 78 percent and 88 percent of the regulated community were already in compliance with these requirements, respectively, and would not be affected by the proposed rule change.

Since we last performed these analyses, API has issued several industry standards, including API 653 and 2610, which address many of the provisions in the SPCC rule. As a result, the final rule relies on current industry standards and practices, where feasible. In the final rule, we withdrew the proposed 72-hour impermeability standard for secondary containment and maintained the current requirement that dikes, berms, and oil retaining walls must be sufficiently impervious to contain oil. As a result, the final rule reflects current industry standards and we assume poses no additional requirements on industry.

*Sufficient freeboard. See* the Response to Comments in § 112.8(c)(2) for a discussion of this topic.

*Industry standards.* Industry standards that may assist an owner or operator with secondary containment include: (1) NFPA 30; (2) BOCA, National Fire Prevention Code; and, (3) API Standard 2610, ''Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities.''

*Editorial changes and clarifications.* In the introduction to paragraph (c), ''structures or equipment to prevent discharged oil from reaching a navigable water course'' becomes ''structures or equipment to prevent a discharge as described in § 112.1(b).'' This wording change reflects the expanded scope of the CWA as reflected in § 112.1(b) and is clearer than the proposed language. In the second sentence of the paragraph, we deleted the words ''permeate, drain, infiltrate, or otherwise'' from the sentence because they were unnecessary. The word ''escape'' in that sentence is sufficient. Also in that sentence, the reference to ''escape to surface waters'' becomes ''escape from the containment system.'' This language more clearly reflects the intent of the rule that secondary containment should keep oil from escaping from the facility and reaching navigable waters or adjoining shorelines. In paragraph (c)(2)(i), ''curbing, drip pans'' becomes ''curbing or drip pans.''

In response to the commenter's question, we note that a primary containment system is the container or equipment which holds oil or in which oil is used.

*Section 112.7(d)—Contingency Planning*

*Background. 1991 proposal.* In 1991, we proposed to add several new requirements to the contingency planning requirement in § 112.7(d). First, we proposed that a facility without secondary containment be required to test a tank for integrity every five years. In contrast, our 1991 proposal for § 112.8(c)(6) provided for testing at least every 10 years for a tank with secondary containment. In addition, we proposed to require a facility without secondary containment to conduct integrity and leak testing of valves and piping at least annually. We also proposed that the contingency plan be submitted to the Regional Administrator for approval.

Instead of referring to 40 CFR part 109 for contingency plan requirements as the current rule does, the 1991 proposal added specific requirements including a description of response plans; personnel needs; methods of mechanical containment; removal of spilled oil; and, access to and availability of sorbents, booms, and other equipment. Additionally, the proposal would have required that the Plan not rely on dispersants and other chemicals for response to oil spills without approval by the Regional Administrator. The owner or operator of a facility would also have been required to provide a written commitment of manpower, equipment, and materials required to quickly control and remove any quantity of oil that may be discharged.

*1993 proposal.* In 1993, we modified the 1991 proposal for a facility that lacks secondary containment to require a facility response plan as described in § 112.20, instead of the specific requirements proposed in 1991. The response plan would not be submitted to the Regional Administrator for his review, unless otherwise required, but would be maintained at the facility with the SPCC Plan.

*Comments. 1991 comments.* Many commenters supported the 1991 proposal. Opposing commenters suggested that such planning should be discretionary because not all facilities need such planning, or that facilities be allowed to use contingency plans prepared for other purposes. Others thought the proposal was premature as we had not at the time finalized response planning requirements in § 112.20. One commenter argued that we should delete all of the contingency planning requirements in § 112.7(d) at the point when we require an owner or operator to prepare a response plan. Some said that contingency planning was not practicable because the costs are too high, but commenters did not provide cost estimates. Several commenters criticized the proposed requirement that the contingency plan be submitted to the Regional Administrator, calling it duplicative, time-consuming, and unnecessary. Two commenters suggested that the Contingency Plan prepared under RCRA rules would suffice. Representatives of small facilities asked for a small facility exemption. Others asked for clarification of what a ''written commitment'' of manpower, equipment, and materials meant. Several commenters asked if PE certification of the contingency plan was necessary. One commenter opposed any requirement to provide contingency planning for buried tanks, piping, or valves for which secondary containment cannot be provided.

*Integrity and leak testing.* Several commenters supported the proposed integrity and leak testing requirements. Others opposed them, some on the basis that facilities already inspect their tanks regularly. Various commenters suggested exemptions for small containers or containers that are entirely within buildings. Electrical utilities argued that the requirement was

inapplicable for them because they do not store oil and that such testing would cause disruption in electrical service. Mining interests likewise asked for an exemption on the basis that they only store small amounts of oil and the requirements would be very expensive, but did not provide specific cost estimates. Various commenters asked for clarification of the term ''integrity testing,'' and its applicability. Others asked for clarification as to methods of testing. Some argued that testing of valves and gathering lines would be expensive and result in shut-downs of operations. None of these commenters provided specific cost estimates.

*1993 proposal.* One commenter argued that the response plan proposal was beyond our statutory authority. Others argued that the proposal was expensive and lacking in environmental benefit. One commenter said that the installation of structures or measures achieving equivalent protection should be sufficient to avert the need for a response plan. Another suggested that the current rule, which specifies use of a strong oil spill contingency plan following 40 CFR part 109, is adequate. One commenter asked for an exemption for facilities in areas historically not subject to natural disasters. Electrical utility commenters asked for an exemption because they argued that a response plan was unnecessary for facilities that use, but do not store, oil.

*Response to comments. Planning requirements.* We note that we did not finalize the 1991 or 1993 contingency planning proposals. Thus there are no new costs for such planning.

Under the current rule, contingency planning is necessary whenever you determine that a secondary containment system for any part of the facility that might be the cause of a discharge as described in § 112.1(b) is not practicable. This requirement applies whether the facility is manned or unmanned, urban or rural, and for large and small facilities. In response to comment, we have revised the rule to exempt from the contingency planning requirement any facility which has submitted a response plan under § 112.20 because such a response plan is more comprehensive than a contingency plan following part 109.

We believe that it may be appropriate for an owner or operator to consider costs or economic impacts in determining whether he can meet a specific requirement that falls within the general deviation provision of § 112.7(a)(2). We believe so because under this section, the owner or operator will still have to utilize good engineering practices and come up with an alternative that provides ''equivalent environmental protection.'' However, we believe that the secondary containment requirement in § 112.7(d) is an important component in preventing discharges as described in § 112.1(b) and is environmentally preferable to a contingency plan prepared under 40 CFR part 109. Thus, we do not believe it is appropriate to allow an owner or operator to consider costs or economic impacts in any determination as to whether he can satisfy the secondary containment requirement. Instead, the owner or operator may only provide a contingency Plan in his SPCC Plan and otherwise comply with § 112.7(d). Therefore, the purpose of a determination of impracticability is to examine whether space or other geographic limitations of the facility would accommodate secondary containment; or, if local zoning ordinances or fire prevention standards or safety considerations would not allow secondary containment; or, if installing secondary containment would defeat the overall goal of the regulation to prevent discharges as described in § 112.1(b).

We disagree that facility response planning is beyond our statutory authority, it is a procedure or method to remove discharged oil. *See* section 311(j)(1)(A) of the CWA. However, while we disagree that such planning is expensive and lacking in environmental benefit, we agree that the current contingency plan arrangements which reference 40 CFR part 109 should be sufficient to protect the environment, and that a facility response plan as described in § 112.20 is therefore unnecessary for a facility that is not otherwise subject to § 112.20. We agree with the commenter that structures or equipment might achieve the same or equivalent protection as response planning for some SPCC facilities. Therefore, we are withdrawing that part of the 1993 proposal related to response planning in proposed § 112.7(d)(1), but are retaining the current contingency planning provisions, which require a contingency plan following the provisions of 40 CFR part 109. We also believe that response plans should be reserved for higher risk facilities, as provided in § 112.20.

In following the provisions of part 109, you must address the oil removal contingency planning criteria listed in 40 CFR 109.5 and ensure that all response actions are coordinated with governmental oil spill response organizations. The absence of secondary containment will place extreme importance on the early detection of an oil discharge and rapid response by the facility to prevent that discharge. Part 109 was originally promulgated to assist State and local government oil spill response agencies to prepare oil removal contingency plans in the inland response zone, where EPA provides the On-Scene Coordinator. The basic criteria for contingency planning listed in § 109.5 apply to any SPCC regulated facility that has adequately justified the impracticability of installing secondary containment, irrespective of whether it is a government agency or the facility is located in the coastal (U.S. Coast Guard) or inland (EPA) response zone. Because the contingency plan involves good engineering practice and is technically a material part of the Plan, PE certification is required.

A contingency plan prepared under RCRA rules might suffice for purposes of the rule if the plan fulfills the requirements of part 109, and the PE certifies that such plan is adequate for the facility. If the RCRA contingency plan satisfies some but not all SPCC requirements, you must supplement it so that it does.

We note that the preamble to the 1993 proposed rule (at 58 FR 8841) suggested that response plans would not have to be submitted to the Regional Administrator unless ''otherwise required by the rest of today's proposed rule.'' However, proposed § 112.7(a)(2) would have required that the owner or operator submit to the Regional Administrator any Plan containing a proposed deviation, including a deviation for the general secondary containment requirements in § 112.7(c). In any case, we agree with commenters that the contingency plan (or any other deviation) should not have to be submitted to the Regional Administrator for his review and approval because we believe that it is sufficient that the contingency plan (or other deviation) be available for on-site inspection. We have therefore withdrawn that part of the proposal. See also the discussion on § 112.7(a)(2).

*Integrity and leak testing.* In response to a commenter who asked for a clarification of integrity testing, ''integrity testing'' is any means to measure the strength (structural soundness) of the container shell, bottom, and/or floor to contain oil and may include leak testing to determine whether the container will discharge oil. Facility components that might cause a discharge as described in § 112.1(b) include containers, piping, valves, or other equipment or devices. Integrity testing includes, but is not limited to, testing foundations and supports of containers. Its scope includes both the

inside and outside of the container. It also includes frequent observation of the outside of the container for signs of deterioration, leaks, or accumulation of oil inside diked areas. Such testing is also applicable to valves and piping. See API Standard 653 for further information on this term.

Leak testing for purposes of the rule is testing to determine the liquid tightness of valves and piping and whether they may discharge oil. Facilities that store oil, whether they are mines or other businesses, are required to employ integrity testing for their bulk storage containers, and integrity and leak testing for their valves and piping, to help prevent discharges. Containers that do not store oil, but merely use oil, are not subject to the requirement.

We reaffirm the applicability of integrity and leak testing to both large and small facilities, because we believe such testing requirements help prevent discharges as described in § 112.1(b) at those facilities. However, we have modified our proposal in response to comments to only require such testing on a periodic basis instead of at a prescribed frequency. Integrity and leak testing requirements are also applicable for containers and valves and piping that are entirely within buildings, or within mines, because in either case, such containers, or valves and piping may become the source of a discharge as described in § 112.1(b). We have revised the rule to reflect that the requirement applies only to onshore and offshore bulk storage facilities. Therefore, a facility with only oil-filled electrical, operating, or manufacturing equipment need not conduct such testing nor incur any costs for such testing. For other types of facilities, we disagree that testing of valves and gathering lines would be prohibitively costly. In 1991, we estimated tank integrity testing and leak testing costs of buried piping. We estimated the costs as $465 per tank, $155 for equipment, and $310 for installation. Small facilities were assumed to have no buried piping. Medium sized facilities were assumed to bear first year costs for tank installation and testing of $4,704 and subsequent year costs of $1,449. Large facilities were assumed to incur a first year cost of $11,313, and subsequent year costs of $3,519. We assume that this provision represents a negligible additional burden because most facilities are already testing such valves and gathering lines according to industry standards as a matter of good engineering practice. We believe that if such testing is done in accordance with industry standards, costs will be minimized.

We have eliminated the proposed frequency of the testing, both for containers and for valves and piping, in favor of testing according to industry standards. Instead, we require ''periodic'' integrity testing of containers, and ''periodic'' integrity and leak testing of valves and piping. ''Periodic'' testing means testing according to a regular schedule consistent with accepted industry standards. We believe that use of industry standards, which change over time, will prove more feasible than providing a specific and unchanging regulatory requirement. As required by § 112.8(c)(6), integrity testing of containers must be accomplished by a combination of visual testing and some other technique.

*Written commitment.* A ''written commitment'' of manpower, equipment, and materials means either a written contract or other written documentation showing that you have made provision for those items for response purposes. Such commitment must be shown by: the identification and inventory of applicable equipment, materials, and supplies which are available locally and regionally; an estimate of the equipment, materials, and supplies which would be required to remove the maximum oil discharge to be anticipated; and, development of agreements and arrangements in advance of an oil discharge for the acquisition of equipment, materials, and supplies to be used in responding to such a discharge. 40 CFR 109.5(c).

The commitment also involves making provisions for well defined and specific actions to be taken after discovery and notification of an oil discharge including: specification of an oil discharge response operating team consisting of trained, prepared, and available operating personnel; predesignation of a properly qualified oil discharge response coordinator who is charged with the responsibility and delegated commensurate authority for directing and coordinating response operations and who knows how to request assistance from Federal authorities operating under current national and regional contingency plans; a preplanned location for an oil discharge response operations center and a reliable communications system for directing the coordinated overall response actions; provisions for varying degrees of response effort depending on the severity of the oil discharge; and, specification of the order of priority in which the various water uses are to be protected where more than one water use may be adversely affected as a result of an oil discharge and where response operations may not be adequate to protect all uses. 40 CFR 109.5(d).

*Industry standards.* Industry standards that may assist an owner or operator with the integrity testing of containers, and the integrity and leak testing of piping and valves include: (1) API Standard 653, ''Tank Inspection, Repair, Alteration, and Reconstruction''; (2) API Recommended Practice 575, ''Inspection of Atmospheric and Low-Pressure Tanks''; (3) API Standard 570, ''Piping Inspection Code (Inspection, Repair, Alteration, and Rerating of In-Service Piping Systems)''; (4) American Society of Mechanical Engineers (ASME) B31.3, ''Process Piping''; (5) ASME 31.4, ''Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols''; (6) Steel Tank Institute Standard SP001–00, ''Standard for Inspection of In-Service Shop Fabricated Aboveground Tanks for Storage of Combustible and Flammable Liquids''; and, (7) Underwriters Laboratory (UL) Standard 142, ''Steel Aboveground Tanks for Flammable and Combustible Liquids.''

*Editorial changes and clarifications.* In the introductory paragraph, ''tanks'' becomes ''containers.'' We revised the first sentence of the introduction which now reads, ''When it is determined * * *,'' to read, ''If you determine * * *.'' Later in that sentence we change the words ''demonstrate such impracticability'' to ''explain why such measures are not practicable,'' in referencing the impracticability of secondary containment. Also, in the first sentence of the introduction, we clarify that the requirement for contingency planning and other measures is applicable when secondary containment is not practicable under §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c), as well as § 112.7(c) and (h)(1). Additionally in that sentence, the reference to ''prevent discharged oil from reaching navigable waters'' becomes ''to prevent a discharge as described in § 112.1(b),'' conforming the geographic scope of the rule to the CWA. At the end of the paragraph we clarify that when secondary containment is not practicable, the contingency plan and written commitment must be provided in the Plan, rather than to the Regional Administrator. We also clarify that if you have submitted a facility response plan under § 112.20 for a facility, you need not provide for that facility either a contingency plan following the provisions of part 109, nor a written commitment of manpower, equipment, and materials required to expeditiously

control and remove any quantity of oil discharged that may be harmful.

In paragraph (d)(1), ''A strong oil spill contingency plan following the provision of 40 CFR part 109 * * *.'' becomes ''An oil spill contingency plan following the provisions of part 109 * * *.'' The word ''strong'' is unnecessary because in any case the contingency plan must follow the provisions of part 109.

In paragraph (d)(2), we did not finalize the proposed recommendation for the operator to consider financial capability in making his written commitment of manpower, equipment, and materials because we do not wish to confuse the regulated community with discretionary requirements in a mandatory rule. Finally, we changed the reference in paragraph (d)(2) from ''to expeditiously control and remove any harmful quantity of oil discharged'' to read ''to expeditiously control and remove any quantity of oil discharged that may be harmful.'' We made this change to refer to the statutory standard referring to a quantity of oil ''that may be harmful.''

*Section 112.7(e)—Inspections, Tests, and Records*

*Background.* In 1991, we proposed that records and inspections and test results be kept for a period of five years. Current rules require record, inspection, and test results be maintained for three years. We also proposed that such records might be maintained with the Plan, instead of being part of the Plan.

In 1997, we returned to the three-year record maintenance period in our new proposal. In 1997, we also proposed that usual and customary business records, such as records maintained under API Standards 653 and 2610, would suffice to meet the requirements of this section. Finally we proposed that such records be made a part of the Plan.

*Comments. 1991 comments.* Maintenance with Plan. Most commenters favored the proposal that records might be maintained with the Plan, rather than as part of it. Two commenters thought the requirements should apply generally only to large facilities.

*Form of records.* One commenter urged use of electronic records.

*Records required.* Still another asked that we list all inspections and tests required by part 112. One commenter asked for a requirement to keep records and tests of all major repairs and of employee training.

*Time period.* Most commenters favored retaining the current three-year time period to maintain records, believing it is adequate. Some commenters objected to the cost of a five-year record retention requirement. One commenter favored a two-year record maintenance period. Several favored a phase-in period if five years were to be required so that three-year records could be brought into compliance with the rule. One commenter favored a requirement that records be maintained in accordance with other State and Federal agency requirements to avoid additional and unnecessary costs.

*1997 comments. Maintenance with Plan.* A number of commenters criticized the proposal that records must be maintained as part of the Plan, rather than maintained with the Plan, considering that proposal burdensome and providing no benefit to the environment.

*Form of records.* Several commenters asked that we clarify that use of records maintained under the API standards cited is not required. Another commenter noted that many smaller companies do not use API standards, and that use of such records should be allowed ''when available.'' Several commenters urged that we state that records kept under the NPDES program might suffice for the SPCC program. Other commenters asked whether records in other formats might be acceptable, such as under a facility's QS–9000 or ISO–14000 system, or under standards promulgated by the Underwriters' Laboratories. Other commenters discussed use of NPDES stormwater bypass records. We will talk about those records under the discussion of § 112.8(c)(3)(iv).

*Time period.* Most commenters favored the proposal to retain the current three-year time period for maintenance of records.

*Response to comments. Maintenance with Plan.* We agree with commenters that it is not necessary to maintain records as part of the Plan. Therefore, today's rule allows ''keeping'' of the records ''with'' the Plan, but not as part of it. In the current rule, such records ''should be made part of the SPCC Plan * * *.'' 40 CFR 112.7(e)(8). Because you continually update these records, this change will eliminate the need to amend your Plan each time you remove old records and add new ones. You still retain the option of making these records a part of the Plan if you choose.

*Records required.* The rule permits use of usual and customary business records, and covers all of the inspections and tests required by this part as well as any ancillary records. ''Inspections and tests'' include not only inspections and tests, but schedules, evaluations, examinations, descriptions, and similar activities required by this part. After publication of this rule, we will list all of the inspections and tests required by part 112 on our website (www.epa.gov/oilspill). The applicability of each inspection and test will depend on the exercise of good engineering practice, because not every one will be applicable to every facility.

*Form of records.* Records of inspections and tests required by this rule may be maintained in electronic or any other format which is readily accessible to the facility and to EPA personnel. Usual and customary business records may be those ordinarily used in the industry, including those made under API standards, Underwriters' Laboratories standards, NPDES permits, a facility's QS–9000 or ISO–14000 system, or any other format acceptable to the Regional Administrator. If you choose to use records associated with compliance with industry standards, such as Underwriters' Laboratories standards, you must closely review the inspection, testing, and recordkeeping requirements of this rule to ensure that any records kept in accordance with industry standards meets the intent of the rule. Some standards have limited recordkeeping requirements and may only address a particular aspect of container fabrication, installation, inspection, and operation and maintenance. The intent of the rule is that you will not have to maintain duplicate sets of records when one set has already been prepared under industry or regulatory purposes that also fully suffices for SPCC purposes. The use of these alternative record formats is optional; you are not required to use them, but you may use them.

*Time period.* We agree with commenters that maintenance of records for three years is sufficient for SPCC purposes, since that period will allow for meaningful comparisons of inspections and tests taken. Therefore, there will be no new costs. We note, however, that certain industry standards, for example API Standards 570 and 653, may specify record maintenance for more than three years.

*Editorial changes and clarifications.* As proposed in 1991, we affirm that the certifying engineer, as well as the owner or operator, may be a person who develops inspection procedures. We also affirm that the provision applies to both ''inspections'' and ''tests'' undertaken. The tests are usually integral parts of the inspections.

*Section 112.7(f)—Employee Training and Discharge Prevention Procedures*

*Background.* In 1991, we proposed that you conduct training exercises and that you train new employees within their first week of work. The rationale for these provisions was that a high percentage of discharges are caused by operator error; therefore, training and briefings might help prevent many discharges and promote a safer facility. This rationale was based on program experience and studies EPA undertook. The 1995 SPCC Survey found that operator error was the most common spill cause for facilities in 9 of the 19 industry categories that reported having spills. Also, the August 1994 draft report of the EPA Aboveground Oil Storage Facilities Workgroup called ''Soil and Ground Water Contamination from Aboveground Oil Storage Facilities: A Strategic Study'' presented data on causes of discharges from two studies. Both studies showed that error during product transfer activities is one of the biggest known causes of discharges at AST facilities. Two other studies also support our contention: Carter, W.J., ''How API Viewed the Needs for Aboveground Storage Tanks,'' Tank Talk, Vol. 7, July/August 1992, p.2.; and U.S. EPA, ''The Technical Background Document to Support the Implementation of OPA Response Plan Requirements,'' Emergency Response Division, Office of Solid Waste and Emergency Response, February 1993, p.4–19.

In 1993, we proposed to qualify the applicability of the training requirements to only those facilities that transfer or receive greater than or equal to 10,000 gallons of oil in a single operation more than twice per month on average, or greater than or equal to 50,000 gallons in a single operation more than once a month on the average. We further proposed that you require that employees involved in ''oil-handling activities,'' such as the operation or maintenance of oil storage tanks or the operation of equipment related to storage tanks, receive eight hours of facility specific training within one year of the effective date of the rule or at the date that your facility becomes subject to the requirement. In subsequent years, each employee would be required to undergo four hours of refresher training.

Our 1993 proposal would require training for new employees within one week of employment. We also proposed to specify the areas in which you would be required to train employees to include: training in correct equipment operation and maintenance, general facility operations, discharge prevention laws and regulations, and the contents of the facility's SPCC Plan. Finally, the proposal would require that you conduct unannounced drills, at least annually, in which oil-handling personnel would participate.

*Comments. 1991 comments. Applicability of training requirements.* Numerous commenters suggested that the training requirements should apply only to personnel involved in the operation or maintenance of equipment. They argued that the training requirements need not apply to clerks, secretaries, and similar employees who are not involved in the physical operations of the facility. They also argued that we failed to sufficiently account for training costs in our economic analysis. Another commenter asked for a small facility exemption from training requirements.

Another commenter asked that facilities be allowed to incorporate SPCC training requirements into already existing training programs required by other Federal or State law. One commenter suggested that the rule include a requirement that owners or operators document each training session and spill response drill conducted, and to maintain those records for five years.

*Timing of employee training.* Some commenters favored the proposed provision for yearly training exercises and suggested that the training be coordinated with local oil spill response organizations or Local Emergency Planning Committees (LEPCs) whenever possible. One commenter cautioned that the annual training should not be considered a full scale SPCC drill.

Opposing commenters suggested no time period for such exercises, or alternative periods, such as every two or three years.

Likewise, many commenters opposed the provision relating to the training of new employees within one week of employment. Opposing commenters argued generally that such a recommendation is impractical, and called for employer discretion in scheduling training. Others suggested varying time periods in lieu of one week. Those suggestions ranged from one month to one year, with alternatives suggested such as ''as soon as practical,'' ''prior to operation but before one year,'' ''within one week of job assignment,'' ''a more reasonable time period,'' ''after training,'' and ''until the next annual training for all employees.'' One commenter asked that we define the term ''new employee.''

*Discharge prevention briefings.* Many commenters criticized the proposal for annual spill prevention briefings, as opposed to the current requirement to hold such briefings ''at intervals frequent enough to assure adequate understanding of the SPCC Plan.'' They argued that the current standard is adequate. Some commenters suggested that we require additional training in these briefings such as emergency response training, or training concerning Plan changes.

*1993 comments. Applicability of training requirements.* In 1993, many commenters asked for clarification of what ''oil-handling'' personnel meant. Some thought the requirements for training should be limited to those employees engaged in response activities. Others questioned what ''on average'' meant in determining the threshold applicability of the rule. Still others asked what ''a single operation'' meant. Some asked that the requirements be limited to facilities with potential to cause ''substantial harm'' to the environment. Others asked that the requirements be relaxed for facilities with equipment that reduce the potential for discharges. Some suggested differing gallon thresholds for the applicability of the training requirements. One commenter suggested that training be limited to those employees involved in emergency response or countermeasure activities. One commenter asked for an exemption from this requirement for small facilities. Another commenter asked for an exemption for extraction facilities, because, he argued, they have few spills. Another commenter suggested that the 1991 proposal was adequate.

*Timing of employee training.* Some commenters favored the proposed requirement for eight-hour annual training, with four-hour refresher training in subsequent years. Others opposed it, arguing that employer discretion in this matter will ensure a better result.

Likewise many commenters opposed the requirement that new employees be trained within one week of employment, arguing instead for employer discretion. Some commenters suggested alternate frequencies other than one week, ranging from ''prior to assuming duties'' to up to six months after hiring.

*Content of training.* A few commenters supported the specification of training subjects. Some commenters suggested that we require training in the proper operation and maintenance of facility equipment and knowledge of spill procedure protocols. A utility commenter objected to the proposal that its employees be trained in maintenance of oil storage tanks, because its

maintenance activities do not involve the transfer or handling of oil and therefore fall outside the scope of the rule. Alternatively, the commenter suggested, those employees should be given a lower level of ''awareness'' training. One commenter suggested inclusion of response training.

*Unannounced drills.* Some commenters favored the proposal and suggested that actual discharge experience should be given credit as a drill. One commenter suggested a frequency schedule for various types of drills.

Some commenters criticized the proposal for at least yearly unannounced drills. One commenter suggested that the frequency of the drills should be at the operator's discretion. Commenters argued that, if required at all, drills should only be applicable to operational or response personnel. Two commenters said that a requirement for unannounced drills for all employees would require them to conduct at least eight or more drills a year. Another commenter suggested training instead of drills, because of the potential for drills to cause expensive shutdowns.

*Response to comments. Applicability of training requirements.* We believe that training requirements should apply to all facilities, large or small, including all those that store or use oil, regardless of the amount of oil transferred in any particular time. Training may help avert human error, which is a principal cause of oil discharges. ''Spills from ASTs may occur as a result of operator error, for example, during loading operations (*e.g.,* vessel or tank truck—AST transfer operation), or as a result of structural failure (*e.g.,* brittle fracture) because of inadequate maintenance of the AST.'' EPA Liner Study, at 14. The 1995 SPCC Survey found that operator error was the most common spill cause for facilities in 9 of the 19 industry categories that reported having spills. Also, the August 1994 draft report of the EPA Aboveground Oil Storage Facilities Workgroup called ''Soil and Ground Water Contamination from Aboveground Oil Storage Facilities: A Strategic Study'' presented data on causes of discharges from two studies. Both studies showed that error during product transfer activities is one of the biggest known causes of discharges at AST facilities. Two other studies also support our contention: Carter, W.J., ''How API Viewed the Needs for Aboveground Storage Tanks,'' Tank Talk, Vol. 7, July/August 1992, p.2.; and U.S. EPA, ''The Technical Background Document to Support the Implementation of OPA Response Plan Requirements,'' Emergency Response Division, Office of Solid Waste and Emergency Response, February 1993, p.4–19. We have therefore retained the applicability of training to all facilities. The 1993 proposal would have limited training requirements to only certain facilities which received or transferred over the proposed amount of oil. Facilities which receive or transfer less than the proposed amount might also have discharges which could have been averted through required training. Also the proposed rule would have exempted many facilities that use rather than store oil from its scope. Therefore, we have provided in the rule that all facilities, whether bulk storage facilities or facilities that merely use oil, must train oil-handling employees because all facilities have the potential for a discharge as described in § 112.1(b), and training is necessary to avert such a discharge.

We agree with the commenter that training is only necessary for personnel who will use it to carry out the requirements of this rule. Therefore revised paragraph (f)(1) provides that only oil-handling personnel are subject to training requirements, as we proposed in 1993. Thus there are no new training costs because we have always required such training of oil-handling personnel. ''Oil-handling personnel'' is to be interpreted according to industry standards, but includes employees engaged in the operation and maintenance of oil storage containers or the operation of equipment related to storage containers and emergency response personnel. We do not interpret the term to include secretaries, clerks, and other personnel who are never involved in operation or maintenance activities related to oil storage or equipment, oil transfer operations, emergency response, countermeasure functions, or similar activities.

You may incorporate SPCC training requirements into already existing training programs required by other Federal or State law at your option or may conduct SPCC training separately.

You must document that you have conducted required training courses. Such documentation must be maintained with the Plan for three years.

*Timing of employee training.* We agree with commenters who thought it desirable to leave the timing and number of hours of training of oil-handling employees, including new employees, to the employer's discretion. ''Proper instruction'' of oil-handling employees, as required in the rule, means in accordance with industry standards or at a frequency sufficient to prevent a discharge as described in § 112.1(b). This standard will allow facilities more flexibility to develop training programs better suited to the particular facility. While the rule requires annual discharge prevention briefings, we also agree that the annual briefings required are not drills. In any case, the SPCC rules do not require drills, as explained below.

For purposes of the rule, it is not necessary to define a ''new employee'' because all oil-handling personnel are subject to training requirements, whether new or not. You do, however, have discretion as to the timing of that training, so long as the timing meets the requirements of good engineering practice.

*Discharge prevention briefings.* Annual discharge prevention briefings are necessary, but there should be more frequent briefings where appropriate. Such briefings are necessary to refresh employees' memories on facility Plan provisions and to update employees on the latest prevention and response techniques. Training must include the contents of the facility Plan. Although it is desirable, we disagree that we should require SPCC briefings to include emergency response training. That training is already required for those facilities which must prepare response plans.

*Content of training.* Specifying a minimum list of training subjects is necessary to ensure that facility employees are aware of discharge prevention procedures and regulations. As suggested by a commenter, we have added knowledge of discharge procedure protocols to the list of training subjects because such training will help avert discharges. Therefore, we have specified that training must include, at a minimum: the operation and maintenance of equipment to prevent the discharge of oil; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility Plan. As noted above, we require response training for facilities that must submit response plans, but such training is not necessary for all SPCC facilities.

In response to the utility commenter who asserted that utility employees do not need to be trained in the maintenance of oil storage tanks because such maintenance does not involve the transfer and handling of oil, we note that training must address relevant maintenance activities at the facility. If there is no transfer and handling of oil, such topic need not be covered in training.

*Unannounced drills.* The proposed yearly frequency for unannounced drills is also unnecessary because such drills are already required at FRP facilities, which are higher risk facilities. We do not believe that the risk at all SPCC facilities approaches the same level as at FRP facilities. Therefore, we are not finalizing this proposal, and there are no new costs.

*Editorial changes and clarifications.* We changed the title from ''Personnel, training, and spill prevention procedures,'' to ''Personnel, training, and discharge prevention procedures.'' In paragraph (f)(1), ''discharges of oil'' becomes ''discharges.'' In paragraph (f)(2), ''line management'' becomes ''facility management,'' and ''oil spill prevention'' becomes ''discharge prevention.'' In paragraph (f)(3), ''spill prevention briefings'' becomes ''discharge prevention briefings.'' Also in paragraph (f)(3); ''operating personnel'' becomes ''oil-handling'' personnel,'' to be consistent with language in paragraph (f)(1); and, ''spill events'' becomes ''discharges as described in § 112.1(b).''

*Section 112.7(g)—Security (Excluding oil Production Facilities)*

*Background.* In 1991, we proposed to turn into a recommendation the current requirement that a facility should be fully fenced, and gates locked and/or guarded when the facility is not in production or is unattended. We proposed to require that the master flow and drain valves (or other valves that will permit direct outward flow of the tanks' contents) have adequate security to ensure that they remain in a closed position when in non-operating or non-standby status. Thus, the proposal would allow more flexibility in the method of securing the valves than the current rule, which requires that such valves be ''securely locked.''

The current rule requires that loading/unloading connections be securely capped or blank-flanged when not in service or standby-service ''for an extended time.'' We proposed in 1991 to clarify that ''an extended time'' means six months or more, based on our Regional experience.

*Comments. Editorial changes and clarifications.* One commenter asked for the meaning of ''plant'' as used in proposed § 112.7(g)(1).

*Applicability of requirement.* One commenter urged an exemption from all security provisions for mobile facilities, because such facilities are manned 24 hours a day while in operation.

*Fences.* One commenter argued that fences should not be required for all facilities, because it is not practicable in some places. Another argued that fences should be topped with barbed wire, or otherwise designed to deter vandalism.

*Starter controls on pumps.* Several commenters argued that the requirements to lock starter controls on all pumps and to locate them at a site accessible only to authorized personnel are duplicative and do not deter vandals or other unauthorized personnel. Another commenter urged us to exclude large facilities from the locking requirement because the potential for losing keys or having the locks become inoperative due to freezing conditions is great. A third commenter suggested that the requirement should apply to facilities, and not to pumps.

*Loading/unloading connections.* One commenter urged that the blank-flanging requirement apply to facilities that are not in service for six months or more, rather than to connections of oil piping. The rationale was that larger facilities have seasonal or contractual variations in use of lines, pumps, racks, and connections. Therefore, it would be costly and impractical to blank off lines only to reopen them in the seventh month. Accordingly, the rule should, per the commenter, recognize normal operating procedures at such facilities and allow flexibility. Another commenter requested that ''quick disconnect'' fittings qualify as a method of secure capping.

*Response to comments. Applicability of requirements.* We asked in the 1991 preamble (at 56 FR 54616) for comments as to whether provisions proposed as discretionary measures or recommendations should be made requirements. We were concerned whether these proposed measures represented good engineering practice for all facilities. Specific comments are discussed below. In the case of proposed § 112.7(g)(1) and (5) as requirements, we have decided to retain the requirements as requirements rather than convert those paragraphs into recommendations as proposed. We have done this because we believe that fencing, facility lighting, and the other measures prescribed in the rule to prevent vandalism are elements of good engineering practice in most facilities, including mobile facilities. Where they are not a part of good engineering practice, we have amended the proposed provision allowing deviations, § 112.7(a)(2), to include the provisions in § 112.7(g).

*Fences.* Fencing helps to deter vandals and thus prevent the discharges that they might cause. In response to the commenter who argued that fences should be topped with barbed wire, or otherwise designed to deter vandalism, we agree. When you use a fence to protect a facility, the design of the fence should deter vandalism. Methods of deterring vandals might include barbed wire or other devices. If any type of fence is impractical, you may, under § 112.7(a)(2), explain your reasons for nonconformance and provide equivalent environmental protection by some other means.

*Valves.* Revised § 112.7(g)(2) requires you to ensure that the master flow and drain valves and other valves permitting outward flow of the container's contents have adequate security measures. The current rule requires that such valves be securely locked in the closed position when in non-operating or non-standby status. Today's revised rule allows security measures other than locking drain valves or other valves permitting outflow to the surface. Manual locks may be preferable for valves that are not electronically or automatically controlled. Such locks may be the only practical way to ensure that valves stay in the closed position. For electronically controlled or automated systems, no manual lock may be necessary. The rule gives you discretion in the method of securing valves. We believe that this flexibility is necessary due to changes in technology and in the use of manual and electronic valving.

*Starter controls on pumps.* We disagree that the requirements to have the starter control locked in the off position and be accessible only to authorized personnel are redundant. Restricting access to such pumps prevents unauthorized personnel from accidentally opening the starter control. These measures are necessary to prevent discharges at small as well as large facilities because the threat of discharge is the same regardless of the size of the container, and a small discharge may be harmful to the environment. If the potential for losing keys, weather conditions such as frequent freezing, or other engineering factors render such a measure infeasible, you may use the deviation provisions in § 112.7(a)(2) if you can explain your reasons for nonconformance and provide equivalent environmental protection by some other means.

*Loading/unloading connections.* In response to comment, we have decided to retain the current time line in § 112.7(g)(4), *i.e.,* ''an extended time,'' instead of specifying a six-month time line, due to the need for operational flexibility at facilities. We define ''an extended time'' in reference to industry standards or, in the absence of such standards, at a frequency sufficient to prevent any discharge. The appropriate method of securing or blank flanging of

these connections is a matter of good engineering practice, and might include ''quick disconnect fittings'' as a possible deviation under § 112.7(a)(2). In any case, a secure cap is one equipped with some kind of lock or secure closure device to prevent vandalism. We disagree that the requirements of this paragraph should apply to the owner or operator of a facility instead of the owner or operator of the piping because a facility might place only some piping out of service for a period of time, and let other piping remain in service. Therefore, the owners or operators of some piping might escape the requirements of the rule and be more likely to discharge oil.

*Industry standards.* Industry standards that may assist an owner or operator with security purposes include: (1) API Standard 2610, Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities; and, (2) NFPA 30A, Automotive and Marine Service Station Code, Flammable and Combustible Liquids Code.

*Editorial changes and clarifications.* We agree that the term ''plant'' has no clear meaning. Therefore, in paragraph (g)(1), we have substituted the term ''facility'' in its place, which is a defined term in these rules. Also in that paragraph, the phrase ''handling, processing and storing oil'' becomes ''handling, processing or storing oil.'' In paragraph (g)(2), ''tank'' becomes ''container.'' In paragraph (g)(3), ''pumps'' becomes ''pump.'' In paragraph (g)(5), the phrase ''Consideration should be given to:'' is deleted. We revise the sentence to read, ''Provide facility lighting commensurate with the type and location of the facility that will assist in the: * * *''

*Section 112.7(h)—Loading/Unloading (Excluding Offshore Facilities)*

*Background.* In 1991, we reproposed the current discharge prevention requirements for loading/unloading racks.

*Comments. In general.* Several commenters opposed the proposal on the basis that a requirement for a strong contingency plan would be a preferable and more effective alternative. Another commenter asked that we clarify that only facilities routinely used for loading or unloading of tanker trucks from or into aboveground bulk storage tanks are subject to this provision. One commenter believed that the proposed rule regulates items which ''should be covered'' by DOT rules governing loading, unloading, and vehicle inspection.

*Editorial changes and clarifications.* One commenter asked for a clarification of the term ''quick drainage system.''

Another commenter recommended that instead of mandatory containment requirements, a facility be allowed to show that procedures are in place to ensure that personnel are present at all times to supervise tank truck loading and unloading. Additionally, that commenter recommended that all new or renovated loading/unloading areas provide, at a minimum, curbing, sloped concrete, trenching, tanks, or basins which could contain at least five percent by volume of the largest compartment of the tank car or truck. For existing facilities, that commenter suggested that containment might contain a lesser volume, provided that the entire area is constructed of impervious material, no reported releases have occurred, and that loading/unloading activities are supervised.

*Alarm or warning systems.* One commenter asked whether the requirement to provide a warning light or physical barrier system, or warning signs, applied to tank batteries or just plants. Another suggested that a vehicle brake interlock system or similar system might work just as well. Still another suggested the use of wheel chocks during tank truck transfers.

*Vehicle drain closure.* Two commenters opposed the proposed requirement that vehicle drains and outlets be examined for leakage and if necessary repaired to prevent liquid leaks during transit. They argued that the facility owner had little or no control over trucks that were owned by others which loaded or unloaded at a facility and could not ensure their compliance with the rules.

*Response to comments. In general.* This section is applicable to any non-transportation-related or terminal facility where oil is loaded or unloaded from or to a tank car or tank truck. It applies to containers which are aboveground (including partially buried tanks, bunkered tanks, or vaulted tanks) or completely buried (except those exempted by this rule), and to all facilities, large or small. All of these facilities have a risk of discharge from transfers. Our Survey of Oil Storage Facilities (published in July 1996) showed that as annual throughput increases, so does the propensity to discharge, the severity of the discharge, and, to a lesser extent, the costs of the cleanup. Throughput increases are often associated with transfers of oil.

The requirements contained in this section, including those for secondary containment, warning systems, and inspection of trucks or cars for discharges are necessary to help prevent discharges. If you can justify a deviation for secondary containment requirement in paragraph (h)(1) on the basis that it is not practicable from an engineering standpoint, you must provide a contingency plan and take other actions to comply with § 112.7(d). If you seek to deviate from any of the requirements in paragraphs (h)(2) or (3), you must explain your reasons for nonconformance, as provided in § 112.7(a)(2), and provide measures affording equivalent environmental protection.

We disagree that a contingency plan (whether labeled ''strong'' or otherwise) is a preferable alternative to secondary containment. Secondary containment is preferable because it may prevent a discharge that may be harmful as described in § 112.1(b). A contingency plan is a plan for action when such discharge has already occurred. However, as noted earlier, if secondary containment is not practicable, you must provide a contingency plan and take other actions as required by § 112.7(d). EPA will continue to evaluate the issue of whether the provisions for secondary containment found in § 112.7(h)(1) should be modified or revised. We intend to publish a notice asking for additional data and comment on this issue.

We disagree that the section regulates activities already under the purview of the U.S. Department of Transportation. We regulate the environmental aspects of loading/unloading transfers at non-transportation-related facilities, which are legitimately part of a prevention plan. DOT regulates other aspects of those transfers, such as safety measures.

*Other State or Federal law.* We have withdrawn, as unnecessary, proposed § 112.7(h)(1), which would have required that facilities meet the minimum requirements of Federal and State law. Those requirements apply whether they are mentioned or not.

*Secondary containment.* As noted above, the requirement for secondary containment applies to all facilities, whether with aboveground or completely buried containers. This includes production facilities and small facilities. The method of secondary containment must be one of those listed in the rule (see § 112.7(c)), or some similar system that provides equivalent environmental protection. The choice of method is one of good engineering practice. However, in response to comments, we note that sumps and drip pans are a listed method of secondary containment for offshore facilities. A catchment basin might be an acceptable

form of retention pond for an onshore facility. Whatever method is implemented, it must be capable of containing the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded in the facility. A discharge from the maximum capacity of any single compartment of a tank car or tank truck includes a discharge from the tank car or tank truck piping and hoses. This is the largest amount likely to be discharged from the oil storage vehicle. A requirement that secondary containment be able to hold only five percent of a potential discharge when procedures are in place to prevent discharges fails to protect the environment if there is human error in one of those procedures. In case of discharge, the secondary containment system must be capable of preventing a discharge from that maximum capacity compartment to the environment. As mentioned above, if secondary containment is not practicable, you may be able to deviate from the requirement if you provide a contingency plan and otherwise comply with § 112.7(d).

*Alarm or warning systems.* The requirement to provide a warning light or other physical barrier system applies to the loading/unloading areas of facilities. We have amended the rule on the suggestion of a commenter to include ''vehicle brake interlock system'' and ''wheel chocks.'' The examples listed in the rule of potential warning systems are merely illustrative. Any other alarm or warning system which serves the same purpose and performs effectively will also suffice to meet this requirement.

*Vehicle drain closure.* We believe that the requirement to check vehicles for discharge is important to help prevent discharges. If the check were not done, the entire contents of the vehicle might be discharged. We further believe that the responsibility for compliance with proposed § 112.7(h)(3), as well as with all provisions of the rule, continues to rest with the owner or operator of the facility when those vehicles are loading or unloading oil at the facility.

*Industry standards.* Industry standards that may assist an owner or operator with loading and unloading areas include: (1) NFPA 30, ''Flammable and Combustible Liquids Code''; and, (2) API Standard 2610, ''Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities.''

*Editorial changes and clarifications.* In paragraph (h)(1), for clarity, ''plant'' is changed to ''facility.'' The phrase ''to handle spills'' becomes ''to handle discharges.'' A ''quick drainage system'' is a device which drains oil away from the loading/unloading area to some means of secondary containment or returns the oil to the facility. For § 112.7(h)(1), if secondary containment is not practicable, you must provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d). Also, in paragraph (h)(1), ''tank truck'' becomes ''tank car or tank truck.'' In paragraph (h)(2), ''prevent vehicular departure,'' becomes ''prevent vehicles from departing.'' In paragraph (h)(3), ''leakage'' becomes ''discharge.'' ''Discharge'' is a broader term, of which ''leakage'' is a subset. Also in that paragraph, ''examine'' becomes ''inspect.''

*Section 112.7(i)—Brittle Fracture Evaluation*

*Background.* In 1993, we proposed to require that you evaluate your field-constructed tanks for brittle fracture if those tanks undergo repair, alteration, or a change in service. You would have been required to evaluate those tanks by adherence to industry standards contained in American Petroleum Institute (API) Standard 653, entitled ''Tank Inspection, Repair, Alteration, and Reconstruction.'' The rationale was to help prevent the failure of field-constructed tanks due to brittle fracture, such as the four million gallon aboveground Ashland Oil tank failure which occurred in January 1988.

*Comments. Applicability.* Several commenters favored the proposal. One suggested that we incorporate API Standard 653 into our rules to accommodate the possibility of tank failures other than through brittle fracture. One commenter opposed the proposal on the basis that the evaluation was unnecessary for small volume tanks and tanks with secondary containment. Other commenters argued that such testing was unnecessary for steel-bolted tanks because such tanks are too thin to be subject to brittle fracture since material properties are uniform through the thickness. One commenter asked that small facilities be exempted from the proposed requirement.

*Editorial changes and clarifications.* Two commenters asked what the term ''change in service'' means. Others asked for clarification of the term ''field-erected tank.'' Another asked for clarification of the term ''repair,'' so that it would exclude ordinary day-to-day maintenance activities which are conducted to maintain the functional integrity of the tank and do not weaken the tank.

*Alternatives to brittle fracture evaluation.* One commenter suggested that we allow testing by acoustic emission testing.

*Response to comments. Applicability.* The requirement to evaluate field-constructed tanks for brittle fracture whenever a field-constructed aboveground container undergoes repair, alteration, reconstruction, or change in service is necessary because brittle fracture may cause sudden and catastrophic tank failure, resulting in potentially serious damage to the environment and loss of oil. The requirement must be applicable to large and small facilities alike, because all the field-constructed aboveground containers have a risk of failure. The presence or absence of secondary containment does not eliminate the need for brittle fracture evaluation because the intent of the rule is to prevent a discharge whether or not it will be contained. While the requirement applies to all field-constructed aboveground containers, if you can show that the evaluation is unnecessary for your steel-bolted tanks, you may deviate from the requirement under § 112.7(a)(2) if you can explain your reasons for nonconformance and provide equivalent environmental protection. We note that portions of steel-bolted tanks, such as the bottom or roof, may be welded, and therefore subject to brittle fracture.

The requirement for evaluation of a field-constructed aboveground container must be undertaken when the container undergoes a repair, alteration, reconstruction, or change in service that might affect the risk of a discharge or failure due to brittle fracture, or when a discharge or failure has already occurred due to brittle fracture or other catastrophe. Catastrophic failures are failures which may result from events such as lightning strikes, dangerous seismic activity, etc. As a result of a catastrophic failure, the entire contents of a container may be discharged to the environment in the same way as if brittle fracture had occurred.

''Repair'' means any work necessary to maintain or restore a container to a condition suitable for safe operation. Typical examples include the removal and replacement of material (such as roof, shell, or bottom material, including weld metal) to maintain container integrity; the re-leveling or jacking of a container shell, bottom, or roof; the addition of reinforcing plates to existing shell penetrations; and the repair of flaws, such as tears or gouges, by grinding or gouging followed by welding. We understand that some repairs (such as repair of tank seals), alterations, or changes in service will not cause a risk of failure due to brittle

fracture; therefore, we have amended the rule to refer to those repairs, alterations, reconstruction, or changes in service that affect the risk of a discharge or failure due to brittle fracture.

''Alteration'' means any work on a container involving cutting, burning, welding, or heating operations that changes the physical dimensions or configurations of the container. Typical examples include the addition of manways and nozzles greater than 12-inch nominal pipe size and an increase or decrease in tank shell height.

*Alternatives to brittle fracture evaluation.* We have eliminated the incorporation by reference to API Standard 653 from the rule. We have also therefore withdrawn proposed Appendix H, the API Standard 653 brittle fracture flowchart. We believe that API Standard 653 is an acceptable standard to test for brittle fracture. However, an incorporation by reference of any standard might cause the rule to be instantly obsolete should that standard change or should a newer, better method emerge. A potential standard might also apply only to a certain subset of facilities or equipment. Therefore, as with most other requirements in this part, if you explain your reasons for nonconformance, alternative methods which afford equivalent environmental protection may be acceptable under § 112.7(a)(2). If acoustic emission testing provides equivalent environmental protection it may be acceptable as an alternative. That decision, in the first instance, is one for the Professional Engineer and owner or operator.

*Industry standards.* Industry standards that may assist an owner or operator with brittle fracture evaluation include: (1) API Standard 653, ''Tank Inspection, Repair, Alteration, and Reconstruction''; and, (2) API Recommended Practice 920, ''Prevention of Brittle Fracture of Pressure Vessels.''

Editorial changes and clarifications. A ''field-constructed aboveground container'' is one that is assembled or reassembled outside the factory at the location of its intended use. A ''change in service'' is a change from previous operating conditions involving different properties of the stored product such as specific gravity or corrosivity and/or different service conditions of temperature and/or pressure. The word ''reconstruction'' was added in the first sentence to conform with the text in API Standard 653. The words ''discharge or'' were added prior to ''failure'' and ''brittle fracture failure'' to make clear that evaluation is necessary when there has been a discharge from the container, whether or not there has been a complete failure of the container due to brittle fracture or catastrophe. When a container has failed completely and will be replaced, no brittle fracture or catastrophe evaluation is necessary. The evaluation is only applicable when the original container remains, but the physical condition of the container has changed due to repair, alteration, or change in service.

*Section 112.7(j)—State Rules*

Background. In the introduction to § 112.7(e) of the current rule, an owner or operator is required to discuss in the Plan his conformance with § 112.7(c), plus other applicable parts of § 112.7, other effective spill prevention and containment procedures or, if more stringent, with State rules, regulations, and guidelines. In our 1991 proposal, we limited the required discussion of ''other effective spill prevention and containment procedures'' to those listed in §§ 112.8, 112.9, 112.10, and 112.11, or if more stringent, with State rules, regulations, and guidelines.

*Comments. Cross-referencing of requirements.* One commenter argued that the proposed requirements should be more clearly limited to those sections which are applicable to the facility in question. For example, the commenter asserted, ''requirements in § 112.8 '* * *onshore facilities (excluding production facilities)' should not (by the requirement in § 112.7(i)) be applied to any portion of any production facility.''

*Consistency in rules.* Two States urged that our rules be as consistent as possible with rules in the States. Another State urged that we grant reciprocity to State-approved Plans which have been reviewed under equal or greater adequacy criteria. One commenter complained that EPA rules are in some cases more stringent than some State rules.

*Federal and State regulation.* Two commenters argued against any State regulation in the SPCC area to avoid duplication. Conversely, another commenter argued against any Federal regulation because the States are better qualified to regulate in the SPCC arena.

*Preemption.* Another State requested that EPA strive to have similar programs as the States, or at the least not to preempt the States in the regulation of SPCC matters.

*Response to comments.* Cross-referencing of requirements. In response to the commenter who believed that proposed § 112.7(i) (redesignated in today's rule as § 112.7(j)) might require him to discuss inapplicable requirements, we note that you must address all SPCC requirements in your Plan. You must include in your Plan a complete discussion of conformance with the applicable requirements and other effective discharge prevention and containment procedures listed in part 112 or any applicable more stringent State rule, regulation, or guideline. If a requirement is not applicable to a particular type of facility, we believe that it is important for an owner or operator to explain why.

*Consistency in rules.* As noted above, you may now use a State plan as a substitute for an SPCC Plan when the State plan meets all Federal requirements and is cross-referenced. When you use a State plan that does not meet all Federal requirements, it must be supplemented by sections that do meet all Federal requirements. At times EPA will have rules that are more stringent than States rules, and some States may have rules that are more stringent than those of EPA. If you follow more stringent State rules in your Plan, you must explain that is what you are doing.

*Federal and State regulation.* Both the States and EPA have authority to regulate containers storing or using oil. We believe State authority to regulate in this area and establish spill prevention programs is supported by section 311(o) of the CWA. Some States have exercised their authority to regulate while others have not. We believe that State SPCC programs are a valuable supplement to our SPCC program.

*Preemption.* We do not preempt State rules, and defer to State rules, regulations, and guidelines that are more stringent than part 112.

*Editorial changes and clarifications.* To simplify the rule language, we have amended the proposed rule to state that you must discuss all applicable requirements in the Plan instead of listing all of the sections individually. The phrase ''sections of the Plan shall include* * *'' becomes ''include in your Plan* * * .'' ''Spill'' becomes ''discharge.''

**Subpart B—Requirements for Petroleum Oils or Other Non-petroleum Oils, Except Animal Fats and Vegetable Oils**

*Background.* As noted above, we have reformatted the rule to differentiate between various classes of oil as mandated by EORRA. Subpart B prescribes particular requirements for an owner or operator of a facility that stores or uses petroleum oils or non-petroleum oils, except for animal fats and vegetable oils.

*Introduction to Section 112.8*

*Background.* We have inserted an introduction to § 112.8 so that we could list the requirements of that section in the active voice. Those requirements, except as specifically noted, apply to the owner or operator of an onshore facility (except a production facility). The introduction does not result in any substantive change in requirements.

*Section 112.8(a)—General Requirements—Onshore Facilities (Excluding Production Facilities)*

*Background.* This is a new provision that merely references the general requirements which all facilities subject to this part must meet and the specific requirements that facilities subject to this section must meet. It does not result in any change to substantive requirements.

*Editorial changes and clarifications.* ''Spill prevention'' in the 1991 proposal becomes ''discharge prevention.'' We also deleted from the titles of each paragraph the words ''onshore'' and ''excluding production facilities'' because the entire section applies to onshore facilities and excludes production facilities from its scope. Finally, the proposed requirement to ''address'' general and specific requirements and procedures becomes ''meet'' those requirements and procedures.

*Section 112.8(b)(1)—Diked Storage Area Drainage*

*Background.* In 1991, we reproposed the current rule (§ 112.7(e)(1)(i)) on facility drainage from diked areas.

*Comments. Applicability.* One commenter asked that we limit the scope of this section to facilities having areas with the potential to receive discharges greater than 660 gallons or areas with tanks regulated under these rules. Another commenter said that for facilities with site-wide containment, or that have substantial stormwater draining onto and across the site, the requirement is not practical and may justify reliance on contingency plans instead of containment. That commenter, and another, suggested that certain devices may reduce the potential of a significant spill of floating or other products that can be separated by gravity, such as oil/water separators, underflow uncontrolled discharge devices, and other apparatus.

*De minimis amounts of oil.* One commenter thought it would be impossible to ensure no oil would be discharged into water from diked areas. The rationale was that oil can be present in water in an amount below the perception threshold of the human eye.

*Response to comments. Applicability.* We disagree that we should limit the scope of this section to facilities having areas with the potential to receive discharges greater than 660 gallons or areas with tanks regulated under these rules. Small discharges (that is, of 660 gallons or less) as described in § 112.1(b) from diked storage areas can cause great environmental harm. See section IV. F of this preamble for a discussion of the effects of small discharges. We disagree that this section should apply only to areas with tanks regulated under these rules because this rule applies to regulated facilities, not merely areas with regulated tanks or other containers. A facility may contain operating equipment within a diked storage area which could cause a discharge as described in § 112.1(b).

We disagree that the requirement is not practical for facilities with site-wide containment, or that have substantial stormwater draining onto and across the site. Where oil/water separators, underflow uncontrolled discharge devices, or other positive means provide equivalent environmental protection as the discharge restraints required by this section, you may use them, if you explain your reasons for nonconformance. See § 112.7(a)(2). However, you must still ensure that no oil will be discharged when using alternate devices.

*De minimis amounts of oil.* This rule is concerned with a discharge of oil that would become a discharge as described in § 112.1(b). When oil is present in water in an amount that cannot be perceived by the human eye, the discharge might not meet the description provided in 40 CFR 110.3. Therefore, such a discharge might not be a discharge in a quantity that may be harmful, and therefore not a reportable discharge under part 110. However, a discharge which is invisible to the human eye might also contain components (for example, dissolved petroleum components) which would violate applicable water quality standards, making it a reportable discharge. Therefore, we are keeping the language as proposed, other than making some editorial changes.

*Industry standards.* Industry standards that may assist an owner or operator with facility drainage include: (1) NFPA 30, ''Flammable and Combustible Liquids Code''; and (2), API Standard 2610, ''Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities.''

*Editorial changes and clarifications.* ''Spill or other excessive leakage of oil'' and ''leakage'' become ''discharge.'' The phrase ''handle such leakage'' becomes ''control such discharge.'' We deleted the phrase ''or other positive means,'' because it is confusing when compared with the text of § 112.7(a)(2). Under § 112.7(a)(2), you have the flexibility to use alternate measures ensuring equivalent environmental protection. The word ''examine'' becomes ''inspect.''

*Section 112.8(b)(2)—Diked Storage Areas—Valves Used; Inspection of Retained Stormwater*

*Background.* In 1991, we reproposed the current rule on the type of valves that must be used to drain diked storage areas. The rule also addresses inspection of retained stormwater.

*Comments. Innovative devices.* Two commenters believed that the rule would apparently preclude the use of innovative containment devices to control discharges from containment dikes, such as imbiber beads. These beads are inside a small cylinder that filters releases from a containment area. The beads are inserted where a valve would be placed and allow water to pass, but prevent release of oil by closing on contact. Another commenter asked that the rule allow oil-water gravity separation systems instead of valves.

*PE certification.* One commenter suggested that a section should be added to the rule requiring that Professional Engineers be required to certify the design and construction of the stormwater drainage system and the sanitary sewer system, because the Professional Engineer is in the best position to prepare the spill containment parts of the SPCC Plan.

*Response to comments. Innovative devices.* This rule does not preclude innovative devices that achieve the same environmental protection as manual open-and-closed design valves. If you do not use such valves, you must explain why. The provision for deviations in § 112.7(a)(2) allows alternatives if the owner or operator states his reasons for nonconformance, and if he can provide equivalent environmental protection by some other means. However, you may not use flapper-type drain valves to drain diked areas. And if you use alternate devices to substitute for manual, open-and-closed design valves, you must inspect and may drain retained stormwater, as provided in § 112.8(c)(3)(ii), (iii), and (iv), if your facility drainage drains directly into a watercourse, lake, or pond bypassing the facility treatment system.

*PE certification.* PE certification is already required for the design of

stormwater drainage and sanitary sewer systems by current rules because those systems are a technical element of the Plan. Therefore, we are keeping the language as proposed.

*Editorial changes and clarifications.* In the first sentence, we deleted the phrase ''as far as practical'' because it is confusing when compared to the text of § 112.7(a)(2). Under § 112.7(a)(2), if the requirement is not practical, you have the flexibility to use measures ensuring equivalent environmental protection. In the second sentence, we clarify that the wastewater treatment plant mentioned therein is an ''on-site wastewater treatment plant.'' Also in that sentence, we clarify that you must inspect and ''may drain'' retained stormwater, as provided in § 112.8(c)(3)(ii), (iii), and (iv). Finally, in the last sentence, we clarify that drained retained stormwater must be ''uncontaminated.''

*Section 112.8(b)(3)—Drainage Into Secondary Containment; Areas Subject to Flooding*

*Background.* In 1991, we proposed to clarify that only undiked areas that are located such that they have a reasonable potential to be contaminated by an oil discharge are required to drain into a pond, lagoon, or catchment basin. We explained that a good Plan should seek to separate reasonably foreseeable sources of contamination and non-contamination.

We also proposed to make a recommendation of the current requirement that catchment basins not be located in areas subject to periodic flooding.

*Comments.* One commenter supported the proposal.

*Editorial changes and clarifications.* One commenter suggested that the rule should be worded to refer to systems ''with a potential for discharge,'' rather than with a ''potential for contamination.''

*Applicability.* Two commenters argued that the secondary containment provisions of this paragraph should ''remain a recommendation as opposed to a regulation,'' because a requirement is impracticable for drainage systems from pipelines that move product throughout the facility.

*Alternatives.* One commenter said that the rule should not be limited to drainage trenches, and that the owners and operators of facilities should have a free choice of design. Another commenter suggested that if areas under aboveground piping and loading/unloading areas are regulated under this section, the operation should have the option of providing spill control by committing to the regular inspection of, and immediate clean-up of spills within such areas. Another commenter urged that we clarify that oil/water separators meet the requirement for drainage control and secondary containment because such units, when properly sized and operated, meet the requirements of good engineering practice for preventing discharges of oil. One commenter suggested that in rural areas where electrical equipment is widely spaced, it may be more practical to provide for individual secondary containment rather than site-wide diversion facilities. Other commenters suggested that the drainage requirements in urban areas would be impossible to meet for transformers located in vaults in large office and apartment buildings, and underneath urban streets because there is no space at such sites to construct the sort of drainage control structures required by the rule.

*Areas subject to periodic flooding.* One commenter argued that the proposed recommendation should be retained as a requirement because it is highly unlikely that catchment basins would operate effectively during a flood event, and that these facilities could cause significant harm to the environment. Another commenter suggested that drainage systems for existing facilities be engineered (even if it requires pumping of contaminated water to a higher level for storage prior to treatment) so that minimal amounts of contaminated water are retained in areas subject to periodic flooding.

*Response to comments. Applicability.* We disagree that the rule language should become a recommendation because we believe that it is important to control the potential discharges the rule addresses. Where a drainage system is infeasible, if you explain your reasons for nonconformance, you may provide equivalent environmental protection by an alternate means.

In response to the commenter who questioned the applicability of this paragraph to areas under aboveground piping and loading/unloading areas, we note that both areas are subject to the rule's requirements if they are undiked.

*Alternatives.* The rule does not limit you to the use of drainage trenches for undiked areas. Other forms of secondary containment may be acceptable. The rule only prescribes requirements for the drainage of diked areas, but does not mandate the use of diked areas. However, if you do use diked areas, the rule prescribes minimum requirements for drainage of those areas. Also, if the requirement is not practical, you may explain your reasons for nonconformance and provide equivalent environmental protection under § 112.7(a)(2).

*Areas subject to periodic flooding.* We agree with the commenter that the current requirement should remain a requirement and not be converted into a recommendation. We are convinced by the argument that catchment basins will not work during flood events and may cause significant environmental damage. We also agree with the commenter that any drainage system should be engineered so that minimal amounts of contaminated water are retained in areas subject to periodic flooding. Therefore, we have retained the current requirement. We also recommend, but do not require that ponds, lagoons, or other facility drainage systems with the potential for discharge not be located in areas subject to periodic flooding.

*Editorial changes and clarifications.* We agree that the wording ''potential for discharge'' meets the intent of the rule better than ''potential for contamination'' and have made that change.

*Section 112.8(b)(4)—Diversion Systems*

*Background.* In 1991, we proposed that diversion systems must retain oil in the facility, rather than return it to the facility after it has been discharged.

*Comments.* One commenter asked for a clarification that oil ''retained'' in a facility does not leave the facility boundaries. A second commenter suggested that oil be either retained within the facility or returned to the facility, whichever is applicable. The commenter further suggested that the diversion system apply only to the petroleum areas of the facility such as tanks, pipes, racks, and diked areas because drainage from the rest of the facility should not be contaminated and thus should not have to be diverted.

*Response to comments.* The rule accomplishes the aim of retaining within the facility minimal amounts of contaminated water in undiked areas subject to periodic flooding. It is better that a diversion system retain rather than allow oil to leave the facility, thus enhancing the prevention goals of the rule. Furthermore, it should be easier to retain discharged oil rather than retrieve oil that has been discharged from the facility. Therefore, we agree with the commenter that ''retained'' oil is oil that never leaves the facility. We also agree that the rule applies only to drainage from the ''petroleum'' (or other oil) areas of the facility such as tanks, pipes, racks, and diked areas, because the purpose of the SPCC rule is to prevent discharges of oil, not of all runoff contaminants. Amendment of the rule

language is unnecessary because all of the rule applies only to ''petroleum'' or ''oil'' areas of the facility. Therefore, we have promulgated the rule language as proposed with a minor editorial change.

*Editorial changes and clarifications.* We clarify that the reference to the engineering of facility drainage is a reference to paragraph (b)(3).

*Section 112.8(b)(5)—Natural Hydraulic Flow, Pumps*

*Background.* In 1991, we reproposed substantively the current rule (see § 112.7(e)(1)(v)) concerning hydraulic flow and pump transfer for drainage waters.

*Comments.* We received one editorial comment regarding a grammatical error in the proposal. The commenter suggested that the second sentence of the proposal read, ''If pump transfer is needed, two ''lift'' pumps shall be provided, and at least one of the pumps shall be permanently installed when such treatment is continuous.'' We received no substantive comments.

*Editorial changes and clarifications.* We deleted the first sentence from the proposed rule because it is a recommendation. We are not including recommendations in this rule so as to avoid confusion in the regulated community as to what is required and what is not. We agree with the commenter's editorial suggestion regarding the second sentence, and have amended the rule accordingly. In the last sentence of the proposal, the phrase ''oil will be prevented from reaching navigable waters of the United States, adjoining shorelines, or other waters that would be affected by discharging oil as described in § 112.1(b)(1) of this part'' becomes '' to prevent a discharge as described in § 112.1(b). * * *''

*Response to comments.* We have corrected the grammatical error.

*Proposed Section 112.8(b)(6)—Additional Requirements for Events that Occur During a Period of Flooding*

*Background.* In 1991, we proposed a new recommendation that facilities should address the need to comply with Federal, State, and local governmental requirements in areas subject to flooding. We noted that this recommendation was consistent with Federal Emergency Management Agency (FEMA) rules found at 44 CFR part 60 for aboveground storage tanks located in flood hazard areas.

*Comments.* One commenter suggested that exploration and production tanks located in flood plain areas should be adequately secured through proper mechanical or engineering methods to reduce the chance of loss of product. Another commenter argued that the proposed rule should be eliminated because it is duplicative of stormwater regulations. One commenter urged that the rule require that no facilities for oil or hazardous substances be sited in floodplains. Another commenter requested that the rule require that: (1) A facility should identify whether it is in a floodplain in the SPCC Plan; (2) if it is in a floodplain, the Plan should address minimum FEMA standards; and, (3) if a facility does not meet minimum FEMA standards, the Plan should address appropriate precautionary and mitigation measures for potential flood-related discharges. The commenter also suggested that we consider requiring facilities in areas subject to 500-year events to address minimum FEMA standards. A second commenter supported a requirement for special considerations in the Plan for facilities in areas subject to flooding. That commenter also suggested that we define ''areas subject to flooding,'' and noted that other Federal rules (i.e., RCRA) define this as the 25-year floodplain. Another commenter thought the term ''areas subject to flooding'' should be explained in terms of a 100-year flood event. A final comment noted that the preamble spoke to a recommendation that facilities address precautionary measures if they are located in areas subject to flooding, while the recommendation text spoke to requirements for events that occur during a period of flooding. The commenter urged reconciliation of the differing language.

*Response to comments.* We deleted this recommendation because it is more appropriately addressed in FEMA rules and guidance, including the definitions the commenters referenced. We disagree that the proposed recommendation should be made a requirement because flood control plans and design capabilities for discharge systems are provided for under the stormwater regulations, and further Federal regulations would be duplicative.

Other Federal rules also apply, making further SPCC rules unnecessary. Oil storage facilities are considered structures under the National Flood Insurance Program (NFIP), and therefore such structures are subject to the Regulations for Floodplain Management at 44 CFR 60.3. Some of the specific NFIP standards that may apply for aboveground storage tanks include the following: (1) tanks must be designed so that they are elevated to or above the base flood level (100-year flood) or be designed so that the portion of the tank below the base flood level is watertight with walls substantially impermeable to the passage of water, with structural components having the capability of resisting hydrostatic and hydrodynamic loads, and with the capability to resist effects of buoyancy (44 CFR 60.3(a)(3)); (2) tanks must be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads and the effects of buoyancy (40 CFR 60.3(c)(3)); for structures that are intended to be made watertight below the base flood level, a Registered Professional Engineer must develop and/or review the structural design, specifications, and plans for construction, and certify that they have been prepared in accordance with accepted standards and practice (40 CFR 60.3(c)(4)); and, tanks must not encroach within the adopted regulatory floodway unless it has been demonstrated that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge (40 CFR 60.3(d)). Additionally, the NFIP has specific standards for coastal high hazard areas. *See* 40 CFR 60.3(e)(4).

*Section 112.8(c)(1)—Construction of and Materials Used for Containers*

*Background.* In 1991, we reproposed without substantive change current § 112.7(e)(2)(i), which requires that no tank be used for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage such as pressure and temperature. The only changes we proposed were editorial. We also proposed a new recommendation that the construction, materials, installation, and use of tanks conform with relevant industry standards such as API, NFPA, UL, or ASME standards, which are required in the application of good engineering practice for the construction and operation of the tank.

*Comments.* Several commenters asked that the proposal be recast as a recommendation rather than a rule, arguing that the words of the proposal, when taken in conjunction with § 112.7(a) language requiring the use of good engineering practice in the preparation of Plans, were contradictory. A commenter noted that § 112.8(c)(1) *recommends* that materials, construction, and installation of tanks adhere to industry standards ''*which are required in the application of good engineering practice* for the construction and operation of the tank.'' The commenter asserted that since it is clear in the preamble that the Agency's intent is to make the use of industry standards a recommendation rather than a

requirement, the rule should be modified to reflect that. Another commenter supported the proposal as a requirement on the theory that all tanks should be required to meet industry standards. A third commenter asked for clarification as to whether we intended a recommendation or a requirement.

One commenter asked that we specifically reference steel storage tank systems standards in the rule.

*Response to comments. Requirement v. recommendation.* The first sentence of the proposed rule indeed contemplated a requirement, i.e., that no container may be used for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage, such as pressure or temperature. The second sentence, which was clearly a recommendation, has been deleted from the rule because we have decided to remove all recommendations from the rule language. Rules are mandates, and we do not wish to confuse the regulated community as to what actions are mandatory and what actions are discretionary. The Professional Engineer must, pursuant to § 112.3(d)(1)(iii), certify that he has considered applicable industry standards in the preparation of the Plan. While he must consider such standards, use of any particular standards is a matter of good engineering practice.

*Industry standards.* Industry standards that may assist an owner or operator with the material and construction of containers include: (1) API Standard 620, ''Design and Construction of Large Welded Low-Pressure Storage Tanks''; (2) API Standard 650, ''Welded Steel Tanks for Oil Storage''; (3) Steel Tank Institute (STI) F911, ''Standard for Diked Aboveground Steel Tanks''; (4) STI Publication R931, ''Double Wall Aboveground Storage Tank Installation and Testing Instruction''; (5) UL Standard 58, ''Standard for Steel Underground Tanks for Flammable and Combustible Liquids''; (6) UL Standard 142, ''Steel Aboveground Tanks for Flammable and Combustible Liquids''; (7) UL Standard 1316, ''Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products''; and, (8) Petroleum Equipment Institute (PEI) Recommended Practice 200, ''Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling.''

*Editorial changes and clarifications.* ''Bulk storage tanks'' becomes ''bulk storage containers.'' We deleted the abbreviation ''etc.'' from the end of the paragraph because it is unnecessary. The use of the phrase ''such as pressure and temperature'' already indicates that these are only some examples of such conditions.

*Section 112.8(c)(2)—Secondary Containment—Bulk Storage Containers*

*Background.* In 1991, we reproposed current secondary containment requirements with several significant additions. We gave notice in the preamble (at 56 FR 54622–23) that ''sufficient freeboard'' is freeboard sufficient to contain precipitation from a 25-year storm event. We also proposed in rule language that diked areas must be sufficiently impervious to contain spilled oil for at least 72 hours. The current standard is that such diked areas must be ''sufficiently impervious'' to contain spilled oil.

*Comments. Secondary containment, in general.* One commenter asked for clarification of what ''primary containment system'' means. One commenter opposed the requirement for secondary containment on the grounds that impervious containment of a volume greater than the largest single tank may not be necessary for all tanks, and that existing facilities may find it difficult to retrofit. In this vein, another commenter asked for a phase-in of the requirements, and a third asked for variance provisions so that a facility would not have to make small additions to its secondary containment for minimum environmental benefit. Another commenter argued that the requirement should be applied to large facilities only. One commenter believed that the proposal duplicates NPDES stormwater rules. Two commenters believed the requirement should apply only to unmanned facilities. See also the comments and response to comments concerning secondary containment in the discussion of § 112.7(c), above.

*Sufficient freeboard.* Several commenters said that the standard of a 25-year storm event might be difficult to determine without extensive meteorological studies. Other commenters asked for clarification of the terms ''sufficient'' and ''freeboard,'' or of the phrase ''sufficient freeboard.'' Likewise, several commenters asked for clarification of the Agency's position that sufficient freeboard would be that which would withstand a 25-year storm event. Two commenters suggested a standard of 110% of tank capacity. Other commenters suggested alternatives for the 25-year storm event, such as a 24-hour, 10 year rain; or a 24-hour, 25-year storm. Another commenter suggested the adequacy of freeboard should be left flexible on a facility-specific basis.

*Seventy-two-hour impermeability standard.* Similar to the comments directed toward the proposed requirements for secondary containment in § 112.7(c), some commenters objected to the proposed 72-hour impermeability standard. See the comments and response to comments for § 112.7(c) above.

*Response to comments. Secondary containment, in general.* A primary containment system is the container or equipment in which oil is stored or used. Secondary containment is a requirement for all bulk storage facilities, large or small, manned or unmanned; and for facilities that use oil-filled equipment; whenever practicable. Such containment must at least provide for the capacity of the largest single tank with sufficient freeboard for precipitation. A discharge as described in § 112.1(b) from a small facility may be as environmentally devastating as such a discharge from a large facility, depending on the surrounding environment. Likewise, a discharge from a manned facility needs to be contained just as a discharge from an unmanned one. A phase-in of these requirements is not appropriate because secondary containment is already required under current rules. When secondary containment is not practicable, the owner or operator of a facility may deviate from the requirement under § 112.7(d), explain the rationale in the Plan, provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d).

Because a pit used as a form of secondary containment may pose a threat to birds and wildlife, we encourage an owner or operator who uses a pit to take measures to mitigate the effect of the pit on birds and wildlife. Such measures may include netting, fences, or other means to keep birds or animals away. In some cases, pits may also cause a discharge as described in § 112.1(b). The discharge may occur when oil spills over the top of the pit or when oil seeps through the ground into groundwater, and thence to navigable waters or adjoining shorelines. Therefore, we recommend that an owner or operator not use pits in an area where such pit may prove a source of such discharges. Should the oil reach navigable waters or adjoining shorelines, it is a reportable discharge under 40 CFR 110.6.

We disagree that the rule is duplicative of NPDES rules. Forseeable or chronic point source discharges that are permitted under CWA section 402, and that are either due to causes associated with the manufacturing or

other commercial activities in which the discharger is engaged or due to the operation of treatment facilities required by the NPDES permit, are to be regulated under the NPDES program. ''Classic spill'' situations are subject to the requirements of CWA section 311. Such spills are governed by section 311 even where the discharger holds a valid and effective NPDES permit under section 402. 52 FR 10712, 10714. Therefore, the typical bulk storage facility with no permitted discharge or treatment facility would not be under the NPDES rules.

The secondary containment requirements of the rule apply to bulk storage containers and their purpose is to help prevent discharges as described in § 112.1(b) by containing discharged oil. NPDES rules, on the other hand, may at times require secondary containment, but do not always. Furthermore, NPDES rules may not always apply to bulk storage facilities. Therefore, the rule is not always duplicative of NPDES rules. Where it is duplicative, an owner or operator of a facility subject to NPDES rules may use that portion of his Best Management Practice Plan as part of his SPCC Plan.

*Sufficient freeboard.* An essential part of secondary containment is sufficient freeboard to contain precipitation. Whatever method you use to calculate the amount of freeboard that is ''sufficient'' must be documented in the Plan. We believe that the proper standard of ''sufficient freeboard'' to contain precipitation is that amount necessary to contain precipitation from a 25-year, 24-hour storm event. That standard allows flexibility for varying climatic conditions. It is also the standard required for certain tank systems storing or treating hazardous waste. See, for example, 40 CFR 265.1(e)(1)(ii) and (e)(2)(ii). While we believe that 25-year, 24-hour storm event standard is appropriate for most facilities and protective of the environment, we are not making it a rule standard because of the difficulty and expense for some facilities of securing recent information concerning such storm events at this time. Recent data does not exist for all areas of the United States. Furthermore, available data may be costly for small operators to secure. Should recent and inexpensive information concerning a 25-year, 24-hour storm event for any part of the United States become easily accessible, we will reconsider proposing such a standard.

*Seventy-two-hour impermeability standard.* As noted above, we have decided to withdraw the proposal for the 72-hour impermeability standard and retain the current standard that diked areas must be sufficiently impervious to contain oil. We take this step because we agree with commenters that the purpose of secondary containment is to contain oil from reaching waters of the United States. The rationale for the 72-hour standard was to allow time for the discovery and removal of an oil spill. We believe that an owner or operator of a facility should have flexibility in how to prevent discharges as described in § 112.1(b), and that any method of containment that achieves that end is sufficient. Should such containment fail, an owner or operator must immediately clean up any discharged oil. Similarly, we intend that the purpose of the ''sufficiently impervious'' standard is to prevent discharges as described in § 112.1(b) by ensuring that diked areas can contain oil and are sufficiently impervious to prevent such discharges.

*Industry standards.* Industry standards that may assist an owner or operator with secondary containment for bulk storage containers include: (1) NFPA 30, ''Flammable and Combustible Liquids Code''; (2) BOCA, National Fire Prevention Code; (3) API Standard 2610, ''Design Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities''; and, (4) Petroleum Equipment Institute Recommended Practice 200, ''Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling.''

*Editorial changes and clarifications.* In the first sentence, ''spill'' becomes ''discharge.'' Also in that sentence, ''contents of the largest single tank'' becomes ''capacity of the largest single container.'' This is merely a clarification and has always been the intent of the rule. The contents of a container may vary from day to day, but the capacity remains the same. In discussing capacity, we noted in the 1991 preamble that ''the oil storage capacity (emphasis added) of the equipment, however, must be included in determining the total storage capacity of the facility, which determines whether a facility is subject to the Oil Pollution Prevention regulation.'' 56 FR 54623. We discuss this capacity in the context of the general requirements for secondary containment. Thus, it is clear that we have always intended capacity to be the determinative factor in both subjecting a facility to the rule and in determining the need for secondary containment.

We also deleted the phrase ''but they may not always be appropriate'' from the third sentence of the paragraph because it is confusing when compared to the text of § 112.7(d). Under § 112.7(d), if secondary containment is not practicable, you may provide a contingency plan in your SPCC Plan and otherwise comply with that section. In the last sentence, ''plant'' becomes ''facility.'' Also in that sentence, the phrase ''so that a spill could terminate * * *'' becomes ''so that any discharge will terminate.* * *''

*Section 112.8(c)(3)—Drainage of Rainwater*

*Background.* In 1991, we reproposed the current rule on drainage of rainwater, incorporating the CWA standard, *i.e.,* ''that may be harmful,'' into the proposal.

In 1997, we proposed that records required under NPDES §§ 122.41(j)(2) and 122.41(m)(3) would suffice for purposes of this section, so that you would not have to prepare duplicate records specifically for SPCC purposes. The proposed change would also apply to records maintained regarding inspection of diked areas in onshore oil production facilities prior to drainage. *See* 112.9(b)(1).

*Comments. 1991 comments.* One commenter in 1991 suggested that we allow use of NPDES records for purposes of this section. Another commenter suggested that records of discharges that do not violate water quality standards are unnecessary.

*1997 comments.* Many commenters favored the 1997 proposal. One commenter opposed the proposal if the records were not to be required by NPDES. Specifically, the commenter sought an exemption for discharges of rainwater containing animal fats and vegetable oils if such discharges are not regulated under NPDES rules. The commenter believed that an exception should be created for reporting and recording dike bypasses of § 112.7(e)(2)(iii)(D) relating to animal fats and vegetable oil storage, only requiring such reporting and recording if required by an NPDES stormwater permit, because in all cases discharge of contaminated stormwater is not permitted. Asking why EPA should regulate stormwater bypass events if the stormwater is not contaminated, the commenter argued that if stormwater permits do not require reporting and recording of dike bypass events, then EPA should not require an added tier of regulation under SPCC Plans. Other commenters thought that EPA was adopting by reference the NPDES rules and sought clarification on the issue.

*Response to comments.* We agree with the first 1991 commenter mentioned above and proposed that change in 1997. We disagree with the second 1991 commenter that records of discharges

that do not violate water quality standards are unnecessary. Such records show that the facility has complied with the rule.

We are not adopting the NPDES rules for SPCC purposes, but are only offering an alternative for recordkeeping. The intent of the rule is that you may, if you choose, use the NPDES stormwater discharge records in lieu of records specifically created for SPCC purposes. We are not incorporating the NPDES requirements into our rules by reference.

This paragraph applies to discharges of rainwater from diked areas that may contain any type of oil, including animal fats and vegetable oils. The only purpose of this paragraph is to offer a recordkeeping option so that you do not have to create a duplicate set of records for SPCC purposes, when adequate records created for NPDES purposes already exist.

*Editorial changes and clarifications.* In the introduction to the paragraph (c)(3), ''drainage of rainwater'' becomes ''drainage of uncontaminated rainwater.'' In paragraph (c)(3)(ii), which read, ''* * * run-off rainwater ensures compliance with applicable water quality standards and will not cause a discharge as described in 40 CFR part 110'' becomes ''* * * retained rainwater to ensure that its presence will not cause a discharge as described in § 112.1(b).'' Also in that paragraph, we deleted the phrase ''applicable water quality standards'' because such standards are encompassed within the phrase ''a discharge as described in § 112.1(b).''

*Section 112.8(c)(4)—Completely Buried Tanks; Corrosion Protection*

*Background.* In 1991, we reproposed the current rule requiring that new completely buried metallic storage tank installations (*i.e.,* installed on or after January 10, 1974) must be protected from corrosion by coatings, cathodic protection, or effective methods compatible with local soil conditions. We recommended that such buried tanks be subjected to regular leak testing. The rationale for the recommendation was that testing technology was rapidly advancing and we wanted more information on such technology before making the recommendation a requirement. We also stated a desire to be consistent with many State rules.

*Comments. Corrosion protection.* One commenter supported the proposal for corrosion protection. Another thought a requirement for corrosion protection ''if soil conditions warrant'' would be unenforceable. A third commenter complained that the proposal included no discussion of cathodic protection for tank bottoms in contact with soil or fill materials. Others thought facilities with underground tanks subject to part 112 should be required to develop a corrosion protection plan consistent with 40 CFR part 280, the rules for the Underground Storage Tanks Program.

*Leak testing.* Several commenters opposed the proposed recommendation for leak testing, arguing that owner/operator discretion should be retained. One commenter suggested that practices for annual integrity testing and for the installation of pipes under 40 CFR part 280 should be changed from recommended practices to required practices because recommendations with standards are not usually followed.

*Response to comments. Corrosion protection.* We agree in principle that all completely buried tanks should have some type of corrosion protection, but as proposed, we will only extend that requirement to new completely buried metallic storage tanks. Because corrosion protection is a feature of the current rule (see § 112.7(e)(2)(iv)), the requirement applies to completely buried metallic tanks installed on or after January 10, 1974. The requirement is enforceable because it is a procedure or method to prevent the discharge of oil. See section 311(j)(1)(C) of the CWA. Most owners or operators of completely buried storage tanks will be exempted from part 112 under this rule because such tanks are subject to all of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281. Those tanks subject to 40 CFR part 280 or a State program approved under 40 CFR part 281 will follow the corrosion protection provisions of that rule, which provides comparable environmental protection. Those that remain subject to the SPCC regulation must comply with this paragraph.

The rule requires corrosion protection for completely buried metallic tanks by a method compatible with local soil conditions. Local soil conditions might include fill material. The method of such corrosion protection is a question of good engineering practice which will vary from facility to facility. You should monitor such corrosion protection for effectiveness, in order to be sure that the method of protection you choose remains protective. See § 112.8(d)(1) for a discussion of corrosion protection for buried piping.

*Leak testing.* The current SPCC rule contains a provision calling for the ''regular pressure testing'' of buried metallic storage tanks. 40 CFR 112.7(e)(2)(iv). We proposed in 1991 a recommendation that such buried tanks be subject to regular ''leak testing.'' Proposed § 112.8(c)(4). Leak testing for purposes of this paragraph is testing to ensure liquid tightness of a container and whether it may discharge oil. We specified leak testing in the proposal, instead of pressure testing, in order to be consistent with many State regulations and because the technology on such testing was rapidly evolving. 56 FR at 54623.

We are modifying the leak testing recommendation to make it a requirement. We agree with the commenter who argued that such testing should be mandatory because recommendations may not often be followed. Appropriate methods of testing should be selected based on good engineering practice. Whatever method and schedule for testing the PE selects must be described in the Plan. Testing under the standards set out in 40 CFR part 280 or a State program approved under 40 CFR part 281 is certainly acceptable (as we suggested in the proposed rule). ''Regular testing'' means testing in accordance with industry standards or at a frequency sufficient to prevent leaks.

*Editorial changes and clarifications.* The first sentence of the proposed rule was deleted because it was surplus, and contained no mandatory requirements. It merely noted that completely buried metallic storage tanks represent a potential for undetected spills. ''Buried installation'' becomes ''completely buried metallic storage tank,'' to accord with the definition in § 112.2. We clarify that a ''new'' installation is one installed on or after January 10, 1974, the effective date of the SPCC rule, by deleting the word ''new'' and substituting the date. We deleted the phrase ''or other effective methods,'' because it is confusing when compared to the text of § 112.7(a)(2). Under § 112.7(a)(2), if you explain your reasons for nonconformance, you may use alternate methods providing equivalent environmental protection.

*Section 112.8(c)(5)—Partially Buried or Bunkered Tanks; Corrosion Protection*

*Background.* In 1991, we proposed changing the current requirement to avoid using partially buried metallic tanks into a recommendation. We proposed that if you do use such tanks, that you must protect them from corrosion.

*Comments.* One commenter argued that the rule should only apply to new tanks.

*Response to comments. Requirement v. recommendation.* Due to the risk of discharge caused by corrosion, we

decided to keep the current requirement to not use partially buried metallic tanks, unless the buried section of such tanks are protected from corrosion. The requirement to not use such tanks, unless they are protected from corrosion, applies to all partially buried metallic tanks, installed at any time.

*Editorial changes and clarifications.* Bunkered tanks are a subset of partially buried tanks, and are included within the rule to clarify that it applies to all partially buried tanks. We did not finalize the proposed phrase ''or other effective methods,'' because it is confusing when compared to the text of § 112.7(a)(2). Under § 112.7(a)(2), if you explain your reasons for nonconformance, you may use alternate methods providing equivalent environmental protection. The proposed recommendation that ''partially buried or bunkered metallic tanks be avoided, since partial burial at the earth can cause rapid corrosion of metallic surfaces, especially at the earth/air interface'' becomes a requirement to ''not use partially buried or bunkered metallic tanks for the storage of oil unless you protect the buried section of the tank from corrosion.''

*Section 112.8(c)(6)—Integrity Testing*

*Background.* In 1991, we proposed that integrity testing for bulk storage tanks be conducted at least every ten years and when material repairs are conducted. We gave several examples of ''material repairs'' in the preamble. The current requirement for such testing is that it be ''periodic.'' We also proposed that visual inspection, as a method of testing, must be combined with some other method, because visual testing alone is insufficient for an integrity test. 56 FR at 54623.

In 1997, we added a proposed sentence to the rule which would allow the use of usual and customary business records for integrity testing. We suggested that records maintained under API Standards 653 and 2610 would suffice for this purpose.

*Comments. 10-year integrity testing in general.* One commenter asked for a clarification of the term ''integrity testing.'' Several commenters favored the proposal for ten-year integrity testing. Other commenters opposed the requirement or favored turning it into a recommendation. Several commenters proposed testing according to accepted industry standards, such as American Petroleum Institute (API), National Fire Protection Association (NFPA), Underwriters Laboratory (UL), or American Society of Mechanical Engineers (ASME).

*Applicability of integrity testing.* Some asked for an exemption for tanks inside buildings. Others asked for an exemption for number 5 and 6 fuel oils, and asphalt, because such oils are heavy and would not flow very far. Some commenters believed the requirement should not apply to small facilities because it is ''not standard industry practice'' to conduct these tests at small facilities. Another commenter stated that while most large corporations perform testing at some frequency, most smaller businesses do not. The commenter suggested that exemptions because of size or quantity of oil stored should not be granted because the smaller facilities generally are more in need of testing.

Several commenters suggested that integrity testing should be waived for tanks which can be visually inspected on the bottom and all sides, such as tanks located off the ground on crates, and which have secondary containment. One commenter asked that the requirement apply only when the tank is used to store corrosive materials or where the tank has failed within the last five years. Other commenters asked for a phase-in of the requirement. Utilities asked that the requirement not apply to electrical equipment because no methods exist for integrity testing of such equipment, and because the primary reason for failure of such equipment is not corrosion, but mechanical failure.

*Material repairs.* Several commenters asked for clarification as to the meaning of ''material repairs.''

*Method of testing.* Some commenters favored visual inspection only because it might be used more frequently than any other method of testing. Another commenter asked for clarification if visual inspection meant inspection of both the interior and exterior of a tank. Another commenter suggested that we augment integrity testing procedures with procedures to test the tank bottom for settlement and corrosion, and to test roof supports.

*Business records.* Most commenters favored the proposal to allow use of usual and customary business records for integrity testing and other purposes. Some commenters argued that the suggested API Standards were unfamiliar to many owners and operators.

*Response to comments. 10-year integrity testing in general.* Integrity testing is a necessary component of any good prevention plan. A number of commenters supported a requirement for such testing. It will help to prevent discharges by testing the strength and imperviousness of the container. We agree with commenters that testing according to industry standards is preferable, and thus will maintain the current standard of regularly scheduled testing instead of prescribing a particular period for testing. Industry standards may at times be more specific and more stringent than our proposed rule. For example, API Standard 653 provides specific criteria for internal inspection frequencies based on the calculated corrosion rate, rather than an arbitrary time period. API Standard 653 allows the aboveground storage tank (AST) owner or operator the flexibility to implement a number of options to identify and prevent problems which ultimately lead to a loss of tank integrity. It establishes a minimum and maximum interval between internal inspections. It requires an internal AST inspection when the estimated corrosion rate indicates the bottom will have corroded to 0.1 inches. Certain prevention measures taken to prevent a discharge from the tank bottom may affect this action level (thickness). Once this point has been reached, the owner or operator has to make a decision, depending on the future service and operating environment of the tank, to either replace the whole tank, line the bottom, add cathodic protection, replace the tank bottom with a new bottom, add a release prevention barrier, or some combination of the above.

Another benefit from the use of industry standards is that they specify when and where specific tests may and may not be used. For example, API Standard 653 is very specific as to when radiographic tests may be used and when a full hydrostatic test is required after shell repairs. Depending on shell material toughness and thickness a full hydrotest is required for certain shell repairs. Allowing a visual inspection in these cases risks a tank failure similar to the 1988 Floreffe, Pennsylvania event. Testing on a ''regular schedule'' means testing per industry standards or at a frequency sufficient to prevent discharges. Whatever schedule the PE selects must be documented in the Plan.

*Applicability of integrity testing.* Integrity testing is essential for all aboveground containers to help prevent discharges. Testing will show whether corrosion has reached a point where repairs or replacement of the container is needed. Prevention of discharges is preferable to cleaning them up afterwards. Therefore, it must apply to large and small containers, containers on and off the ground wherever located, and to containers storing any type of oil. From all of these containers there exists the possibility of discharge. Because electrical, operating, and manufacturing

equipment are not bulk storage containers, the requirement is inapplicable to those devices or equipment. 56 FR 54623. Also, as noted by commenters, methods may not exist for integrity testing of such devices or equipment.

*Material repairs.* The rationale for testing at the time material repairs are conducted is that such repairs could materially increase the potential for oil to be discharged from the tank. Examples of such repairs include removing or replacing the annular plate ring; replacement of the container bottom; jacking of a container shell; installation of a 12-inch or larger nozzle in the shell; a door sheet, tombstone replacement in the shell, or other shell repair; or, such repairs that might materially change the potential for oil to be discharged from the container.

*Method of testing.* The rule requires visual testing in conjunction with another method of testing, because visual testing alone is normally insufficient to measure the integrity of a container. Visual testing alone might not detect problems which could lead to container failure. For example, studies of the 1988 Ashland oil spill suggest that the tank collapse resulted from a brittle fracture in the shell of the tank. Adequate fracture toughness of the base metal of existing tanks is an important consideration in discharge prevention, especially in cold weather. Although no definitive non-destructive test exists for testing fracture toughness, had the tank been evaluated for brittle fracture, for example under API standard 653, and had the evaluation shown that the tank was at risk for brittle fracture, the owner or operator could have taken measures to repair or modify the tank's operation to prevent failure.

For certain smaller shop-built containers in which internal corrosion poses minimal risk of failure; which are inspected at least monthly; and, for which all sides are visible (*i.e.,* the container has no contact with the ground), visual inspection alone might suffice, subject to good engineering practice. In such case the owner or operator must explain in the Plan why visual integrity testing alone is sufficient, and provide equivalent environmental protection. 40 CFR 112.7(a)(2). However, containers which are in contact with the ground must be evaluated for integrity in accordance with industry standards and good engineering practice.

*Business records.* You may use usual and customary business records, at your option, for purposes of integrity testing recordkeeping. Specifically, you may use records maintained under API Standards 653 and 2610 for purposes of this section, if you choose. Other usual and customary business records either existing or to be developed in the future may also suffice. Or, you may elect to keep separate records for SPCC purposes. This section requires you to keep comparison records. Section 112.7(e) requires retention of these records for three years. You should note, however, that certain industry standards (for example, API Standards 570 and 653) may specify that an owner or operator maintain records for longer than three years.

*Industry standards.* Industry standards that may assist an owner or operator with integrity testing include: (1) API Standard 653, ''Tank Inspection, Repair, Alteration, and Reconstruction''; (2) API Recommended Practice 575, ''Inspection of Atmospheric and Low-Pressure Tanks;'' and, (3) Steel Tank Institute Standard SP001–00, ''Standard for Inspection of In-Service Shop Fabricated Aboveground Tanks for Storage of Combustible and Flammable Liquids.''

*Editorial changes and clarifications.* In the first sentence, ''Aboveground tanks shall be subject to integrity testing * * *'' becomes ''Test each container for integrity * * *'' Also in that sentence, the phrase ''or a system of non-destructive shell testing'' becomes ''or another system of non-destructive shell testing.'' The last sentence which read, ''* * * the outside of the container must be frequently observed by operating personnel for signs of deterioration, leaks, * * *'' becomes ''* * * you must frequently inspect the outside of the container for signs of deterioration, leaks, * * *'' We made that change because the requirements of this paragraph are the responsibility of the owner or operator, not of ''operating personnel.''

''Integrity testing'' is any means to measure the strength (structural soundness) of the container shell, bottom, and/or floor to contain oil and may include leak testing to determine whether the container will discharge oil. It includes, but is not limited to, testing foundations and supports of containers. Its scope includes both the inside and outside of the container. It also includes frequent observation of the outside of the container for signs of deterioration, leaks, or accumulation of oil inside diked areas.

*Section 112.8(c)(7)—Leakage; Internal Heating Coils*

*Background.* In 1991, we proposed that the current rule on controlling leakage through defective internal heating coils should be modified to include a recommendation that retention systems be designed to hold the contents of an entire tank. We also proposed to change the current requirement to consider the feasibility of installing external heating systems into a recommendation.

*Comments.* One commenter proposed that instead of requiring a retention system which would hold the entire contents of a tank, that an oil/water separator might work just as well. Another commenter opposed requiring the use of oil/water separators. As to the proposed recommendation to consider use of external heating systems, one commenter objected to the cost which might be incurred. One commenter opposed the proposed recommendation due to the belief that leaks in the aboveground piping can be mitigated through daily inspections and they are often placed within secondary containment. Another commenter asserted that with drainage routed to oil/water separators or holding ponds, leak proof galleys under aboveground piping were redundant and economically unjustified.

*Response to comments.* The rule does not mandate the use of any specific separation or retention system. Any system that achieves the purpose of the rule is acceptable. That purpose is to prevent discharges as described in § 112.1(b) by controlling leakage.

*Editorial changes and clarifications.* We deleted the proposed recommendations from the rule because we do not wish to confuse the regulated public as to what is mandatory and what is discretionary. We have included only requirements in the rule.

*Section 112.8(c)(8)—Good Engineering Practice—Alarm Systems*

*Background.* In 1991, we reproposed the current rule on ''fail-safe'' engineering. We added a proposal to allow alternate technologies. We recommended that sensing devices be tested in accordance with industry standards.

*Comments. Editorial changes and clarifications.* Several commenters objected to the term ''fail-safe'' engineering because they believe that nothing is ever fail-safe. They suggested using the term ''in accordance with good engineering practice,'' or ''consistent with accepted industry practices'' instead.

*Applicability.* One commenter thought the proposed requirement should apply to large facilities only or facilities that were the cause of a reportable spill within the preceding three years. One commenter suggested a phase-in of the requirement.

*Monitoring.* One commenter suggested that a person must be present to monitor gauges when a fast response system is used to prevent container overfilling. Another suggested that the requirement for alarm devices not apply to containers where an operator is present.

*Alternatives.* One commenter suggested that certain ''procedures'' might suffice instead of alarm devices. Another commenter suggested that we need to be specific as to methods of testing.

*Response to comments. Applicability.* Alarm system devices are necessary for all facilities, large or small, to prevent discharges. Such systems alert the owner or operator to potential container overfills, which are a common cause of discharges. Because this is a requirement in the current rule, no phase-in is necessary.

*Monitoring.* We agree with the commenter that a person must be present to monitor a fast response system to prevent overfills and have amended the rule accordingly. We disagree that the requirement for alarm devices should not apply when a person is present, because human error, negligence, on inattention may still occur in those cases, necessitating some kind of alarm device.

*Alternatives.* Under the deviation rule at § 112.7(a)(2), you may substitute ''procedures'' or other measures that provide equivalent environmental protection as any of the alarm systems mandated in the rule if you can explain your reasons for nonconformance.

*Industry standards.* Industry standards that may assist an owner or operator with alarm systems, discharge prevention systems, and inventory control include: (1) NFPA 30, ''Flammable and Combustible Liquids Code''; (2) API Recommended Practice 2350, ''Overfill Protection for Storage Tanks in Petroleum Facilities''; and, (3) API, ''Manual of Petroleum Measurement Standards.''

*Editorial changes and clarifications.* Throughout, ''tank'' becomes ''container.'' In the introductory paragraph, we deleted the words ''as far as practical'' from the rule text because they are confusing when compared with the text of § 112.7(a)(2). Under § 112.7(a)(2), you may deviate from a requirement if you explain your reasons for nonconformance and provide equivalent environmental protection. ''Spills'' becomes ''discharges.'' We agree with the commenter that ''fail-safe'' engineering is inappropriate and have substituted ''in accordance with good engineering practice.'' The change in terminology does not imply any substantive change in the level of environmental protection required, it is merely editorial. Finally, in the introductory paragraph the phrase ''one or more of the following devices'' becomes ''at least one of the following.'' Not all of the items listed under this paragraph are devices. For example, regular testing of liquid sensing devices is a procedure. Therefore, the word ''devices'' was incomplete. In paragraph (i), ''manned operation'' becomes ''attended operation,'' and ''plants'' becomes ''facilities.'' In paragraph (iv), the phrase ''or their equivalent,'' was deleted because it is confusing when compared with the text of § 112.7(a)(2). Under § 112.7(a)(2), you may deviate from a requirement if you explain your reasons for nonconformance, and provide equivalent environmental protection. Proposed paragraph (v), relating to alternative technologies, was deleted because alternative devices are allowed under § 112.7(a)(2).

*Section 112.8(c)(9)—Effluent Disposal Facilities*

*Background.* In 1991, we reproposed the current rule on observation of effluent disposal facilities.

*Comments.* We received only one comment which asked us to clarify that ''effluents'' mean oil-contaminated water collected within secondary containment areas, and that ''disposal facilities'' means ''treatment facilities.''

*Editorial changes and clarifications.* ''Oil spill event'' becomes ''discharge as described in § 112.1(b).'' ''System upset'' refers to an event involving a discharge of oil-contaminated water. ''Effluent'' means oil-contaminated water. ''Disposal facilities'' becomes ''effluent treatment facilities.''

*Section 112.8(c)(10)—Visible Oil Leaks*

*Background.* In 1991, we reproposed the current requirement that visible oil leaks must be promptly corrected. Additionally, we proposed that accumulated oil or oil-contaminated materials must be removed within 72 hours. The 72-hour proposal in this paragraph was consistent with the proposal in § 112.7(c). The rationale was that a 72-hour time period would allow time for discovery and removal of an oil discharge in most cases. We suggested in the preamble to the 1991 proposal that most facilities are attended at some time within a 72-hour time period. 56 FR 54621.

*Comments. Editorial changes and clarifications.* One commenter asked for clarification of the meaning of ''accumulation'' of oil. Others asked for clarification of the meaning of ''oil contaminated materials.'' Another commenter noted that reference to a spill event within a diked area is inconsistent with its definition.

*Applicability.* Some commenters thought the requirement should not apply to small facilities because of the likelihood that the discharge would be smaller.

*Extent and methods of cleanup.* One commenter suggested that covering soil with plastic film may be an acceptable method to prevent stormwater contamination during remediation. Some commenters suggested that where a spill creates a risk of fire or explosion, the first priority should be to eliminate such threats before undertaking cleanup. Several commenters asked whether removal of accumulations of oil means complete removal. Some commenters feared that a requirement to remove oil-contaminated materials would be interpreted to mean that cleanup of portions of the dike that are oil-stained is required. The commenters were concerned that such a cleanup would undermine the stability of the dike and would be unnecessary. One commenter argued that complete removal would compound landfill disposal problems. Another commenter asked whether the rule contemplates cleanup of soil contaminated by past practices. Some commenters argued that the 72-hour requirement would preclude bioremediation.

*72-hour cleanup standard.* Some commenters asked how a 72-hour time limit would be calculated. Those commenters suggested that the clock begin to run from the time of the discharge itself, or of its discovery. Others suggested different time periods from ''immediately,'' ''as soon as possible,'' ''within 72 hours,'' ''within 96 hours,'' or ''expeditiously.'' One commenter suggested no time limit. Some commenters noted that a containment system might be designed to contain oil for more than 72 hours before it begins to leak.

One commenter suggested that, depending on site conditions, a 72-hour time limit might jeopardize worker health and safety. Another sought clarification on the need to clean up small discharges as opposed to larger ones within the proposed time limit.

Numerous commenters opposed this requirement because it might preclude bioremediation. Some thought it would be impossible to meet.

*Response to comments. Applicability.* The requirement to clean up an accumulation of oil is applicable to all facilities, large and small. The damage to the environment may be the same, depending on the amount discharged.

*Extent of and methods of cleanup.* Prevention of contamination is always the preferred alternative. If you choose, you may spread plastic film over the diked area if it will prevent the occurrence of an accumulation of oil. Of course, you must then dispose of the film properly. We agree with commenters that where a discharge creates a risk of fire or explosion, the first priority should be to eliminate such threat before undertaking cleanup. But once that threat is removed, correction of the source of the discharge and cleanup must begin promptly.

No matter what method of cleanup you choose, you must completely remove the accumulation of oil. Any method that works and complies with all other applicable laws and regulations is acceptable. Bioremediation may be one acceptable method of cleanup. Acceptable methods will depend on weather and other environmental conditions. We do not mean to limit cleanup methods, which will depend on good engineering practice. If the cleanup method you choose would undermine the stability of the dike, you must repair the dike to its previous condition.

*72-hour cleanup standard.* We have deleted the 72-hour cleanup standard because it would preclude bioremediation. We also agree that under certain circumstances, such a limit might jeopardize worker health and safety. Therefore, we have maintained the current standard that visible discharges must be promptly removed. ''Prompt'' removal means beginning the cleanup of any accumulation of oil immediately after discovery of the discharge, or immediately after any actions to prevent fire or explosion or other threats to worker health and safety, but such actions may not be used to unreasonably delay such efforts. The size of the accumulation is irrelevant, as any accumulation may migrate to navigable waters or adjoining shorelines.

*Editorial changes and clarifications.* ''Leaks'' becomes ''discharges.'' ''Tank'' becomes ''container.'' ''Accumulation of oil'' means a discharge that causes a ''film or sheen'' in a diked area, or causes a sludge or emulsion there. See 40 CFR 110.3(b). The reference to violation of applicable water quality standards in 40 CFR 110.3(b) does not apply here because the rule assumes that the oil will not have reached any waters of the United States or adjoining shorelines, but stays entirely within the diked area of the facility. The term ''oil-contaminated materials'' is not used in the rule. We eliminate the term ''oil-contaminated materials'' that was used in the proposed rule because oil must accumulate on something such as materials or soil. Therefore, the term is redundant. Instead we refer to an accumulation of oil, which includes anything on which the oil gathers or amasses within the diked area. Such accumulation may include oil-contaminated soil or any other oil-contaminated material within the diked area impairing the secondary containment system. See also the discussion of ''accumulation of oil'' included with the response to comments of § 112.9(b)(2). We have removed the term ''spill event'' from the proposed paragraph and note that we agree with the commenter who noted that reference to a ''spill event,'' or ''a discharge as described in § 112.1(b),'' within a diked area is inconsistent with that concept.

*Section 112.8(c)(11)—Mobile Containers*

*Background.* In 1991, we proposed to require that mobile tanks be positioned or located to prevent oil discharges. We recommended secondary containment for the largest single compartment or tank of any mobile container. We also recommended that these containers not be located where they will be subject to periodic flooding or washout.

*Comments. Scope of discharge prevention.* One commenter asked that the rule be amended to refer to discharges to navigable waters, instead of discharges.

*Time limits.* One commenter asked that a mobile or portable container be defined as a container which is in place on a contiguous property for 10 days or less.

*Secondary containment.* Two commenters supported the secondary containment proposals, but favored making them requirements instead of recommendations. One commenter asked that the secondary containment recommendation for the largest single compartment or container be modified to include tanks which are manifolded together or otherwise have overflow capabilities. Another commenter suggested that secondary containment provide freeboard sufficient to contain precipitation from a 25-year storm event.

*Floods.* Other commenters asked for a requirement that mobile tanks not be located in areas subject to flooding.

*Response to comments. Scope of discharge prevention.* We agree that the purpose of the rule is to prevent discharges from becoming discharges as described in § 112.1(b). Therefore, in response to comment, we have modified the proposed rule to require positioning or locating mobile or portable containers to prevent ''a discharge as described in § 112.1(b),'' rather than ''oil discharges.'' ''A discharge as described in § 112.1(b)'' is a more inclusive term, tracking the expanded scope of the amended CWA.

*Time limits.* We decline to place a time limitation in a definition of mobile or portable containers. Mobile or portable containers may be in place for more than ten days and still be mobile. Mobile containers that are in place for less than 10 days may still experience a discharge as described in § 112.1(b).

*Secondary containment.* In response to comments, we have maintained the secondary containment requirement in the current rule because secondary containment is necessary for mobile containers for the same reason that it is necessary for fixed containers; to prevent discharges from becoming discharges as described in § 112.1(b). Secondary containment must also be designed so that there is ample freeboard for anticipated precipitation. We have therefore amended the rule on the suggestion of a commenter to provide for freeboard. We agree with the commenter that the amount of freeboard should be sufficient to contain a 25-year storm event, but are not adopting that standard because of the difficulty and expense for some facilities in securing recent information concerning 25-year, 24-hour storm events at this time. Should that situation change, we will reconsider proposing such a standard in rule text. Freeboard sufficient to contain precipitation is freeboard according to industry standards, or in an amount that will avert a discharge as described in § 112.1(b). Should secondary containment not be practicable, you may be able to deviate from the requirement under § 112.7(d).

We clarify that the secondary containment requirement relates to the capacity of the largest single compartment or container. Permanently manifolded tanks are tanks that are designed, installed, or operated in such a manner that the multiple containers function as a single storage unit. Containers that are permanently manifolded together may count as the ''largest single compartment,'' as referenced in the rule.

*Floods.* We deleted the proposed recommendation on siting of mobile containers in this rule because we do not wish to confuse the regulated public over what is mandatory and what is discretionary. These rules contain only mandatory requirements.

*Industry standards.* Industry standards that may assist an owner or operator with secondary containment for mobile containers include: (1) NFPA 30, ''Flammable and Combustible

Liquids Code'; and, (2) BOCA, ''National Fire Prevention Code.''

*Editorial changes and clarifications.* ''Spill event'' becomes ''a discharge as described in § 112.1(b).'' ''Tank'' becomes ''container.'' We deleted the word ''onshore'' because the whole section applies only to onshore facilities.

*Section 112.8(d)(1)—Buried Piping—Facility Transfer Operations, Pumping, and Facility Process (Onshore) (Excluding Production Facilities)*

*Background.* In 1991, we proposed a new recommendation that all piping installations should be placed aboveground wherever possible. We added a new proposed requirement that would require protective coating and cathodic protection for new or replaced buried piping. The current rule requires such coating and cathodic protection only if soil conditions warrant. We explained in the preamble that we believe that all soil conditions warrant protection of buried piping. We did not propose to make the requirement applicable to all existing piping because of the significant possibility that replacing all unprotected buried piping might cause more discharges than it would prevent. If soil conditions warrant such protection for existing piping, it is already required by the current rule. We also proposed a new recommendation that buried piping installation comply to the extent possible with all the relevant provisions of 40 CFR part 280.

*Comments. Aboveground piping recommendation.* Two commenters favored the recommendation. Others requested that it be modified to have all piping be aboveground only when appropriate, on the theory that some aboveground piping may become an obstacle to motorized traffic within a facility, or may be a hazard to worker safety because of the possibility of tripping over it.

*Corrosion protection.* Several commenters supported the proposal to require corrosion protection for all new or replaced buried piping. One commenter believed that corrosion protection should be required, as in the current rule, only where soil conditions warrant. One commenter asked for clarification that the requirement for replaced piping only applies to the section replaced, not necessarily to the entire line of piping. Another commenter believed that corrosion protection was inadequate to protect from discharges, and urged a requirement for double-walled piping or secondary containment and product sensitive leak detection for new facilities. One commenter believed that the recommendation for buried piping installation to comply with 40 CFR part 280 should be a requirement, not a recommendation.

*Response to comments. Aboveground piping recommendation.* While we have deleted the proposed recommendation from the rule text because we do not wish to confuse the regulated public over what is mandatory and what is discretionary, we still believe that piping should be placed aboveground whenever possible because such placement makes it easier to detect discharges. The decision to place piping aboveground might include consideration of safety and traffic factors.

*Corrosion protection.* Based on EPA experience, we believe that all soil conditions warrant protection of new and replaced buried piping. EPA's cause of release study indicates that the operational piping portion of an underground storage tank system is twice as likely as the tank portion to be the source of a discharge. Piping failures are caused equally by poor workmanship and corrosion. Metal areas made active by threading have a high propensity to corrode if not coated and cathodically protected. See 53 FR 37082, 37127, September 23, 1988; and ''Causes of Release from US Systems,'' September 1987, EPA 510-R–92–702. If you decide to deviate from the requirement, for example, to provide an alternate means of protection other than coating or cathodic protection, you may do so, but must explain your reasons for nonconformance, and demonstrate that you are providing equivalent environmental protection. A deviation which seeks to avoid coating or cathodic protection, or some alternate means of buried piping protection, on the grounds that the soil is somehow incompatible with such measure(s), will not be acceptable to EPA.

A ''new'' or ''replaced'' buried piping installation is one that is installed 30 days or more after the date of publication of this rule in the **Federal Register**. We have deleted the words ''new'' and ''replaced'' from the proposed language and substituted this specific date so the effective date is clearer to the regulated community. Under the current rule, you have an obligation to provide buried piping installations with protective wrapping and coating only if soil conditions warrant such measures. Under the revised rule, you must provide such wrapping and coating for new or replaced buried piping installations regardless of soil conditions.

You should consult a corrosion professional before design, installation, or repair of any corrosion protection system. Any corrosion protection you provide should be installed according to relevant industry standards. When piping is replaced, you must protect from corrosion only the replaced section, although protection of the entire line whenever possible is preferable. Equipping only a small portion of piping with corrosion protection may accelerate corrosion rates on connected unprotected piping. While we agree that corrosion protection might not prevent all discharges from buried piping, it is an important measure because it will help to prevent most discharges.

Double-walled piping or secondary containment or sensitive leak detection for buried piping may be acceptable as a deviation from the requirements of this paragraph under § 112.7(a)(2) if you explain your reasons for nonconformance with the requirement and show that the means you selected provides equivalent environmental protection to the requirement. However, we will not require such measures because we did not propose them.

We have deleted the recommendation from the proposed rule that all buried piping installations comply to the extent practicable with 40 CFR part 280, because we are excluding recommendations from this rule to avoid confusion with what is mandatory and what is discretionary. Also, some buried piping now subject to part 112 will be subject only to 40 CFR part 280 or a State program approved under 40 CFR part 281 under this rule. See § 112.1(d)(4).

*Industry standards.* Industry standards that may assist an owner or operator with corrosion protection for buried piping installations include: (1) National Association of Corrosion Engineers (NACE) Recommended Practice-0169, ''Control of External Corrosion on Underground or Submerged Metallic Piping Systems''; and, (2) STI Recommended Practice 892, ''Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems.''

*Editorial changes and clarifications.* In the second sentence of paragraph (d)(1), we included a reference to ''a State program approved under part 281 of this chapter.'' In the third sentence, ''examine'' and ''examination'' become ''inspect'' and ''inspection.''

*Section 112.8(d)(2)—Terminal Connections*

*Background.* In 1991, we proposed that when piping is not in service or is in standby service for 6 months or more, the terminal connection at the transfer point must be capped or blank-flanged and marked as to origin. The current rule requires such capping or blank-flanging when the piping is not in service or is in standby service ''for an extended time.''

*Comments.* One commenter supported the six-month clarification of an ''extended time.'' Several commenters opposed the requirement to cap or blank-flange piping in standby service because such piping may be needed to be put into service quickly during an emergency to ensure safe operations at the facility. The commenter suggested that the rule be reworded to say ''When piping is not in service or is not in standby service.''

*Response to comments.* We have decided to keep the current standard of requiring capping or blank-flanging terminal connections when such piping is not in service or is in standby for an extended time in order to maintain flexibility for variable facilities and engineering conditions. We define ''an extended time'' in reference to industry standards or at a frequency sufficient to prevent discharges. We disagree with commenters that the requirement should not apply to piping that is not in standby service because some discharges may be caused by loading or unloading oil through the wrong piping or turning the wrong valve when the piping in question was actually out-of-service. Typically, piping that is in standby service is only needed in emergency situations or when there is an operational problem. In the rare situations when such piping is needed immediately, the owner or operator may remove the cap or blank-flange to return the piping to service.

*Editorial changes and clarifications.* ''Examine'' becomes ''inspect.''

*Section 112.8(d)(3)—Pipe Supports*

*Background.* In 1991, we reproposed without substantive change the current rule concerning pipe supports.

*Comments.* We received no comments on this proposal. Therefore, we have promulgated the provision as proposed.

*Section 112.8(d)(4)—Inspection of Aboveground Valves and Piping*

*Background.* In 1991, we proposed that you examine all aboveground valves, piping, and appurtenances on at least a monthly basis. This contrasts with the current requirement of ''regular'' examinations. We also recommended that you conduct annual integrity and leak testing of buried piping, or that you monitor it on a monthly basis. Finally, we recommended that all valves, pipes, and appurtenances conform to relevant industry codes, such as ASME standards. We proposed deletion from the rule of the current requirement for periodic pressure testing for piping where facility drainage is such that a failure might lead to a spill event.

*Comments. Monthly examination of aboveground valves, piping, and appurtenances.* One commenter supported the visual monthly examination proposal, but suggested that we require a more sophisticated method of testing every three to four years, such as pressure testing. Most other commenters opposed monthly examinations, on grounds of impracticality. Most opposing commenters urged testing on a quarterly or semiannual basis, or per industry standards. Some thought the requirement should be a recommendation, both for large and small facilities. Electrical utility commenters asserted that the monthly testing of millions of pieces of equipment would be extremely burdensome. Several commenters urged that the examination requirement be limited to visual examination because of the cost of other methods.

*Buried piping.* Several commenters favored the proposed recommendation for annual integrity and leak testing of buried piping or monitoring of such piping on a monthly basis. One commenter was concerned that the recommendation made no concession for piping construction material, length of time in the ground, etc. Several commenters believed that the recommendation should be a requirement because piping often runs outside of secondary containment; buried piping cannot be inspected visually; discharges are common from this piping; and few owners or operators conduct integrity or leak testing of such piping. Some thought it should be a requirement for all facilities, others just for large facilities. One commenter thought that the requirement to inspect buried piping only when exposed is inadequate. The commenter suggested that the piping should be subject to pressure testing. The frequency of the testing would be based on aquifer use.

Opposing commenters believed annual testing or monthly monitoring was unnecessary, generally citing cost and practicability reasons. Some suggested differing time periods for testing, such as every three years, or every ten years. One commenter believed that the recommendation should not apply to piping of less than ten feet. Others asked for clarification as to the type of testing contemplated. One commenter suggested that the recommendation be clarified to refer only to oil-handling piping and equipment, and not include buried piping unrelated to oil operations. Several commenters suggested that we add a requirement to the rule to conduct integrity and leak testing of protected piping at the time of installation, modification, construction, relocation, or replacement, and to conduct an engineering evaluation of in-service unprotected underground piping every five years. Another commenter suggested double-walled piping as an alternative. One commenter suggested that the recommendation was inappropriate for vaulted tanks because of the configuration of the tanks.

*Response to comments. Monthly inspection of aboveground valves, piping, and appurtenances.* Inspection of aboveground valves, piping, and appurtenances must be a requirement to help prevent discharges. Such valves, piping, and appurtenances often are located outside of secondary containment systems, and often do not have double-wall protection or some form of secondary containment themselves. Therefore, any discharge from such valves, piping, and appurtenances is more likely to become a discharge as described in § 112.1(b). Examination of discharge reports from the Emergency Response Notification System (ERNS) shows that discharges from such valves, piping, and appurtenances are much more common than catastrophic tank failure or discharges from tanks. The requirement must be applicable to large and small facilities covered by this section that store oil, because of the same threat of discharge.

The requirements of this paragraph do not apply to electrical utilities and other facilities with oil-filled equipment because they are not bulk storage facilities.

The final rule maintains the current standard of ''regular'' inspections, on the suggestion of commenters who noted that at some remote sites monthly inspections are impractical, especially in harsh weather conditions. Furthermore, we agree with commenters that ''regular'' inspections are inspections conducted ''in accordance with accepted industry standards,'' rather than the monthly proposed standard. You must include appurtenances in the inspection. Inspections may be either visual or by

other means, including pressure testing. However, we do not require pressure testing or any other specific method. We agree that, subject to good engineering practice, pressure testing every three or four years may be warranted in addition to regular inspection of aboveground valves, piping, and appurtenances. However, we believe that regular inspection is sufficient to help prevent discharges and will not impose any additional requirements at this time.

*Buried piping.* We have deleted the text of the proposed recommendation to conduct annual integrity and leak testing of buried piping or monitor buried piping on a monthly basis from the rule because we do not wish to confuse the regulated public over what is mandatory and what is discretionary. This rule contains only mandatory requirements. However, we continue to endorse the recommendation as a discretionary action, and suggest that you conduct such testing according to industry standards.

We agree with a commenter that the proposed recommendation would apply only to ''oil-handling'' piping and valves, not all such piping and valves, which may be unrelated to oil activities. However, no change in rule text is necessary because the entire rule applies only to procedures, methods, or equipment that are involved with the storage or use of oil. In response to the commenter who urged that the proposed recommendation not apply to buried piping of less than 10 feet in length, we believe that any buried piping, regardless of length, may cause a discharge, and therefore should be tested. Double-walled piping might be an acceptable alternative to integrity and leak testing or monthly monitoring. If you choose double-walled piping as an alternative, you must explain your nonconformance with the rule requirements, and explain how double-walled piping provides equivalent environmental protection. See 112.7(a)(2).

On the suggestion of commenters, we have modified the proposed recommendation for annual testing or monthly monitoring of buried piping into a requirement that you must only conduct integrity and leak testing of such piping at the time of installation, modification, construction, relocation, or replacement. We believe that when piping is exposed for any reason, integrity and leak testing of such exposed piping according to industry standards is appropriate because piping is visible at that point, and testing is easier because the piping is more accessible. The same commenters also recommended that unprotected underground piping be subject to engineering evaluations every five years, but we recommend such evaluations be conducted in accordance with industry standards to preserve flexibility in case the time frame changes with changing technology.

If you have vaulted containers, the requirement for integrity and leak testing of buried piping might be the subject of a deviation under § 112.7(a)(2) if those pipes, valves, and fittings come out of the top of the container and are not buried, or are encased in a double-walled piping system and you thereby significantly reduce the potential for corrosion.

Likewise, we have deleted from rule text the recommendation that all valves, pipes, and appurtenances conform to industry standards, but we endorse its substance.

*Industry standards.* Industry standards that may assist an owner or operator with inspection and testing of valves, piping, and appurtenances include: (1) API Standard 570, ''Piping Inspection Code (Inspection, Repair, Alteration, and Rerating of In-Service Piping Systems''; (2) API Recommended Practice 574, ''Inspection Practices for Piping System Components''; (3) American Society of Mechanical Engineers (ASME) B31.3, ''Process Piping''; and, (4) ASME B31.4, ''Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols.''

*Editorial changes and clarifications.* ''Examine'' and ''examination'' become ''inspect'' and ''inspection.'' We have deleted the reference to ''operating personnel'' in the first sentence because all of the requirements of this rule, except when specifically noted otherwise, are the responsibility of the owner or operator.

*Section 112.8(d)(5)—Vehicular Traffic*

*Background.* In 1991, we reproposed the current rule concerning warnings to vehicular traffic, because of vehicle size, to avoid endangering aboveground piping. We proposed to amend the rule to include avoidance of endangering ''other transfer operations'' within the scope of the warning. We added a recommendation that weight restrictions should be posted, as applicable, to prevent damage to underground piping.

*Comments. Vehicular warnings.* Several commenters supported the current requirement to warn vehicular traffic to avoid endangering aboveground piping or other transfer operations because of vehicle size. Others believed that any size or weight restrictions would unnecessarily burden facility operations. See the comments below on weight restrictions. Some believed the proposed requirement should be a recommendation based on good engineering practices. One thought it made no difference. One commenter proposed as an alternative, marking such piping so it could be temporarily protected or avoided. One commenter suggested that it would be more prudent to require signs where piping is lower than 14 feet and located such that vehicles can traverse, and recommended that, in addition to signs, verbal warnings be provided.

*Weight restriction posting.* Several commenters supported making this recommendation a requirement because good engineering practice will exclude heavy equipment from crossing buried piping which does not have adequate cover to protect the pipe.

Others opposed it on the grounds it would restrict access to vehicles which ''have driven over the same piping for a dozen or more years.'' One commenter thought the recommendation was unnecessary because local building codes or other standards already address the issue of buried piping protection. Some thought the recommendation should be a matter of PE discretion. Several commenters thought that the recommendation should apply to large facilities only because only large facilities will have the type of tanker trucks on site which would potentially damage underground piping. One commenter thought that small facilities should be exempt from the recommendation.

Another commenter believed that the recommendation should be restricted to situations where it is not certain that the underground piping can withstand all anticipated vehicular traffic. Another commenter suggested that if buried piping is placed across a thoroughfare, it should be installed with additional structural protection. The commenter asserted that proper installation is a preventative and is a better alternative than a sign because signs are not always heeded.

One commenter suggested that posting of weight restrictions at airports in open areas would be impractical and impact operations. The commenter argued that the proposal was unreasonable where some buried piping/hydrant systems run under ramp surfaces. A railroad commenter argued that the recommendation is overly broad because railroads have a large amount of piping under track that is built to withstand maximum loads from vehicular traffic, making the posting of signs unnecessary and costly. One commenter argued that the requirement was inapplicable to vaulted tanks

because the concrete vault reduced the risk of vehicular damage.

*Response to comments. Vehicular warnings.* The requirement to warn vehicular traffic so that no vehicle will endanger aboveground piping or other oil transfer operations applies to all facilities, large or small, because vehicular traffic may endanger aboveground piping or other transfer operations at all facilities. Warnings may include verbal warnings, signs, or marking and temporary protection of piping or equipment. No particular height restriction is incorporated into the rule. Rather, aboveground piping at any height must be protected from vehicular traffic unless the piping is so high that all vehicular traffic passes underneath the piping. In this case, or where the requirement is infeasible, you may be able to use the deviation provision in § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection. We have deleted the clause concerning the size of vehicles that may endanger piping or oil transfer operations because the owner or operator may not be able to determine precisely when the size or weight of a vehicle would cause such endangerment.

In response to commenters who suggested that the posting of signs is impractical and might impact operations, or would be very costly, we note that you may deviate from the requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

*Weight restriction posting.* We deleted the proposed recommendation concerning weight restrictions as they relate to underground piping from rule text, but still support it when appropriate. We include only mandatory items in this rule because we do not wish to confuse the regulated public as to what is mandatory and what is discretionary. We decline to make the recommendation a requirement because we believe the appropriate posting of weight restrictions should be a matter of good engineering practice.

*Editorial changes and clarifications.* We deleted the references to verbal warning or appropriate signs in the rule. Instead, the rule contains an obligation to warn entering vehicular traffic. Warnings may be verbal, by signs, or by other appropriate methods.

*Introduction to Section 112.9*

*Background.* We have added an introduction to help rewrite the section in the active voice. Since the owner or operator is the person with responsibility to implement a Plan, the mandates of the rule are properly addressed to him, except as specifically noted.

*Section 112.9(a)—General Requirements—Onshore Oil Production Facilities*

*Background.* This is a new provision that merely references the general requirements which all facilities must meet as well as the specific requirements that you must meet if you are an owner or operator of a facility in the category of onshore oil production facilities.

*Editorial changes and clarifications.* The obligation to ''address'' general SPCC requirements becomes the obligation to ''meet'' those requirements. ''Spill prevention'' becomes ''discharge prevention.'' We also deleted the word ''onshore'' from the titles of the paragraphs of this section because the entire section applies only to onshore production facilities.

*Proposed Section 112.9(b)—Definition—Onshore Oil Production Facilities*

*Background.* This proposed section was merely a reference to the old definition of onshore oil production facility (*see* current § 112.7(e)(5)(i)), which is today incorporated within the new definition of production facility. Therefore, the section is no longer necessary and we have deleted it.

*Section 112.9(b)(1), Proposed as § 112.9(c)(1)—Dike Drains and Drainage*

*Background.* In 1991, we reproposed the current rule concerning drainage of diked areas.

*Comments. Editorial changes and clarifications.* One commenter suggested an editorial change from discharges to ''navigable waters,'' to a discharge as referenced in § 112.1(b)(1).

*Applicability.* Another commenter urged a small facility exemption from this requirement because the recordkeeping involved was too burdensome.

*Engineering methods.* One commenter believed that the requirement to have all drains closed on dikes around storage containers might preclude engineering methods designed to handle flow-through conditions at water flood oil production operations, where large volumes of water may be directed to oil storage tanks if water discharge lines on oil-water separators become plugged.

*Response to comments. Applicability.* We believe that this requirement must be applicable to both large and small facilities to help prevent discharges as described in § 112.1(b). The risk of such a discharge and the accompanying environmental damage may be devastating whether it comes from a large or small facility. We disagree that the recordkeeping is burdensome. If you are an NPDES permittee, you may use the stormwater drainage records required pursuant to 40 CFR 122.41(j)(2) and 122.41(m)(3) for SPCC purposes, thereby reducing the recordkeeping burden.

*Engineering methods.* ''Equivalent'' measures referenced in the rule might, depending on good engineering practice, include using structures such as stand pipes designed to handle flow-through conditions at water flood oil production operations, where large volumes of water may be directed to oil storage tanks if water discharge lines on oil-water separators become plugged. Any alternate measures must provide environmental protection equivalent to the rule requirement.

*Industry standards.* Industry standards that may assist an owner or operator with facility drainage include API Recommended Practice 51, ''Onshore Oil and Gas Production Practices for Protection of the Environment.''

*Editorial changes and clarifications.* In response to the commenter's suggestion, the reference to ''navigable waters'' becomes a reference to ''a discharge as described in § 112.1(b).'' ''Central treating stations'' becomes ''separation and treating areas.'' Such areas might be centrally located or located elsewhere at the facility and might include both separation and treatment devices and equipment. The reference to ''rainwater is being drained'' becomes ''draining uncontaminated rainwater.'' We clarify that accumulated oil on rainwater must be disposed of in accord with ''legally approved methods,'' not ''approved methods.''

*Section 112.9(b)(2)—Proposed as § 112.9(c)(2)—Drainage Ditches, Accumulations of Oil*

*Background.* In 1991, we sought to clarify that oil as well as oil-contaminated soil must be removed from field drainage ditches, road ditches, and the like. The current rule only requires removal of an ''accumulation of oil.'' We also proposed that such accumulations be removed within 72 hours at the most.

*Comments. Applicability.* One commenter asserted that this section does not apply to crude oil transfers from production fields into tank trucks because any discharges in the transfer process would be caught in a small

sump or catchment basin. Another commenter asked if this section applied to cleanup of oil and oil-contaminated soil from diked areas.

*Inspection schedule.* Another commenter suggested that we require inspections of field drainage ditches, etc., at monthly intervals and within 24 hours of a 25-year storm event.

*Accumulations of oil and oil-contaminated soil.* Two commenters argued that EPA lacks authority to require cleanup of contaminated soil. Others asked for clarifications of the terms ''accumulation'' and ''oil-contaminated soil.'' Another asked what cleanup standard EPA contemplated under this rule. The commenter elaborated, ''is accumulated oil and contaminated soil to be removed from diked areas under this provision?''

*72-hour cleanup standard.* Several commenters argued that the 72-hour standard for cleanup would preclude bioremediation or other cleanup techniques allowed by State and local law. Several commenters suggested other time periods, including ''as soon as practical,'' ''within a timely manner.'' Some suggested no time standard is appropriate. Those commenters generally thought that a 72-hour period might be unrealistic in certain cases.

*Response to comments. Applicability.* Crude oil transfers from production fields into tank trucks or cars are covered by the general requirements contained in § 112.7(c) and (h), both of which require some form of secondary containment. Cleanup of oil, oil-contaminated soil, and oil-contaminated materials from field drainage ditches, road ditches, or other field drainage system is covered by this paragraph. In response to comment, we note that cleanup of oil from diked areas at onshore production facilities is not specifically covered by the rules. However, the presence of oil in diked areas may impair the quality of the dike or the capacity for secondary containment, and if so, the oil must be removed.

*Inspection schedule.* We have retained the ''regularly scheduled intervals'' standard for inspections. This standard means regular inspections according to industry standards or on a schedule sufficient to prevent a discharge as described in § 112.1(b). Whatever schedule for inspections is selected must be documented in the Plan. We decline to specify a specific interval because such an interval might become obsolete with changing technology.

*Accumulations of oil and oil-contaminated soil.* We have adequate authority to require cleanup of an accumulation of oil, including on soil and other materials, because section 311(j)(1)(C) of the CWA provides EPA with the authority to establish procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil. The broad definition of ''oil'' in CWA section 311(a)(1) covers ''oil refuse'' and ''oil mixed with wastes other than dredged spoil.'' If field drainage systems allow the accumulation of oil on the soil or other materials at the onshore facility and that oil threatens navigable water or adjoining shorelines, then EPA has authority to establish a method or procedure, i.e., the removal of oil contaminated soil, to prevent that oil from becoming a discharge as described in § 112.1(b). The cleanup standard under this paragraph requires the complete removal of the contaminated oil, soil, or other materials, either by removal, or by bioremediation, or in any other effective, environmentally sound manner.

*72-hour cleanup standard.* We agree that the 72-hour cleanup standard might preclude bioremediation and have therefore deleted it. Instead we establish a standard of ''prompt cleanup.'' ''Prompt'' cleanup means beginning the cleanup immediately after discovery of the discharge or immediately after any actions necessary to prevent fire or explosion or other imminent threats to worker health and safety.

*Editorial changes and clarifications.* ''Escaped from small leaks'' becomes ''resulted from any small discharge.'' We eliminate the term ''oil-contaminated soil'' because oil must accumulate on something, such as materials or soil. We retain the term ''accumulation of oil,'' but elaborate on its meaning. ''Accumulation of oil'' means a discharge that causes a ''film or sheen'' within the field drainage system, or causes a sludge or emulsion there (*see* 40 CFR 110.3(b)). An accumulation of oil includes anything on which the oil gathers or amasses within the field drainage system. An accumulation of oil may include oil-contaminated soil or any other oil-contaminated material within the field drainage system. *See also* the discussion of ''accumulation of oil'' included with the response to comments of § 112.8(c)(10).

*Proposed Section 112.9(c)(3)—Additional Requirements for Flood Events*

*Background.* In 1991, we proposed a new recommendation for oil production facilities in areas subject to flooding. We recommended that the Plan address additional precautionary measures related to flooding. In the discussion of the proposal, we referenced FEMA requirements.

*Comments.* One commenter thought this provision should be a requirement rather than a recommendation. Another commenter suggested that exploration and production facilities located in flood plain areas should be adequately secured through proper mechanical/engineering methods to reduce the chance of loss of product. A third commenter suggested the following specific measures to be implemented: (1) Identify whether the facility is located in a floodplain in the Plan; (2) if the facility is located in a floodplain, the Plan should address to what extent it meets the minimum requirements of the National Flood Insurance Program (NFIP); and (3) if a facility does not meet the minimum requirements of the NFIP, the Plan should address appropriate precautionary and mitigation measures for potential flood-related discharges.

*Response to comments.* We have deleted the recommendation because we do not wish to confuse the regulated public over what is mandatory and what is discretionary. These rules contain only mandatory requirements. However, we support the substance of the recommendation, and suggest that a facility in an area prone to flooding either follow the requirements of the NFIP or employ other methods based on good engineering practice to minimize damage to the facility from a flood.

*Section 112.9(c)(1)—Proposed as § 112.9(d)(1)—Materials and Construction—Bulk Storage Containers*

*Background.* In 1991, we reproposed the section on materials and construction of bulk storage containers with an added recommendation that containers conform to relevant industry standards.

*Comments.* One commenter thought that the recommendation for use of industry standards should be a requirement. The commenter asked that at a date certain, all existing tanks must be upgraded to current standards, and that all new and reconstructed tanks must be subject to applicable codes. Another commenter suggested that the recommendation should not apply to crude oil storage tanks because local industry standards are more appropriate.

*Response to comments. Recommendation v. requirement.* We are retaining the mandatory requirement to use no container for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage, as proposed. We have deleted the recommendation that materials, installation, and use of

new tanks conform with relevant portions of industry standards because we do not wish to confuse the regulated public over what is mandatory and what is discretionary. However, we endorse its substance. In most cases good engineering practice and liability concerns will prompt the use of industry standards. See § 112.3(d)(1)(iii). In addition, a requirement is not necessary or desirable because local governmental standards on construction, materials, and installation sometimes control industry standards on these matters.

*Industry standards.* Industry standards that may assist an owner or operator with materials for and construction of onshore bulk storage production facilities include: (1) API Specification 12B, ''Bolted Tanks for Storage of Production Liquids'; (2) API Specification 12D, ''Field Welded Tanks for Storage of Production Liquids'; (3) API Specification 12F, ''Shop Welded Tanks for Storage of Production Liquids'; (4) API Specification 12J, ''Oil Gas Separators'; (5) API Specification 12K, ''Indirect-Type Oil Field Heaters'; and, (6) API Specification 12L, ''Vertical and Horizontal Emulsion Treaters.''

*Editorial changes and clarifications.* ''Tank'' becomes ''container.''

*Section 112.9(c)(2)—Proposed as § 112.9(d)(2)—Secondary Containment, Drainage*

*Background.* The SPCC Task force concluded that aboveground storage tanks without secondary containment pose a particularly significant threat to the environment. We noted that the proposed rule modifications would ''retain the current requirement for facility owners or operators who are unable to provide certain structures or equipment for oil spill prevention, including secondary containment, to prepare facility-specific contingency plans in lieu of prevention systems.'' 56 FR 54614. In 1991, we therefore reproposed the secondary containment requirements for onshore oil production facilities with a clarification. We clarified that secondary containment must include sufficient freeboard to allow for precipitation. The current rule requires that drainage from undiked areas must be safely confined in a catchment basin or holding pond. The proposed rule had modified this requirement to apply only to drainage from undiked areas ''showing a potential for contamination.''

*Comments. Secondary containment. See* the discussion under § 112.7(c) of secondary containment in general. One commenter suggested that the requirement was too vague and comprehensive to be applied to oil leases, which might cover hundreds of acres. Another asked how we would determine what is sufficient freeboard.

*Drainage.* One commenter thought the drainage requirement was duplicative of NPDES requirements.

*Response to comments. Secondary containment.* The requirement applies to oil leases of any size. Secondary containment is not required for the entire leased area, merely for the contents of the largest single container in the tank battery, separation, and treating facility installation, with sufficient freeboard to contain precipitation. In response to the comment as to how an owner or operator might determine how much freeboard is sufficient, we have revised the rule to provide that freeboard sufficient to contain precipitation is the standard. Freeboard sufficient to contain precipitation is freeboard installed according to industry standards, or in an amount sufficient to avert a discharge as described in § 112.1(b). This standard is consistent with the amount of freeboard required in § 112.8(c)(2).

*Drainage.* We deleted the proposed reference to undiked areas ''showing a potential for contamination'' because drainage from any undiked area poses a threat of contamination. When drainage from such areas is covered by stormwater discharge permits, that part of the BMP might be usable for SPCC purposes. There is no redundancy in recordkeeping requirements, because you can use your NPDES records for SPCC purposes.

*Industry standards.* Industry standards that may assist an owner or operator with secondary containment at onshore production facilities include: (1) API Recommended Practice 51, ''Onshore Oil and Gas Production Practices for Protection of the Environment'; (2) NFPA 30, ''Flammable and Combustible Liquids Code'; and, (3) BOCA, ''National Fire Prevention Code.''

*Editorial changes and clarifications.* ''Tank battery and central treating plant installations'' becomes ''tank battery, separation, and treating facility installations.'' ''Contents of the largest single tank'' becomes ''capacity of the largest single container.'' With this change, this paragraph agrees with general secondary containment requirements found in § 112.7(c). The reference to tanks ''in use'' was deleted because it is redundant. Containment for tanks or containers that are not permanently closed is already required. We deleted the phrase ''if feasible, or alternate systems, such as those outlined in § 112.7(c)(1),'' because it is confusing when compared to the text of § 112.7(d). Under § 112.7(d), if secondary containment is not practicable, you must provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with the requirements of § 112.7(d). Furthermore, you are also free to provide alternate systems of secondary containment. We do not prescribe the method.

*Section 112.9(c)(3)—Proposed as § 112.9(d)(3)—Container Inspection*

*Background.* In 1991, we proposed that you must visually examine all containers of oil at onshore production facilities at least once a year. The current requirement is that you examine these containers ''on a scheduled periodic basis.'' We also proposed that you would be required to maintain the schedule and records of those examinations for a period of five years, irrespective of changes in ownership.

*Comments. Frequency of inspection.* One commenter favored the proposal. One commenter suggested quarterly rather than annual inspections. Two commenters suggested triennial inspections. Other commenters suggested a frequency in accordance with API recommended standards.

*Extent of inspection.* Several commenters thought that the inspections should be external only, and should not necessarily include the foundations and supports (as proposed) because of the number of containers that would be taken out of service with that requirement. Another commenter asserted that inspection of foundations and supports might not be possible due to foundation settlement or lack of space to perform the inspection.

*Response to comments. Frequency of inspection.* We have maintained the current standard for frequency of inspection because we agree that inspections in accordance with industry standards are necessary. Those standards may change with changing technology, therefore, a frequency of ''periodically and upon a regular schedule'' preserves maximum flexibility and upholds statutory intent.

*Extent of inspection.* We disagree that the inspection of containers should be limited to external inspection. Internal inspection is also necessary to detect possible flaws that could cause a discharge. The inspection must also include foundations and supports that are on or above the surface of the ground. If for some reason it is not practicable to inspect the foundations and supports, you may deviate from the requirement under § 112.7(a)(2), if you explain your rationale for

nonconformance and provide equivalent environmental protection.

*Record maintenance.* We have deleted the proposed requirement to maintain records of these inspections for five years, irrespective of ownership, because it is redundant with the general requirement in § 112.7(e) to maintain Plan records. Section 112.7(e) requires record maintenance for three years. However, you should note that certain industry standards (for example, API Standard 653 or API Recommended Practice 12R1) may specify that an owner or operator maintain records for longer than three years.

*Industry standards.* Industry standards that may assist an owner or operator with inspection of containers at onshore production facilities include: (1) API Recommended Practice 12R1, ''Recommended Practice for Setting, Maintenance, Inspection, Operation, and Repair of Tanks in Production Service''; and, (2) ''API Standard 653, ''Tank Inspection, Repair, Alteration, and Reconstruction.''

*Editorial changes and clarifications.* ''Visually examine'' becomes ''Visually inspect.'' ''All tanks'' becomes ''each container.'' ''Foundation and supports of tanks above the ground surface'' becomes ''Foundation and support of each container that is on or above the surface of the ground.''

*Section 112.9(c)(4)—Proposed as § 112.9(d)(4)—Good Engineering Practice*

*Background.* In 1991, we proposed to convert the current requirement for ''fail-safe'' engineering (which includes vacuum protection and other measures) of new and old tank battery installations into a recommendation. We also proposed that you reference appropriate industry standards.

*Comments.* One commenter asserted that we should retain the original requirement to avoid confusion among the regulated community, help improve spill prevention, and because we proposed a similar requirement for bulk storage containers. Another commenter opposed the proposed recommendation because he believed the cost of such engineering would be prohibitive. Two commenters sought an exemption for small facilities on the same rationale. Similarly, some commenters opposed the proposed recommendation on vacuum protection because of the potential cost. None of the commenters provided their own cost estimates. Some commenters opposed the proposed recommendation relating to vacuum protection because of the potential cost, which they estimated as ''in excess of $100 per tank.''

*Response to comments. Good engineering practice.* We agree with the commenter that we should retain this section as a requirement both to improve spill prevention and to avoid confusion among the regulated community because of the similar requirement for bulk storage containers at facilities other than production facilities. Therefore, there are no new costs. Nevertheless, you have flexibility as to which measures you use, and may choose the least expensive alternative listed in § 112.9(c)(4). For example, should vacuum protection be too costly, you are free to use another alternative. Furthermore, you may also deviate from the requirement under § 112.7(a)(2) if you can explain nonconformance and provide equivalent environmental protection by some other means. We revised the paragraph on vacuum protection to clarify that the rule addresses any type of transfer from the tank, not merely a pipeline run.

*Industry standards.* Industry standards that may assist an owner or operator with alarm systems include: (1) API, ''Manual of Petroleum Measurement Standards''; (2) API Recommended Practice 51, ''Onshore Oil and Gas Production Practices for Protection of the Environment''; (3) API Recommended Practice 2350, ''Overfill Protection for Storage Tanks in Petroleum Facilities''; and, (4) NFPA 30, ''Flammable and Combustible Liquids Code.''

*Editorial changes and clarifications.* ''Fail-safe'' engineering becomes ''good engineering practice,'' because fail-safe engineering is a misnomer. The change in terminology does not imply any substantive change in the level of environmental protection required, it is merely editorial. See the comments, and the discussion under ''Editorial changes and clarification,'' § 112.8(c)(8). The same reasoning applies to this paragraph. We deleted the phrase ''as far as is practical,'' because it is confusing when compared to the text of § 112.7(a)(2). Under § 112.7(a)(2), you may explain your reasons for nonconformance, and provide equivalent environmental protection by some other means. We deleted the recommendation to reference appropriate industry standards because it was unnecessary. You must discuss actual standards used in the Plan. Section 112.3(d)(1)(iii) also requires the Professional Engineer to certify that he has considered applicable industry standards in the preparation of the Plan. Also in the introductory paragraph, the phrase ''Consideration shall be given to providing.* * *'' becomes, ''You must provide.* * *'' This change makes the language consistent with a companion paragraph dealing with good engineering design, *i.e.*, § 112.8(c)(8). In paragraph (c)(4)(i), ''regular rounds'' becomes ''regularly scheduled rounds.'' ''Spills'' becomes ''discharges.'' In paragraph (c)(4)(iv), the phrase ''where facilities are'' becomes ''where the facility is.'' Elsewhere ''tank'' becomes ''container.''

*Section 112.9(d)(1)—Proposed as § 112.9(e)(1)—Inspection of Aboveground Valves and Piping*

*Background.* In 1991, we proposed that you inspect monthly all aboveground valves and pipelines, and that you maintain records of such inspections for five years. The current requirement is that you examine such valves and pipelines ''periodically on a scheduled basis,'' and maintain the records of such inspections for three years.

*Comments. Editorial changes and clarifications.* One commenter asked for clarifying language that the rule only applied to valves and piping associated with transfer operations.

*Applicability.* Two commenters asked for an exemption from the requirements of this paragraph for small facilities.

*Frequency of inspections.* Several commenters suggested alternate inspection intervals, such as every six months, or every year. Another commenter suggested that monthly inspections are meaningless because some unscrupulous operators might fill out inspection reports on dates when no problems are to be found. Other commenters suggested that we require a performance standard instead of a prescribed monthly inspection. One commenter suggested the proposed inspections standards for § 112.9(e) were excessive for many small facilities. The commenter suggested that a standard defined by the licensed Professional Engineer who certifies the SPCC Plan could reflect the differing requirements that may apply under different equipment configurations as well as differing geographical and meteorological conditions. The commenter added that a generalized performance standard should be included that includes a minimum inspection interval, such as annual inspection, which could be altered to meet specific facility conditions.

*Recordkeeping.* One commenter thought a five-year record retention period is excessive. Another commenter asked that we clarify that PE certification of these regular inspections and records is not required.

*Response to comments. Applicability.* The rule must apply equally to large and

small facilities because failure to inspect piping and valves at any facility might lead to a discharge as described in § 112.1(b).

*Frequency of inspections.* We have retained the current inspection frequency of periodic inspections, but editorially changed it to ''upon a regular schedule.'' Our decision accords with the comment which sought a performance standard instead of a prescribed monthly inspection. The standard of inspections ''upon a regular schedule'' means in accordance with industry standards or at a frequency sufficient to prevent discharges as described in § 112.1(b). Whatever frequency of inspections is selected must be documented in the Plan.

*Recordkeeping.* We agree that a five-year record retention period is longer than necessary and have deleted the proposed requirement in favor of the general requirement in § 112.7(e) to maintain records for three years. However, comparison records for compliance with certain industry standards may require an owner or operator to maintain records for longer than three years. PE certification of these inspections and records is not required.

*Editorial changes and clarifications.* ''Examine'' becomes ''inspect.'' We agree with the commenter who asked for clarification that the rule applies only to inspections related to transfer operations and have amended the rule to reflect that. A transfer operation is one in which oil is moved from or into some form of transportation, storage, equipment, or other device, into or from some other or similar form of transportation, such as a pipeline, truck, tank car, or other storage, equipment, or device.

*Section 112.9(d)(2)—Proposed as § 112.9(e)(2)—Salt Water Disposal Facilities*

*Background.* In 1991, we reproposed without change the current requirements on the examination of salt water (oil field brine) disposal facilities. The current requirement is that you examine these facilities ''often.'' However, we have recommended weekly examination as an appropriate engineering standard for most facilities. 56 FR 54624. We noted that low temperature conditions, sudden temperature changes, or periods of low flow rates may require more frequent inspections.

*Comments. Applicability.* One commenter suggested that the requirement to examine these facilities should not apply to storage facilities with de minimis amounts of oil.

*Sudden change in temperature.* Another commenter asked for clarification of what ''a sudden change in temperature'' means. The commenter assumed that it meant a sudden drop that could cause system upsets.

*Response to comments. Applicability.* The rule applies to any regulated facility with salt water disposal if the potential exists to discharge oil in amounts that may be harmful, as defined in 40 CFR 110.3. This standard is necessary to protect the environment.

*Sudden change in temperature.* A sudden change in temperature means any abrupt change in temperature, either up or down, which could cause system upsets.

*Frequency of inspections.* Inspections of these facilities must be conducted ''often.'' ''Often'' means in accordance with industry standards, or more frequently, if as noted, conditions warrant. Whatever frequency of inspections is chosen must be documented in the Plan.

*Editorial changes and clarifications.* ''Examine'' becomes ''inspect.'' ''Oil discharge'' becomes ''discharge,'' because the term ''oil'' is redundant in the definition of ''discharge.''

*Section 112.9(d)(3)—Proposed as § 112.9(e)(3)—Flowline Maintenance*

*Background.* In 1991, we reproposed the current requirements for flowline maintenance. We proposed a recommendation, rather than a requirement, that the program include certain specifics, because of differences in the circumstances of locations, staffing, and design for production facilities. We suggested that monthly examinations are appropriate for most facilities.

*Comments. Applicability.* Two commenters asked for a small facility exemption for this recommendation.

*Frequency of inspections.* Several commenters suggested that the recommendation refer to periodic instead of monthly examinations. Others suggested annual or quarterly inspections. One commenter said that monthly inspection of gathering lines buried in the colder parts of the Appalachian basin is impossible.

*Corrosion protection.* Several commenters asserted that the provision for corrosion protection for the bare steel pipe used for gathering line systems in the Appalachians is impossible because the cost of coated lines and cathodic protection is prohibitive. None of the commenters provided their own cost estimates.

*Transfer operation.* One commenter asked for clarification of the term ''oil production facility transfer operation.'' The commenter suggested that a definition of the term would improve compliance.

*Response to comments. Applicability.* A program of flowline maintenance is necessary to prevent discharges both at large and small facilities. However, we have deleted the proposed recommendation regarding the specifics of the program from the rule. We took this action because we are not including recommendations in the rule in order not to confuse the public over what is mandatory and what is discretionary. This rule contains only mandatory requirements.

*Frequency of inspections.* In the proposed recommendation we suggested that you conduct monthly inspections for a flowline maintenance program. We now recommend that you conduct inspections either according to industry standards or at a frequency sufficient to prevent a discharge as described in § 112.1(b). Under § 112.3(d)(1)(iii), the Professional Engineer must certify that the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards.

*Corrosion protection, flowline replacement.* While we have deleted the recommendation from rule text due to reasons explained above and therefore, the rule imposes no new costs, we recommend corrosion protection, we recommend corrosion protection, and flowline replacement when necessary, because those measures help to prevent discharges as described in § 112.1(b).

*Transfer operation.* A transfer operation is one in which oil is moved from or into some form of transportation, storage, equipment, or other device, into or from some other or similar form of transportation, such as a pipeline, truck, tank car, or other storage, equipment, or device.

*Editorial changes and clarifications.* ''Spills'' becomes ''discharges.'' The phrase ''from this source'' becomes ''from each flowline.''

*Section 112.10—Introduction—Onshore Oil Drilling and Workover Facilities*

*Background.* This paragraph is a new one, not proposed in 1991, but editorially added to allow us to rewrite the section in the active voice. Since the owner or operator is the person with responsibility to implement a Plan, the mandates of the rule are properly addressed to him, except as specifically noted.

*Section 112.10(a)—General and Specific Requirements*

*Background.* This is a new paragraph that merely references the general

requirements which all facilities must meet as well as the specific requirements that facilities in this category must meet.

*Comments.* One commenter asked for a definition of ''onshore drilling and workover facilities.''

*Editorial changes and clarifications.* The new definition for ''production facility'' in § 112.2 includes the procedures, methods, and equipment referenced in this section, making a definition of ''onshore drilling and workover facilities'' unnecessary. ''Spill prevention'' becomes ''discharge prevention.'' To ''address'' requirements becomes to ''meet'' requirements.

*Section 112.10(b)—Mobile Facilities*

*Background.* In 1991, we reproposed the current rule on the location of mobile facilities without substantive change.

*Comments. Editorial changes and clarifications.* One commenter asked that the requirement be limited to discharges to navigable waters.

*Site location.* One commenter opposed the requirement on the location of mobile facilities because the facility contractor has absolutely no control over the location of the rig unit. The commenter added that the contractor is instructed by the site owner/operator where to place the rig unit generally, and the sites are where oil and gas are expected to be located. The physical location of the well site is constructed by and maintained by the owner/operator of the lease. The contractor has no input as to site design nor responsibility for its maintenance.

*Response to comments. Site location.* We agree with the commenter that the contractor is not normally responsible for site location, nor site design or maintenance. Such decisions are the responsibility of the facility owner or operator. The owner or operator of the facility has the responsibility to locate equipment so as to prevent discharges as described in § 112.1(b).

*Editorial changes and clarifications.* The applicable limitation on discharges in the rule tracks the statute. The commenters requested that discharges be limited to discharges to ''navigable waters.'' However, the correct scope of discharge prevention is not merely navigable waters, but the entire range of protected resources described in § 112.1(b). We therefore use the phrase ''a discharge as described in § 112.1(b).''

*Section 112.10(c)—Secondary Containment—Catchment Basins or Diversion Structures*

*Background.* In 1991, we reproposed without substantive change the current requirements for secondary containment. We received no comments on the proposal. Therefore, we have promulgated it as proposed, with minor editorial changes.

*Industry standards.* Industry standards that may assist an owner or operator with secondary containment at onshore oil drilling and workover facilities include: (1) API Recommended Practice 52, ''Land Drilling Practices for Protection of the Environment''; (2) NFPA 30, ''Flammable and Combustible Liquids Code''; and, (3) BOCA, ''National Fire Prevention Code.''

*Editorial changes and clarifications.* ''Spills'' becomes ''discharges.'' The words ''depending on the location'' were deleted because they were confusing when compared with the text of § 112.7(d). If a catchment basin or diversion structure or other form of secondary containment is not practicable from the standpoint of good engineering practice, under § 112.7(d) you must provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d).

*Section 112.10(d)—Blowout Prevention (BOP)*

*Background.* In 1991, we proposed that blowout prevention (BOP) assembly would only be required ''when necessary.'' The rationale was that a BOP assembly is not necessary where pressure is not great enough to cause a blowout (gauge negative) and is not required in all cases. We noted that the necessity of BOP assembly hinges on the ''history of the pressures encountered when drilling on the oil reservoir.'' When that history is unknown, BOP assembly is required.

*Comments.* Several commenters urged modification of the rule to exclude well service jobs that may not need BOP assembly, such as the installation of a rod pumping unit, or the batch treatment of a well with corrosion inhibitor.

*Response to comments. Service jobs.* Where BOP assembly is not necessary, as for certain routine service jobs, such as the installation of a rod pumping unit, or the batch treatment of a well with corrosion inhibitor, you may deviate from the requirement under § 112.7(a)(2), and explain its absence in the Plan. When BOP assembly is unnecessary because pressures are not great enough to cause a blowout, it is likewise unnecessary to provide equivalent environmental protection.

*Industry standards.* Industry standards that may assist an owner or operator with blowout prevention assembly include: (1) API Recommended Practice 16E, ''Design of Control Systems for Drilling Well Control Equipment''; (2) API Recommended Practice 53, ''Blowout Prevention Equipment Systems for Drilling Operations''; (3) API Specification 16A, ''Drill Through Equipment''; and, (4) API Specification 16D, ''Control Systems for Drilling Well Control Equipment.''

*Editorial changes and clarifications.* We deleted the phrase ''as necessary'' from the requirement, because it is confusing when compared to the text of § 112.7(a)(2). When BOP assembly is unnecessary and therefore no alternate measure is required, you may deviate from the requirement under § 112.7(a)(2) if you explain your reasons for nonconformance. We have deleted as surplus the last sentence of the rule requiring that casing and BOP installations must be in accordance with State regulatory requirements. Adherence to State regulatory requirements is mandatory under State law in any case. The phrase ''is expected to be encountered'' becomes ''may be encountered.''

*Section 112.11—Introduction—Offshore Oil Drilling, Production, or Workover Facilities*

*Background.* We added an introduction as an editorial device to allow us to rewrite the section in the active voice. Because the owner or operator is the person with responsibility to implement a Plan, the mandates of the rule are properly addressed to him, except as specifically noted.

*Section 112.11(a)—General and Specific Requirements—Offshore Oil Drilling, Production, or Workover Facilities*

*Background.* This is a new paragraph that merely references the general requirements which all facilities must meet as well as the specific requirements that facilities in this category must meet.

*Comments. State rules.* One commenter thought § 112.11 should be deleted because current State rules provide adequate spill protection in inland water areas such as lakes, rivers, and wetlands.

*Response to comments. State rules.* We disagree with the commenter that these rules are unnecessary because not every State has rules to protect offshore drilling, production, and workover facilities. While some States may have rules, some State rules may not be as stringent as the Federal rules. In any case, Congress has intended us to establish a nationwide Federal program to protect the environment from the

dangers of discharges as described in § 112.1(b) posed by this class of facilities. Therefore, we have retained the section, as modified. We note, however, that if you have a State SPCC plan or other regulatory document acceptable to the Regional Administrator that meets all Federal SPCC requirements, you may use it as an SPCC Plan if you cross reference the State or other requirements to the Federal requirement. If it meets only some, but not all Federal SPCC requirements, you must supplement it so that it meets all of the SPCC requirements.

*Editorial changes and clarifications.* ''Spill prevention'' becomes ''discharge prevention.'' The obligation to ''address'' requirements and procedures becomes the obligation to ''meet'' them.

*Proposed Section 112.11(b)—Definition Reference; MMS Jurisdiction*

*Background.* The proposed 1991 section referenced the definition of ''offshore oil drilling, production, and workover facility,'' which is now encompassed within the definition of ''production facility'' in § 112.2. A new sentence would have referenced the exemption of facilities subject to Minerals Management Service (MMS) Operating Orders, notices, and regulations from the SPCC rule. MMS jurisdiction is outlined in Appendix B to part 112.

*Comments.* One commenter suggested that we delete the reference to the proposed definition and to the applicability section.

*Response to comments.* We agree. Since none of the proposed language is mandatory, we have deleted it because we have included only mandates in this rule so as not to confuse the regulated public over what is required and what is discretionary.

*Section 112.11(b)—Proposed as § 112.11(c)—Facility Drainage*

*Background.* In 1991, we reproposed the current section on facility drainage with the modification to require removal of collected material at least once a year. The rationale was to prevent a buildup of accumulated oils. We noted that a protracted removal period could lead to an accidental excess buildup and resultant overflow.

*Comments.* Two commenters recommended deletion of the proposed requirement to remove collected oil as often as necessary, but at least once a year, because the current requirement is sufficient.

*Response to comments. Removal of collected oil.* EPA agrees with the commenter's suggestion that the current rule is sufficient to prevent discharges as described in § 112.1(b), and therefore we have deleted the ''at least once a year'' standard. You must remove collected oil as often as is necessary to prevent such discharges.

*Editorial changes and clarifications.* ''Discharging oil as described in § 112.1(b)(1)'' becomes ''having a discharge as described in § 112.1(b).'' In the second sentence, we deleted the phrase ''or equivalent collection system sufficient,'' because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance, and provide equivalent environmental protection.

*Section 112.11(c)—Proposed as § 112.11(d)—Sump Systems*

*Background.* In 1991, we proposed to clarify language in current rule that a regularly scheduled maintenance program is a monthly preventive maintenance program.

*Comments. Frequency of inspections.* One commenter recommended that a semi-annual inspection and testing program of the liquid removal system, instead of monthly inspection and testing would be preferable.

*Response to comments. Frequency of inspections.* We have retained the current rule language requiring a ''regularly scheduled'' preventive maintenance program because we believe that the frequency of maintenance should be in accordance with industry standards or frequently enough to prevent a discharge as described in § 112.1(b). Whatever schedule is chosen must be documented in the Plan.

*Editorial changes and clarifications.* We deleted the phrase ''or equivalent method'' from the first sentence because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

*Section 112.11(d)—Proposed as § 112.11(e)—Discharge Prevention Systems for Separators and Treaters*

*Background.* In 1991, we reproposed without substantive change the current rule on discharge prevention systems for separators and treaters. We received no comments.

*Editorial changes and clarifications.* ''Escape'' of oil becomes ''discharge'' of oil. ''Oil discharges'' becomes ''discharge of oil.'' We deleted the phrase from the last sentence which allows ''using other feasible alternatives to prevent oil discharges,'' because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

*Section 112.11(e)—Proposed as § 112.11(f)—Atmospheric Storage or Surge Containers; Alarms*

*Background.* In 1991, we reproposed without substantive change the current paragraph on alarm systems for atmospheric storage or surge containers. We received no comments. Therefore, we have promulgated the rule as proposed, with only minor editorial changes.

*Editorial changes and clarifications.* ''Oil discharges'' becomes ''discharges.'' We added the words ''that activate an alarm or control the flow'' to clarify that these activities, along with ''otherwise'' controlling discharges, are the purpose of the sensing devices we reference in the paragraph. The phrase ''to activate'' becomes ''that activate,'' and we add the word ''otherwise'' before ''prevent discharges.'' We deleted the phrase ''or other acceptable alternatives,'' because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

*Section 112.11(f)—Proposed as § 112.11(g)—Pressure Containers; Alarm Systems*

*Background.* In 1991, we reproposed the current rule concerning pressure tanks without substantive change. We received no comments. Therefore, we have promulgated the rule as proposed, with minor editorial changes.

*Editorial changes and clarifications.* ''Tanks'' becomes ''containers.'' ''Oil discharges'' becomes ''discharges.'' We deleted the phrase ''or with other acceptable alternatives to prevent discharges,'' because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

*Section 112.11(g)—Proposed as § 112.11(h)—Corrosion Protection*

*Background.* In 1991, we reproposed the current paragraph requiring corrosion protection for containers at facilities subject to this section. We added a recommendation that you follow National Association of

Corrosion Engineers standards for corrosion protection.

*Comments. Industry standards.* One commenter suggested that we remove the last sentence, which is advisory, and addresses industry standards of the National Association of Corrosion Engineers, or make it a requirement (at least for new construction). Another commenter suggested that the rule be modified to incorporate other industry recommended practices relative to corrosion control, such as those of STI and API. The commenter specifically recommended STI Recommended Practice R892–89, ''Recommended Practice for Corrosion Protection of Underground Steel Piping Associated with Underground Storage and Dispensing Systems,'' and STI Recommended Practice 893–89, ''Recommended Practice for External Corrosion of Shop Fabricated Aboveground Steel Storage Tank Floors.''

*Response to comments. Industry standards.* In response to the comment, we have deleted the recommendation because we do not wish to confuse the regulated community over what is mandatory and what is discretionary. These rules contain only mandatory requirements. We expect that facilities will follow industry standards for corrosion protection as well as other matters (*see* § 112.3(d)(iii)), but decline to prescribe particular standards in the rule text because those standards are subject to change, and we will not incorporate a potentially obsolescent standard into the rules.

*Industry standards.* Industry standards suggested by a commenter that may assist an owner or operator with corrosion include: (1) National Association of Corrosion Engineer standards; (2) STI Recommended Practice R892, ''Recommended Practice for Corrosion Protection of Underground Steel Piping Associated with Underground Storage and Dispensing Systems,'' and, (3) STI Recommended Practice 893, ''Recommended Practice for External Corrosion of Shop Fabricated Aboveground Steel Storage Tank Floors.''

*Editorial changes and clarifications.* ''Tanks'' becomes ''containers.''

*Section 112.11(h)—Proposed as § 112.11(i)—Pollution Prevention System Procedures*

*Background.* In 1991, we reproposed without substantive change the current requirements concerning written procedures for inspecting and testing pollution prevention equipment and systems. We received no substantive comments. Therefore, we have promulgated the rule as proposed with minor editorial changes.

*Editorial changes and clarifications.* ''As part of the SPCC Plan'' becomes ''within the Plan.''

*Section 112.11(i)—Proposed as § 112.11(j)—Pollution Prevention Systems; Testing and Inspection*

*Background.* In 1991, we reproposed the current rule on testing and inspection of pollution prevention systems. Additionally, we proposed that simulated spill testing must be the preferred method to test and inspect oil spill prevention equipment and systems. We also proposed that pollution prevention systems must be tested at least monthly. The current standard calls for testing and inspection ''on a scheduled periodic basis.''

*Comments.* Some commenters suggested that simulation testing on a monthly basis is excessive. Commenters suggested instead testing on a semi-annual or annual basis.

*Response to comments. Frequency of testing.* We have retained the current requirement for testing on a ''scheduled periodic basis'' commensurate with conditions at the facility because we believe that testing should follow industry standards or be conducted at a frequency sufficient enough to prevent a discharge as described in § 112.1(b) rather than any prescribed time frame. Whatever frequency is chosen must be documented in the Plan.

*Editorial changes and clarifications.* In the first sentence, ''or other appropriate regulations'' becomes ''and any other appropriate regulations.'' In the second sentence, ''spill testing'' becomes ''simulated discharges for testing.'' We have deleted from the last sentence the phrase ''unless the owner or operator demonstrates that another method provides equivalent alternative protection'' because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

*Section 112.11(j)—Proposed as § 112.11(k)—Surface and Subsurface Well Shut-in Valves and Devices*

*Background.* In 1991, we reproposed the current section concerning surface and subsurface well shut-in valves and devices. We proposed an additional requirement that records for each well must be kept for five years. We received no substantive comments. Therefore, we have promulgated the rule as proposed, with minor editorial changes.

*Editorial changes and clarifications.* In today's rule, we kept the recordkeeping requirement, but deleted language requiring maintenance of those records for five years. The effect of the deletion is that records become subject to the general three-year recordkeeping requirement. *See* § 112.7(e). You may keep the records as part of the Plan or may keep them with the Plan.

*Section 112.11(k)—Proposed as § 112.11(l)—Blowout Prevention*

*Background.* In 1991, we reproposed the current rule concerning blowout prevention without substantive change.

*Comments.* One commenter suggested that there are occasions when blowout prevention is not warranted or impractical to implement and that there should be an exception for drilling below conductor casing.

*Response to comments. Alternatives.* The question of whether blowout prevention is warranted or impractical or not for drilling below conductor casing is one of good engineering practice. Acceptable alternatives may be permissible under the rule permitting deviations (§ 112.7(a)(2)) when the owner or operator states the reasons for nonconformance and provides equivalent environmental protection.

*Industry standards.* Industry standards that may assist an owner or operator with offshore blowout prevention assembly and well control systems include: (1) API Recommended Practice 16E, ''Design of Control Systems for Drilling Well Control Equipment''; (2) API Recommended Practice 53, ''Blowout Prevention Equipment Systems for Drilling Operations''; (3) API Specification 16A, ''Drill Through Equipment''; (4) API Specification 16C, ''Choke and Kill Systems''; and, (5) API Specification 16D, ''Control Systems for Drilling Well Control Equipment.''

*Editorial changes and clarifications.* ''BOP preventor assembly'' becomes ''BOP assembly.'' We deleted the last sentence of the paragraph referring to adherence to State rules because we are not incorporating State rules into the SPCC rule and adherence to State rules is required under State law whether we state it or not. The phrase ''expected to be encountered'' becomes ''may be encountered.''

*Proposed § 112.11(m)—Extraordinary Well Control Measures*

*Background.* In 1991, we proposed to change the current requirements on extraordinary well control measures for emergency conditions to recommendations. The rationale was

that we would review these measures in the context of response planning.

*Comments.* One commenter suggested that the paragraph should be deleted because it is advisory, or made a requirement.

*Response to comments.* In response to comment, we have deleted the text of the recommendations from the rules because we do not wish to confuse the regulated community over what is mandatory and what is discretionary. However, we endorse its substance. This rule contains only mandatory requirements.

*Section 112.11(l)—Proposed as § 112.11(n)—Manifolds*

*Background.* In 1991, we reproposed the current requirements concerning manifolds without substantive change. We received no comments on the proposal. Therefore, we have promulgated the rule as proposed.

*Section 112.11(m)—Proposed as § 112.11(o)—Flowlines, Pressure Sensing Devices*

*Background.* In 1991, we reproposed the current requirements concerning pressure sensing devices and shut-in valves for flowlines without substantive change. We received no comments on the proposal. Therefore, we have promulgated the rule as proposed.

*Section 112.11(n)—Proposed as § 112.11(p)—Piping; Corrosion Protection*

*Background.* In 1991, we reproposed the current requirements concerning corrosion protection for piping appurtenant to the facility without substantive change. We also proposed to change into a recommendation the current requirement that the method used, such as protective coatings or cathodic protection, be discussed.

*Comments.* One commenter suggested that we remove the second sentence, which is advisory.

*Response to comments.* In response to comment, we have deleted the recommendation to discuss the method of corrosion protection, because it is surplus. In your SPCC Plan, you must discuss the method of corrosion protection you use. See 112.7(a)(1).

*Section 112.11(o)—Proposed as § 112.11(q)—Sub-Marine Piping; Environmental Stresses*

*Background.* In 1991, we reproposed the current requirements concerning environmental stress against sub-marine piping appurtenant to facilities without substantive change. We received no comments. Therefore, we have promulgated the rule as proposed, with minor editorial changes.

*Editorial changes and clarifications.* We have rewritten the rule in the active voice. We also deleted the proposed recommendation because this rule contains only mandatory items, and because the recommendation is redundant. Whatever manner of protection is chosen to protect sub-marine piping must be discussed in the Plan.

*Section 112.11(p)—Proposed as § 112.11(r)—Inspections of Sub-Marine Piping*

*Background.* In 1991, we reproposed the current requirements concerning the inspection of sub-marine piping appurtenant to facilities without substantive change. We received no comments. Therefore, we have promulgated the rule as proposed, with minor editorial changes.

*Editorial changes and clarifications.* The proposal to require maintenance of records for five years was deleted because under § 112.7(e) of today's rule, all records must be kept for three years. We clarify that you must inspect or test the piping. Because visual inspection of sub-marine piping may not always be possible, we allow testing as an alternative. We encourage inspection or testing pursuant to industry standards or at a frequency sufficient to prevent a discharge as described in § 112.1(b). Whatever inspection schedule you select must be documented in the Plan.

*Proposed § 112.11(s)—Written Instructions for Contractors*

*Background.* In 1991, we proposed to change into a recommendation the current requirement that you prepare written instructions for contractors and subcontractors whenever contract activities involve servicing a well, or systems appurtenant to a well or pressure vessel. The current rule requires that you keep the instructions at the facility. We note in the proposed rule that under certain circumstances, you may require the presence of your representative at the facility to intervene when necessary to prevent a discharge as described in § 112.1(b).

*Comments.* One commenter wrote that the proposal creates two serious problems. First, that since the contractor is hired to perform special services, he is able to do his work more safely if he is allowed to direct his own activities. Second, operators might expose themselves to various types of liability by virtue of the degree of control exercised over contractors. A second commenter suggested editorial revisions to the recommendation, and subsequent sentences.

*Response to comments.* We have decided to delete the proposed recommendation because we do not wish to confuse the regulated community over what is mandatory and what is discretionary. This rule contains only mandatory requirements.

*Subparts C and D*

*Background.* In 1995, Congress enacted the Edible Oil Regulatory Reform Act (EORRA), 33 U.S.C. 2720. That statute mandates that most Federal agencies differentiate between and establish separate classes for various types of oils, specifically: animal fats and oils and greases, fish and marine mammal oils; oils of vegetable origin; and, other oils and greases, including petroleum and other non-petroleum oils. In differentiating between these classes of oils, Federal agencies are directed to consider differences in the physical, chemical, biological, and other properties, and in the environmental effects, of the classes.

In 1991, EPA proposed to reorganize the SPCC rule based on facility type. The rationale for that reorganization is to clarify SPCC Plan requirements for different types of facilities. While we have reorganized the rule to provide requirements for different types of facilities, we also provide requirements for different types of oil in this rulemaking. To make this change, we have divided the rule into subparts. Subpart A consists of an applicability section, definitions, and general requirements for all facilities. Subparts B and C outline the requirements for different types of oils. Subpart B is for petroleum oils and non-petroleum oils, except for animal fats and vegetable oils. Subpart C is for animal fats and oils and greases, and fish and marine mammal oils; and for vegetable oils, including oils from seeds, nuts, fruits, and kernels. Subpart D is for response. Subparts B and C are divided into sections to reflect the differing types of facilities for each type of oil. Subpart D is for response requirements.

Therefore, as noted above, we have divided the requirements of the rule by subparts for the various classes of oils listed in EORRA. Because at the present time EPA has not proposed differentiated requirements for public notice and comment, the requirements for facilities storing or using all classes of oil will remain the same. However, we have published an advance notice of proposed rulemaking seeking comments on how we might differentiate requirements for facilities storing or using the various classes of oil. 64 FR

17227, April 8, 1999. After considering these comments, if there is adequate justification for differentiation, we will propose a rule.

*Proposed § 112.20(f)(4)—Capacity of Facilities Storing Process Water/ Wastewater for Response Plan Purposes*

*Background.* In 1997, we proposed to add a new paragraph to § 112.20(f) to provide a method for facility response plan purposes to calculate the oil storage capacity of storage containers storing a mixture of process water/ wastewater with 10% or less of oil. This proposal for certain systems that treat process water/wastewater would be applicable at certain facilities required to prepare a facility response plan. It would have no effect on facilities required to prepare response plans because they transfer oil over water and have a total oil storage capacity greater than or equal to 42,000 gallons. Likewise, the proposal would have no effect on the method of calculating capacity for purposes of SPCC Plans. Under the proposal, we would not count the entire capacity of process water/ wastewater containers with 10% or less of oil in the capacity calculation to determine whether a facility must prepare a facility response plan. We only would count the oil portion of that process water/wastewater contained in § 112.20(f)(2), and therefore response planning is not necessary.

Today, we are withdrawing the proposal because it is no longer necessary. It is unnecessary because we have exempted from part 112 any facility or part thereof (except at oil production, oil recovery, and oil recycling facilities) used exclusively for wastewater treatment and not to satisfy any requirement of part 112. See the discussion under § 112.1(d)(6). The exemption in § 112.1(d)(6) applies to the types of facilities treating wastewater that would have been allowed to calculate a reduced storage capacity if the percentage of oil in the mixture were 10 percent or less.

*Section 112.20(h)—Facility Response Plan Format*

*Background.* In 1997, we proposed to amend the requirements for formatting of a facility response plan to clarify that an Integrated Contingency Plan (ICP) or other plan format acceptable to the Regional Administrator is allowable to serve as a facility response plan if it meets all facility response plan requirements. Our intent was to track language in the SPCC rule allowing the Regional Administrator similar authority to accept differing formats for SPCC Plans. However, the Regional Administrator already has the authority to accept differing formats for response plans, and the existing facility response plan requirements already provide for cross-referencing. *See* § 112.20(h). Therefore, new rule language was unnecessary, and the proposal tracked current language. Today, we have made only a minor editorial change in rule language.

*Comments. Acceptable formats.* Most commenters favored the proposal. One commenter suggested that the rule should specifically mention the ICP. Another requested that State FRP equivalents be accepted. Several commenters criticized the proposal; one calling the ICP concept ''over-rated.'' One commenter thought that the rule makes the ICP mandatory. Another commenter noted that the proposed rule is identical to the current rule.

*Partially acceptable formats.* One commenter asked if an operator would have to integrate all parts of an ICP with a response plan or if he would have the option to integrate parts of the ICP with the SPCC Plan.

*PE certification.* One commenter asked how an ICP would work, i.e., whether the PE would be certifying the SPCC portion, the FRP portion, or both.

*Response to comments. Acceptable formats.* It is not necessary for the rule to mention the ICP or any other format specifically because the rule already allows the Regional Administrator flexibility to accept any format that meets all Federal requirements. *See* § 112.20(h). You may use the ICP, a State response plan, or other format acceptable to the Regional Administrator, at your option. We do not require use of any alternative format, but merely give you the option to do so.

The commenter is correct that the proposed rule is identical to the current rule. The current rule allows the submission of an ''equivalent response plan that has been prepared to meet State or other Federal requirements.''

*Partially acceptable formats.* You have the option to integrate any or all parts of an ICP with your response plan. This gives you flexibility in formatting. Similar to SPCC Plans, the Regional Administrator may accept partial use of alternative formats.

*PE certification.* PE certification is only required for the SPCC portion of any ICP.

*Editorial changes and clarifications.* We added the words ''acceptable to the Regional Administrator'' in the first sentence after the words ''response plan.''

*Appendix C—Substantial Harm Criteria*

*Background.* In 1997, we proposed changes to Appendix C which would track proposed amendments to § 112.20(f)(4) regarding calculating the oil storage capacity of aboveground storage containers storing a mixture of process water/wastewater within 10% or less of oil. Because we have withdrawn the proposed changes to § 112.20(f)(4), the proposed changes to Appendix C are also unnecessary. Therefore, we have withdrawn the proposed changes to Appendix C, and it remains unchanged.

*Appendix C—Section 2.1—Non-Transportation-Related Facilities With a Total Oil Storage Capacity Greater Than or Equal to 42,000 Gallons Where Operations Include Over-Water Transfer of Oil*

*Background.* We have corrected the text of the first sentence in the section to correspond with the title, so that it reads ''A non-transportation-related facility with a total oil storage capacity greater than or equal to 42,000 gallons that transfers oil over water to or from vessels must submit a response plan to EPA. We added the words ''or equal to'' to track rule language found at § 112.20(f)(1)(i).

*Appendix C—Section 2.4—Proximity to Public Drinking Water Intakes at Facilities With a Total Oil Storage Capacity Greater Than or Equal to 1 Million Gallons*

*Background.* We have revised the title of this section by reversing the order of the words ''Storage'' and ''Oil'' in the heading. We have also added the word ''oil'' to the first sentence so that it reads, ''A facility with a total oil storage capacity greater than * * *.''

*Appendix D—Part A—Section A.2 (Footnote 2)*

*Background.* We have revised footnote 2 to section A.2 of Part A, Appendix D, to reflect the new citation to the SPCC rule's secondary containment requirements.

*Appendix F—Section 1.2.7—NAICS Codes*

*Background.* We have revised section 1.2.7 to delete the reference to Standard Industry Classification (SIC) codes, and replace it with a reference to North American Industry Classification System (NAICS) codes. The NAICS was adopted by the United States, Canada, and Mexico on January 1, 1997 to replace the SIC codes.

*Appendix F—Section 1.4.3 Analysis of the Potential for an Oil Discharge*

*Background.* We have revised the second and last sentences of this section by replacing the word ''spill'' with ''discharge.''

*Appendix F—Section 1.7.3 (7)—Containment and Drainage Planning*

*Background.* We have revised paragraph (7) of section 1.7.3 of Appendix F to use the new citation to the SPCC rule's inspection and monitoring requirements for drainage.

*Appendix F—Section 1.8.1 Facility Self-Inspection*

*Background.* We have revised section 1.8.1 of Appendix F to use the new citation to the SPCC rule's recordkeeping requirements. The revision also reflects the three-year record maintenance periods for SPCC records and keeps the current five-year period for FRP records.

*Editorial changes and clarifications.* ''Tanks'' becomes ''each container.''

*Appendix F—Section 1.8.1.1—Tank Inspection*

*Background.* We have revised section 1.8.1.1 of Appendix F to use the new citation to the SPCC rule's tank inspection requirements.

*Appendix F—Section 1.8.1.3 Secondary Containment Inspection*

*Background.* We have revised section 1.8.1.1.4 of Appendix F to use the new citation to the SPCC rule's secondary containment inspection requirements.

*Appendix F—Section 1.10 Security*

*Background.* We have revised section 1.10 of Appendix F to use the new citation to the SPCC rule's security requirements.

*Appendix F—Section 2.1(6) General Information*

*Background.* We have revised paragraph 2.1(6) to refer to NAICS codes in place of SIC codes.

*Appendix F—Section 3.0 Acronyms*

*Background.* We have deleted the acronym for SIC and substituted the acronym for NAICS.

*Appendix F-Attachment F–1 Response Plan Cover Sheet*

*Background.* We have deleted the reference to SIC and substituted a reference to NAICS.

## VI. Summary of Supporting Analyses

*A. Executive Order 12866—OMB Review*

Under Executive Order 12866, (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it raises novel legal or policy issues. Such issues include proposed measures which would relieve facilities of regulatory mandates and could change the manner in which facilities comply with remaining mandates. Therefore, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The reduction in size of the regulated community due to final rule revisions will lead to a capital cost savings of approximately $29.47 million per year. During the first year, regulated facilities will experience an increase in total paperwork cost burden of $21.93 million due primarily to the need to read the rule. In addition, certain facilities will recalculate their storage capacity to exclude applicable wastewater treatment systems and, therefore, must amend and certify their plans if the storage capacity threshold is still met. In certain cases, however, the wastewater treatment system provision in section 112.1(b)(6) will result in a facility no longer being subject to the any Part 112 requirements. However, during the second year, total paperwork cost burden will decrease by about $60.21 million and beginning in the third year following the rulemaking, the total paperwork cost burden to all regulated facilities will decrease by about $45.03 million. The result is an aggregate cost savings of about $7.56 million during the first year, $89.69 million during the second year, and $74.51 million during subsequent years.

*B. Executive Order 12898—Environmental Justice*

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. EPA has determined that the regulatory changes in this rule will not have a disproportionate impact on minorities and low-income populations.

*C. Executive Order 13045—Children's Health*

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866; and, (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The Agency has no data that indicate that the types of risks resulting from oil discharges have a disproportionate effect on children, and does not have reason to believe that they do so.

*D. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments*

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal

Consultation) as of that date. EPA developed this final rule, however, under the period when EO 13084 was in effect; thus, EPA addressed tribal considerations under EO 13084.

Today's rule does not significantly or uniquely affect communities of Indian tribal governments. Overall, the rule significantly reduces the regulatory burden, and the few burden increases in the rule do not uniquely affect Indian tribal governments.

Nevertheless, we consulted with a representative organization of tribal groups, the Tribal Association on Solid Waste and Emergency Response. That organization did not provide us with any comments.

*E. Executive Order 13132—Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

This final rule does not have federalism implications. It 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, as specified in Executive Order 13132. Under CWA section 311(o), EPA believes that States are free to impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters. In proposing modifications to the SPCC rule, EPA encouraged States to supplement the federal SPCC program and recognized that some States have more stringent requirements. 56 FR 54612 (Oct. 22, 1991). This rule does not preempt state law or regulations. Thus, Executive Order 13132 does not apply to this rule.

*F. Executive Order 13211—Energy Effects*

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The overall effect of the rule is to decrease the regulatory burden on facility owners or operators subject to its provisions.

*G. Regulatory Flexibility Act (R.F.A.) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The R.F.A. generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, which constitute a large percentage of the facilities affected by this rule, generally defines small businesses as having less than $500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This rule will significantly reduce regulatory burden on all facilities, particularly small facilities. For example, the rule exempts approximately 55,000 facilities from its scope. Approximately 41,300 of those facilities are small facilities, and of those, nearly 27,700 are small farms. This rulemaking will increase information collection burden for most facilities in the first year by approximately 0.75 million hours due principally to the estimated burden each facility will incur to read and understand the changes that we are making to the rule. However, the rule will also reduce the overall annual information collection burden by nearly 1.59 million hours a year in the second year and over 1.18 million hours a year in the third year of the information collection request, much of that for the small facilities that make up the large majority of our regulated universe. Further, the rule will reduce costs for both existing and new facilities.

Information collection and other provisions in the final rule that affect capital costs are expected to yield cost savings of about $7.56 million during the first year, $89.69 million during the second year and $74.51 million during subsequent years. The rule also gives all facilities greater flexibility in recordkeeping and other paperwork requirements. Finally, § 112.7(a)(2) of the rule gives small businesses and all other facilities the flexibility to use alternative methods to comply with the requirements of the rule if the facility explains its rationale for nonconformance and provides equivalent environmental protection. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

*H. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative

that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Overall, the rule reduces burden and costs on all facilities. After the first and second year, the rule is expected to reduce the information collection burden by over 1.3 million hours annually.

Approximately 55,000 facilities will no longer be subject to the SPCC rule. Of these facilities, EPA estimates that approximately 3,500 existing facilities will no longer be required to maintain SPCC plans, due to the exemption for certain wastewater treatment systems. Other revisions are expected to exempt approximately 51,400 additional facilities 39,623 small facilities (including 27,700 small farms). The exemption for completely buried containers will result in approximately 14,000 facilities no longer subject to the rule, and 37,000 more facilities with some partial information collection reduction. Further, EPA estimates Information collection and capital costs are expected to decrease by over $74.25 million a year in the third year of the SPCC information collection request. In addition to these SPCC-related impacts, this rulemaking is estimated to result in cost savings for as many as 35 facilities that are expected to no longer require facility response plans due to the wastewater treatment system exemption. The result of the changes to the scope of the FRP information collection requirements is a cost savings of approximately $0.23 million per year. The rule also gives all facilities greater flexibility in recordkeeping and other paperwork requirements. Finally, § 112.7(a)(2) of the rule gives small businesses and all other facilities the flexibility to use alternate methods to comply with the requirements of the rule if the facility explains its rationale for nonconformance and describes its method of equivalent environmental protection. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In developing this rule, EPA nevertheless consulted with representative organizations of State, local, and tribal governments. The representative organizations were the Environmental Council of the States, the National Association of Counties, and the Tribal Association on Solid Waste and Emergency Response. None of those organizations provided us with any comments. However, numerous States and local governments did comment on the rule proposals in all three proposed rulemakings. Those commenters submitted a wide variety of comments. EPA responses to those comments may be found in this document and in the Comment Response Documents.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the overall effect of the rule will be to reduce burden and costs for regulated facilities, including small governments that are subject to the rule.

*I. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number *2050–0021.*

EPA does not collect the information required by SPCC regulation on a routine basis. SPCC Plans ordinarily need not be submitted to EPA, but must generally be maintained at the facility. Preparation, implementation, and maintenance of an SPCC Plan by the facility helps prevent oil discharges, and mitigates the environmental damage caused by such discharges. Therefore, the primary user of the data is the facility. While EPA may, from time to time, request information under these regulations, such requests are not routine.

Although the facility is the primary data user, EPA also uses the data in certain situations. EPA primarily uses SPCC Plan data to ensure that facilities comply with the regulation. This includes design and operation specifications, and inspection requirements. EPA reviews SPCC Plans: (1) when it requests a facility to submit a Plan after certain oil discharges or to evaluate an extension request; and, (2) as part of EPA's inspection program. Note that the final rule eliminates the previous requirement to submit the entire Plan after certain discharges, and merely retains the requirement that it be maintained at the facility unless EPA requests a copy. State and local governments also use the data, which are not necessarily available elsewhere and can greatly assist local emergency preparedness efforts. Preparation of the information for affected facilities is required under section 311(j)(1) of the Act as implemented by 40 CFR part 112.

In the absence of this final rulemaking, EPA estimates that 469,274 facilities would have been subject to the rule in the first year and would have already prepared SPCC Plans. In addition, EPA estimates that approximately 4,700 new facilities would have become subject to the requirements of the rule annually. EPA also estimates that, in the absence of this rulemaking, the average annual public reporting and recordkeeping burden for this collection of information for existing and newly regulated facilities would have ranged between 4.9 to 13.8 hours and 39.4 to 100.4 hours, respectively, depending on facility characteristics (*e.g.,* storage capacity).

Through this rulemaking, we expect to reduce both the number of regulated facilities, as well as the average annual burden for facilities that remain regulated. The number of regulated facilities will be reduced by approximately 55,000. The average annual public reporting for facilities already regulated by the Oil Pollution Prevention regulation is estimated to range between 8.6 and 12.2 hours, while the burden for newly regulated facilities is estimated to range between 35.1 and 65.2 hours as a result of this rulemaking. These average annual burden estimates take into account the varied frequencies of response for individual facilities according to characteristics specific to those facilities, including the frequency of oil discharges and facility modification, but exclude the anticipated burden facilities may incur in the first year to read and understand the changes we are making to the rule.

Under the final rule, an estimated 419,033 existing and newly regulated facilities will be subject to the SPCC information collection requirements of this rule during the first year of the information collection period. The net annualized capital and start-up costs for

the SPCC information collection portion of the rule average $740,000 and net annualized labor and operation and maintenance costs are estimated to be $93.00 million for all of these facilities combined.

The information collection burden of the SPCC rule prior to this rulemaking averaged 2,828,150 hours per year. Under this final rule, the annual average burden over the next three-year ICR period is estimated to be 2,208,701 hours, resulting in a 22 percent average reduction. This rulemaking will increase burden for most facilities in the first year (totaling approximately 3.6 million hours) due principally to the estimated burden each facility will incur to read and understand the changes that we are making to the rule. The first-year burden also includes the additional need for certain facilities to amend and certify their SPCC plans to exclude wastewater treatment volumes from their oil storage capacity. Second year burden is expected to total approximately 1.3 million hours. In subsequent years, we estimate that the overall burden will be approximately 1.7 million hours annually, representing a nearly 40 percent reduction versus the average annual burden from the previous information collection period. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

In addition to reducing the information collection burden of SPCC facilities, this final rule also affects the number of facilities that require an FRP. The FRP rule (40 CFR 112.20–21) requires that owners or operators of facilities that could cause ''substantial harm'' to the environment by discharging oil into navigable waters or adjoining shorelines prepare plans for responding, to the maximum extent practicable, to a worst case discharge of oil, to a substantial threat of such a discharge, and, as appropriate, to discharges smaller than worst case discharges. All facilities subject to this requirement must submit their plans to EPA. In turn, we review and approve plans submitted by facilities identified as ''significant and substantial harm'' to the environment from oil discharges. Other facilities are not required to prepare FRPs but are required to document their determination that they do not meet the ''substantial harm'' criteria.

Prior to this rulemaking, EPA estimated that it requires between 99 and 132 hours for facility personnel in a large facility (*i.e.,* total storage capacity greater than 1 million gallons) and between 26 and 46 hours for personnel in a medium facility (*i.e.,* total storage capacity greater than 42,000 gallons and less than or equal to 1 million gallons) to comply with the annual, subsequent-year reporting and recordkeeping requirements of the FRP rule. We have also estimated that prior to this rulemaking newly regulated large and medium facilities will require between 253 and 293 hours and 109 and 142 hours, respectively, to prepare a plan in the first year. In the absence of this rulemaking, EPA estimates that the total number FRP facilities affected in the first year would have been 6,000 existing and 70 new facilities. Through this rulemaking the estimated number of facilities required to maintain FRPs is reduced to 5,965 and the number of new facilities that will be required to prepare and submit FRP plans is reduced to 64 facilities. This reduction in the number of facilities required to prepare, submit, and/or maintain an FRP would result in an average annual information collection burden reduction of 8,513 hours a year (624,252 to 615,739 hours).

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

### *J. National Technology Transfer and Advancement Act*

As noted in the December 7, 1997, proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''). Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. Throughout today's preamble, EPA has emphasized that owners or operators of facilities should use applicable industry standards in performing tests, inspections, and in monitoring. Section 112.3(d) provides that a Professional Engineer must certify that the SPCC Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards. We are providing examples of specific standards in today's preamble. However, due to the wide variety of facilities the rule involves, few standards would be applicable to all regulated facilities. Also, those standards change over time. Therefore, we are not incorporating those standards into rule text.

### *K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective August 16, 2002.

### List of Subjects in 40 CFR Part 112

Environmental protection, Fire prevention, Flammable materials, Materials handling and storage, Oil pollution, Oil spill prevention, Oil spill response, Penalties, Petroleum, Reporting and recordkeeping requirements, Tanks, Water pollution control, Water resources.

Dated: June 28, 2002.

**Christine Todd Whitman,**

*Administrator.*

For the reasons set out in the preamble, title 40 CFR, chapter I, part

112 of the Code of Federal Regulations, is amended as follows:

## PART 112—OIL POLLUTION PREVENTION

1. The authority for part 112 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.*; 33 U.S.C 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

2. Part 112 is amended by designating §§ 112.1 through 112.7 as subpart A, adding a subpart heading and revising newly designated subpart A to read as follows:

### Subpart A—Applicability, Definitions, and General Requirements For All Facilities and All Types of Oils

Sec.



## Subpart A—Applicability, Definitions, and General Requirements for All Facilities and All Types of Oils

### § 112.1 General applicability.

(a)(1) This part establishes procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or 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).

(2) As used in this part, 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.

(b) Except as provided in paragraph (d) of this section, this part applies to any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or 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) that has oil in:

(1) Any aboveground container;

(2) Any completely buried tank as defined in § 112.2;

(3) Any container that is used for standby storage, for seasonal storage, or for temporary storage, or not otherwise ''permanently closed'' as defined in § 112.2;

(4) Any ''bunkered tank'' or ''partially buried tank'' as defined in § 112.2, or any container in a vault, each of which is considered an aboveground storage container for purposes of this part.

(c) As provided in section 313 of the Clean Water Act (CWA), departments, agencies, and instrumentalities of the Federal government are subject to this part to the same extent as any person.

(d) Except as provided in paragraph (f) of this section, this part does not apply to:

(1) The owner or operator of any facility, equipment, or operation that is not subject to the jurisdiction of the Environmental Protection Agency (EPA) under section 311(j)(1)(C) of the CWA, as follows:

(i) Any onshore or offshore facility, that due to its location, could not reasonably be expected to have a discharge as described in paragraph (b) of this section. This determination must be based solely upon consideration of the geographical and location aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.) and must exclude consideration of manmade features such as dikes, equipment or other structures, which may serve to restrain, hinder, contain, or otherwise prevent a discharge as described in paragraph (b) of this section.

(ii) Any equipment, or operation of a vessel or transportation-related onshore or offshore facility which is subject to the authority and control of the U.S. Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of EPA, dated November 24, 1971 (Appendix A of this part).

(iii) Any equipment, or operation of a vessel or onshore or offshore facility which is subject to the authority and control of the U.S. Department of Transportation or the U.S. Department of the Interior, as defined in the Memorandum of Understanding between the Secretary of Transportation, the Secretary of the Interior, and the Administrator of EPA, dated November 8, 1993 (Appendix B of this part).

(2) Any facility which, although otherwise subject to the jurisdiction of EPA, meets both of the following requirements:

(i) The completely buried storage capacity of the facility is 42,000 gallons or less of oil. For purposes of this exemption, the completely buried storage capacity of a facility excludes the capacity of a completely buried tank, as defined in § 112.2, and connected underground piping, underground ancillary equipment, and containment systems, that is currently subject to all of the technical requirements of part 280 of this chapter or all of the technical requirements of a State program approved under part 281 of this chapter. The completely buried storage capacity of a facility also excludes the capacity of a container that is ''permanently closed,'' as defined in § 112.2.

(ii) The aggregate aboveground storage capacity of the facility is 1,320 gallons or less of oil. For purposes of this exemption, only containers of oil with a capacity of 55 gallons or greater are counted. The aggregate aboveground storage capacity of a facility excludes the capacity of a container that is ''permanently closed,'' as defined in § 112.2.

(3) Any offshore oil drilling, production, or workover facility that is subject to the notices and regulations of the Minerals Management Service, as specified in the Memorandum of Understanding between the Secretary of Transportation, the Secretary of the Interior, and the Administrator of EPA, dated November 8, 1993 (Appendix B of this part).

(4) Any completely buried storage tank, as defined in § 112.2, and connected underground piping, underground ancillary equipment, and containment systems, at any facility, that is subject to all of the technical requirements of part 280 of this chapter or a State program approved under part 281 of this chapter, except that such a tank must be marked on the facility diagram as provided in § 112.7(a)(3), if

the facility is otherwise subject to this part.

(5) Any container with a storage capacity of less than 55 gallons of oil.

(6) Any facility or part thereof used exclusively for wastewater treatment and not used to satisfy any requirement of this part. The production, recovery, or recycling of oil is not wastewater treatment for purposes of this paragraph.

(e) This part establishes requirements for the preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans. SPCC Plans are designed to complement existing laws, regulations, rules, standards, policies, and procedures pertaining to safety standards, fire prevention, and pollution prevention rules. The purpose of an SPCC Plan is to form a comprehensive Federal/State spill prevention program that minimizes the potential for discharges. The SPCC Plan must address all relevant spill prevention, control, and countermeasures necessary at the specific facility. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State, or local laws.

(f) Notwithstanding paragraph (d) of this section, the Regional Administrator may require that the owner or operator of any facility subject to the jurisdiction of EPA under section 311(j) of the CWA prepare and implement an SPCC Plan, or any applicable part, to carry out the purposes of the CWA.

(1) Following a preliminary determination, the Regional Administrator must provide a written notice to the owner or operator stating the reasons why he must prepare an SPCC Plan, or applicable part. The Regional Administrator must send such notice to the owner or operator by certified mail or by personal delivery. If the owner or operator is a corporation, the Regional Administrator must also mail a copy of such notice to the registered agent, if any and if known, of the corporation in the State where the facility is located.

(2) Within 30 days of receipt of such written notice, the owner or operator may provide information and data and may consult with the Agency about the need to prepare an SPCC Plan, or applicable part.

(3) Within 30 days following the time under paragraph (b)(2) of this section within which the owner or operator may provide information and data and consult with the Agency about the need to prepare an SPCC Plan, or applicable part, the Regional Administrator must make a final determination regarding whether the owner or operator is required to prepare and implement an SPCC Plan, or applicable part. The Regional Administrator must send the final determination to the owner or operator by certified mail or by personal delivery. If the owner or operator is a corporation, the Regional Administrator must also mail a copy of the final determination to the registered agent, if any and if known, of the corporation in the State where the facility is located.

(4) If the Regional Administrator makes a final determination that an SPCC Plan, or applicable part, is necessary, the owner or operator must prepare the Plan, or applicable part, within six months of that final determination and implement the Plan, or applicable part, as soon as possible, but not later than one year after the Regional Administrator has made a final determination.

(5) The owner or operator may appeal a final determination made by the Regional Administrator requiring preparation and implementation of an SPCC Plan, or applicable part, under this paragraph. The owner or operator must make the appeal to the Administrator of EPA within 30 days of receipt of the final determination under paragraph (b)(3) of this section from the Regional Administrator requiring preparation and/or implementation of an SPCC Plan, or applicable part. The owner or operator must send a complete copy of the appeal to the Regional Administrator at the time he makes the appeal to the Administrator. The appeal must contain a clear and concise statement of the issues and points of fact in the case. In the appeal, the owner or operator may also provide additional information. The additional information may be from any person. The Administrator may request additional information from the owner or operator. The Administrator must render a decision within 60 days of receiving the appeal or additional information submitted by the owner or operator and must serve the owner or operator with the decision made in the appeal in the manner described in paragraph (f)(1) of this section.

### § 112.2 Definitions.

For the purposes of this part:

*Adverse weather* means weather conditions that make it difficult for response equipment and personnel to clean up or remove spilled oil, and that must be considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include significant wave height as specified in Appendix E to this part (as appropriate), ice conditions, temperatures, weather-related visibility, and currents within the area in which the systems or equipment is intended to function.

*Alteration* means any work on a container involving cutting, burning, welding, or heating operations that changes the physical dimensions or configuration of the container.

*Animal fat* means a non-petroleum oil, fat, or grease of animal, fish, or marine mammal origin.

*Breakout tank* means a container used to relieve surges in an oil pipeline system or to receive and store oil transported by a pipeline for reinjection and continued transportation by pipeline.

*Bulk storage container* means any container used to store oil. These containers are used for purposes including, but not limited to, the storage of oil prior to use, while being used, or prior to further distribution in commerce. Oil-filled electrical, operating, or manufacturing equipment is not a bulk storage container.

*Bunkered tank* means a container constructed or placed in the ground by cutting the earth and re-covering the container in a manner that breaks the surrounding natural grade, or that lies above grade, and is covered with earth, sand, gravel, asphalt, or other material. A bunkered tank is considered an aboveground storage container for purposes of this part.

*Completely buried tank* means any container completely below grade and covered with earth, sand, gravel, asphalt, or other material. Containers in vaults, bunkered tanks, or partially buried tanks are considered aboveground storage containers for purposes of this part.

*Complex* means a facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the CWA.

*Contiguous zone* means the zone established by the United States under Article 24 of the Convention of the Territorial Sea and Contiguous Zone, that is contiguous to the territorial sea and that extends nine miles seaward from the outer limit of the territorial area.

*Contract or other approved means* means:

(1) A written contractual agreement with an oil spill removal organization that identifies and ensures the availability of the necessary personnel and equipment within appropriate response times; and/or

(2) A written certification by the owner or operator that the necessary personnel and equipment resources, owned or operated by the facility owner or operator, are available to respond to a discharge within appropriate response times; and/or

(3) Active membership in a local or regional oil spill removal organization that has identified and ensures adequate access through such membership to necessary personnel and equipment to respond to a discharge within appropriate response times in the specified geographic area; and/or

(4) Any other specific arrangement approved by the Regional Administrator upon request of the owner or operator.

*Discharge* 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, 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 this part, the term discharge shall not include any discharge of oil that is authorized by a permit issued under section 13 of the River and Harbor Act of 1899 (33 U.S.C. 407).

*Facility* means any mobile or fixed, onshore or offshore building, structure, installation, equipment, pipe, or pipeline (other than a vessel or a public vessel) used in oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil processing, oil transfer, oil distribution, and waste treatment, or in which oil is used, as described in Appendix A to this part. The boundaries of a facility depend on several site-specific factors, including, but not limited to, the ownership or operation of buildings, structures, and equipment on the same site and the types of activity at the site.

*Fish and wildlife and sensitive environments* means areas that may be identified by their legal designation or by evaluations of Area Committees (for planning) or members of the Federal On-Scene Coordinator's spill response structure (during responses). These areas may include wetlands, National and State parks, critical habitats for endangered or threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, recreational areas, national forests, Federal and State lands that are research national areas, heritage program areas, land trust areas, and historical and archaeological sites and parks. These areas may also include unique habitats such as aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats.

*Injury* means a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge, or exposure to a product of reactions resulting from a discharge.

*Maximum extent practicable* means within the limitations used to determine oil spill planning resources and response times for on-water recovery, shoreline protection, and cleanup for worst case discharges from onshore non-transportation-related facilities in adverse weather. It includes the planned capability to respond to a worst case discharge in adverse weather, as contained in a response plan that meets the requirements in § 112.20 or in a specific plan approved by the Regional Administrator.

*Navigable waters* means the waters of the United States, including the territorial seas.

(1) The term includes:

(i) 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 subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters:

(A) That are or could be used by interstate or foreign travelers for recreational or other purposes; or

(B) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or,

(C) That are or could be used for industrial purposes by industries in interstate commerce;

(iv) All impoundments of waters otherwise defined as waters of the United States under this section;

(v) Tributaries of waters identified in paragraphs (1)(i) through (iv) of this definition;

(vi) The territorial sea; and

(vii) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraph (1) of this definition.

(2) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds which also meet the criteria of this definition) are not waters of the United States. Navigable waters 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 CWA, the final authority regarding CWA jurisdiction remains with EPA.

*Non-petroleum oil* means oil of any kind that is not petroleum-based, including but not limited to: Fats, oils, and greases of animal, fish, or marine mammal origin; and vegetable oils, including oils from seeds, nuts, fruits, and kernels.

*Offshore facility* means any facility of any kind (other than a vessel or public vessel) located in, on, or under any of the navigable waters of the United States, and any facility of any kind that is subject to the jurisdiction of the United States and is located in, on, or under any other waters.

*Oil* means oil of any kind or in any form, including, but not limited to: fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and, other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil.

*Oil Spill Removal Organization* means an entity that provides oil spill response resources, and includes any for-profit or not-for-profit contractor, cooperative, or in-house response resources that have been established in a geographic area to provide required response resources.

*Onshore facility* means any facility of any kind located in, on, or under any land within the United States, other than submerged lands.

*Owner or operator* means any person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated or maintained the facility immediately prior to such abandonment.

*Partially buried tank* means a storage container that is partially inserted or constructed in the ground, but not entirely below grade, and not

completely covered with earth, sand, gravel, asphalt, or other material. A partially buried tank is considered an aboveground storage container for purposes of this part.

*Permanently closed* means any container or facility for which:

(1) All liquid and sludge has been removed from each container and connecting line; and

(2) All connecting lines and piping have been disconnected from the container and blanked off, all valves (except for ventilation valves) have been closed and locked, and conspicuous signs have been posted on each container stating that it is a permanently closed container and noting the date of closure.

*Person* includes an individual, firm, corporation, association, or partnership.

*Petroleum oil* means petroleum in any form, including but not limited to crude oil, fuel oil, mineral oil, sludge, oil refuse, and refined products.

*Production facility* means all structures (including but not limited to wells, platforms, or storage facilities), piping (including but not limited to flowlines or gathering lines), or equipment (including but not limited to workover equipment, separation equipment, or auxiliary non-transportation-related equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of oil, or associated storage or measurement, and located in a single geographical oil or gas field operated by a single operator.

*Regional Administrator* means the Regional Administrator of the Environmental Protection Agency, in and for the Region in which the facility is located.

*Repair* means any work necessary to maintain or restore a container to a condition suitable for safe operation, other than that necessary for ordinary, day-to-day maintenance to maintain the functional integrity of the container and that does not weaken the container.

*Spill Prevention, Control, and Countermeasure Plan; SPCC Plan, or Plan* means the document required by § 112.3 that details the equipment, workforce, procedures, and steps to prevent, control, and provide adequate countermeasures to a discharge.

*Storage capacity* of a container means the shell capacity of the container.

*Transportation-related and non-transportation-related*, as applied to an onshore or offshore facility, are defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971, (Appendix A of this part).

*United States* means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Pacific Island Governments.

*Vegetable oil* means a non-petroleum oil or fat of vegetable origin, including but not limited to oils and fats derived from plant seeds, nuts, fruits, and kernels.

*Vessel* 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.

*Wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

*Worst case discharge* for an onshore non-transportation-related facility means the largest foreseeable discharge in adverse weather conditions as determined using the worksheets in Appendix D to this part.

### § 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.

The owner or operator of an onshore or offshore facility subject to this section must prepare a Spill Prevention, Control, and Countermeasure Plan (hereafter ''SPCC Plan'' or ''Plan),'' in writing, and in accordance with § 112.7, and any other applicable section of this part.

(a) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, on or before February 17, 2003, and must implement the amended Plan as soon as possible, but not later than August 18, 2003. If your onshore or offshore facility becomes operational after August 16, 2002, through August 18, 2003, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare a Plan on or before August 18, 2003, and fully implement it as soon as possible, but not later than August 18, 2003.

(b) If you are the owner or operator of an onshore or offshore facility that becomes operational after August 18, 2003, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

(c) If you are the owner or operator of an onshore or offshore mobile facility, such as an onshore drilling or workover rig, barge mounted offshore drilling or workover rig, or portable fueling facility, you must prepare, implement, and maintain a facility Plan as required by this section. This provision does not require that you prepare a new Plan each time you move the facility to a new site. The Plan may be a general plan. When you move the mobile or portable facility, you must locate and install it using the discharge prevention practices outlined in the Plan for the facility. You may not operate a mobile or portable facility subject to this part unless you have implemented the Plan. The Plan is applicable only while the facility is in a fixed (non-transportation) operating mode.

(d) A licensed Professional Engineer must review and certify a Plan for it to be effective to satisfy the requirements of this part.

(1) By means of this certification the Professional Engineer attests:

(i) That he is familiar with the requirements of this part ;

(ii) That he or his agent has visited and examined the facility;

(iii) That the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part;

(iv) That procedures for required inspections and testing have been established; and

(v) That the Plan is adequate for the facility.

(2) Such certification shall in no way relieve the owner or operator of a facility of his duty to prepare and fully implement such Plan in accordance with the requirements of this part.

(e) If you are the owner or operator of a facility for which a Plan is required under this section, you must:

(1) Maintain a complete copy of the Plan at the facility if the facility is normally attended at least four hours per day, or at the nearest field office if the facility is not so attended, and

(2) Have the Plan available to the Regional Administrator for on-site review during normal working hours.

(f) *Extension of time.* (1) The Regional Administrator may authorize an extension of time for the preparation and full implementation of a Plan, or any amendment thereto, beyond the time permitted for the preparation, implementation, or amendment of a

Plan under this part, when he finds that the owner or operator of a facility subject to this section, cannot fully comply with the requirements as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of such owner or operator or his agents or employees.

(2) If you are an owner or operator seeking an extension of time under paragraph (f)(1) of this section, you may submit a written extension request to the Regional Administrator. Your request must include:

(i) A full explanation of the cause for any such delay and the specific aspects of the Plan affected by the delay;

(ii) A full discussion of actions being taken or contemplated to minimize or mitigate such delay; and

(iii) A proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for completion of tests or studies, installation and operation of any necessary equipment, or other preventive measures. In addition you may present additional oral or written statements in support of your extension request.

(3) The submission of a written extension request under paragraph (f)(2) of this section does not relieve you of your obligation to comply with the requirements of this part. The Regional Administrator may request a copy of your Plan to evaluate the extension request. When the Regional Administrator authorizes an extension of time for particular equipment or other specific aspects of the Plan, such extension does not affect your obligation to comply with the requirements related to other equipment or other specific aspects of the Plan for which the Regional Administrator has not expressly authorized an extension.

**§ 112.4 Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator.**

If you are the owner or operator of a facility subject to this part, you must:

(a) Notwithstanding compliance with § 112.3, whenever your facility has discharged more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or discharged more than 42 U.S. gallons of oil in each of two discharges as described in § 112.1(b), occurring within any twelve month period, submit the following information to the Regional Administrator within 60 days from the time the facility becomes subject to this section:

(1) Name of the facility;

(2) Your name;

(3) Location of the facility;

(4) Maximum storage or handling capacity of the facility and normal daily throughput;

(5) Corrective action and countermeasures you have taken, including a description of equipment repairs and replacements;

(6) An adequate description of the facility, including maps, flow diagrams, and topographical maps, as necessary;

(7) The cause of such discharge as described in § 112.1(b), including a failure analysis of the system or subsystem in which the failure occurred;

(8) Additional preventive measures you have taken or contemplated to minimize the possibility of recurrence; and

(9) Such other information as the Regional Administrator may reasonably require pertinent to the Plan or discharge.

(b) Take no action under this section until it applies to your facility. This section does not apply until the expiration of the time permitted for the initial preparation and implementation of the Plan under § 112.3, but not including any amendments to the Plan.

(c) Send to the appropriate agency or agencies in charge of oil pollution control activities in the State in which the facility is located a complete copy of all information you provided to the Regional Administrator under paragraph (a) of this section. Upon receipt of the information such State agency or agencies may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment, and other requirements necessary to prevent and to contain discharges from your facility.

(d) Amend your Plan, if after review by the Regional Administrator of the information you submit under paragraph (a) of this section, or submission of information to EPA by the State agency under paragraph (c) of this section, or after on-site review of your Plan, the Regional Administrator requires that you do so. The Regional Administrator may require you to amend your Plan if he finds that it does not meet the requirements of this part or that amendment is necessary to prevent and contain discharges from your facility.

(e) Act in accordance with this paragraph when the Regional Administrator proposes by certified mail or by personal delivery that you amend your SPCC Plan. If the owner or operator is a corporation, he must also notify by mail the registered agent of such corporation, if any and if known, in the State in which the facility is located. The Regional Administrator must specify the terms of such proposed amendment. Within 30 days from receipt of such notice, you may submit written information, views, and arguments on the proposed amendment. After considering all relevant material presented, the Regional Administrator must either notify you of any amendment required or rescind the notice. You must amend your Plan as required within 30 days after such notice, unless the Regional Administrator, for good cause, specifies another effective date. You must implement the amended Plan as soon as possible, but not later than six months after you amend your Plan, unless the Regional Administrator specifies another date.

(f) If you appeal a decision made by the Regional Administrator requiring an amendment to an SPCC Plan, send the appeal to the EPA Administrator in writing within 30 days of receipt of the notice from the Regional Administrator requiring the amendment under paragraph (e) of this section. You must send a complete copy of the appeal to the Regional Administrator at the time you make the appeal. The appeal must contain a clear and concise statement of the issues and points of fact in the case. It may also contain additional information from you, or from any other person. The EPA Administrator may request additional information from you, or from any other person. The EPA Administrator must render a decision within 60 days of receiving the appeal and must notify you of his decision.

**§ 112.5 Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators.**

If you are the owner or operator of a facility subject to this part, you must:

(a) Amend the SPCC Plan for your facility in accordance with the general requirements in § 112.7, and with any specific section of this part applicable to your facility, when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge as described in § 112.1(b). Examples of changes that may require amendment of the Plan include, but are not limited to: commissioning or decommissioning containers; replacement, reconstruction, or movement of containers; reconstruction, replacement, or installation of piping systems; construction or demolition that might alter secondary containment structures; changes of product or service; or revision of standard operation or maintenance procedures at

a facility. An amendment made under this section must be prepared within six months, and implemented as soon as possible, but not later than six months following preparation of the amendment.

(b) Notwithstanding compliance with paragraph (a) of this section, complete a review and evaluation of the SPCC Plan at least once every five years from the date your facility becomes subject to this part; or, if your facility was in operation on or before August 16, 2002, five years from the date your last review was required under this part. As a result of this review and evaluation, you must amend your SPCC Plan within six months of the review to include more effective prevention and control technology if the technology has been field-proven at the time of the review and will significantly reduce the likelihood of a discharge as described in § 112.1(b) from the facility. You must implement any amendment as soon as possible, but not later than six months following preparation of any amendment. You must document your completion of the review and evaluation, and must sign a statement as to whether you will amend the Plan, either at the beginning or end of the Plan or in a log or an appendix to the Plan. The following words will suffice, ''I have completed review and evaluation of the SPCC Plan for (name of facility) on (date), and will (will not) amend the Plan as a result.''

(c) Have a Professional Engineer certify any technical amendment to your Plan in accordance with § 112.3(d).

**§ 112.6 [Reserved]**

**§ 112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans.**

If you are the owner or operator of a facility subject to this part you must prepare a Plan in accordance with good engineering practices. The Plan must have the full approval of management at a level of authority to commit the necessary resources to fully implement the Plan. You must prepare the Plan in writing. If you do not follow the sequence specified in this section for the Plan, you must prepare an equivalent Plan acceptable to the Regional Administrator that meets all of the applicable requirements listed in this part, and you must supplement it with a section cross-referencing the location of requirements listed in this part and the equivalent requirements in the other prevention plan. If the Plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, you must discuss these items in separate paragraphs, and must explain separately the details of installation and operational start-up. As detailed elsewhere in this section, you must also:

(a)(1) Include a discussion of your facility's conformance with the requirements listed in this part.

(2) Comply with all applicable requirements listed in this part. Your Plan may deviate from the requirements in paragraphs (g), (h)(2) and (3), and (i) of this section and the requirements in subparts B and C of this part, except the secondary containment requirements in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2),112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11),112.13(c)(2), and 112.14(c), where applicable to a specific facility, if you provide equivalent environmental protection by some other means of spill prevention, control, or countermeasure. Where your Plan does not conform to the applicable requirements in paragraphs (g), (h)(2) and (3), and (i) of this section, or the requirements of subparts B and C of this part, except the secondary containment requirements in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c), you must state the reasons for nonconformance in your Plan and describe in detail alternate methods and how you will achieve equivalent environmental protection. If the Regional Administrator determines that the measures described in your Plan do not provide equivalent environmental protection, he may require that you amend your Plan, following the procedures in § 112.4(d) and (e).

(3) Describe in your Plan the physical layout of the facility and include a facility diagram, which must mark the location and contents of each container. The facility diagram must include completely buried tanks that are otherwise exempted from the requirements of this part under § 112.1(d)(4). The facility diagram must also include all transfer stations and connecting pipes. You must also address in your Plan:

(i) The type of oil in each container and its storage capacity;

(ii) Discharge prevention measures including procedures for routine handling of products (loading, unloading, and facility transfers, *etc.*);

(iii) Discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge;

(iv) Countermeasures for discharge discovery, response, and cleanup (both the facility's capability and those that might be required of a contractor);

(v) Methods of disposal of recovered materials in accordance with applicable legal requirements; and

(vi) Contact list and phone numbers for the facility response coordinator, National Response Center, cleanup contractors with whom you have an agreement for response, and all appropriate Federal, State, and local agencies who must be contacted in case of a discharge as described in § 112.1(b).

(4) Unless you have submitted a response plan under § 112.20, provide information and procedures in your Plan to enable a person reporting a discharge as described in § 112.1(b) to relate information on the exact address or location and phone number of the facility; the date and time of the discharge, the type of material discharged; estimates of the total quantity discharged; estimates of the quantity discharged as described in § 112.1(b); the source of the discharge; a description of all affected media; the cause of the discharge; any damages or injuries caused by the discharge; actions being used to stop, remove, and mitigate the effects of the discharge; whether an evacuation may be needed; and, the names of individuals and/or organizations who have also been contacted.

(5) Unless you have submitted a response plan under § 112.20, organize portions of the Plan describing procedures you will use when a discharge occurs in a way that will make them readily usable in an emergency, and include appropriate supporting material as appendices.

(b) Where experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any other equipment known to be a source of a discharge), include in your Plan a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

(c) Provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in § 112.1(b). The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank or pipe, will not escape the containment system before cleanup occurs. At a minimum, you must use one of the following prevention systems or its equivalent:

(1) For onshore facilities:
(i) Dikes, berms, or retaining walls sufficiently impervious to contain oil;
(ii) Curbing;
(iii) Culverting, gutters, or other drainage systems;
(iv) Weirs, booms, or other barriers;
(v) Spill diversion ponds;
(vi) Retention ponds; or
(vii) Sorbent materials.
(2) For offshore facilities:
(i) Curbing or drip pans; or
(ii) Sumps and collection systems.

(d) If you determine that the installation of any of the structures or pieces of equipment listed in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c) to prevent a discharge as described in § 112.1(b) from any onshore or offshore facility is not practicable, you must clearly explain in your Plan why such measures are not practicable; for bulk storage containers, conduct both periodic integrity testing of the containers and periodic integrity and leak testing of the valves and piping; and, unless you have submitted a response plan under § 112.20, provide in your Plan the following:

(1) An oil spill contingency plan following the provisions of part 109 of this chapter.

(2) A written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful.

(e) *Inspections, tests, and records.* Conduct inspections and tests required by this part in accordance with written procedures that you or the certifying engineer develop for the facility. You must keep these written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan for a period of three years. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph.

(f) *Personnel, training, and discharge prevention procedures.* (1) At a minimum, train your oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility SPCC Plan.

(2) Designate a person at each applicable facility who is accountable for discharge prevention and who reports to facility management.

(3) Schedule and conduct discharge prevention briefings for your oil-handling personnel at least once a year to assure adequate understanding of the SPCC Plan for that facility. Such briefings must highlight and describe known discharges as described in § 112.1(b) or failures, malfunctioning components, and any recently developed precautionary measures.

(g) *Security (excluding oil production facilities).* (1) Fully fence each facility handling, processing, or storing oil, and lock and/or guard entrance gates when the facility is not in production or is unattended.

(2) Ensure that the master flow and drain valves and any other valves permitting direct outward flow of the container's contents to the surface have adequate security measures so that they remain in the closed position when in non-operating or non-standby status.

(3) Lock the starter control on each oil pump in the ''off'' position and locate it at a site accessible only to authorized personnel when the pump is in a non-operating or non-standby status.

(4) Securely cap or blank-flange the loading/unloading connections of oil pipelines or facility piping when not in service or when in standby service for an extended time. This security practice also applies to piping that is emptied of liquid content either by draining or by inert gas pressure.

(5) Provide facility lighting commensurate with the type and location of the facility that will assist in the:

(i) Discovery of discharges occurring during hours of darkness, both by operating personnel, if present, and by non-operating personnel (the general public, local police, etc.); and

(ii) Prevention of discharges occurring through acts of vandalism.

(h) *Facility tank car and tank truck loading/unloading rack (excluding offshore facilities).* (1) Where loading/unloading area drainage does not flow into a catchment basin or treatment facility designed to handle discharges, use a quick drainage system for tank car or tank truck loading and unloading areas. You must design any containment system to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility.

(2) Provide an interlocked warning light or physical barrier system, warning signs, wheel chocks, or vehicle break interlock system in loading/unloading areas to prevent vehicles from departing before complete disconnection of flexible or fixed oil transfer lines.

(3) Prior to filling and departure of any tank car or tank truck, closely inspect for discharges the lowermost drain and all outlets of such vehicles, and if necessary, ensure that they are tightened, adjusted, or replaced to prevent liquid discharge while in transit.

(i) If a field-constructed aboveground container undergoes a repair, alteration, reconstruction, or a change in service that might affect the risk of a discharge or failure due to brittle fracture or other catastrophe, or has discharged oil or failed due to brittle fracture failure or other catastrophe, evaluate the container for risk of discharge or failure due to brittle fracture or other catastrophe, and as necessary, take appropriate action.

(j) In addition to the minimal prevention standards listed under this section, include in your Plan a complete discussion of conformance with the applicable requirements and other effective discharge prevention and containment procedures listed in this part or any applicable more stringent State rules, regulations, and guidelines.

3. Part 112 is amended adding subpart B consisting of §§ 112.8 through 112.11 to read as follows:

**Subpart B—Requirements for Petroleum Oils and Non-Petroleum Oils, Except Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and Vegetable Oils (Including Oils from Seeds, Nuts, Fruits, and Kernels)**

Sec.



## Subpart B—Requirements for Petroleum Oils and Non-Petroleum Oils, Except Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and Vegetable Oils (Including Oils from Seeds, Nuts, Fruits, and Kernels)

### § 112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities).

If you are the owner or operator of an onshore facility (excluding a production facility), you must:

(a) Meet the general requirements for the Plan listed under § 112.7, and the specific discharge prevention and containment procedures listed in this section.

(b) *Facility drainage.* (1) Restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such discharge. You may empty diked areas by pumps or ejectors; however, you must manually activate these pumps or ejectors and must inspect the condition of the accumulation before starting, to ensure no oil will be discharged.

(2) Use valves of manual, open-and-closed design, for the drainage of diked areas. You may not use flapper-type drain valves to drain diked areas. If your facility drainage drains directly into a watercourse and not into an on-site wastewater treatment plant, you must inspect and may drain uncontaminated retained stormwater, as provided in paragraphs (c)(3)(ii), (iii), and (iv) of this section.

(3) Design facility drainage systems from undiked areas with a potential for a discharge (such as where piping is located outside containment walls or where tank truck discharges may occur outside the loading area) to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility. You must not locate catchment basins in areas subject to periodic flooding.

(4) If facility drainage is not engineered as in paragraph (b)(3) of this section, equip the final discharge of all ditches inside the facility with a diversion system that would, in the event of an uncontrolled discharge, retain oil in the facility.

(5) Where drainage waters are treated in more than one treatment unit and such treatment is continuous, and pump transfer is needed, provide two ''lift'' pumps and permanently install at least one of the pumps. Whatever techniques you use, you must engineer facility drainage systems to prevent a discharge as described in § 112.1(b) in case there is an equipment failure or human error at the facility.

(c) *Bulk storage containers.* (1) Not use a container for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature.

(2) Construct all bulk storage container installations so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must ensure that diked areas are sufficiently impervious to contain discharged oil. Dikes, containment curbs, and pits are commonly employed for this purpose. You may also use an alternative system consisting of a drainage trench enclosure that must be arranged so that any discharge will terminate and be safely confined in a facility catchment basin or holding pond.

(3) Not allow drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse, lake, or pond, bypassing the facility treatment system unless you:

(i) Normally keep the bypass valve sealed closed.

(ii) Inspect the retained rainwater to ensure that its presence will not cause a discharge as described in § 112.1(b).

(iii) Open the bypass valve and reseal it following drainage under responsible supervision; and

(iv) Keep adequate records of such events, for example, any records required under permits issued in accordance with §§ 122.41(j)(2) and 122.41(m)(3) of this chapter.

(4) Protect any completely buried metallic storage tank installed on or after January 10, 1974 from corrosion by coatings or cathodic protection compatible with local soil conditions. You must regularly leak test such completely buried metallic storage tanks.

(5) Not use partially buried or bunkered metallic tanks for the storage of oil, unless you protect the buried section of the tank from corrosion. You must protect partially buried and bunkered tanks from corrosion by coatings or cathodic protection compatible with local soil conditions.

(6) Test each aboveground container for integrity on a regular schedule, and whenever you make material repairs. The frequency of and type of testing must take into account container size and design (such as floating roof, skid-mounted, elevated, or partially buried). You must combine visual inspection with another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or another system of non-destructive shell testing. You must keep comparison records and you must also inspect the container's supports and foundations. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph.

(7) Control leakage through defective internal heating coils by monitoring the steam return and exhaust lines for contamination from internal heating coils that discharge into an open watercourse, or pass the steam return or exhaust lines through a settling tank, skimmer, or other separation or retention system.

(8) Engineer or update each container installation in accordance with good engineering practice to avoid discharges. You must provide at least one of the following devices:

(i) High liquid level alarms with an audible or visual signal at a constantly attended operation or surveillance station. In smaller facilities an audible air vent may suffice.

(ii) High liquid level pump cutoff devices set to stop flow at a predetermined container content level.

(iii) Direct audible or code signal communication between the container gauger and the pumping station.

(iv) A fast response system for determining the liquid level of each bulk storage container such as digital computers, telepulse, or direct vision gauges. If you use this alternative, a person must be present to monitor gauges and the overall filling of bulk storage containers.

(v) You must regularly test liquid level sensing devices to ensure proper operation.

(9) Observe effluent treatment facilities frequently enough to detect possible system upsets that could cause a discharge as described in § 112.1(b).

(10) Promptly correct visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts. You must promptly remove any accumulations of oil in diked areas.

(11) Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b). You must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

(d) *Facility transfer operations, pumping, and facility process.* (1) Provide buried piping that is installed or replaced on or after August 16, 2002, with a protective wrapping and coating. You must also cathodically protect such buried piping installations or otherwise satisfy the corrosion protection standards for piping in part 280 of this chapter or a State program approved under part 281 of this chapter. If a section of buried line is exposed for any reason, you must carefully inspect it for deterioration. If you find corrosion damage, you must undertake additional examination and corrective action as

indicated by the magnitude of the damage.

(2) Cap or blank-flange the terminal connection at the transfer point and mark it as to origin when piping is not in service or is in standby service for an extended time.

(3) Properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction.

(4) Regularly inspect all aboveground valves, piping, and appurtenances. During the inspection you must assess the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces. You must also conduct integrity and leak testing of buried piping at the time of installation, modification, construction, relocation, or replacement.

(5) Warn all vehicles entering the facility to be sure that no vehicle will endanger aboveground piping or other oil transfer operations.

**§ 112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities.**

If you are the owner or operator of an onshore production facility, you must:

(a) Meet the general requirements for the Plan listed under § 112.7, and the specific discharge prevention and containment procedures listed under this section.

(b) *Oil production facility drainage.* (1) At tank batteries and separation and treating areas where there is a reasonable possibility of a discharge as described in § 112.1(b), close and seal at all times drains of dikes or drains of equivalent measures required under § 112.7(c)(1), except when draining uncontaminated rainwater. Prior to drainage, you must inspect the diked area and take action as provided in § 112.8(c)(3)(ii), (iii), and (iv). You must remove accumulated oil on the rainwater and return it to storage or dispose of it in accordance with legally approved methods.

(2) Inspect at regularly scheduled intervals field drainage systems (such as drainage ditches or road ditches), and oil traps, sumps, or skimmers, for an accumulation of oil that may have resulted from any small discharge. You must promptly remove any accumulations of oil.

(c) *Oil production facility bulk storage containers.* (1) Not use a container for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage.

(2) Provide all tank battery, separation, and treating facility installations with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must safely confine drainage from undiked areas in a catchment basin or holding pond.

(3) Periodically and upon a regular schedule visually inspect each container of oil for deterioration and maintenance needs, including the foundation and support of each container that is on or above the surface of the ground.

(4) Engineer or update new and old tank battery installations in accordance with good engineering practice to prevent discharges. You must provide at least one of the following:

(i) Container capacity adequate to assure that a container will not overfill if a pumper/gauger is delayed in making regularly scheduled rounds.

(ii) Overflow equalizing lines between containers so that a full container can overflow to an adjacent container.

(iii) Vacuum protection adequate to prevent container collapse during a pipeline run or other transfer of oil from the container.

(iv) High level sensors to generate and transmit an alarm signal to the computer where the facility is subject to a computer production control system.

(d) *Facility transfer operations, oil production facility.* (1) Periodically and upon a regular schedule inspect all aboveground valves and piping associated with transfer operations for the general condition of flange joints, valve glands and bodies, drip pans, pipe supports, pumping well polish rod stuffing boxes, bleeder and gauge valves, and other such items.

(2) Inspect saltwater (oil field brine) disposal facilities often, particularly following a sudden change in atmospheric temperature, to detect possible system upsets capable of causing a discharge.

(3) Have a program of flowline maintenance to prevent discharges from each flowline.

**§ 112.10 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities.**

If you are the owner or operator of an onshore oil drilling and workover facility, you must:

(a) Meet the general requirements listed under § 112.7, and also meet the specific discharge prevention and containment procedures listed under this section.

(b) Position or locate mobile drilling or workover equipment so as to prevent a discharge as described in § 112.1(b).

(c) Provide catchment basins or diversion structures to intercept and contain discharges of fuel, crude oil, or oily drilling fluids.

(d) Install a blowout prevention (BOP) assembly and well control system before drilling below any casing string or during workover operations. The BOP assembly and well control system must be capable of controlling any well-head pressure that may be encountered while that BOP assembly and well control system are on the well.

**§ 112.11 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities.**

If you are the owner or operator of an offshore oil drilling, production, or workover facility, you must:

(a) Meet the general requirements listed under § 112.7, and also meet the specific discharge prevention and containment procedures listed under this section.

(b) Use oil drainage collection equipment to prevent and control small oil discharges around pumps, glands, valves, flanges, expansion joints, hoses, drain lines, separators, treaters, tanks, and associated equipment. You must control and direct facility drains toward a central collection sump to prevent the facility from having a discharge as described in § 112.1(b). Where drains and sumps are not practicable, you must remove oil contained in collection equipment as often as necessary to prevent overflow.

(c) For facilities employing a sump system, provide adequately sized sump and drains and make available a spare pump to remove liquid from the sump and assure that oil does not escape. You must employ a regularly scheduled preventive maintenance inspection and testing program to assure reliable operation of the liquid removal system and pump start-up device. Redundant automatic sump pumps and control devices may be required on some installations.

(d) At facilities with areas where separators and treaters are equipped with dump valves which predominantly fail in the closed position and where pollution risk is high, specially equip the facility to prevent the discharge of oil. You must prevent the discharge of oil by:

(1) Extending the flare line to a diked area if the separator is near shore;

(2) Equipping the separator with a high liquid level sensor that will automatically shut in wells producing to the separator; or

(3) Installing parallel redundant dump valves.

(e) Equip atmospheric storage or surge containers with high liquid level

sensing devices that activate an alarm or control the flow, or otherwise prevent discharges.

(f) Equip pressure containers with high and low pressure sensing devices that activate an alarm or control the flow.

(g) Equip containers with suitable corrosion protection.

(h) Prepare and maintain at the facility a written procedure within the Plan for inspecting and testing pollution prevention equipment and systems.

(i) Conduct testing and inspection of the pollution prevention equipment and systems at the facility on a scheduled periodic basis, commensurate with the complexity, conditions, and circumstances of the facility and any other appropriate regulations. You must use simulated discharges for testing and inspecting human and equipment pollution control and countermeasure systems.

(j) Describe in detailed records surface and subsurface well shut-in valves and devices in use at the facility for each well sufficiently to determine their method of activation or control, such as pressure differential, change in fluid or flow conditions, combination of pressure and flow, manual or remote control mechanisms.

(k) Install a BOP assembly and well control system during workover operations and before drilling below any casing string. The BOP assembly and well control system must be capable of controlling any well-head pressure that may be encountered while the BOP assembly and well control system are on the well.

(l) Equip all manifolds (headers) with check valves on individual flowlines.

(m) Equip the flowline with a high pressure sensing device and shut-in valve at the wellhead if the shut-in well pressure is greater than the working pressure of the flowline and manifold valves up to and including the header valves. Alternatively you may provide a pressure relief system for flowlines.

(n) Protect all piping appurtenant to the facility from corrosion, such as with protective coatings or cathodic protection.

(o) Adequately protect sub-marine piping appurtenant to the facility against environmental stresses and other activities such as fishing operations.

(p) Maintain sub-marine piping appurtenant to the facility in good operating condition at all times. You must periodically and according to a schedule inspect or test such piping for failures. You must document and keep a record of such inspections or tests at the facility.

4. Part 112 is amended by adding subpart C consisting of §§ 112.12 through 112.15 to read as follows:

**Subpart C—Requirements for Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and for Vegetable Oils, Including Oils from Seeds, Nuts, Fruits and Kernels**

Sec.



## Subpart C—Requirements for Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and for Vegetable Oils, including Oils from Seeds, Nuts, Fruits, and Kernels.

### § 112.12 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities)

If you are the owner or operator of an onshore facility (excluding a production facility), you must:

(a) Meet the general requirements for the Plan listed under § 112.7, and the specific discharge prevention and containment procedures listed in this section.

(b) *Facility drainage.* (1) Restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such discharge. You may empty diked areas by pumps or ejectors; however, you must manually activate these pumps or ejectors and must inspect the condition of the accumulation before starting, to ensure no oil will be discharged.

(2) Use valves of manual, open-and-closed design, for the drainage of diked areas. You may not use flapper-type drain valves to drain diked areas. If your facility drainage drains directly into a watercourse and not into an on-site wastewater treatment plant, you must inspect and may drain uncontaminated retained stormwater, subject to the requirements of paragraphs (c)(3)(ii), (iii), and (iv) of this section.

(3) Design facility drainage systems from undiked areas with a potential for a discharge (such as where piping is located outside containment walls or where tank truck discharges may occur outside the loading area) to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility. You must not locate catchment basins in areas subject to periodic flooding.

(4) If facility drainage is not engineered as in paragraph (b)(3) of this section, equip the final discharge of all ditches inside the facility with a diversion system that would, in the event of an uncontrolled discharge, retain oil in the facility.

(5) Where drainage waters are treated in more than one treatment unit and such treatment is continuous, and pump transfer is needed, provide two ''lift'' pumps and permanently install at least one of the pumps. Whatever techniques you use, you must engineer facility drainage systems to prevent a discharge as described in § 112.1(b) in case there is an equipment failure or human error at the facility.

(c) *Bulk storage containers.* (1) Not use a container for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature.

(2) Construct all bulk storage container installations so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must ensure that diked areas are sufficiently impervious to contain discharged oil. Dikes, containment curbs, and pits are commonly employed for this purpose. You may also use an alternative system consisting of a drainage trench enclosure that must be arranged so that any discharge will terminate and be safely confined in a facility catchment basin or holding pond.

(3) Not allow drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse, lake, or pond, bypassing the facility treatment system unless you:

(i) Normally keep the bypass valve sealed closed.

(ii) Inspect the retained rainwater to ensure that its presence will not cause a discharge as described in § 112.1(b).

(iii) Open the bypass valve and reseal it following drainage under responsible supervision; and

(iv) Keep adequate records of such events, for example, any records required under permits issued in accordance with §§ 122.41(j)(2) and 122.41(m)(3) of this chapter.

(4) Protect any completely buried metallic storage tank installed on or after January 10, 1974 from corrosion by

coatings or cathodic protection compatible with local soil conditions. You must regularly leak test such completely buried metallic storage tanks.

(5) Not use partially buried or bunkered metallic tanks for the storage of oil, unless you protect the buried section of the tank from corrosion. You must protect partially buried and bunkered tanks from corrosion by coatings or cathodic protection compatible with local soil conditions.

(6) Test each aboveground container for integrity on a regular schedule, and whenever you make material repairs. The frequency of and type of testing must take into account container size and design (such as floating roof, skid-mounted, elevated, or partially buried). You must combine visual inspection with another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or another system of non-destructive shell testing. You must keep comparison records and you must also inspect the container's supports and foundations. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph.

(7) Control leakage through defective internal heating coils by monitoring the steam return and exhaust lines for contamination from internal heating coils that discharge into an open watercourse, or pass the steam return or exhaust lines through a settling tank, skimmer, or other separation or retention system.

(8) Engineer or update each container installation in accordance with good engineering practice to avoid discharges. You must provide at least one of the following devices:

(i) High liquid level alarms with an audible or visual signal at a constantly attended operation or surveillance station. In smaller facilities an audible air vent may suffice.

(ii) High liquid level pump cutoff devices set to stop flow at a predetermined container content level.

(iii) Direct audible or code signal communication between the container gauger and the pumping station.

(iv) A fast response system for determining the liquid level of each bulk storage container such as digital computers, telepulse, or direct vision gauges. If you use this alternative, a person must be present to monitor gauges and the overall filling of bulk storage containers.

(v) You must regularly test liquid level sensing devices to ensure proper operation.

(9) Observe effluent treatment facilities frequently enough to detect possible system upsets that could cause a discharge as described in § 112.1(b).

(10) Promptly correct visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts. You must promptly remove any accumulations of oil in diked areas.

(11) Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b). You must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

(d) *Facility transfer operations, pumping, and facility process.* (1) Provide buried piping that is installed or replaced on or after August 16, 2002, with a protective wrapping and coating. You must also cathodically protect such buried piping installations or otherwise satisfy the corrosion protection standards for piping in part 280 of this chapter or a State program approved under part 281 of this chapter. If a section of buried line is exposed for any reason, you must carefully inspect it for deterioration. If you find corrosion damage, you must undertake additional examination and corrective action as indicated by the magnitude of the damage.

(2) Cap or blank-flange the terminal connection at the transfer point and mark it as to origin when piping is not in service or is in standby service for an extended time.

(3) Properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction.

(4) Regularly inspect all aboveground valves, piping, and appurtenances. During the inspection you must assess the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces. You must also conduct integrity and leak testing of buried piping at the time of installation, modification, construction, relocation, or replacement.

(5) Warn all vehicles entering the facility to be sure that no vehicle will endanger aboveground piping or other oil transfer operations.

**§ 112.13 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities.**

If you are the owner or operator of an onshore production facility, you must:

(a) Meet the general requirements for the Plan listed under § 112.7, and the specific discharge prevention and containment procedures listed under this section.

(b) *Oil production facility drainage.* (1) At tank batteries and separation and treating areas where there is a reasonable possibility of a discharge as described in § 112.1(b), close and seal at all times drains of dikes or drains of equivalent measures required under § 112.7(c)(1), except when draining uncontaminated rainwater. Prior to drainage, you must inspect the diked area and take action as provided in § 112.12(c)(3)(ii), (iii), and (iv). You must remove accumulated oil on the rainwater and return it to storage or dispose of it in accordance with legally approved methods.

(2) Inspect at regularly scheduled intervals field drainage systems (such as drainage ditches or road ditches), and oil traps, sumps, or skimmers, for an accumulation of oil that may have resulted from any small discharge. You must promptly remove any accumulations of oil.

(c) *Oil production facility bulk storage containers.* (1) Not use a container for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage.

(2) Provide all tank battery, separation, and treating facility installations with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must safely confine drainage from undiked areas in a catchment basin or holding pond.

(3) Periodically and upon a regular schedule visually inspect each container of oil for deterioration and maintenance needs, including the foundation and support of each container that is on or above the surface of the ground.

(4) Engineer or update new and old tank battery installations in accordance with good engineering practice to prevent discharges. You must provide at least one of the following:

(i) Container capacity adequate to assure that a container will not overfill if a pumper/gauger is delayed in making regularly scheduled rounds.

(ii) Overflow equalizing lines between containers so that a full container can overflow to an adjacent container.

(iii) Vacuum protection adequate to prevent container collapse during a

pipeline run or other transfer of oil from the container.

(iv) High level sensors to generate and transmit an alarm signal to the computer where the facility is subject to a computer production control system.

(d) *Facility transfer operations, oil production facility.* (1) Periodically and upon a regular schedule inspect all aboveground valves and piping associated with transfer operations for the general condition of flange joints, valve glands and bodies, drip pans, pipe supports, pumping well polish rod stuffing boxes, bleeder and gauge valves, and other such items.

(2) Inspect saltwater (oil field brine) disposal facilities often, particularly following a sudden change in atmospheric temperature, to detect possible system upsets capable of causing a discharge.

(3) Have a program of flowline maintenance to prevent discharges from each flowline.

**§ 112.14 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities.**

If you are the owner or operator of an onshore oil drilling and workover facility, you must:

(a) Meet the general requirements listed under § 112.7, and also meet the specific discharge prevention and containment procedures listed under this section.

(b) Position or locate mobile drilling or workover equipment so as to prevent a discharge as described in § 112.1(b).

(c) Provide catchment basins or diversion structures to intercept and contain discharges of fuel, crude oil, or oily drilling fluids.

(d) Install a blowout prevention (BOP) assembly and well control system before drilling below any casing string or during workover operations. The BOP assembly and well control system must be capable of controlling any well-head pressure that may be encountered while that BOP assembly and well control system are on the well.

**§ 112.15 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities.**

If you are the owner or operator of an offshore oil drilling, production, or workover facility, you must:

(a) Meet the general requirements listed under § 112.7, and also meet the specific discharge prevention and containment procedures listed under this section.

(b) Use oil drainage collection equipment to prevent and control small oil discharges around pumps, glands, valves, flanges, expansion joints, hoses, drain lines, separators, treaters, tanks, and associated equipment. You must control and direct facility drains toward a central collection sump to prevent the facility from having a discharge as described in § 112.1(b). Where drains and sumps are not practicable, you must remove oil contained in collection equipment as often as necessary to prevent overflow.

(c) For facilities employing a sump system, provide adequately sized sump and drains and make available a spare pump to remove liquid from the sump and assure that oil does not escape. You must employ a regularly scheduled preventive maintenance inspection and testing program to assure reliable operation of the liquid removal system and pump start-up device. Redundant automatic sump pumps and control devices may be required on some installations.

(d) At facilities with areas where separators and treaters are equipped with dump valves which predominantly fail in the closed position and where pollution risk is high, specially equip the facility to prevent the discharge of oil. You must prevent the discharge of oil by:

(1) Extending the flare line to a diked area if the separator is near shore;

(2) Equipping the separator with a high liquid level sensor that will automatically shut in wells producing to the separator; or

(3) Installing parallel redundant dump valves.

(e) Equip atmospheric storage or surge containers with high liquid level sensing devices that activate an alarm or control the flow, or otherwise prevent discharges.

(f) Equip pressure containers with high and low pressure sensing devices that activate an alarm or control the flow.

(g) Equip containers with suitable corrosion protection.

(h) Prepare and maintain at the facility a written procedure within the Plan for inspecting and testing pollution prevention equipment and systems.

(i) Conduct testing and inspection of the pollution prevention equipment and systems at the facility on a scheduled periodic basis, commensurate with the complexity, conditions, and circumstances of the facility and any other appropriate regulations. You must use simulated discharges for testing and inspecting human and equipment pollution control and countermeasure systems.

(j) Describe in detailed records surface and subsurface well shut-in valves and devices in use at the facility for each well sufficiently to determine their method of activation or control, such as pressure differential, change in fluid or flow conditions, combination of pressure and flow, manual or remote control mechanisms.

(k) Install a BOP assembly and well control system during workover operations and before drilling below any casing string. The BOP assembly and well control system must be capable of controlling any well-head pressure that may be encountered while that BOP assembly and well control system are on the well.

(l) Equip all manifolds (headers) with check valves on individual flowlines.

(m) Equip the flowline with a high pressure sensing device and shut-in valve at the wellhead if the shut-in well pressure is greater than the working pressure of the flowline and manifold valves up to and including the header valves. Alternatively you may provide a pressure relief system for flowlines.

(n) Protect all piping appurtenant to the facility from corrosion, such as with protective coatings or cathodic protection.

(o) Adequately protect sub-marine piping appurtenant to the facility against environmental stresses and other activities such as fishing operations.

(p) Maintain sub-marine piping appurtenant to the facility in good operating condition at all times. You must periodically and according to a schedule inspect or test such piping for failures. You must document and keep a record of such inspections or tests at the facility.

5. Part 112 is amended by designating §§ 112.20 and 112.21 as subpart D, and adding a subpart heading as follows:

**Subpart D—Response Requirements**

Sec.



## Subpart D—Response Requirements

6. Section 112.20 is amended by revising the first sentence of paragraph (h) to read as follows:

**§ 112.20 Facility response plans.**

* * * * *

(h) A response plan shall follow the format of the model facility-specific response plan included in Appendix F to this part, unless you have prepared an equivalent response plan acceptable to the Regional Administrator to meet State or other Federal requirements. * * *

* * * * *

**Appendix C—[Amended]**

7. Appendix C of part 112 is amended by:

a. Revising the first sentence of section 2.1; and

b. Revising the title and first sentence of section 2.4.

**Appendix C to Part 112—Substantial Harm Criteria**

* * * * *

*2.1 Non-Transportation-Related Facilities With a Total Oil Storage Capacity Greater Than or Equal to 42,000 Gallons Where Operations Include Over-Water Transfers of Oil*

A non-transportation-related facility with a total oil storage capacity greater than or equal to 42,000 gallons that transfers oil over water to or from vessels must submit a response plan to EPA. * * *

* * * * *

*2.4 Proximity to Public Drinking Water Intakes at Facilities with a Total Oil Storage Capacity Greater than or Equal to 1 Million Gallons*

A facility with a total oil storage capacity greater than or equal to 1 million gallons must submit its response plan if it is located at a distance such that a discharge from the facility would shut down a public drinking water intake, which is analogous to a public water system as described at 40 CFR 143.2(c). * * *

* * * * *

**Appendix D—[Amended]**

8. Appendix D of part 112 is amended by revising footnote 2 to section A.2 of Part A to read as follows:

**Appendix D to Part 112—Determination of a Worst Case Discharge Planning Volume**

* * * * *

Part A * * *

* * * * *

A.2 Secondary Containment—Multiple-Tank Facilities

* * * * *

Secondary containment is described in 40 CFR part 112, subparts A through C. Acceptable methods and structures for containment are also given in 40 CFR 112.7(c)(1).

* * * * *

**Appendix F—[Amended]**

9. Appendix F of part 112 is amended by:

a. Revising section 1.2.7;

b. Revising the second and last sentences of section 1.4.3;

c. Revising paragraph (7) and the undesignated paragraph and NOTE following paragraph (7) in section 1.7.3;

d. Revising section 1.8.1;

e. Revising the first two sentences of section 1.8.1.1. introductory text;

f. Revising the next to the last sentence of section 1.8.1.3;

g. Revising the next to last sentence of section 1.10.;

h. Revising paragraph (6) of section 2.1;

i. Remove the acronym ''SIC'' in section 3.0, and add in alphabetical order the acronym ''NAICS''; and.

j. Remove the reference to ''Standard Industrial Classification (SIC) Code'' in Attachment F–1, General Information, and add in in alphabetical order a reference to ''North American Industrial Classification System (NAICS) Code.''

The revisions read as follows:

**Appendix F to Part 112—Facility-Specific Response Plan**

* * * * *

*1.2.7 Current Operation*

Briefly describe the facility's operations and include the North American Industrial Classification System (NAICS) code.

* * * * *

*1.4.3 Analysis of the Potential for an Oil Discharge*

* * * This analysis shall incorporate factors such as oil discharge history, horizontal range of a potential discharge, and vulnerability to natural disaster, and shall, as appropriate, incorporate other factors such as tank age. * * * The owner or operator may need to research the age of the tanks the oil discharge history at the facility.

* * * * *

*1.7.3 Containment and Drainage Planning*

* * * * *

(7) Other cleanup materials.

In addition, a facility owner or operator must meet the inspection and monitoring requirements for drainage contained in 40 CFR part 112, subparts A through C. A copy of the containment and drainage plans that are required in 40 CFR part 112, subparts A through C may be inserted in this section, including any diagrams in those plans.

**Note:** The general permit for stormwater drainage may contain additional requirements.

* * * * *

*1.8.1 Facility Self-Inspection*

Under 40 CFR 112.7(e), you must include the written procedures and records of inspections for each facility in the SPCC Plan. You must include the inspection records for each container, secondary containment, and item of response equipment at the facility. You must cross-reference the records of inspections of each container and secondary containment required by 40 CFR 112.7(e) in the facility response plan. The inspection record of response equipment is a new requirement in this plan. Facility self-inspection requires two-steps: (1) a checklist of things to inspect; and (2) a method of recording the actual inspection and its findings. You must note the date of each inspection. You must keep facility response plan records for five years. You must keep SPCC records for three years.

* * * * *

*1.8.1.1. Tank Inspection*

The tank inspection checklist presented below has been included as guidance during inspections and monitoring. Similar requirements exist in 40 CFR part 112, subparts A through C. * * *

* * * * *

*1.8.1.3 Secondary Containment Inspection*

* * * * *

* * * Similar requirements exist in 40 CFR part 112, subparts A through C. * * *

* * * * *

*1.10 Security*

According to 40 CFR 112.7(g) facilities are required to maintain a certain level of security, as appropriate. * * *

* * * * *

*2.1 General Information*

* * * * *

(6) North American Industrial Classification System (NAICS) Code: Enter the facility's NAICS code as determined by the Office of Management and Budget (this information may be obtained from public library resources.)

* * * * *

*3.0 Acronyms*

* * * * *

NAICS: North American Industrial Classification System

* * * * *

**Attachments to Appendix F**

Attachment F–1—Response Plan Cover Sheet

* * * * *

**General Information**

* * * * *

North American Industrial Classification System (NAICS) Code:

* * * * *

[FR Doc. 02–16852 Filed 7–16–02; 8:45 am]

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**Wednesday,**
**July 17, 2002**

## Part III

# Department of the Interior

**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Preble's Meadow Jumping Mouse (Zapus hudsonius preblei); Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AI46**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed designation includes 19 habitat units totaling approximately 23,248 hectares (ha) (57,446 acres (ac)) found along 1,058.1 kilometers (km) (657.5 miles (mi)) of rivers and streams in the States of Colorado and Wyoming.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. If this proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency; and Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

**DATES:** We will consider all comments on the proposed rule received from interested parties by September 16, 2002. Public hearing requests must be received by September 3, 2002.

**ADDRESSES:** You may submit written comments and information to Preble's Mouse Comments, Colorado Ecological Services Field Office, U.S. Fish and Wildlife Service, 755 Parfet Street, Suite 361, Lakewood, CO 80215 or by facsimile to 303–275–2371. You may hand-deliver written comments to our Colorado Ecological Services Field Office at the address given above. You may send comments by electronic mail (e-mail) to <*fw6_pmjm@fws.gov*>. See the ''Public Comments Solicited'' section below for file format and other information on electronic filing. You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours, at the Colorado Ecological Services Field Office.

**FOR FURTHER INFORMATION CONTACT:** LeRoy Carlson, Field Supervisor, Colorado Ecological Services Field Office, (see **ADDRESSES** section), (telephone 303–275–2370; facsimile 303–275–2371).

**SUPPLEMENTARY INFORMATION:**

### Background

Much of what is now known about the Preble's meadow jumping mouse (Preble's) is a result of information gained from the early 1990s to the present. Following the Preble's listing as a threatened species in 1998, knowledge about its distribution, habitat requirements, abundance, and population dynamics has grown substantially. However, much of the biology and ecology of the Preble's is still not well understood. Where gaps in knowledge exist, scientists have relied on information from closely related subspecies of the meadow jumping mouse (*Zapus hudsonius*), whose biology and ecology appear similar to the Preble's. Information presented below that is specific to the Preble's is described as being relevant to this subspecies, the Preble's, but when information pertains to what is known about other subspecies of meadow jumping mouse, it will be described as relevant to the species, the meadow jumping mouse. Portions of the following have been adapted from the general biology section of the Preble's Meadow Jumping Mouse Recovery Team's February 27, 2002, Draft Discussion Document on a recovery plan for the Preble's.

### Taxonomy and Description

The Preble's is a member of the family Dipodidae (jumping mice) with four living genera, two of which, *Zapus* and *Napaeozapus*, are found in North America (Hall 1981). The three living species within the genus *Zapus* are *Z. hudsonius* (the meadow jumping mouse), *Z. princeps* (the western jumping mouse), and *Z. trinotatus* (the Pacific jumping mouse).

Edward A. Preble (1899) first documented the meadow jumping mouse from Colorado. Krutzch (1954) described the Preble's as a separate subspecies of meadow jumping mouse limited to Colorado and Wyoming. The Preble's is now recognized as 1 of 12 subspecies of meadow jumping mouse (Hafner *et al.* 1981).

The Preble's is a small rodent with an extremely long tail, large hind feet, and long hind legs. The tail is bicolored, lightly-furred, and typically twice as long as the body. The large hind feet can be one-third again as large as those of other mice of similar size. The Preble's has a distinct, dark, broad stripe on its back that runs from head to tail and is bordered on either side by gray to orange-brown fur. The hair on the back of all jumping mice appears coarse compared to other mice. The underside hair is white and much finer in texture. Total length of adult Preble's mice is approximately 180 to 250 millimeters (mm) (7 to 10 inches (in)), and tail length is 108 to 155 mm (4 to 6 in) (Krutzsch 1954, Fitzgerald *et al.* 1994).

The average weight of 120 adult Preble's mice captured early in their active season (prior to June 18) was 18 grams (g) (0.6 ounce (oz)); included were10 pregnant females weighing more than 22 g (0.8 oz) (Meaney *et al.,* in prep.). Upon emergence from hibernation, adult Preble's mice can weigh as little as 14 g (0.5 oz). Through late August and into mid-September, Preble's adults ready for hibernation weighed 25 to 34 g (0.9 to 1.2 oz) (Meaney *et al.,* in prep.), comparable to pre-hibernation weights for the meadow jumping mouse cited by Muchlinski (1988).

While the western jumping mouse is a distinctly separate species from the Preble's, it is similar in appearance and can easily be confused with Preble's. The range of the western jumping mouse in Wyoming and Colorado is generally west of, and at higher elevations than, the range of the Preble's. However, they appear to coexist over portions of their range in southeastern Wyoming and Colorado (Long 1965, Clark and Stromberg 1987, Schorr 1999, Meaney *et al.* 2001). Compared to the western jumping mouse, the Preble's is generally smaller, has a more distinctly bicolored tail, and a less obvious dorsal (back) stripe. Krutzsch (1954) described skull characteristics useful for differentiating the two species. Previously, studies found that the meadow jumping mouse could be distinguished from the western jumping mouse by a fold in the first

lower molar (Klingener 1963, Hafner 1993). However, this molar characteristic is not always reliable due to tooth wear as animals age; specimens showing the tooth fold are presumed to be Preble's, while specimens lacking the fold may be either species (Klingener 1963; Conner and Shenk, in prep.). A recent reevaluation of Preble's and western jumping mouse morphology showed that, by using a combination of six skull measurements and this molar characteristic, the Preble's could be distinguished from the western jumping mouse (Conner and Shenk, in prep.).

A genetic study that analyzed tissue samples of meadow jumping mice and western jumping mice from throughout North America concluded that the Preble's is distinct from other subspecies of the meadow jumping mouse and from the western jumping mouse (Riggs *et al.* 1997, Hafner 1997). While results from the genetic study supported the taxonomic status of Preble's, analysis of samples from jumping mice in a few Wyoming and Colorado locations produced unexpected results. In these cases, samples of assumed Preble's mice at lower elevations were later determined to be the western jumping mouse and samples of assumed western jumping mice at higher elevations were later determined to be the Preble's. Hafner (1997) suggested that limited hybridization could have affected the results of the study and Beauvais (2001) stated that zones of co-occurrence of the Preble's and the western jumping mouse in Wyoming provide the opportunity for hybridization. However, Krutzsch (1954) cited significant range overlap between the meadow jumping mouse and the western jumping mouse in North America and indicated that there was no evidence of interbreeding. While the question of possible hybridization between the Preble's and the western jumping mouse has yet to be fully explored, information currently available suggests that any hybridization between the two species is limited in scope.

**Geographic Range**

The Preble's is found along the foothills in southeastern Wyoming, southward along the eastern edge of the Front Range of Colorado to Colorado Springs, El Paso County (Hall 1981, Clark and Stromberg 1987, Fitzgerald *et al.* 1994). Knowledge about the current distribution of the Preble's comes from collected specimens, and live-trapping locations from both range-wide survey efforts and numerous site-specific survey efforts conducted in Wyoming and Colorado since the mid-1990s. Recently collected specimens are housed at the Denver Museum of Nature and Science and survey reports are filed with the Service's Field Offices in Colorado and Wyoming.

In Wyoming, capture locations of mice confirmed as the Preble's, and locations of mice identified in the field as Preble's and released, extend in a band from the town of Douglas southward along the Laramie Range to the Colorado border, with captures east to eastern Platte County and Cheyenne, Laramie County. In Colorado, the distribution of the Preble's forms a band along the Front Range from Wyoming southward to Colorado Springs, El Paso County, with eastern marginal captures in western Weld County, western Elbert County, and north-central El Paso County.

The Preble's is likely an Ice Age relict (Hafner *et al.* 1981, Fitzgerald *et al.* 1994). Once the glaciers receded from the Front Range of Colorado and the foothills of Wyoming and the climate became drier, the Preble's was confined to the riparian (river) systems where moisture was more plentiful. The semi-arid climate in southeastern Wyoming and eastern Colorado limits the extent of riparian corridors and restricts the range of the Preble's in this region. The Preble's has not been found east of Cheyenne in Wyoming or on the extreme eastern plains in Colorado. The eastern boundary for the subspecies is likely defined by the dry shortgrass prairie, which may present a barrier to eastward expansion (Beauvais 2001).

The western boundary of Preble's range in both States appears related to elevation along the Laramie Range and Front Range. The Service has used 2,300 meters (m) (7,600 feet (ft)) in elevation as the general upward limit of Preble's habitat in Colorado (Service 1998). Recent morphological examination of specimens has confirmed the Preble's to an elevation of approximately 2,300 m (7,600 ft) in Colorado (Meaney *et al.* 2001) and to 2,360 m (7,750 ft) in southeastern Wyoming (Cheri Jones, Denver Museum of Natural Science, *in litt.,* 2001). In a modeling study of habitat associations in Wyoming, Keinath (2001) found suitable habitat predicted in the Laramie Basin and Snowy Range Mountains (west of known Preble's occurrence) but very little suitable habitat predicted on the plains of Goshen, Niobrara, and eastern Laramie Counties (east of known Preble's occurrence).

Although there is little information on past distribution or abundance of the Preble's, surveys have identified various locations where the subspecies was historically present but is now absent (Ryon 1996). Since at least 1991, the Preble's has not been found in Denver, Adams, or Arapahoe Counties in Colorado. Its absence in these counties is likely due to urban development, which has altered, reduced, or eliminated riparian habitat (Compton and Hugie 1993, Ryon 1996).

**Ecology and Life History**

Typical habitat for the Preble's comprises well-developed plains riparian vegetation with adjacent, undisturbed grassland communities and a nearby water source. Well-developed plains riparian vegetation typically includes a dense combination of grasses, forbs, and shrubs; a taller shrub and tree canopy may be present (Bakeman 1997). When present, the shrub canopy is often *Salix* spp. (willow), although shrub species including *Symphoricarpus* spp. (snowberry), *Prunus virginiana* (chokecherry), *Crataegus* spp. (hawthorn), *Quercus gambelli* (Gambel's oak), *Alnus incana* (alder), *Betula fontinalis* (river birch), *Rhus trilobata* (skunkbrush), *Prunus americana* (wild plum), *Amorpha fruticosa* (lead plant), *Cornus sericea* (dogwood), and others also may occur (Bakeman 1997, Shenk and Eussen 1998).

Preble's have rarely been trapped in uplands adjacent to riparian areas (Dharman 2001). However, in detailed studies of Preble's movement patterns using radio telemetry, Preble's has been found feeding and resting in adjacent uplands (Shenk and Sivert 1999b, Ryon 1999, Schorr 2001). These studies reveal that the Preble's regularly uses uplands at least as far out as 100 m (330 ft) beyond the 100-year floodplain (Ryon 1999; Tanya Shenk, Colorado Division of Wildlife, *in litt.,* 2002). Preble's also can move considerable distances along streams, as far as 1.6 km (1.0 mi) in one evening (Ryon 1999, Shenk and Sivert 1999a).

In a study comparing habitats at Preble's capture locations on the Department of Energy's Rocky Flats Environmental Technology Site (Rocky Flats), Jefferson County, CO, and the U.S. Air Force Academy (Academy), El Paso County, CO, the Academy sites had lower plant species richness at capture locations but considerably greater numbers of the Preble's (Schorr 2001). However, the Academy sites had higher densities of both grasses and shrubs. It is likely that Preble's abundance is not driven by the diversity of plant species, but by the density of riparian vegetation.

The tolerance of the Preble's for exotic plant species is not well understood. Whether or not exotic plant species reduce Preble's persistence at a site may be due in large part to whether plants

create a monoculture and replace native species. There is particular concern about nonnative species such as *Euphorbia esula* (leafy spurge) that may form a monoculture, displacing native vegetation and thus reducing available habitat.

Fifteen apparent Preble's hibernacula (hibernation nests) have been located through radio telemetry, all within 78 m (260 ft) of a perennial stream bed or intermittent tributary (Bakeman and Deans 1997, Shenk and Sivert 1999a, Schorr 2001). Of these, one was confirmed through excavation (Bakeman and Deans 1997); others were left intact to prevent harm to the mice. Hibernacula have been located under willow, chokecherry, snowberry, skunkbrush, *Rhus* spp. (sumac), *Clematis* spp. (clematis), *Populus* spp. (cottonwoods), Gambel's oak, *Cirsium* spp. (thistle), and *Alyssum* spp. (alyssum) (Shenk and Sivert 1999a). At the Academy, four of six hibernacula found by radio-telemetry were located in close proximity to coyote willow (*Salix exigua*) (Schorr 2001). The one excavated hibernaculum, at Rocky Flats, was found 9 m (30 ft) above the stream bed, in a dense patch of chokecherry and snowberry (Bakeman and Deans 1997). The nest was constructed of leaf litter 30 centimeters (cm) (12 in) below the surface in coarse textured soil.

The Preble's constructs day nests composed of grasses, forbs, sedges, rushes, and other available plant material. They may be globular in shape or simply raised mats of litter, and are most commonly above ground but also can be below ground. They are typically found under debris at the base of shrubs and trees, or in open grasslands (Ryon 2001). An individual mouse can have multiple day nests in both riparian and grassland communities (Shenk and Sivert 1999a), and may abandon a nest after approximately a week of use (Ryon 2001).

Hydrologic regimes that support Preble's habitat range from large perennial rivers such as the South Platte River to small temporary drainages only 1 to 3 m (3 to 10 ft) in width, as at Rocky Flats and in montane habitats. Flooding is a common and natural event in the riparian systems along the Front Range of Colorado. This periodic flooding helps create a dense vegetative community by stimulating resprouting from willow shrubs and allows herbs and grasses to take advantage of newly-deposited soil.

Fire is also a natural component of the Colorado Front Range and Wyoming foothills, and Preble's habitat naturally waxes and wanes with fire events. Within shrubland and forest, intensive fire may result in adverse impacts to Preble's populations. However, in a review of the effects of grassland fires on small mammals, Kaufman *et al.* (1990) found a positive effect of fire on the meadow jumping mouse in one study and no effect of fire on the species in another study.

Meadow jumping mice usually have two litters per year, but there are records of three litters per year. An average of five young are born per litter, but the size of a litter can range from two to eight young (Quimby 1951, Whitaker 1963).

The Preble's is long-lived for a small mammal, in comparison with many species of mice and voles that seldom live a full year. Along South Boulder Creek, Boulder County, CO, seven individuals originally captured as adults were still alive 2 years later, having attained at least 3 years of age (Meaney *et al.,* in prep.). However, like many small mammals, the Preble's annual survival rate is low. Preble's survival rates appear to be lower over the summer than over the winter. Over-summer survival rates ranged from 22 to 78 percent and over-winter survival rates ranged from 56 to 97 percent (Shenk and Sivert 1999b; Ensight Technical Services 2000, 2001; Schorr 2001; Meaney *et al.,* in prep.).

The Preble's has a host of known predators including garter snakes (*Thamnophis* spp.), prairie rattlesnakes (*Crotalus viridus*), bullfrogs (*Rana catesbiana*), foxes (*Vulpes vulpes* and *Urocyon cinereoargenteus*), house cats (*Felis catus*), long-tailed weasels (*Mustela frenata*), and red-tailed hawks (*Buteo jamaicensis*) (Shenk and Sivert 1999a, Schorr 2001). Other potential predators include coyotes (*Canis latrans*), barn owls (*Tyto alba*), great horned owls (*Bubo virginianus*), screech owls (*Otus* spp.), long-eared owls (*Asio otus*), northern harriers (*Circus cyaneus*), and large predatory fish.

Other mortality factors of the Preble's include drowning and vehicle collision (Schorr 2001, Shenk and Sivert 1999a). Mortality factors known for the meadow jumping mouse, such as starvation, exposure, disease, and insufficient fat stores for hibernation (Whitaker 1963) also are likely causes of death for the Preble's.

White and Shenk (2000) determined that riparian shrub cover, tree cover, and the amount of open water nearby are good predictors of Preble's densities, and summarized abundance estimates from nine sites in Colorado for field work conducted during 1998 and 1999. Estimates of abundance ranged from 4 to 67 mice per km (6 to 110 mice per mi) of stream and averaged 33 mice per km (53 mice per mi) of stream.

While fecal analyses have provided the best data on the Preble's diet to date, they overestimate the components of the diet that are less digestible. Based on fecal analyses the Preble's eats insects; fungus; moss; pollen; willow; *Chenopodium* sp. (lamb's quarters); *Salsola* sp. (Russian thistle); *Helianthus* spp. (sunflowers); *Carex* spp. (sedge); *Verbascum* sp. (mullein); *Bromus, Festuca, Poa, Sporobolus* and *Agropyron* spp. (grasses); *Lesquerella* sp. (bladderpod); *Equisetum* sp. (rushes); and assorted seeds (Shenk and Eussen 1998, Shenk and Sivert 1999a). The diet shifts seasonally; it consists primarily of insects and fungus after emerging from hibernation, shifts to fungus, moss, and pollen during mid-summer (July-August), with insects again added in September (Shenk and Sivert 1999a). The shift in diet along with shifts in mouse movements suggests that the Preble's may require specific seasonal diets, perhaps related to the physiological constraints imposed by hibernation (Shenk and Sivert 1999a).

The Preble's is a true hibernator, usually entering hibernation in September or October and emerging the following May, after a potential hibernation period of 7 or 8 months. Adults are the first age group to enter hibernation because they accumulate the necessary fat stores earlier than young of the year. Similar to other subspecies of meadow jumping mouse, Preble's do not store food, but survive on fat stores accumulated prior to hibernation (Whitaker 1963). Apparent hibernacula of the Preble's have been located both within and outside of the 100-year floodplain of streams (Shenk and Sivert 1999a, Ryon 2001, Schorr 2001). Those hibernating outside of the 100-year floodplain would likely be less vulnerable to flood-related mortality.

Meadow jumping mice are docile to handle and not antagonistic toward one another (Whitaker 1972). However, meadow jumping mice compete with meadow voles and may be kept at low densities by voles (Boonstra and Hoyle 1986). Introduced species that occupy riparian habitats may displace or compete with the Preble's. House mice (*Mus musculus*) were common in and adjacent to historic capture sites where the Preble's was no longer found (Ryon 1996).

The Preble's is primarily nocturnal or crepuscular but also may be active during the day, when they have been seen moving around or sitting still under a shrub (Shenk 1998). Little is known about social interactions and their significance in the Preble's. Jones

and Jones (1985) described lively social interactions in which several Preble's mice were observed jumping into the air and squeaking and suggested that they formed a gregarious unit. In a recent study, for the month their radio-collars were active, several Preble's mice came repeatedly from different day-nest locations to meet at one spot at night (Shenk, pers. comm., 2002).

**Conservation Issues**

The Preble's is closely associated with riparian ecosystems that are relatively narrow and represent a small percentage of the landscape. If habitat for the Preble's is destroyed or modified, populations in those areas will decline or be extirpated. The decline in the extent and quality of Preble's habitat is considered the main factor threatening the subspecies (Service 1998, Hafner *et al.* 1998, Shenk 1998). Habitat alteration, degradation, loss, and fragmentation resulting from urban development, flood control, water development, agriculture, and other human land uses have adversely impacted Preble's populations. Habitat destruction may impact individual Preble's directly or by destroying nest sites, food resources, and hibernation sites, by disrupting behavior, or by forming a barrier to movement.

Despite numerous surveys, the Preble's has not recently been found in the Denver and Colorado Springs metropolitan areas, and is believed to be extirpated from these areas as a result of extensive urban development. Given the overlap of the Preble's range with an area of extensive and rapid urban development along the Colorado Front Range, it is likely that significant losses of Preble's populations and habitats have occurred and may continue to occur.

Conversion of native riparian ecosystems to commercial croplands and grazed rangelands was identified as the major threat to Preble's persistence in Wyoming (Clark and Stromberg 1987, Compton and Hugie 1993). Intensive grazing and haying operations may negatively impact the Preble's by removing food and shelter. While some Preble's populations coexist with livestock operations, overgrazing can decimate riparian communities on which the Preble's depends. Similarly, haying operations that allow significant riparian vegetation to remain in place may be compatible with persistent Preble's populations.

Trail systems frequently parallel or intersect riparian communities and thus are common throughout Preble's range. Trail development can alter natural communities and may impact the Preble's by modifying nest sites, food resources, and hibernation sites, and by fragmenting its habitat. Humans and pets using these trails may alter behavior patterns of the Preble's and cause a decrease in survival and reproductive success.

Habitat fragmentation limits the extent and abundance of the Preble's. In general, as animal populations become fragmented and isolated, it becomes more difficult for them to persist. Small, isolated patches of habitat are unable to support as many Preble's mice as larger patches of habitat. When threats to persistence are similar, larger populations are more secure from extirpation than smaller ones.

The structure and function of riparian ecosystems are determined by the hydrology of the waterway. Changes in timing and abundance of water can alter the channel structure, riparian vegetation, and the adjacent floodplain, and may result in changes that are detrimental to the persistence of the Preble's. Similarly, depletion of groundwater also affects the habitat components needed by the Preble's. As groundwater supplies are depleted, more xeric (low moisture) plant communities replace the riparian vegetation. The conversion of habitats from mesic (moderate moisture), shrub-dominated systems to drier grass-dominated systems may preclude the Preble's from these areas.

Alluvial aggregate extraction may produce long-term changes to Preble's habitat by altering hydrology and removing riparian vegetation. In particular, such extraction removes and often precludes reestablishment of habitat components required by the Preble's. Such mining impacts the deposits of alluvial sands and gravels that may be important hibernation locations for the Preble's.

Within the Preble's range, bank stabilization, channelization, and other measures to address flooding and stormwater runoff have increased the rate of stream flow, straightened riparian channels, and narrowed riparian areas (Pague and Grunau 2000). Using riprap and other structural stabilization options to reduce erosion can destroy riparian vegetation, and prevent or delay its re-establishment. These measures can alter the hydrologic processes and plant communities present to the point where Preble's populations can no longer persist.

Transportation and utility corridors frequently cross Preble's habitat and may negatively affect populations. As new roads are built and old roads are maintained, habitat is destroyed or fragmented. Roads and bridges also may act as barriers to dispersal. Train and truck accidents within riparian areas may release spills of chemicals, fuels and other substances that may impact the mouse or its habitat. Sewer, water, communications, gas, and electric lines cross Preble's habitat. Their rights-of-way can contribute to habitat disturbance and fragmentation through new construction and periodic maintenance.

Invasive, noxious plants can encroach upon a landscape and displace native plant species. This change reduces the abundance and diversity of native plants, and may negatively impact cover and food sources for the Preble's. The control of noxious weeds also may impact the Preble's where large-scale removal of vegetation occurs through chemical treatments and mechanical mowing operations.

Pesticides and herbicides are used within the range of the Preble's. Inappropriate use of these chemicals may harm the Preble's directly or when ingested by the Preble's with food or water. Overall, an integrated pest management approach (use of biological, chemical, and mechanical control) may help reduce the threat of chemicals, but allow for the control of target species.

The increasing presence of humans near Preble's habitats may result in increased level of predation that may pose a threat to the Preble's. The striped skunk (*Mephitis mephitis*), raccoon (*Procyon lotor*), red fox (*Vulpes vulpes*), and the domestic and feral cat are found in greater densities in and around areas of human activity; all four of these species feed opportunistically on small mammals. Introduction of non-native sport fish and the bullfrog into waters within Preble's range may result in additional predation. The fact that summer mortality is higher than overwinter mortality underscores the impact that predators can have on the Preble's.

While normal flooding events help maintain the riparian and floodplain communities that provide suitable habitat for the Preble's, increased development and surfaces impervious to water absorption within a drainage can result in more frequent and severe flood events and prevent the re-establishment of riparian communities.

Catastrophic fires can alter habitat dramatically and change the structure and composition of the vegetation communities so that the Preble's may no longer persist. In addition, precipitation falling in a burned area may degrade Preble's habitat by causing greater levels of erosion and sedimentation along creeks. Controlled use of fire may be one

method to maintain appropriate riparian, floodplain, and upland vegetation within Preble's habitat. However, over the past several decades, as human presence has increased through Preble's range, significant effort has been made to suppress fires. Long periods of fire suppression may result in a build-up of fuel and result in a catastrophic fire.

**Previous Federal Action**

The Service included the Preble's as a category 2 candidate species in the 1985 Animal Notice of Review (50 FR 37958) and retained that status in subsequent notices published in the **Federal Register** on January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58810), and November 15, 1994 (59 FR 58982). In 1996 the Service discontinued the practice of maintaining a list of category 2 species and the Preble's did not appear in the February 28, 1996, notice of review (61 FR 7596). Category 2 species were those species for which information in the Service's possession indicated that listing was possibly appropriate, but for which substantive data on biological vulnerability and threats were not available to support a proposed rule.

On August 16, 1994, we received a petition from the Biodiversity Legal Foundation to list the Preble's as endangered or threatened throughout its range and to designate critical habitat within a reasonable amount of time following the listing. On March 15,1995, we published notice of the 90-day finding that the petition presented substantial information indicating that listing the Preble's may be warranted (60 FR 13950), and requested comments and biological data on the status of the Preble's. On March 25, 1997, we issued a proposed rule to list the Preble's as an endangered species (62 FR 14093) and announced a 90-day public comment period. After a review of the best scientific data available and all comments received in response to the proposed rule, we published a final rule on May 13, 1998, designating the Preble's as threatened throughout its range (62 FR 26517). The Service did not designate critical habitat for the species at that time.

On December 3, 1998, we proposed special regulations under section 4(d) of the Act (63 FR 66777) to define conditions under which certain activities that could result in incidental take of the Preble's would be exempt from the section 9 take prohibitions of the Act. On May 22, 2001, we published a final rule (66 FR 28125) adopting certain portions of the proposal that provided exemptions for specified activities related to rodent control, ongoing agricultural activities, landscape maintenance, and ongoing use of perfected water rights, for a period of 36 months (through May 21, 2004). On August 30, 2001, we proposed to amend the special regulations to provide additional exemptions from section 9 take prohibitions for certain noxious weed control and ditch maintenance activities (66 FR 45829).

The final listing rule for the Preble's indicated that designation of critical habitat was not prudent because publication of specific locations would increase the threat of vandalism or intentional destruction of habitat. On June 9, 2000, the Biodiversity Legal Foundation, Biodiversity Associates, Center for Biological Diversity, South Dakota Resources Coalition, David C. Jones, and Dennis Williams filed a suit in the U.S. District Court for the District of Colorado (Civil Action Number 00–D–1180) against the Department of the Interior and the Service over our failure to designate critical habitat for both the Preble's and the Topeka shiner, and for failure to prepare and implement a recovery plan for the Preble's. A court-mediated settlement was reached with the litigants that included a June 4, 2002, date for submission of proposed critical habitat for the Preble's to the **Federal Register** for publication and a June 4, 2003, date for submission of final critical habitat for the Preble's to the **Federal Register**. They agreed to dismiss their claim that the Service failed to prepare a recovery plan for the Preble's and subsequently agreed to extend the date for submission of the proposed critical habitat for the Preble's to July 8, 2001. In early 2000, we formed the Preble's Meadow Jumping Mouse Recovery Team. A recovery plan for the Preble's is currently being drafted. The team's working draft is available to the public as a discussion document.

**Critical Habitat**

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to conserve the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential to conserve the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences with the Service on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not result in any regulatory requirement for these actions.

To be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

In accordance with sections 3(5)(C) of the Act, not all areas that can be occupied by a species will be designated critical habitat. Within the geographic area occupied by the species we designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to conserve the species. We will not

speculate about what areas might be found to be essential if better information becomes available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. We will not designate areas within the geographic area occupied by the species unless at least one of the primary constituent elements are present, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species. Moreover, areas occupied by certain known populations of the Preble's have not been proposed as critical habitat. For example, we did not propose critical habitat for some small scattered populations or habitats in areas highly fragmented by human development.

Our regulations state, ''The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Based on the best available science and commercial data, there appears to be no foundation upon which to make a determination that the conservation needs of the Preble's require designation of critical habitat outside of the geographic area occupied by the species, so we have not proposed to designate critical habitat outside of the geographic area believed to be occupied.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, procedures, and guidance to ensure decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States, Tribes, and counties, scientific status surveys and studies, and biological assessments or other unpublished materials, and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize designation of critical habitat may not include all habitat eventually determined as necessary to recover the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act, and the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in likely-to-jeopardize findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts, if new information available to these planning efforts calls for a different outcome.

**Methods**

In determining areas essential to conserve the Preble's, we used the best scientific and commercial data available. We have reviewed approaches to the conservation of the Preble's undertaken by the Federal, State, and local agencies operating within the species' range since its listing in 1998, and the identified steps necessary for recovery outlined in the working draft of the recovery plan for the Preble's. We also reviewed available information that pertains to the habitat requirements of this species, including material received since the listing of the Preble's. The material included research published in peer-reviewed articles, academic theses and agency reports; reports from biologists conducting research under section 10(a)(1)(A) recovery permits; the working draft of the recovery plan for the Preble's; information from consulting biologists conducting site assessments, surveys, formal and informal consultations; as well as information obtained in personal communications with Federal, State, and other knowledgeable biologists in Colorado and Wyoming.

**Primary Constituent Elements**

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat we are required to base critical habitat determinations on the best scientific and commercial data available and to consider physical and biological features (primary constituent elements) that are essential to conservation of the species, and that may require special management considerations and protection. These physical and biological features include, but are not limited to—(1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing (or development) of offspring; and (5) habitats protected from disturbance or that are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the Preble's include those habitat components essential for the biological needs of reproducing, rearing of young, foraging, sheltering, hibernation, dispersal, and genetic exchange. The Preble's is able to live and reproduce in and near riparian areas located within grassland, shrubland, forest, and mixed vegetation types where dense herbaceous or woody vegetation occurs near the ground level, where available open water exists during their active season, and where there are ample upland habitats of sufficient width and quality for foraging, hibernation, and refugia from catastrophic flooding events. While willows of shrub form are a dominant component in many riparian habitats occupied by the Preble's, the structure of the vegetation appears more important to the Preble's than species composition.

Primary constituent elements associated with the biological needs of dispersal and genetic exchange also are found in areas that provide connectivity or linkage between or within Preble's populations. These areas may not include the habitat components listed above and may have experienced substantial human alteration or disturbance.

The dynamic ecological processes that create and maintain Preble's habitat also are important primary constituent elements. Habitat components essential to the Preble's are found in and near those areas where past and present geomorphological and hydrological processes have shaped streams, rivers, and floodplains, and have created conditions that support appropriate vegetative communities. Preble's habitat is maintained over time along rivers and streams by a natural flooding regime (or

one sufficiently corresponding to a natural regime) that periodically scours riparian vegetation, reworks stream channels, floodplains, and benches, and redistributes sediments such that a pattern of appropriate vegetation is present along river and stream edges, and throughout their floodplains. Periodic disturbance of riparian areas sets back succession and promotes dense, low-growing shrubs and lush herbaceous vegetation favorable to the Preble's. Where flows are controlled to preclude a natural pattern and other disturbance is limited, a less favorable mature successional stage of vegetation dominated by cottonwoods or other trees may develop. The long-term availability of habitat components favored by the Preble's also depends on plant succession and impacts of drought, fires, windstorms, herbivory, and other natural events. In some cases these naturally-occurring ecological processes are modified or are supplanted by human land uses that include manipulation of water flow and of vegetation.

Primary constituent elements for the Preble's include:

(1) A pattern of dense riparian vegetation consisting of grasses, forbs, and shrubs in areas along rivers and streams that provide open water through the Preble's active season.

(2) Adjacent floodplains and vegetated uplands with limited human disturbance (including hayed fields, grazed pasture, other agricultural lands that are not plowed or disced regularly, areas that have been restored after past aggregate extraction, areas supporting recreational trails, and urban/wildland interfaces).

(3) Areas that provide connectivity between and within populations. These may include river and stream reaches with minimal vegetative cover or that are armored for erosion control, travel ways beneath bridges, through culverts, along canals and ditches, and other areas that have experienced substantial human alteration or disturbance.

(4) Dynamic geomorphological and hydrological processes typical of systems within the range of the Preble's, *i.e.*, those processes that create and maintain river and stream channels, floodplains, and floodplain benches, and promote patterns of vegetation favorable to the Preble's.

Existing features and structures within the boundaries of the mapped units, such as buildings, roads, parking lots, other paved areas, lawns, other urban and suburban landscaped areas, regularly plowed or disced agricultural areas, and other features not containing any of the primary constituent elements are not considered critical habitat.

**Criteria Used To Identify Critical Habitat**

The Preble's Meadow Jumping Mouse Recovery Team's February 27, 2002, Draft Discussion Document on a recovery plan for the Preble's (Draft Document) identifies specific criteria for reaching recovery and the delisting of the Preble's. While elements of this Draft Document may change prior to plan finalization, the concepts described within it apply the best available science on the Preble's and serve as a logical starting point for identifying areas that are essential for the conservation of the Preble's. We anticipate that a draft recovery plan for the Preble's will be published prior to our final designation of critical habitat. To assure that designation of critical habitat for the Preble's and the recovery plan for the Preble's are compatible, the content of the draft recovery plan and comments received on the plan will be reviewed and incorporated, as appropriate, into the final designation of critical habitat.

To recover the Preble's to the point where it can be delisted, the Draft Document identifies the need for a specified number, size, and distribution of wild, self-sustaining Preble's populations across the known range of the Preble's. The distribution of these recovery populations is intended both to reduce the risk of multiple Preble's populations being negatively affected by natural or man-made events at any one time and to preserve the existing genetic variation within the Preble's.

The Draft Document identifies recovery criteria for each of the three major river drainages where the Preble's occurs (the North Platte River drainage in Wyoming, the South Platte River drainage in Wyoming and Colorado, and the Arkansas River drainage in Colorado) and for each subdrainage judged likely to support Preble's. In some cases the Draft Document identifies recovery criteria for subdrainages where trapping for the Preble's has not yet occurred or where limited trapping has not confirmed the presence of the Preble's. Boundaries of drainages and subdrainages have been mapped by the U.S. Geological Survey (USGS). For the Draft Document, 8-digit Hydrological Unit Code (HUC) boundaries were selected to define subdrainages. Hereafter, we refer to these specific subdrainages as ''HUCs.'' A total of 19 HUCs are identified in the Draft Document as occupied or potentially occupied by the Preble's. Of these, 5 are located in the North Platte River drainage, 11 in the South Platte River drainage, and 3 in the Arkansas River drainage.

Three large and three medium Preble's populations in Colorado that are designated in the Draft Document as recovery populations are reflected in this critical habitat proposal. The Draft Document defines large populations as maintaining 2,500 mice and usually including at least 80 km (50 mi) of rivers and streams. It defines medium populations as maintaining 500 mice over at least 16 km (10 mi) of rivers and streams. However, the Draft Document does not delineate specific boundaries of these six recovery populations. In addition, in the remaining 13 HUCs within the Preble's range the Draft Document calls for recovery populations but does not designate their locations. In these cases, the Draft Document only prescribes the need to establish one or more recovery populations of specified minimum size within a HUC. The Draft Document anticipates that, in the future, the locations of these recovery populations will be designated and their boundaries delineated by State and local governments, and other interested parties, working in coordination with the Service. However, to meet the deadline for this critical habitat proposal, we have proposed specific critical habitat units in these areas. In addition, we have proposed specific critical habitat units, as appropriate, in HUCs where recovery populations are called for by the Draft Document, but where their locations have not been specifically designated in the Draft Document.

Beyond proposing critical habitat for sites of likely recovery populations based on the Draft Document, we reviewed other sites of Preble's occurrence, especially on Federal lands, for possible designation as critical habitat. The Draft Document emphasizes the importance of protecting additional Preble's populations, to provide insurance for the Preble's in the event that designated recovery populations cannot be effectively managed or protected as envisioned by the recovery plan, or are decimated by uncontrollable catastrophic events such as fires or flooding. The Draft Document also recommends directing recovery efforts toward public lands rather than private lands where possible and calls upon all Federal agencies to protect and manage for the Preble's wherever it occurs on Federal lands. Given these recommendations from the Draft Plan, the designation of additional areas of critical habitat on Federal land is essential for the conservation of the Preble's. Should unforseen events cause

the continued decline of Preble's populations throughout its range, Preble's populations and the primary constituent elements on which they depend are more likely to persist and remain viable on Federal lands than on non-Federal lands. The likelihood of maintaining stable populations is greatest on these Federal lands, where consistent and effective land management strategies can be more easily employed. Preble's populations on Federal lands could serve as substitute recovery populations should designated recovery populations decline or fail to meet recovery goals. In addition, some Preble's populations on Federal lands have been the subject of ongoing research that could prove vital to the conservation of the Preble's.

For the reasons stated above we have proposed selected stream reaches on Federal lands supporting the Preble's that we believe to be essential to the conservation of the Preble's, even if these areas appear unlikely to be selected for initially designated recovery populations based on the Draft Document. These areas of proposed critical habitat may include short reaches of intervening non-Federal lands that in some cases support all primary constituent elements needed by the Preble's or, if substantially developed, are likely to provide only connectivity between areas of Preble's habitat on nearby Federal lands.

Proposed critical habitat units include only river and stream reaches, and adjacent floodplains and uplands, that are within the known geographic and elevational range of the Preble's, have the primary constituent elements present, and, based on the best available scientific information, are believed to currently support the Preble's.

In Wyoming and at higher elevations along the Front Range in Colorado the geographical distribution of the Preble's has been subject to scrutiny due to the close resemblance, and apparent range overlap, between the Preble's and the western jumping mouse. However, new information obtained since the time of the Preble's listing has not appreciably changed the known range of the Preble's. Based on the most recent information on elevational range of the Preble's we have, with one exception, limited proposed critical habitat to 2,300 m (7,600 ft) in elevation and below.

Presence of primary constituent elements was determined through a variety of sources including, but not limited to—Colorado Division of Wildlife mapping of Preble's Habitat Similarity Models derived from interpretation of aerial photographs; the Services' 1998 mapping of sites occupied or potentially occupied by the Preble's produced in conjunction with the Colorado Department of Natural Resources as part of proposed special regulations under section 4(d) of the Act (63 FR 66777); working maps produced by the Preble's Meadow Jumping Mouse Recovery Team during development of the Draft Document; National Wetland Inventory maps produced by the Service; results of research conducted on a variety of Federal properties by the Forest Service, the Department of Energy, the Air Force, and the Army Corps of Engineers; results of research conducted by the Colorado Division of Wildlife, Colorado Department of Transportation, and the City of Boulder; field assessments of habitat by Service staff; information amassed to support regional Habitat Conservation Plans (HCPs) including those in Boulder, Douglas, and El Paso Counties in Colorado, and for Denver Water properties; coordination with Forest Service personnel from the Medicine Bow-Routt, Arapaho-Roosevelt, and Pike-San Isabel National Forests; and, numerous evaluations of potential Preble's habitat by consulting biologists in support of developers, landowners, and other clients.

Presence of the Preble's was determined based largely on the results of trapping surveys, the majority of which were conducted in the past 6 years. Sites judged to be occupied by the Preble's include those that—(1) have recently been documented to support jumping mice identified by genetic or morphological examination as Preble's; (2) have recently been documented to support jumping mice and for which historical verification of the Preble's exists; or (3) are at appropriate elevation levels for the Preble's, have recently been documented to support jumping mice identified in the field as the Preble's, but where the mice were released alive and not subject to definitive morphological or genetic studies. While, in some cases, proposed critical habitat units extend well beyond these Preble's capture locations, boundaries of these critical habitat units include only those reaches that we believe to be occupied by the Preble's based on the best available information regarding capture sites, the known mobility of the Preble's, and the quality and continuity of habitat components along stream reaches. Where appropriate, we have included details on the known status of the Preble's within specific subdrainages in the in the Proposed Critical Habitat Designation section of this document.

Survey efforts to document the Preble's in Wyoming have been more limited than in Colorado and have been focused on—(1) Federal lands (the Medicine Bow-Routt National Forest, some Bureau of Land Management lands, and the F.E. Warren Air Force Base in Laramie County); (2) lands owned by True Ranches; and (3) areas to be impacted by proposed projects, most notably the Medicine Bow Lateral Pipeline.

We considered several qualitative criteria to judge the current status and probable persistence of Preble's populations in the selection and proposal of specific areas as critical habitat. These included—(1) the quality, continuity, and extent of habitat components present; (2) the state of natural hydrological processes that maintain and rejuvenate suitable habitat components; (3) the presence of lands devoted to conservation, either public lands such as parks, wildlife management areas, and dedicated open space, or private lands under conservation easements; and (4) the landscape context of the site, including the overall degree of current human disturbance and presence, and likelihood of future development based on local planning and zoning.

In those units where we propose critical habitat on Federal lands judged not likely to be initially designated as recovery populations under the Draft Document, we looked for contiguous Federal property along stream reaches occupied by the Preble's of at least 3 miles in length. This corresponds to the minimum size of small populations consistent with recovery criteria in the Draft Document. In some cases shorter reaches on Federal lands were proposed as critical habitat when they were separated from more substantial reaches on Federal lands by only small segments of intervening non-Federal lands.

We also determined whether areas or portions of areas designated as recovery populations in the Draft Document, or otherwise likely to be proposed as critical habitat based on factors described above, do not represent critical habitat due to adequate protection and management under an existing Integrated Natural Resource Management Plan, HCP, or other special management plan. Where regional HCPs are being developed, we evaluated the potential completion schedule of these planning efforts in relation to the likely completion of the final rule designating Preble's critical habitat.

**North Platte River Drainage**

In order to meet recovery criteria, the Draft Document calls for one large and

two medium recovery populations spread over three of the five HUCs in the North Platte River drainage likely to support the Preble's. The Draft Document calls for three small populations (defined as 5 km (3 mi) or more of occupied habitat) or one medium population in each of the other two HUCs. Two of the five HUCs currently lack confirmed occurrence of the Preble's. Therefore, we have proposed critical habitat areas representing large and medium recovery populations on the remaining three HUCs, all of which have extensive areas supporting primary constituent elements required by the Preble's.

Suitable habitat appears to be present throughout the Middle North Platte-Casper HUC. However, survey efforts targeted at the Preble's have occurred on only a limited basis in this subdrainage, with the only known captures of jumping mice at elevations above 2,800 m (7,800 ft) and likely to be western jumping mice. Therefore, while primary constituent elements for the Preble's appear present in this subdrainage and the Preble's probably occurs within this system, we have not proposed critical habitat based on lack of known occurrence.

Suitable habitat components occur throughout the Glendo HUC. We have proposed critical habitat on the Cottonwood Creek watershed consistent with one of the medium recovery populations required to meet recovery criteria for the North Platte River drainage in the Draft Document. In addition, we have proposed critical habitat in the Horseshoe Creek watershed on Forest Service land.

Primary constituent elements required by the Preble's appear widespread within the Lower Laramie HUC. Of two major watersheds we investigated, the complex formed by Chugwater Creek and its tributaries appears to be of better habitat quality and includes more stream miles than the complex formed by Sybille Creek and its tributaries. We have proposed critical habitat on the Chugwater Creek watershed consistent with the one large recovery population required to meet recovery criteria for the North Platte River drainage in the Draft Document. Richeau Creek and Hunton Creek were not included as proposed critical habitat since they are segregated from the main portion of the Chugwater Creek complex by long stretches of less suitable habitat.

In the Lower Laramie HUC, habitat components typically used by the Preble's exist on Federal property on the Medicine Bow-Routt National Forest. While many of these locations are at higher elevations than those that the Preble's has been shown to inhabit, surveys have captured jumping mice identified in the field as the Preble's from the appropriate elevational range. Therefore, we have proposed critical habitat on Forest Service lands and small parcels of intervening non-Federal lands within the Friend Creek watershed and within the Murphy Canyon watershed.

Suitable habitat in the Horse Creek HUC is generally limited to the western half of the subdrainage. Two areas of suitable habitat include the complex formed by Horse Creek and its tributaries and the various tributaries to Bear Creek. The Bear Creek tributaries are generally isolated from each other and from Horse Creek by large sections of unsuitable habitat. The Horse Creek complex is the larger complex and has better quality habitat. Therefore, we have proposed critical habitat on the Horse Creek watershed consistent with one of the two medium recovery populations required to meet recovery criteria for the North Platte River drainage in the Draft Document.

Habitat components suitable for the Preble's appear to be quite limited in the Middle North Platte-Scottsbluff HUC and are largely confined to the westernmost portions of the subdrainage. Some small pockets of suitable habitat are scattered throughout the rest of the subdrainage, but they are quite isolated. Additionally, trapping efforts targeted at the Preble's have occurred on a limited basis in this subdrainage with no surveys providing captures of the jumping mice. Therefore, while there is a high probability that the Preble's occurs within this subdrainage, we have not proposed critical habitat based on lack of known occurrence.

**South Platte River Drainage**

Recovery criteria in the Draft Document require three small recovery populations or one medium population in the Upper Lodgepole HUC. Suitable habitat for Preble's is generally limited to the western half of the subdrainage. Most trapping efforts in this HUC have been on the Medicine Bow-Routt National Forest at elevations above 2,300 m (7,700 ft). Additionally, one trapping effort at a lower elevation produced a jumping mouse presumed to be a Preble's. We have proposed two critical habitat units in this subdrainage, Lodgepole Creek and Upper Middle Lodgepole Creek, consistent with two of the three small recovery populations identified for the HUC in the Draft Document.

In Crow Creek HUC we have proposed critical habitat consistent with one of the three small recovery populations required to meet recovery criteria in the Draft Document. This area is limited to the F.E. Warren Air Force Base in Cheyenne.

The Lone Tree-Owl HUC supports primary constituent elements for Preble's both in Wyoming and in Colorado. Based on the recovery criteria of three small or one medium recovery population assigned to this HUC in the Draft Document, we have proposed two small areas of critical habitat along Lone Tree Creek, one in Wyoming and one in Colorado.

We have elected not to propose additional critical habitat on Federal property in the Upper Lodgepole, Crow Creek, and Lone Tree-Owl HUCs in southern Wyoming beyond those populations likely to be designated recovery populations under the proposed plan. Within these HUCs, Bureau of Land Management properties are largely upland areas with only small segments of streams. Forest Service lands in the Medicine Bow—Routt National Forest include many suitable-looking streams, but most occur at elevations ranging from 2,200 m (7,300 ft) to 2,400 m (8,000 ft). Although surveys from these riparian areas have produced jumping mice that are potentially the Preble's, it is likely, based on elevation, that many of these are western jumping mice. We will continue to work with the Forest Service regarding potential Preble's populations on their lands and will encourage further survey effort and collection of jumping mouse specimens for species verification.

In the Cache La Poudre HUC, we have proposed critical habitat along the lower portions of the North Fork of the Cache Le Poudre River and its tributaries, consistent with the large recovery population designated in the Draft Document. In addition, further south in this subdrainage we have proposed a second area limited largely to Forest Service lands along the main stem of the Cache Le Poudre River and on selected tributaries. While additional stream reaches that support Preble's populations are present on Forest Service lands in the upper reaches of the North Fork of the Cache Le Poudre and its tributaries, including Bull Creek, Willow Creek, Mill Creek, and Trail Creek, the extent of contiguous stream reaches in Forest Service ownership is very limited. A checkerboard pattern of land ownership convinced us that proposing additional critical habitat centered on Federal lands is not warranted; therefore, we proposed no critical habitat in this area.

In the Big Thompson HUC we proposed critical habitat on Buckhorn

Creek and its tributaries consistent with the medium recovery population designated to meet recovery criteria for this area under the Draft Document. We also assessed Forest Service lands along the Big Thompson River and Little Thompson River for possible inclusion as proposed critical habitat. Potential areas along the Big Thompson River and the North Fork of the Big Thompson River were largely in private ownership, with substantial human development occurring in many places. For these reasons we proposed only one additional area as critical habitat, centered on Forest Service lands on portions of Dry Creek and its tributaries. Similarly, Forest Service holdings along the Little Thompson River and its tributaries are highly fragmented by non-Federal lands or represent only short stream reaches near the 7,600-foot elevation. No critical habitat has been proposed on the Little Thompson River.

Within the St. Vrain HUC, the Draft Document designated a medium recovery population on South Boulder Creek as necessary to meet recovery criteria. We included the South Boulder Creek as proposed critical habitat. At the request of representatives from the City of Boulder we considered proposing critical habitat along the St. Vrain River between Hygiene and Lyons. We have little evidence to support designation of critical habitat for the Preble's population on the St. Vrain River as a preferable alternative to that on South Boulder Creek, nor did we find reason to propose critical habitat for a second population on non-Federal lands within this subdrainage. We considered proposing critical habitat for the Preble's on Forest Service lands at higher elevations along the North St. Vrain Creek and the Middle St. Vrain Creek. However, since no trapping efforts targeted at the Preble's have been conducted in these areas and we are aware of no records of the Preble's occurrence in these watersheds, neither has been proposed as critical habitat.

The Department of Energy's Rocky Flats site spans portions of the St. Vrain HUC and the Middle South Platte-Cherry Creek HUC. Rocky Flats has been a focus of research on the Preble's. We have proposed a critical habitat unit consisting of three streams in close proximity to one another on Department of Energy lands within these two subdrainages.

While the Draft Document calls for three small recovery populations or one medium recovery population within the Clear Creek HUC, the Preble's has been captured only along a segment of Ralston Creek above Ralston Reservoir. Based on limited occurrence of habitat components needed by the Preble's and the absence of other captures, we limited proposed critical habitat within the Clear Creek HUC to this single population.

The Draft Document calls for a medium recovery population along Cherry Creek in the Middle South Platte-Cherry Creek HUC. Preble's habitat in the upper reaches of the Cherry Creek basin appears extensive. We propose critical habitat in an area that includes a segment of Cherry Creek, Lake Gulch, and its tributaries. This area was chosen partly because it includes substantial public lands.

Within the Upper South Platte HUC we have proposed critical habitat along West Plum Creek and its tributaries consistent with the large recovery population designated in the Draft Document. An approved HCP exists for The Harding Property on West Plum Creek just upstream from its confluence with Garber Creek. Since the duration of the permit for this HCP is only 3 years, we have included this property in the proposed critical habitat.

We examined other areas of Preble's habitat on Federal lands within the Upper South Platte HUC, and have proposed critical habitat on Corps of Engineers lands upstream of Chatfield Reservoir along the South Platte River and on four areas centered on Forest Service land in the Pike-San Isabel National Forest within the South Platte River watershed. Though Forest Service lands in the Upper South Platte HUC are extensive, much of the South Platte itself is not federally owned. On Forest Service lands on some of the major tributaries of the South Platte River, habitat components required by the Preble's have been degraded by fire, flooding, or both. The Buffalo Creek watershed in particular has been highly degraded by fire, followed by flooding and accompanying erosion and sedimentation. Critical habitat has not been proposed in these areas. Combined, these five areas of proposed critical habitat should help assure that a viable population of the Preble's is maintained in the portion of this HUC upstream of Chatfield Reservoir on the South Platte River.

While the Draft Document calls for either three small populations or one medium population in both the Kiowa and Bijou HUCs, no confirmation of the Preble's currently exists for either of these subdrainages. To our knowledge, no trapping efforts targeted at the Preble's have taken place within likely Preble's habitat in either HUC. While primary constituent elements appear present and it is likely that the Preble's occurs within these systems, based on lack of known Preble's occurrence we have not proposed critical habitat within these HUCs.

**Arkansas River Drainage**

Within the Fountain Creek HUC the Draft Document calls for a large recovery population along Monument Creek and its tributaries including lands within the Air Force Academy. While the Academy would be an essential part of this recovery population, we have determined that the Academy does not meet the definition of critical habitat since it does not require special management considerations or protection. In determining boundaries of proposed critical habitat we considered whether documented Preble's populations on some reaches remained connected to the larger population present along Monument Creek or, due to fragmentation caused by past development, they have become permanently isolated.

Massive erosion and habitat modification along Pine Creek has likely isolated the Preble's population east of Interstate Highway 25 from that downstream on Monument Creek. Therefore, we have proposed no critical habitat on Pine Creek. A significant barrier to Preble's movement is present on Kettle Creek in the form of a large detention basin just east of Interstate Highway 25 and accompanying outflow structure that channels creek flow under the highway. Recent discussions have addressed possible means of improving connectivity between upstream and downstream Preble's populations along this reach. Since improved connectivity may be pursued and could prove important in meeting the recovery criteria in this HUC, we have proposed critical habitat through this reach of Kettle Creek.

Along the upper reaches of Monument Creek, Monument Lake and the dam that forms it create at least a partial barrier to Preble's movement upstream and downstream. While a current project will likely enhance connectivity for the Preble's population along this reach of Monument Creek, some reaches upstream from Monument Lake have been significantly altered by human activity. Based on our examination of the extent and quality of Preble's habitat upstream from Monument Lake, we have chosen to limit proposed critical habitat to areas downstream of the dam.

The Draft Document calls for either three small recovery populations or one medium recovery population to meet recovery criteria in both the Chico and the Big Sandy HUCs. The Preble's has been documented at a single location

within the Chico HUC, in apparently marginal habitat along an unnamed tributary of Black Squirrel Creek. Subsequent trapping could not relocate the Preble's at the site. Limited trapping of other sites has produced no captures of the Preble's and the extent of appropriate habitat components within the subdrainage appears limited. We have not proposed critical habitat in the Chico HUC based on our uncertainty that the Preble's exists within any given reach in this area. In the Big Sandy HUC limited trapping efforts targeted at the Preble's have not confirmed Preble's presence. Sites supporting primary constituent elements required by the Preble's appear few. For these reasons we have not proposed critical habitat in the Big Sandy HUC.

Proposed critical habitat for the Preble's was delineated based on the interpretation of multiple sources used during the preparation of this proposed rule. We used GIS-based mapping using ARCInfo that incorporated streams, steam order (Stahler method), roads, and cities from USGS maps, floodplains from Federal Emergency Management Agency maps, and surface management maps depicting property ownership from the Bureau of Land Management (primarily from the early 1990s). Lands proposed as critical habitat were divided into specific mapping units, *i.e.*, critical habitat units, often corresponding to individual HUCs. For the purposes of this proposed rule these units have been described primarily by latitude and longitude, and by section, township, and range, to mark the upstream and the downstream extent of proposed critical habitat along rivers and streams.

We were presented with a decision in designating outward extent of critical habitat into uplands. The Service has typically described Preble's habitat as extending outward 300 ft (90 m) from the 100-year floodplain of rivers and streams (Service 1998). The Draft Document defines Preble's habitat as the 100-year floodplain plus 100 m (330 ft) outward on both sides, but allows for alternative delineations that provide for all the needs of the Preble's and include the alluvial floodplain, transition slopes, and pertinent uplands.

In order to allow normal behavior and to assure that the Preble's and the primary constituent elements on which it depends are protected from disturbance, the outward extent of critical habitat should at least approximate the outward distances described above in relation to the 100-year floodplain. Unfortunately, floodplains have not been mapped for many streams within Preble's range and electronic layers depicting 100-year floodplains needed to facilitate GIS mapping are not available for several counties within Preble's range. Where floodplain mapping is available, we have found that it may include local inaccuracies.

While alternative delineation of critical habitat based on geomorphology and existing vegetation could accurately portray the presence and extent of required habitat components, we lacked an explicit data layer that could support such a delineation. Creation of such a layer through interpretation of aerial photographs and site visits was not possible given the time and resources available for this proposal.

We also considered determining the outward extent of critical habitat based on a distance outward from features such as the stream edge, associated wetlands, or riparian areas. We judged wetlands an inconsistent indicator of habitat extent and found no consistent source of riparian mapping available across the range of the Preble's. We also considered using an outward extent of critical habitat established by a vertical distance above the elevation of the river or stream to approximate the floodplain and adjacent uplands likely to be used by the Preble's.

For this proposal we ultimately settled on delineating the upland extent of critical habitat boundaries as a set distance outward from the river or stream edge (as defined by the ordinary high water mark) varying with the size (order) of a river or stream. We compared known floodplain widths to stream order over a series of sites and approximated average floodplain width for various orders of streams. To that average we added an additional 100 m (330 ft) outward on each side. Based on this calculation, for streams of order 1 and 2 (the smallest streams) we have delineated critical habitat as 110 m (360 ft) outward from the stream edge, for streams of order 3 and 4 we have delineated critical habitat as 120 m (400 ft) outward from the stream edge, and for stream orders 5 and above (the largest streams and rivers) we have delineated critical habitat as 140 m (460 ft) outward from the stream edge. While proposed critical habitat will not include all areas used by individual Preble's over time, we believe that these corridors of critical habitat ranging from 220 m (720 ft) to 280 m (920 ft) in width (plus the river or stream width) will support the full range of primary constituent elements essential for persistence of Preble's populations, and should help protect the Preble's and their habitats from secondary impacts of nearby disturbance. We welcome comments regarding the appropriate outward limits of critical habitat and means of establishing them.

In selecting areas of proposed critical habitat, we made an effort to avoid developed areas that are not likely to contribute to Preble's conservation. However, the scale of mapping that we used to approximate our delineation of critical habitat did not allow us to exclude all developed areas such as roads and rural development. In addition, some developed stream reaches serve as important connectors within Preble's populations. Existing structures and features within the boundaries of the mapped units, such as buildings, roads, parking lots, other paved areas, lawns, other urban and suburban landscaped areas, regularly plowed or disced agricultural areas, and certain other areas are not likely to contain primary constituent elements for the Preble's and, therefore, are not critical habitat. Federal actions limited to these areas would not trigger a section 7 consultation unless they affect the Preble's or primary constituent elements within proposed critical habitat.

Consistent with the Draft Document, we could not depend solely on federally-owned lands to propose critical habitat designation, as these lands are limited in geographic location, size, and habitat quality within the range of the Preble's. In addition to the federally-owned lands, we are proposing critical habitat on non-Federal public lands and privately owned lands, including lands owned by the State of Colorado and State of Wyoming, and by local governments. All non-Federal lands designated as critical habitat meet the definition of critical habitat under section 3 of the Act in that they are within the geographical area occupied by the species, are essential to the conservation of the species, and may require special management considerations or protection.

Section 4(b)(2) of the Act requires us to consider the economic and other relevant impacts of designating areas as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of designating these areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. We will make available for public review an economic analysis of this proposal; this economic analysis will serve as the basis of our 4(b)(2) analysis and any exclusions. However, this economic analysis is not yet completed;

as a result, we are not able to identify proposed exclusions under section 4(b)(2) in this proposed rule. We will complete our economic analysis, re-open the public comment period, and review public comments before making a final determination of critical habitat. This review, combined with our assessment of the benefits of designating areas as critical habitat, may identify certain proposed areas that should be excluded from the final critical habitat designation, provided these exclusions will not result in the extinction of the species. As a result, the final critical habitat determination may differ from this proposal.

**Proposed Critical Habitat Designation**

The proposed critical habitat contained within units discussed below constitutes our best evaluation of areas necessary to conserve the Preble's. Proposed critical habitat may be revised should new information become available prior to the final rule, or may be revised through rule-making (including notice and public comment) if new information becomes available after the final rule.

Table 1 provides a summary of land ownership by river or stream length and area of proposed critical habitat in each county for which critical habitat has been proposed. Critical habitat for the Preble's includes approximately 381.7 km (237.2 mi) of rivers and streams and 8,116 ha (20,054 ac) of lands in Wyoming and approximately 676.4 km (420.3 mi) of rivers and streams and 15,132 ha (37,392 ac) of lands in Colorado. Lands proposed as critical habitat are under Federal, State, local government, and private ownership. No lands proposed as critical habitat are under Tribal ownership. Estimates reflect the total river or stream length, or area of lands within critical habitat unit boundaries, without regard to the presence of primary constituent elements. Therefore, given exclusions for developed areas and other areas not supporting the primary constituent elements, the area proposed for designation is actually less than indicated in Table 1.

TABLE 1.—PROPOSED CRITICAL HABITAT FOR THE PREBLE'S MEADOW JUMPING MOUSE BY COUNTY IN WYOMING AND COLORADO, SUMMARIZED BY FEDERAL, STATE, AND OTHER OWNERSHIP

| | Ownership | | | |
|---|---|---|---|---|
| | Linear River Kilometers and Hectares by State and County | | | |
| | Federal | State | Other | Total |
| Wyoming | 51.4 km (32.0 mi); 1,552 ha (3,836 ac). | 12.8 km (7.9 mi); 265 ha (655 ac). | 317.5 km (197.3 mi) 6,297 ha (15,561 ac). | 381.7 km (237.2 mi); 8,116 ha (20,253 ac) |
| Albany | 42.8 km (26.6 mi); 940 ha (2,323 ac). | 5.6 km (3.5 mi); 107 ha (265 ac). | 63.3 km (39.3 mi); 1,348 ha (3,334 ac). | 111.7 km (69.4 mi); 2,396 ha (5,921 ac) |
| Converse | 3.8 km (2.1 mi); 143 ha (279 ac). | 0; 0 | 1.4 km (0.9 mi); 0 | 4.8 km (3.0 mi); 113 ha (279 ac) |
| Laramie | 5.0 km (3.1 mi); 496 ha (1,225 ac). | 4.4 km (2.7 mi); 98 ha (242 ac). | 188.6 km (117.2 mi); 3,617 ha (8,937 ac). | 198.0 km (123.0 mi); 4,210 ha (10,403 ac) |
| Platte | 0.1 km (0.1 mi); 4 ha (11 ac). | 2.8 km (1.8 mi); 60 ha (148 ac). | 64.2 km (39.9 mi); 1,332 ha (3,292 ac). | 67.2 km (41.7 mi); 1,397 ha (3,451 ac) |
| Colorado | 215.2 km (133.6 mi); 4,942 ha (12,214 ac). | 65.2 km (40.5 mi); 1,405 ha (3,473 ac). | 396.1 km (246.1 mi); 8,784 ha (21,706 ac). | 676.4 km (420.3 mi); 15,132 ha (37, 392 ac) |
| Boulder | 0 | 0 | 12.3 km (7.7 mi); 299 ha (740 ac). | 12.3 km (7.7 mi); 299 ha (740 ac) |
| Douglas | 57.5 km (35.7 mi) 1,351 ha (3,479 ac). | 13,5 km (8.4 mi); 276 ha (683 ac). | 157.7 km (98.0 mi); 3,450 ha (8,524 ac). | 228.7 km (142.1 mi); 5,076 ha (12,545 ac) |
| El Paso | 0.2 km (0.1 mi); 16 ha (41 ac). | 0.4 km (0.3 mi); 8 ha (21 ac). | 55.6 km (34.5 mi); 1,232 ha (3.048 ac). | 56.3 km (35.0 mi); 1,259 ha (3,110 ac) |
| Jefferson | 31.8 km (19.7 mi) 611 ha (1,509 ac). | 5.1 km (3.2 mi); 82 ha (203 ac). | 26.7 km (16.6 mi); 551 ha (1,361 ac). | 63.8 km (39.6 mi); 1,244 ga (3,073 ac) |
| Larimer | 124.2 km (77.2 mi); 2,939 ha (6,745 ac). | 46.0 km (28.6 mi); 1,038 ha (2,564 ac). | 134.8 km (83.3 ac); 3,054 ha (7,547 ac). | 305.1 km (189.6 mi); 7,022 ha (17,352 ac) |
| Teller | 1.3 km (0.8 mi); 34 ha (85 ac). | 0 | 0 | 1.3 km (0.8 mi); 34 ha (85 ac) |
| Weld | 0 | 0.0; 1 ha (2 ac) | 8.9 km (5.6 mi); 196 ha (484 ac). | 8.9 km (5.6 mi); 197 ha (486 ac) |

Lands proposed as critical habitat are divided into 19 critical habitat units containing all of those primary constituent elements necessary to meet the primary biological needs of the Preble's. We did not include all areas currently occupied by the Preble's. A brief description of each Preble's critical habitat unit and the reasons why they are essential for the conservation of the Preble's are provided below. The units are generally based on geographically distinct river drainages and subdrainages described in the Draft Document. These units have been subject to, or are threatened by, varying degrees of degradation from human use and development. For these reasons, all of the areas we are proposing for critical habitat designation may require special management considerations or protection.

In areas within the range of the Preble's where there has been concern over possible confusion between the Preble's and the western jumping mouse, we have provided comments regarding known occurrence of the Preble's. Unless otherwise noted, references to ''morphological examination'' refer to Connor and Shenk (in prep.), references to ''genetic examination'' refer to Riggs *et al.* (1997), and references to ''captures presumed to be the Preble's'' refer to field surveys where jumping mice presumed to be Preble's were released alive and not subject to morphological or genetic examination.

The following five critical habitat units are located in the North Platte River drainage:

*Unit NP1:* Cottonwood Creek, Albany, Platte, and Converse Counties, Wyoming.

Unit NP1 encompasses approximately 924 ha (2,284 ac) on 43.3 km (26.9 mi) of streams within the Cottonwood Creek watershed. It includes Cottonwood Creek from Harris Park Road upstream to the 2,100-m (7,000-ft) elevation. Tributaries include North Cottonwood Creek and Preacher Creek. The unit includes both public and private lands, including a small portion on the Medicine Bow-Routt National Forest.

This unit is located in the Glendo HUC and is proposed to address the one of two medium recovery populations required to meet recovery criteria for the North Platte River drainage in the Draft Document. The Preble's habitat on this unit appears generally excellent, particularly on the Forest Service lands. This population is essential not only to maintain distribution near the northernmost extreme of known Preble's range, but because the large size of the population (as predicted by amount and quality of habitat) should help ensure viability into the future. Private lands within the unit are used extensively for grazing, which could pose a threat to the Preble's and its habitat if not managed appropriately.

A specimen examined by Krutzch (1954) in describing the subspecies is from Springhill in this HUC. Five recent specimens from this subdrainage have been identified as the Preble's through morphological examination (tooth fold presence) (Jones, *in litt.,* 2002). Captures of jumping mice presumed to be Preble's have occurred at several other locations in this subdrainage.

*NP2:* Horseshoe Creek, Albany County, Wyoming.

Unit NP2 encompasses approximately 153 ha (377 ac) on 6.5 km (4.1 mi) of streams within the Horseshoe Creek watershed. It includes Horseshoe Creek upstream from Harris Park Road. The unit is entirely on Federal lands within the Medicine Bow-Routt National Forest.

This unit is located in the Glendo HUC and, while unlikely to serve as an initial recovery population under the Draft Document, it encompasses a significant area of habitat entirely on Federal lands. Proposal of critical habitat on this area is based upon captures of jumping mice presumed to be the Preble's on Trail Creek (an upstream tributary to Horshoe Creek) and on primary constituent elements present in this area.

*Unit NP3:* Chugwater Creek, Albany, Laramie, and Platte Counties, Wyoming.

Unit NP3 encompasses approximately 3,811 ha (9,416 ac) on 179.4 km (111.5 mi) of streams within the Chugwater Creek watershed. It extends from several miles downstream of the town of Chugwater, upstream on Chugwater Creek and its tributaries to approximately the 2,100-m (7,000-ft) elevation. Major tributaries within the unit include Middle Chugwater Creek, South Chugwater Creek, Three Mile Creek, Sand Creek, Ricker Creek, Strong Creek, and Shanton Creek. The unit consists of both public and private lands.

This unit is located in the Lower Laramie HUC and is proposed to address the large recovery population in the North Platte River drainage required to meet the recovery criteria described in the Draft Document. The unit supports excellent Preble's habitat with a complex tributary system and is likely to support a high density of the Preble's. While some isolated portions of this unit may be less suitable, we do not believe those areas are permanently affected by current land use practices or pose such barriers as to segregate portions of this Preble's population. Based on the amount and apparent quality of Preble's habitat contained in this unit, it may support one of the largest populations of the Preble's within its entire range and has a high probability of remaining viable well into the future. Threats are presented by future development, road construction, and road improvements. In addition, the unit is repeatedly crossed by gas pipelines and utility corridors. Haying and grazing may be threats to the Preble's in portions of the unit.

Specimens of Preble's from this HUC include a specimen from Chugwater examined by Krutzch (1954) in describing the subspecies, and specimens from Sybille Creek, Chugwater Creek, and Hunton Creek verified as the Preble's through morphological examination (tooth fold presence) (Jones, *in litt.,* 2002). Capture of jumping mice presumed to be the Preble's has occurred at several other locations in this subdrainage.

*Unit NP4:* Friend Creek and Murphy Canyon, Albany County, Wyoming.

Unit NP4 encompasses approximately 683 ha (1,689 ac) on 32.0 km (19.9 mi) of streams within two subunits, the Friend Creek and Murphy Canyon watersheds. It consists largely of Federal lands within the Medicine Bow-Routt National Forest but includes small parcels of intervening non-Federal lands.

This unit is located in the Lower Laramie HUC and, while unlikely to serve as an initial recovery population under the Draft Document, it encompasses a significant area of Preble's habitat largely on Federal lands within the Medicine Bow-Routt National Forest. We have proposed this unit as critical habitat based on the primary constituent elements present and captures of jumping mice presumed to be the Preble's.

*Unit NP5:* Horse Creek, Laramie County, Wyoming.

Unit NP5 encompasses approximately 1,770 ha (4,373 ac) on 84.1 km (52.3 mi) of streams within the Horse Creek watershed. It includes Horse Creek from the Interstate Highway 25 bridge upstream to the 2,100-m (7,000-ft) elevation with major tributaries including Dry Creek, the South Fork of Horse Creek, Mill Creek, and the North Fork of Horse Creek. The unit consists of both public and private lands. It includes lands owned by the University of Wyoming.

The unit is located in the Horse Creek HUC and is proposed to address one of the two medium recovery populations required in the Draft Document to meet recovery criteria in the North Platte River drainage. In general, the habitat appears extremely good with a broad floodplain, patches of dense shrubs, and extensive hay meadows. This population appears to be relatively large, as predicted by the quality and extent of habitat present, and should retain viability into the future. Current and future threats include development, road construction, and utility corridors. Additionally, haying and grazing may be threats to the Preble's in portions of the unit.

This designation is based upon a capture of a mouse verified to be the Preble's through morphological examination (tooth fold presence) (Jones, *in litt.,* 2002) on Horse Creek and other captures presumed to be Preble's on Horse Creek and the South Fork of Horse Creek. We elected to propose critical habitat both upstream and downstream of successful survey locations based on the extensive complex of suitable habitat that is present.

The following 13 critical habitat units are located in the South Platte River drainage:

*Unit SP1:* Lodgepole Creek and Upper Middle Lodgepole Creek, Laramie County, Wyoming.

Unit SP1 encompasses approximately 265 ha (654 ac) on 20.8 km (13.0 mi) of streams within two subunits in the Lodgepole Creek watershed, Lodgepole Creek and the Upper Middle Lodgepole Creek. The Lodgepole Creek subunit includes Lodgepole Creek from Horse Creek Road (County Road 211) upstream beyond the confluence of North Lodgepole Creek and Middle Lodgepole

Creek up to 2,300-m (7,000-ft) elevation on both creeks. The subunit consists of almost entirely private lands. The Upper Middle Lodgepole Creek subunit includes Middle Lodgepole Creek from the eastern boundary of the Pole Mountain Unit of the Medicine Bow-Routt National Forest upstream to about 2,400-m (7,750-ft) elevation and including the North Branch of Middle Lodgepole Creek. The unit consists of public lands including portions of the Medicine Bow-Routt National Forest.

This unit is located in the Upper Lodgepole HUC and is proposed to address two of three small recovery populations included in the recovery criteria for this HUC in the Draft Document. The Lodgepole Creek subunit will likely be threatened in the future by development including road construction. The Upper Middle Lodgepole Creek subunit may be threatened by grazing pressure (particularly during drought conditions) and off-road vehicle use.

Critical habitat on this unit is proposed based on captures of jumping mice on Middle Lodgepole Creek and North Branch of Middle Lodgepole Creek. Although these two trap sites are fairly high in elevation, a specimen was confirmed as the Preble's on the North Branch of Middle Lodgepole Creek through genetic examination and a second specimen was verified to be the Preble's through morphological examination (tooth fold presence) (Jones, *in litt.,* 2001).

*Unit SP2:* F.E. Warren Air Force Base, Laramie County, Wyoming.

Unit SP2 encompasses approximately 134 ha (331 ac) on 5.7 km (3.6 mi) of streams within the Crow Creek watershed. It includes Crow Creek on the F.E. Warren Air Force Base from the southeastern boundary of the Air Force Base in Cheyenne upstream to the western boundary of the Air Force Base. The unit consists entirely of Federal lands of the Air Force Base.

This unit is located in the Crow Creek HUC and is proposed to address one of three small recovery populations required in the recovery criteria for this HUC in the Draft Document. This unit includes portions of the Air Force Base threatened by water management for flood control, reclamation of landfills, and other Air Force Base operations.

Crow Creek on the Air Force Base has been the subject of repeated past trapping. Trapping efforts by the University of Wyoming, Colorado Natural Heritage Program, and the Wyoming Natural Diversity Database identified mice from the Air Force Base as the Preble's, though without morphological examination of specimens. A specimen from Cheyenne, within this HUC, was examined by Krutzch (1954) and used in describing the Preble's subspecies. However, genetic examination identified specimens from the Air Force Base as western jumping mice. One 1996 specimen taken from the Air Force Base was identified through morphological examination as a western jumping mouse. Given that the Air Force Base is within the normal elevational range of the Preble's, it is likely the Air Force Base is occupied by both the Preble's and the western jumping mouse.

*Unit SP3:* Lone Tree Creek, Laramie County, Wyoming, Weld County, Colorado.

Unit SP3 encompasses approximately 394 ha (974 ac) on 18.7 km (11.7 mi) of streams within the Lone Tree Creek watershed. It includes two subunits, Lone Tree Creek, Wyoming and Lone Tree Creek, Colorado. The Lone Tree Creek, Wyoming, subunit includes a reach of Lone Tree Creek and a portion of Goose Creek. The subunit consists of both public and private lands. The Lone Tree Creek, Colorado, subunit includes Lone Tree Creek both upstream and downstream of a successful trapping site near Interstate Highway 25. This subunit also consists of both public and private lands.

This unit is located in the Lone Tree-Owl HUC and is proposed to address two of three small recovery populations required in the recovery criteria for this HUC in the Draft Document. Suitable habitat occurs throughout the HUC, although some areas are of lower quality due to heavy grazing. This unit may be threatened by development in the future.

Proposal of critical habitat within this unit is based on captured jumping mice presumed to be the Preble's in Wyoming and Colorado. In the Colorado subunit, a mouse identified in the field as a Preble's was determined by genetic examination to be more similar to a western jumping mouse. Given the low elevation of the capture site 1,900 m (6,200 ft), it is likely that both the Preble's and the western jumping mouse are present within this unit.

*Unit SP4:* North Fork Cache La Poudre River, Larimer, Colorado.

Unit SP4 encompasses approximately 3,321 ha (8,206 ac) on 141.8 km (88.1 mi) of streams within the North Fork of the Cache La Poudre River watershed. It includes the North Fork of the Cache La Poudre River from Seaman Reservoir upstream to Halligan Reservoir. Major tributaries within the unit include Stonewall Creek, Rabbit Creek (including its North Fork, Middle Fork and South Fork), and Lone Pine Creek. The unit includes both public and private lands. It includes portions of the Arapaho-Roosevelt National Forest, as well as Lone Pine State Wildlife Area.

The unit is located in the Cache La Poudre HUC and is proposed to address the large recovery population designated for this area in the Draft Document. The area remains rural and agricultural with habitat components likely to support relatively high densities of Preble's. Pressure for expanded development is increasing within the area. Portions of the unit are the subject of the Livermore Valley Landowners HCP currently under development.

Specimens from Rabbit Creek and Lone Pine Creek were verified through genetic examination as the Preble's. Jumping mice presumed to be the Preble's have been captured at several locations within the unit.

*Unit SP5:* Cache La Poudre River, Larimer County, Colorado.

Unit SP5 encompasses approximately 1,912 ha (4,725 ac) on 82.4 km (51.2 mi) of streams within the Cache La Poudre River watershed. It includes the Cache La Poudre River from Poudre Park upstream to the 2,300-m (7,600-ft) elevation (below Rustic). Major tributaries within the unit include Hewlett Gulch, Young Gulch, Skin Gulch, Poverty Gulch, Elkhorn Creek, Pendergrass Creek, and Bennett Creek. The unit is primarily composed of Federal lands of the Arapaho-Roosevelt National Forest, including portions of the Cache La Poudre Wilderness, but includes limited non-Federal lands.

The unit is located in the Cache La Poudre HUC and, while unlikely to serve as a recovery population under the Draft Document, it encompasses a significant area of habitat likely to support a sizeable population of Preble's. Due to Federal ownership, development pressure is minimal; however, the area is subject to substantial recreational use (rafting, kayaking, fishing) in the Cache La Poudre River corridor. Non-Federal lands include existing development that may limit habitat components present. Some such reaches may serve the Preble's mostly as connectors between areas containing all necessary primary constituent elements.

A number of jumping mice, presumed to be the Preble's, have been captured from this unit, with one specimen from Young Gulch was verified through morphological examination as a Preble's.

*Unit SP6:* Buckhorn Creek, Larimer County, Colorado.

Unit SP6 encompasses approximately 1,537 ha (3,798 ac) on 69.2 km (43.0 mi)

of streams within the Buckhorn Creek watershed. It includes Buckhorn Creek from just west of Masonville, upstream to the 7,600-foot elevation. Major tributaries within the unit include Little Bear Gulch, Bear Gulch, Stringtown Gulch, Fish Creek, and Stove Prairie Creek. The unit includes both public and private lands, and includes portions of the Arapaho-Roosevelt National Forest.

The unit is located in the Big Thompson HUC and is proposed to address the medium recovery population designated for this area in the Draft Document. Pressure for expanded rural development exists on non-Federal lands within the unit.

Jumping mice presumed to be the Preble's have been captured from various portions of this unit with one specimen from Little Bear Gulch verified through morphological examination as the Preble's.

*Unit SP7:* Cedar Creek, Larimer County, Colorado.

Unit SP7 encompasses approximately 252 ha (624 ac) on 11.7 km (7.3 mi) of streams within the Cedar Creek watershed, including Dry Creek and Jug Gulch. Cedar Creek is a tributary of the Big Thompson River and enters the Big Thompson River at Cedar Cove. The unit is centered on Federal lands of the Arapaho-Roosevelt National Forest, but includes some stream reaches on non-Federal lands.

This unit is located in the Big Thompson HUC and, while unlikely to serve as an initial recovery population under the Draft Document, it supports a population on mostly Federal lands of the upper Big Thompson River, isolated, at least in terms of riparian connection, from the Preble's population on nearby Buckhorn Creek. This site is upstream of The Narrows of the Big Thompson Canyon, a barrier to Preble's movement, while the confluence of the Big Thompson River and Buckhorn Creek is downstream from The Narrows. However, the close proximity of the headwaters of Jug Gulch within this unit to the headwaters of Bear Gulch within the Buckhorn Creek unit suggests that some individual Preble's mice may pass between the two populations and thus between the two significant watersheds within this HUC.

Jumping mice presumed to be the Preble's have been captured from within this unit. The Little Bear Gulch capture of Preble's, cited above, is from just north of this unit and within the same HUC.

*Unit SP8:* South Boulder Creek, Boulder County, Colorado.

Unit SP8 encompasses approximately 283 ha (699 ac) on 11.8 km (7.3 mi) of streams within the South Boulder Creek watershed. It includes South Boulder Creek from Baseline Road upstream to Eldorado Springs, and includes the Spring Brook tributary. The unit includes both public and private lands. It includes substantial lands owned by the City of Boulder Open Space and Mountain Parks.

This unit is located in the St. Vrain HUC and is proposed to address the medium recovery population designated for this area in the Draft Document. Portions of the area have been the subject of Preble's research funded by the City of Boulder and, in places, high densities of the Preble's have been documented. A wide floodplain, complex ditch system, and the irrigation of pastures makes habitat within the lower portions of this unit unique. In places, the outward extent of primary constituent elements surpasses the standard distance outward from the stream used to define critical habitat in this proposal. Boundaries of critical habitat on this unit should be refined in cooperation with the City of Boulder prior to the final rule. Pressure for expanded development is occurring on private lands within the unit. Recreational use of the City of Boulder lands is considerable and may adversely impact the Preble's. The entire unit is within the Boulder County HCP currently under development.

The Preble's has been verified through genetic and morphological examination of specimens from several sites within the unit.

*Unit SP9:* Rocky Flats Environmental Technology Site, Jefferson County, Colorado.

Unit SP9 encompasses approximately 429 ha (1,059 ac) on 19.5 km (12.1 mi) of streams within the Rock Creek, Woman Creek, and Walnut Creek watersheds. The unit includes only Federal lands on the Department of Energy's Rocky Flats.

Portions of this unit are located in the St. Vrain HUC (Rock Creek) and portions are in the Middle South Platte-Cherry Creek HUC (Woman Creek and Walnut Creek). While unlikely to serve as an initial recovery population under the Draft Document, this unit is unique in that it is limited entirely to Federal lands and has been the subject of substantial past research on the Preble's. After cleanup and closure of the Rocky Flats Environmental Technology Site, the property will be transferred to the Service to become part of the National Wildlife Refuge system. Population studies have taken place on the site over a period of years. Streams within the unit are small and habitat components present do not support a high density of the Preble's. The site presents an opportunity to study small populations and their viability over time.

The Preble's has been verified to be present through genetic and morphological examination of specimens from within the unit.

*Unit SP10:* Ralston Creek, Jefferson County, Colorado.

Unit SP10 encompasses approximately 282 ha (698 ac) on 13.1 km (8.1 mi) of streams within the Ralston Creek watershed. It includes Ralston Creek from Ralston Reservoir upstream to the 7,600-foot elevation. The unit includes both public and private lands including lands in Golden Gate Canyon State Park, White Ranch County Park, and lands owned by Denver Water.

This unit is located in the Clear Creek HUC and is proposed to partially address the criteria of three small recovery populations or one medium recovery population required for this area in the Draft Document. The segment of Ralston Creek that passes through the Cotter Corporation's existing Schwartzwalder Mine serves as a connector between areas supporting primary constituent elements required by the Preble's located in areas upstream and downstream.

The Preble's has been verified through morphological examination of a specimen from the lower portion of this unit.

*Unit SP11:* Cherry Creek, Douglas County, Colorado.

Unit SP11 encompasses approximately 703 ha (1,738 ac) on 32.1 km (19.9 mi) of streams within the Cherry Creek watershed. It includes Cherry Creek from the downstream boundary of the Castlewood Canyon State Recreation Area, upstream to its confluence with Lake Gulch. Major tributaries within the unit include Lake Gulch and Upper Lake Gulch. The unit includes both public and private lands. It includes portions of the Castlewood Canyon State Recreation Area, as well as Douglas County's recently acquired Green Mountain Ranch property.

This unit is located in the Middle South Platte-Cherry Creek HUC and is proposed to address the medium recovery population designated for this area in the Draft Document. Some development pressure is occurring from expanding rural development within the area. The entire unit is within the Douglas County HCP currently being developed.

*Unit SP12:* West Plum Creek, Douglas County, Colorado.

Unit SP12 encompasses approximately 3,270 ha (8,080 ac) on 146.6 km (91.1 mi) of streams within the

Plum Creek watershed. It includes Plum Creek from Chatfield Reservoir upstream to the confluence with West Plum Creek then continues upstream on West Plum Creek to its headwaters. Major tributaries within the unit include Indian Creek, Jarre Creek, Garber Creek (including North, Middle, and South Garber Creek), Jackson Creek, Spring Creek, Dry Gulch, Bear Creek, Starr Canyon, Gove Creek, and Metz Canyon. The unit is a combination of public and private lands. It includes portions of the Pike-San Isabel National Forest, as well as Chatfield State Recreation Area (Corps of Engineers property), and Colorado Division of Wildlife's Woodhouse Ranch property.

This unit is located in the Upper South Platte HUC and is proposed to address the large recovery population designated for this area in the Draft Document. Aside from a portion of Plum Creek, the area remains rather rural and includes habitat components likely to support relatively high densities of the Preble's. Pressure for expanded rural development is occurring within the area. With the exception of Federal lands, the entire unit is within the Douglas County HCP currently being developed.

Specimens from West Plum Creek, Garber Creek, and Indian Creek have been verified through morphological examination as the Preble's. The unit has been widely surveyed and jumping mice presumed to be the Preble's have been found in several other locations.

*Unit SP13:* Upper South Platte River, Jefferson and Douglas Counties, Colorado.

Unit SP13 encompasses approximately 1,687 ha (4,168 ac) on 83.1 km (51.6 mi) of streams within the Platte River watershed. It includes five subunits. The Chatfield subunit includes a section of the South Platte River upstream of Chatfield Reservoir within Chatfield State Recreation Area (Corps of Engineers' property). The Bear Creek subunit includes Bear Creek and West Bear Creek, tributaries to the South Platte River on Forest Service lands. The South Platte sub-unit includes a segment of the South Platte River upstream from Nighthawk, including the tributaries Gunbarrel Creek and Sugar Creek. This subunit is centered on Federal lands of the Pike-San Isabel National Forest but includes some intervening non-Federal lands. The Trout Creek subunit includes portions of Trout Creek, a tributary to Horse Creek, and also portions of Eagle Creek, Long Hollow, Fern Creek, Illinois Gulch, and Missouri Gulch. This subunit is centered on Federal lands of the Pike-San Isabel National Forest but includes some intervening non-Federal lands along Trout Creek. The Wigwam Creek subunit includes Wigwam Creek and its tributaries, Pine Creek and Cabin Creek on Forest Service lands.

This unit is located in the Upper South Platte HUC and, while unlikely to serve as an initial recovery population under the Draft Document, encompasses five areas of primarily Federal land spread through the drainage, four within the Pike-San Isabel National Forest boundary. Habitat components present and the likely density of Preble's populations vary. The Trout Creek subunit appears to have high quality Preble's habitat and may provide an opportunity to research relationships between the Preble's and the western jumping mouse, both of which have been verified from a single location in the subunit. Small segments of non-Federal lands in the unit are within the Douglas County HCP currently being developed.

Preble's has been confirmed through morphological examination of a specimen from Trout Creek near the Douglas County-Teller County boundary at 2,310 m (7,590 ft). Other captures of jumping mice from various locations within this unit are presumed to be the Preble's.

The following critical habitat unit is located in the Arkansas River drainage:

*Unit A1:* Monument Creek, El Paso County, Colorado.

Unit A1 encompasses approximately 1,259 ha (3,110 ac) 56.3 km (35.0 mi) of streams within the Monument Creek watershed. It includes Monument Creek from the confluence of Cottonwood Creek upstream to the southern boundary of the Academy and from the northern boundary of the Academy upstream to the dam at Monument Lake. Major tributaries within the unit include Kettle Creek, Black Squirrel Creek, Monument Branch, Smith Creek, Jackson Creek, Beaver Creek, Teachout Creek, and Dirty Woman Creek. The unit is primarily on private lands. It includes a small portion of the Pike-San Isabel National Forest.

This unit is located in the Fountain Creek HUC and is proposed to address the large recovery population designated for this area in the Draft Document. The area is unique in that it represents the only known Preble's population of significant size within the Arkansas River drainage and the southernmost known occurrence of the Preble's. Development pressure is extremely high on some private lands within the unit. There is concern that development will result in changes in flows from increased stormwater runoff and will affect riparian systems. Non-Federal lands within the unit are addressed in the El Paso County HCP currently being developed.

Jumping mice presumed to be the Preble's have been captured throughout this unit and specimens from the Academy and within the unit have been verified as the Preble's through genetic and morphological examination.

**Effects of Critical Habitat Designation**

Designating critical habitat does not, in itself, lead to the recovery of a listed species. The designation does not establish a reserve, create a management plan, establish numerical population goals, prescribe specific management practices (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and conservation plans, and through section 7 consultation and section 10 permits.

However, designation of critical habitat can help focus conservation activities for listed species by identifying areas essential to conserve the species. Designation of critical habitat also alerts the public, as well as land-managing agencies, to the importance of these areas. As a result of critical habitat designation, Federal agencies may be able to prioritize landowner incentive programs such as Conservation Reserve Program enrollment and other private landowner agreements that benefit the Preble's. Critical habitat designation also may assist States and local governments in prioritizing their conservation and land management programs.

*ESA Section 7 Consultation*

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7

consultation under the Act. Adverse modification might result from alterations that include, but are not limited to, adverse changes to the physical or biological features, *i.e.,* the primary constituent elements, that were the basis for determining the habitat to be critical.

*Conference for Proposed Critical Habitat*

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to result in the destruction or adverse modification of proposed critical habitat. The regulations for interagency cooperation regarding proposed critical habitat are codified at 50 CFR 402.10. During a conference on the effects of a Federal action on proposed critical habitat, we make non-binding recommendations on ways to minimize or avoid adverse effects of the action. We document these recommendations and any conclusions reached in a conference report provided to the Federal agency and to any applicant involved.

If requested by the Federal agency and deemed appropriate by us, the conference may be conducted in accordance with the procedures for formal consultation under 50 CFR 402.14. We may adopt an opinion issued at the conclusion of the conference as our biological opinion when the critical habitat is designated by final rule, but only if new information or changes to the proposed Federal action would not significantly alter the content of the opinion.

*Consultation for Designated Critical Habitat*

If a Federal action may affect a listed species or its designated critical habitat, the action agency must initiate consultation with us (50 CFR 402.14). Through this consultation, we would advise the agency whether the action would likely jeopardize the continued existence of the species or adversely modify its critical habitat.

When we issue a biological opinion that concludes that an action is likely to result in the destruction or adverse modification of critical habitat, we must provide reasonable and prudent alternatives to the action, if any are identifiable. Reasonable and prudent alternatives are actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the proposed action, are consistent with the scope of the action agency's authority and jurisdiction, are economically and technologically feasible, and would likely avoid the destruction or adverse modification of critical habitat (50 CFR 402.02).

*Reinitiation of Prior Consultations*

A Federal agency may request a conference with us for any previously reviewed action that is likely to destroy or adversely modify proposed critical habitat and over which the agency retains discretionary involvement or control, as described above under ''Conference for Proposed Critical Habitat.'' Following designation of critical habitat, regulations at 50 CFR 402.16 require a Federal agency to reinitiate consultation for previously reviewed actions that may affect critical habitat and over which the agency has retained discretionary involvement or control.

*Federal Actions That May Destroy or Adversely Modify Preble's Meadow Jumping Mouse Critical Habitat*

Section 4(b)(8) of the Act requires us, in any proposed or final rule designating critical habitat, to briefly describe and evaluate those activities that may adversely modify such habitat, or that may be affected by such designation.

Federal actions that, when carried out, funded or authorized by a federal agency, may destroy or adversely modify critical habitat for the Preble's include, but are not limited to:

(1) Any activity that results in development or alteration of the landscape within a unit, including land clearing; activities associated with construction for urban and industrial development, roads, bridges, pipelines, or bank stabilization; agricultural activities such as plowing, discing, haying, or intensive grazing; off-road vehicle activity; and mining or drilling of wells;

(2) Any activity that results in changes in the hydrology of the unit, including construction, operation, and maintenance of levees, dams, berms, and channels; activities associated with flow control (*e.g.,* releases, diversions, and related operations); irrigation; sediment, sand, or gravel removal; and other activities resulting in the draining or inundation of a unit;

(3) Any sale, exchange, or lease of Federal land that is likely to result in the habitat in a unit being destroyed or appreciably degraded;

(4) Any activity that detrimentally alters natural processes in a unit including the changes to inputs of water, sediment and nutrients, or that significantly and detrimentally alters water quantity in the unit; and

(5) Any activity that could lead to the introduction, expansion, or increased density of exotic plant or animal species that are detrimental to the Preble's and to its habitat.

Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

*Previous Section 7 Consultations*

Many section 7 consultations for Federal actions affecting the Preble's and its habitat have preceded this critical habitat proposal, including, but not limited to:

(1) Activities on Federal lands including those of the Department of Defense, Forest Service, Department of Energy, and Bureau of Land Management;

(2) Activities affecting waters of the United States by the Corps of Engineers under section 404 of the Clean Water Act;

(3) Licensing or relicensing of dams by the Federal Energy Regulatory Commission;

(4) Development, operation, and maintenance of dams, canals, and other means of directing flows by the Corps of Engineers and the Bureau of Reclamation;

(5) Funding and regulation of highway and bridge construction, and improvements by the Federal Highway Administration;

(6) Licensing or construction of communication sites by the Federal Communications Commission;

(7) Hazard mitigation and post-disaster repairs funded by the Federal Emergence Management Agency; and

(8) Issuance of Endangered Species Act section 10(a)(1)(B) permits by the Fish and Wildlife Service.

If you have any questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact LeRoy Carlson, Field Supervisor, Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Ecological Services, P.O. Box 25486, DFC, Denver, CO 80225–0486 (telephone 303–236–7400; facsimile 303–236–0027).

*Relationship of Critical Habitat to Military Lands*

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the

military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. Bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, as they require no additional special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat.

In place at the Air Force Academy in El Paso County, CO are an INRMP, a 1999 Conservation and Management Plan for Preble's Meadow Jumping Mouse on the U.S. Air Force Academy, and a 2000 programmatic section 7 consultation addressing certain activities on the Academy that may affect the Preble's. The conservation and management plan provides guidance for U.S. Air Force management decisions regarding the Preble's and its habitat over five years (2000—2005). While it was based upon the most current scientific knowledge available at the time that it was developed, research regarding Preble's is ongoing at the Academy and the conservation and management plan will be updated as new information is collected.

We have reviewed these measures and have determined that they address the three criteria identified above. Therefore, Academy lands do not meet the definition of critical habitat and are not included in this proposed designation of critical habitat for the Preble's. To date, the Academy is the only Department of Defense installation that has completed a final INRMP that provides for sufficient conservation, management and protection for the Preble's.

*Relationship to Habitat Conservation Plans and Other Planning Efforts*

Section 10(a) of the Act authorizes us to issue permits for private actions which result in the taking of listed species incidental to otherwise lawful activities. Incidental take permit applications must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Currently a limited number of small HCPs covering the Preble's or its habitat have been approved and regional or county-wide HCPs are being developed in a few instances. We have not proposed to exclude any lands from this critical habitat designation on the basis of existing HCPs. However, HCPs that will likely include proposed critical habitat are currently under development. Should any of these HCPs be approved by the Service prior to finalization of a rule designating critical habitat, we will consider whether the area covered by the HCP does not represent critical habitat due to adequate existing protection and management under the HCP.

In the event that future HCPs covering the Preble's are developed within the boundaries of designated critical habitat after finalization of the critical habitat designation, we will provide technical assistance and work closely with the applicants to identify lands essential for the long-term conservation of the Preble's, ensure that the HCPs provide for protection and management of habitat areas essential to the Preble's by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive analysis and data collection regarding the use of particular habitat areas by the Preble's and a more detailed analysis of the importance of such lands.

**Economic Analysis**

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating these areas as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of designating these areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register** and reopen the comment period at the time to accept comments on the economic analysis or, if necessary, further comments on the proposed rule. The economic analysis will be available at *http://www.R6.FWS.GOV/preble.* This economic analysis will serve as the basis of our analysis under section 4(b)(2), and of any exclusions. As this economic analysis is not yet completed, we are not yet able to identify proposed exclusions under section 4(b)(2) in this proposed rule. We will review this analysis, public comments on the analysis and this proposed rule, and the benefits of designating areas as critical habitat; we may identify certain proposed areas that should be excluded from the final critical habitat designation, provided these exclusions will not result in the extinction of the species. As a result, the final critical habitat determination may differ from this proposal.

**Public Comments Solicited**

We intend any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of the Preble's habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices, and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical

habitat for the Preble's, such as those derived from non-consumptive uses (*e.g.,* hiking, camping, birdwatching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs); and

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). If you would like to submit comments by electronic format, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include your name and return e-mail address in your e-mail message. Please note that the e-mail address will be closed out at the termination of the public comment period. If you do not receive confirmation from the system that we have received your message, contact us directly by calling our Colorado Ecological Services Field Office at 303–275–2370.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**Peer Review**

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rule. Accordingly, the final rule may differ from this proposal.

**Public Hearings**

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

We plan to schedule at least three informal public meetings in Wyoming and Colorado to provide information on and an opportunity for discussion of this proposed rule. The dates, times, and places of these meetings will be publicized by the Service, including announcements in local newspapers.

**Clarity of the Rule**

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following—(1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposal? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail comments to: *Exsec@ios.doi.gov.*

**Required Determinations**

*Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). We are preparing a draft economic analysis of this proposed action. We will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of the Preble's. This analysis will be available for public comment before finalizing this designation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As indicated on Table 1 (see ''Critical Habitat Designation''), we have proposed designating property owned by Federal, State, and local governments, and private entities.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Activities on Federal lands including the Department of Defense, Forest Service, Department of Energy, and Bureau of Land Management;

(2) Regulations of activities affecting waters of the United States by the Corps of Engineers under section 404 of the Clean Water Act;

(3) Licensing or relicensing of dams by the Federal Energy Regulatory Commission;

(4) Development, operations, and maintenance of dams, canals, and other means of directing flows by the Corps of Engineers and Bureau of Reclamation;

(5) Funding and regulation of highway and bridge construction and improvements by the Federal Highway Administration;

(6) Licensing or construction of communication sites by the Federal Communications Commission;

(7) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; and

(8) Issuance of Endangered Species Act section 10(a)(1)(B) permits by the Fish and Wildlife Service.

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through

contract, grant, permit, or other Federal authorization. These actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have significant additional effects on these activities in areas of critical habitat occupied by the species.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

In the economic analysis, we will determine whether designation of critical habitat will cause—(a) any effect on the economy of $100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, Tribal, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

*Energy Supply, Distribution or Use (Executive Order 13211)*

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Though this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Service will use the economic analysis to further evaluate this situation.

*Takings*

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Preble's as defined in section 9 of the Act and its implementing regulations (50 FR 17.31). Due to current public knowledge of the species' protection, the prohibition against take of the Preble's both within and outside of the proposed areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have the opportunity to utilize their property in ways consistent with the conservation of the Preble's.

*Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in Wyoming and Colorado. We will continue to coordinate any future designation of critical habitat for the Preble's with the appropriate State agencies. The designation of critical habitat for the Preble's imposes few additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally-sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

*Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Act and plan public meetings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Preble's.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

*National Environmental Policy Act*

Our position is that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act (NEPA) in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)). However, when the range of the species includes States within the Tenth Circuit, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we will complete a NEPA analysis with an Environmental Assessment. The range of the Preble's includes States within the Tenth Circuit; therefore, we are completing an Environmental Assessment and will announce its availability in the **Federal Register**.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We are required to assess the effects of critical habitat designation on tribal lands and tribal trust resources. We believe that no tribal lands or tribal trust resources are essential for the conservation of the Preble's.

**References Cited**

A complete list of all references cited in this final rule is available upon request from the Colorado Fish and

Wildlife Service Field Office (see **ADDRESSES**).

**Author**

The primary author of this proposed rule is Peter Plage, Biologist, of the Colorado Ecological Services Field Office (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for ''Mouse, Preble's meadow jumping'' under ''MAMMALS'' to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| MAMMALS | | | | | | | |
| * | * | * | * | * | * | | * |
| Mouse, Preble's meadow jumping. | *Zapus hudsonius preblei*. | U.S.A. (CO, WY) .... | Entire ..... | T | 636 | 17.95(a) | NA |
| * | * | * | * | * | * | | * |

3. Amend § 17.95(a) by adding critical habitat for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) in the same alphabetical order as the species occurs in § 17.11(h) to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

(a) *Mammals.* * * *

Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*)

(1) Critical habitat units are depicted for Wyoming and Colorado. Maps and description follow.

(2) Within these areas, the primary constituent elements for the Preble's include those habitat components essential for the biological needs of reproducing, rearing of young, foraging, sheltering, hibernation, dispersal, and genetic exchange. The primary constituent elements are found in and near riparian areas located within grassland, shrubland, forest, and mixed vegetation types where dense herbaceous or woody vegetation occurs near the ground level, where available open water exists during their active season, and where there are ample upland habitats of sufficient width and quality for foraging, hibernation, and refugia from catastrophic flooding events. Primary constituent elements associated with the biological needs of dispersal and genetic exchange also are found in areas that provide connectivity or linkage between or within Preble's populations. The dynamic ecological processes that create and maintain Preble's habitat also are important primary constituent elements. Primary constituent elements include:

(i) A pattern of dense riparian vegetation consisting of grasses, forbs, and shrubs in areas along rivers and streams that provide open water through the Preble's active season;

(ii) Adjacent floodplains and vegetated uplands with limited human disturbance (including hayed fields, grazed pasture, other agricultural lands that are not plowed or disced regularly, areas that have been restored after past aggregate extraction, areas supporting recreational trails, and urban/wildland interfaces);

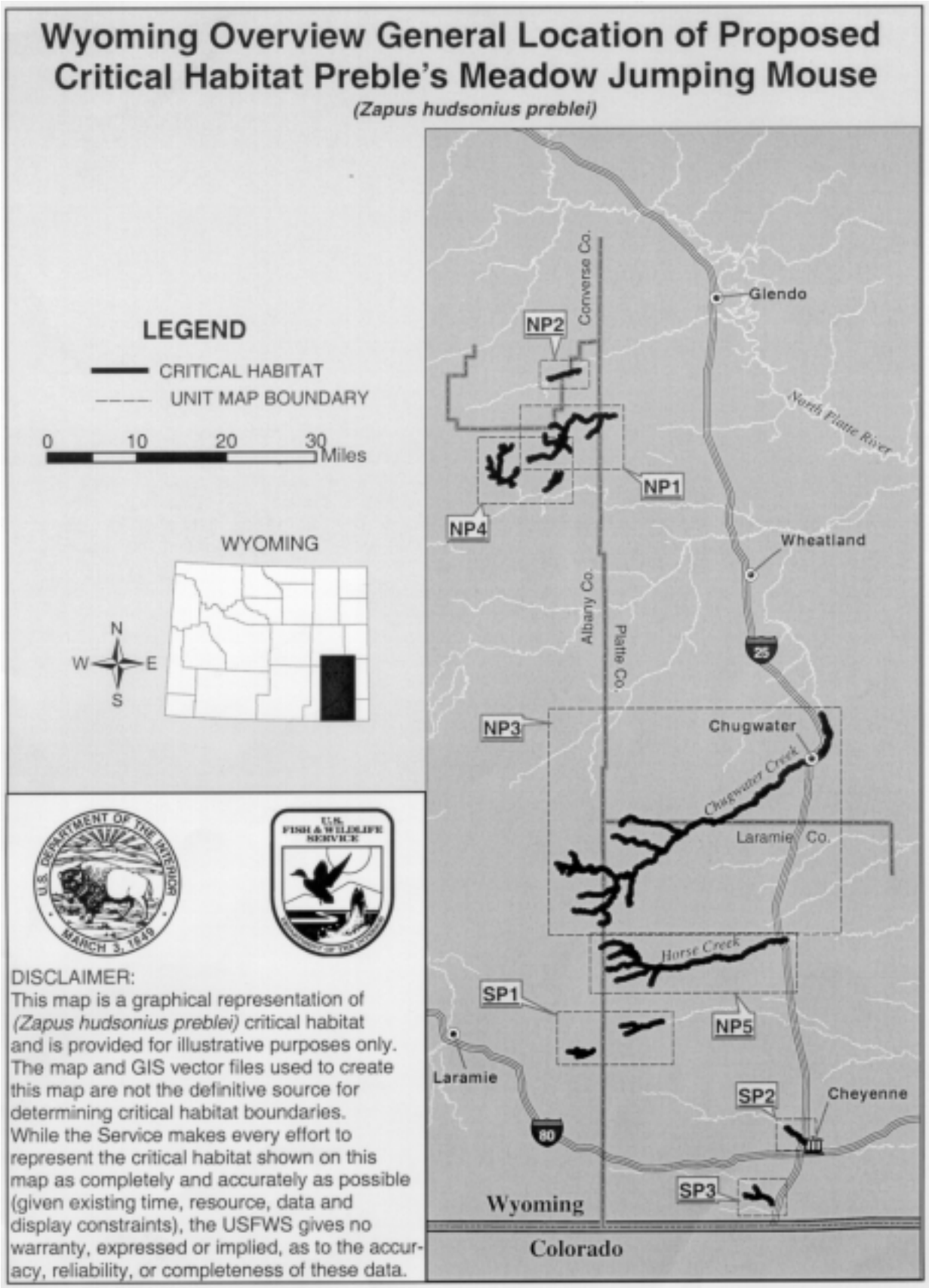
(iii) Areas that provide connectivity between and within populations. These may include river and stream reaches with minimal vegetative cover or that are armored for erosion control, travel ways beneath bridges, through culverts, along canals and ditches, and other areas that have experienced substantial human alteration or disturbance; and

(iv) Dynamic geomorphological and hydrological processes typical of systems within the range of the Preble's, *i.e.,* those processes that create and maintain river and stream channels, floodplains, and floodplain benches, and promote patterns of vegetation favorable to the Preble's.

(3) Existing features and structures within the boundaries of the mapped units, such as buildings, roads, parking lots, other paved areas, lawns, other urban and suburban landscaped areas, regularly plowed or disced agricultural areas, and other features not containing any of the primary constituent elements are not considered critical habitat.

(4) Critical Habitat Units—Wyoming Index Map Follows:

BILLING CODE 4310–55–P


Wyoming Overview General Location of Proposed Critical Habitat Preble's Meadow Jumping Mouse
(Zapus hudsonius preblei)
LEGEND
CRITICAL HABITAT
UNIT MAP BOUNDARY
0 10 20 30 Miles
WYOMING
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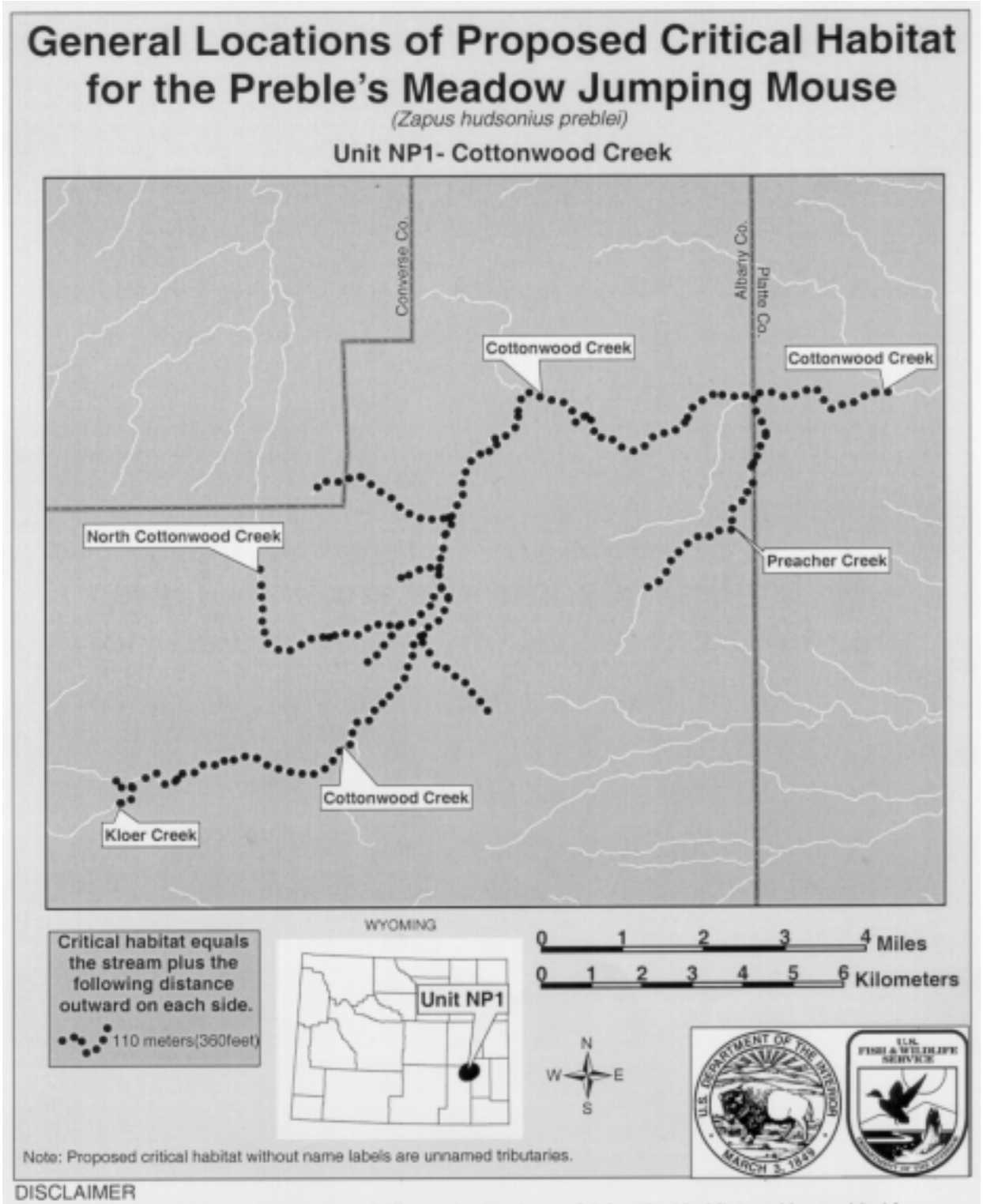
DISCLAIMER:
This map is a graphical representation of (Zapus hudsonius preblei) critical habitat and is provided for illustrative purposes only. The map and GIS vector files used to create this map are not the definitive source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible (given existing time, resource, data and display constraints), the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.
Converse Co.
Glendo
NP2
North Platte River
NP1
NP4
Wheatland
Albany Co.
Platte Co.
25
NP3
Chugwater
Chugwater Creek
Laramie Co.
Horse Creek
SP1
NP5
Laramie
SP2
Cheyenne
80
SP3
Wyoming
Colorado

(5) Map Unit NP1: Cottonwood Creek, Albany, Platte, and Converse Counties, Wyoming.

(i) This unit consists of the following:

43.3 km (26.9 mi) of streams. Cottonwood Creek from the confluence with Held Creek at (42 18 44N 105 14 50W, T.27N., R.70W., Sec. 16) upstream to (42 14 34N 105 26 04W, T.26N., R.72W., Sec. 12). Includes Preacher Creek from its confluence with Cottonwood Creek at (42 18 43N 105 16 51W, T.27N., R.70W., Sec. 17) upstream to (42 16 39N 105 18 22W, T.27N., R.71W., Sec. 25). Also includes an unnamed tributary from its confluence with Cottonwood Creek at (42 17 24N 105 21 12W, T.27N., R.71W., south boundary Sec. 22) upstream to (42 17 39N 105 23 13W, T.27N., R.71W., Sec. 20). Also includes another unnamed tributary from its confluence with Cottonwood Creek at (42 16 51N 105 21 23W, T.27N., R.71W., Sec. 28) upstream to (42 16 46N 105 21 59W, T.27N., R.71W., Sec. 28). Also includes North Cottonwood Creek from its confluence with Cottonwood Creek at (42 16 39N 105 21 21W, T.27N., R.71W., Sec. 28) upstream to (42 16 51N 105 23 59W, T.27N., R.71W., Sec. 30). Which includes an unnamed tributary from its confluence North Cottonwood Creek at (42 16 15N 105 21 57W, T.27N., R.71W., Sec. 33) upstream to (42 15 48N 105 22 30W, T.27N., R.71W., Sec. 32). Cottonwood Creek includes another unnamed tributary from its confluence with Cottonwood Creek at (42 16 08N 105 21 38W, T.27N., R.71W., Sec. 33) upstream to (42 15 17N 105 20 39W, T.26N., R.71W., Sec. 3). Also includes a final tributary, Kloer Creek from its confluence with Cottonwood Creek at (42 14 30N 105 25 49W, T.26N., R.72W., Sec. 12) upstream to (42 14 20N 105 26 00W, T.26N., R.72W., Sec. 12).

(ii) Map Unit NP1 follows:




DISCLAIMER

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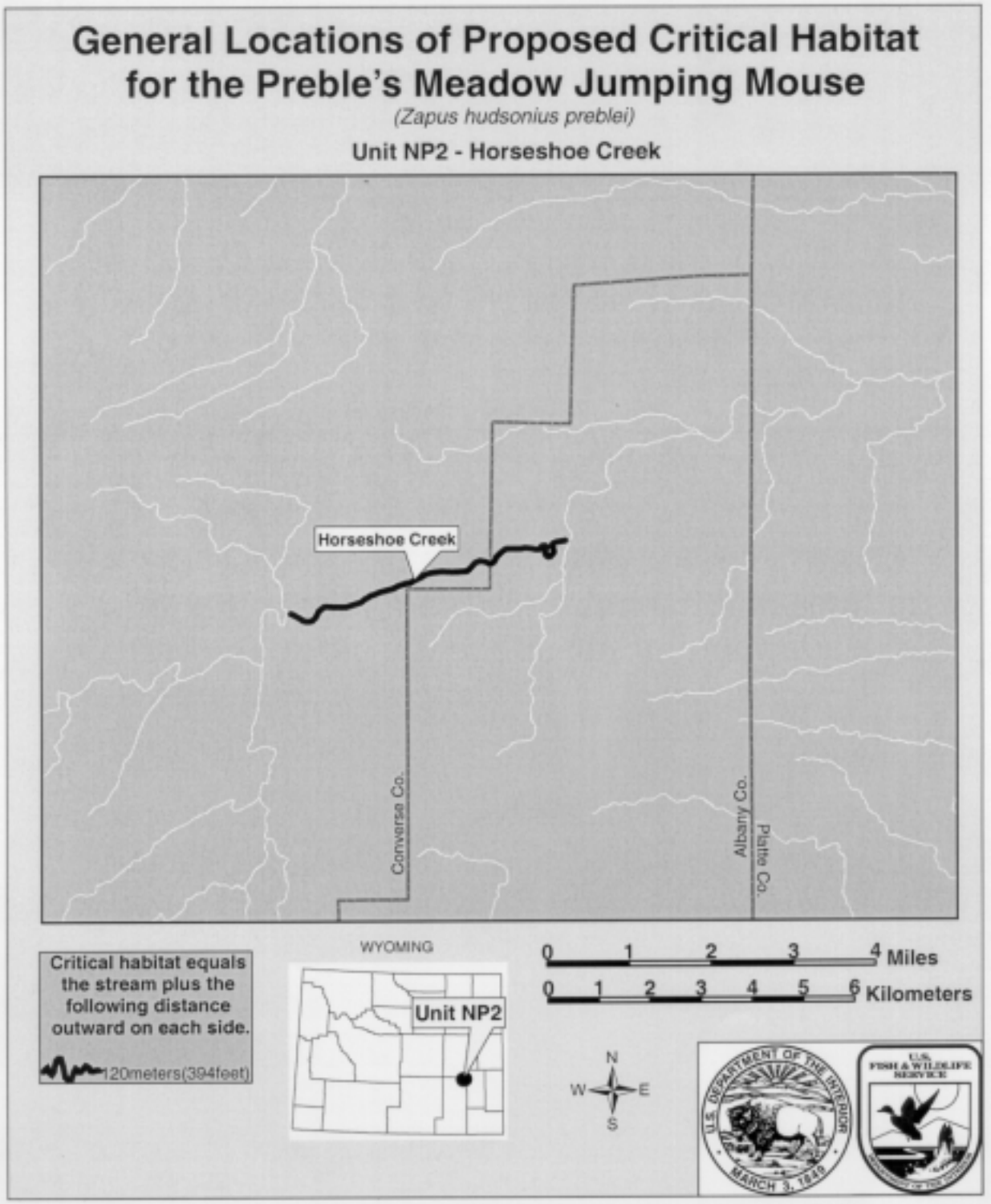
(6) Map Unit NP2: Horseshoe Creek, Albany County, Wyoming.

(i) This unit consists of the following:

6.5 km (4.1 mi) of streams. Horseshoe Creek from the confluence with Soldier Creek at (42 23 07N 105 19 30W, T.28N., R.71W., Sec. 23) upstream to the confluence with Mary Cooper Creek at (42 22 20N 105 23 30W, T.28N., R.71W., Sec. 29).

(ii) Map Unit NP2 follows:

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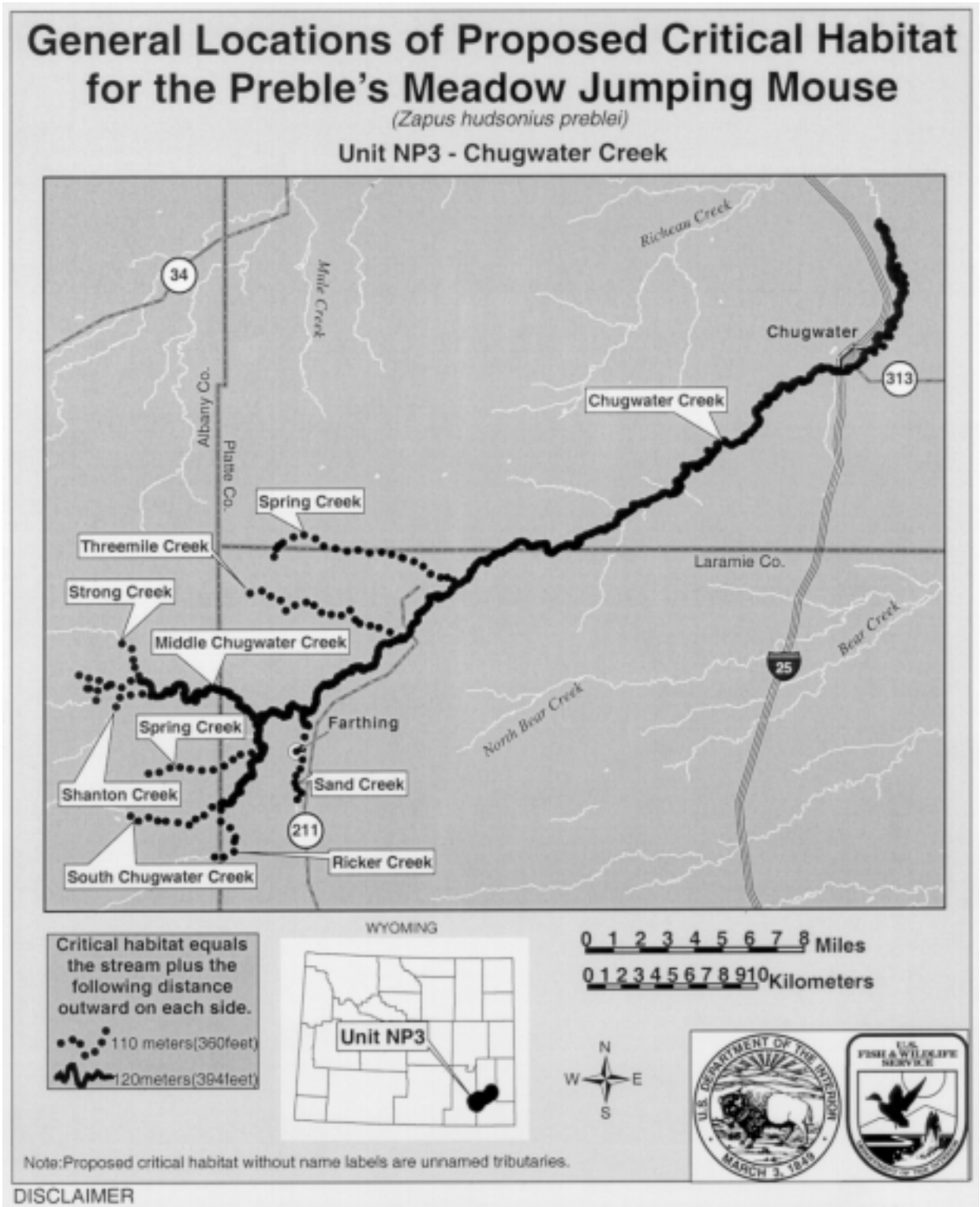
(7) Map Unit NP3: Chugwater Creek, Albany, Laramie, and Platte Counties, Wyoming.

(i) This unit consists of the following: 179.4 km (111.5 mi) of streams. Chugwater Creek from (41 49 41N 104 48 03W, T.21N., R.66W., north boundary Sec. 5) upstream to Farthing Reservoir (41 32 36N 105 14 31W, T.18N., R.70W., Sec. 9). Includes Spring Creek from its confluence with Chugwater Creek (41 38 10N 105 05 56W, T.19N., R.69W., Sec. 10) upstream to (41 39 00N 105 13 58W, T.19N., R.70W., Sec. 4). Includes Threemile Creek from its confluence with Chugwater Creek (41 36 22N 105 08 23W, T.19N., R.69W., Sec. 20) upstream to (41 37 51N 105 14 59W, T.19N., R.70W., west boundary Sec. 9). Also includes Sand Creek from its confluence with Chugwater Creek (41 34 09N 105 12 37W, T.18N., R.70W., north boundary Sec. 3) upstream to (41 31 12N 105 12 54W, T.18N., R.70W., Sec. 22). Also includes Middle Chugwater Creek from its confluence with Chugwater Creek (41 33 55N 105 14 20W, T.18N., R.70W., Sec. 4) upstream to (41 34 23N 105 21 32W, T.19N., R.71W., Sec. 33). Which includes Shanton Creek from its confluence with Middle Chugwater Creek at (41 34 36N 105 19 05W, T.19N., R.71W., Sec. 35) upstream to (41 34 12N 105 20 41W, T.19N., R.71W., southwest corner Sec. 34). Also includes Strong Creek from its confluence with Middle Chugwater Creek at (41 35 04N 105 19 36W, T.19N., R.71W., Sec. 34) upstream to (41 36 16N 105 20 25W, T.19N., R.71W., Sec. 22). Middle Chugwater Creek also includes an unnamed tributary from its confluence with Middle Chugwater Creek at (41 34 56N 105 20 54W, T.19N., R.71W., Sec. 33) upstream to (41 35 14N 105 22 17W, T.19N., R.71W., Sec. 29). Finally, another unnamed tributary from its confluence with Middle Chugwater Creek at (41 34 43N 105 21 28W, T.19N., R.71W., Sec. 33) upstream to (41 34 47N 105 21 56W, T.19N., R.71W., Sec. 32). Another included tributary of Chugwater Creek is Spring Creek from its confluence with Chugwater Creek at (41 32 57N 105 14 27W, T.18N., R.70W., Sec. 9) upstream to (42 32 03N 105 19 17W, T.18N., R.71W., Sec. 15). South Chugwater Creek is included in the unit from the ending point of Chugwater Creek at Farthing Reservoir (41 32 36N 105 14 31W, T.18N., R.70W., Sec. 9) upstream to (41 30 42N 105 20 03W, T.18N., R.71W., north boundary Sec. 27). Includes Ricker Creek from its confluence with South Chugwater Creek at (41 31 04N 105 16 07W, T.18N., R.70W., Sec. 19) upstream to (41 29 24N 105 16 39W, T.18N., R.70W., Sec. 31).

(ii) Map Unit NP3 follows:

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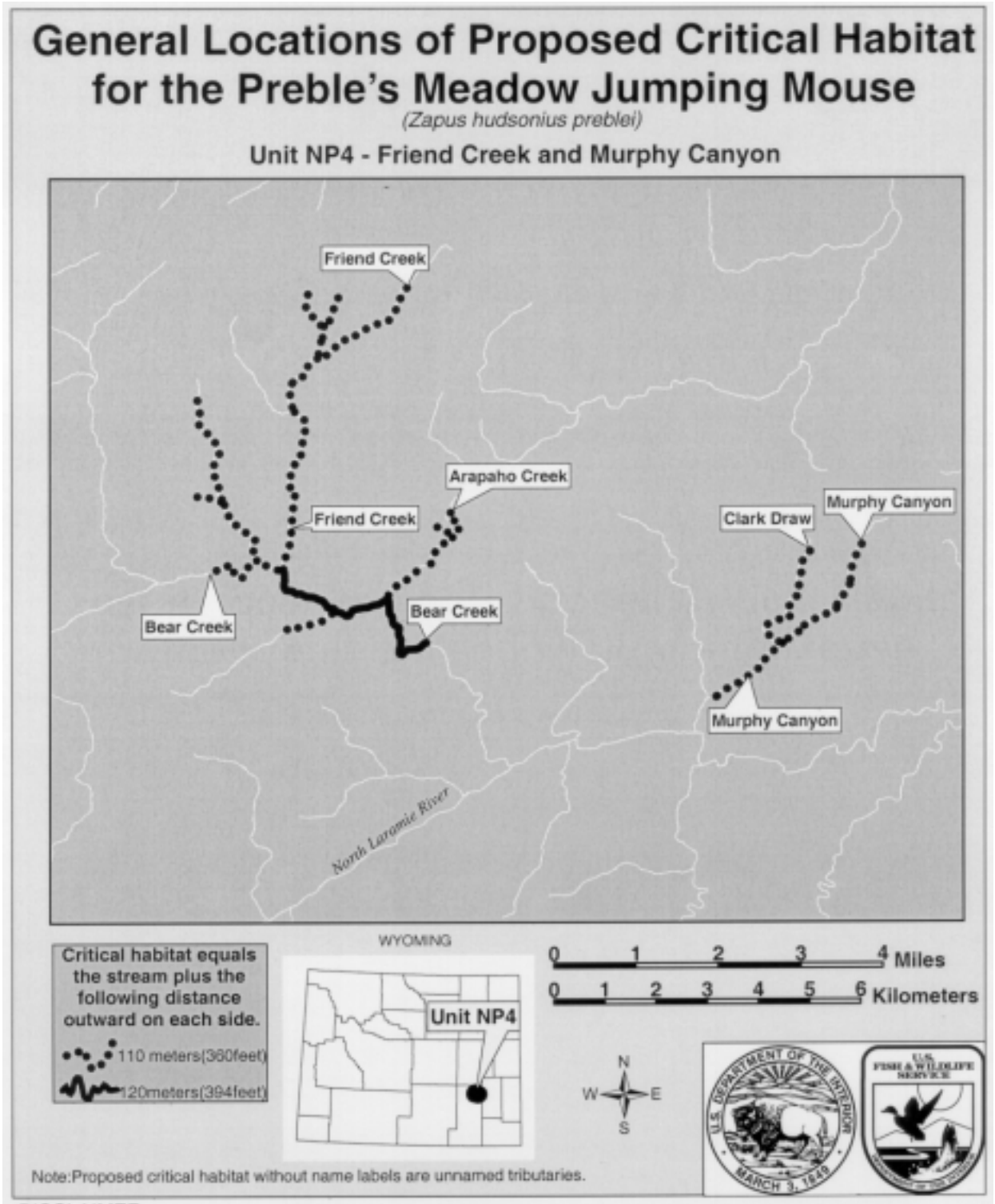
(8) Map Unit NP4: Friend Creek and Murphy Canyon, Albany County, Wyoming.

(i) This unit consists of the following:

32 km (19.9 mi) of streams. Includes 2 subunits. Subunit Murphy Canyon from its confluence with Sturgeon Creek at (42 11 27N 105 23 58W, T.26N., R.71W., Sec. 30) upstream to (42 13 07N 105 21 48W, T.26N., R.71W., north boundary Sec. 21). Includes Clark Draw from its confluence with Murphy Canyon at (42 12 03N 105 22 56W, T.26N., R.71W., Sec. 29) upstream to (42 13 05N 105 22 31W, T.26N., R.71W., north boundary Sec. 20).

Subunit Friend Creek includes Bear Creek from (42 12 02N 105 28 00W, T.26N., R.72W., Sec. 27) upstream to (42 12 46N 105 31 05W, T.26N., R.72W., Sec. 19). Includes Arapaho Creek from its confluence with Bear Creek at (42 12 30N 105 28 35W, T.26N., R.72W., Sec. 22) upstream to (42 13 32N 105 27 37W, T.26N., R.72W., Sec. 15). Includes an unnamed tributary from its confluence with Arapaho Creek at (42 13 11N 105 27 38W, T.26N., R.72W., Sec.15) upstream to (42 13 18N 105 27 53W, T.26N., R.72W., Sec.15). Bear Creek also includes an unnamed tributary from its confluence with Bear Creek at (42 12 22N 105 29 18W, T.26N., R.72W., Sec. 21) upstream to (42 12 11N 105 29 59W, T.26N., R.72W., Sec. 20). Also includes Friend Creek from its confluence with Bear Creek at (42 12 48N 105 30 03W, T.26N., R.72W., Sec.20) upstream to (42 15 48N 105 28 18W, T.27N., R.72W., Sec. 34). Which includes an unnamed tributary from its confluence with Friend Creek at (42 15 03N 105 29 34W, T.26N., R.72W., Sec. 4) upstream to (42 15 48N 105 29 18W, T.27N., R.72W., Sec. 33). Which includes another unnamed tributary from its confluence with the aforementioned unnamed tributary at (42 15 23N 105 29 28W, T.26N., R.72W., Sec. 4) upstream to (42 15 44N 105 29 43W, T.27N., R.72W., Sec. 33). Bear Creek finally includes an unnamed tributary from its confluence with Bear Creek at (42 12 54N 105 30 26W, T.26N., R.72W., Sec. 20) upstream to (42 14 36N 105 31 17W, T.26N., R.72W., Sec. 7). Which includes an unnamed tributary from its confluence with the aforementioned unnamed tributary at (42 13 32N 105 30 55W, T.26N., R.72W., Sec. 17) upstream to (42 13 37N 105 31 24W, T.26N., R.72W., Sec. 18).

(ii) Map Unit NP4 follows:

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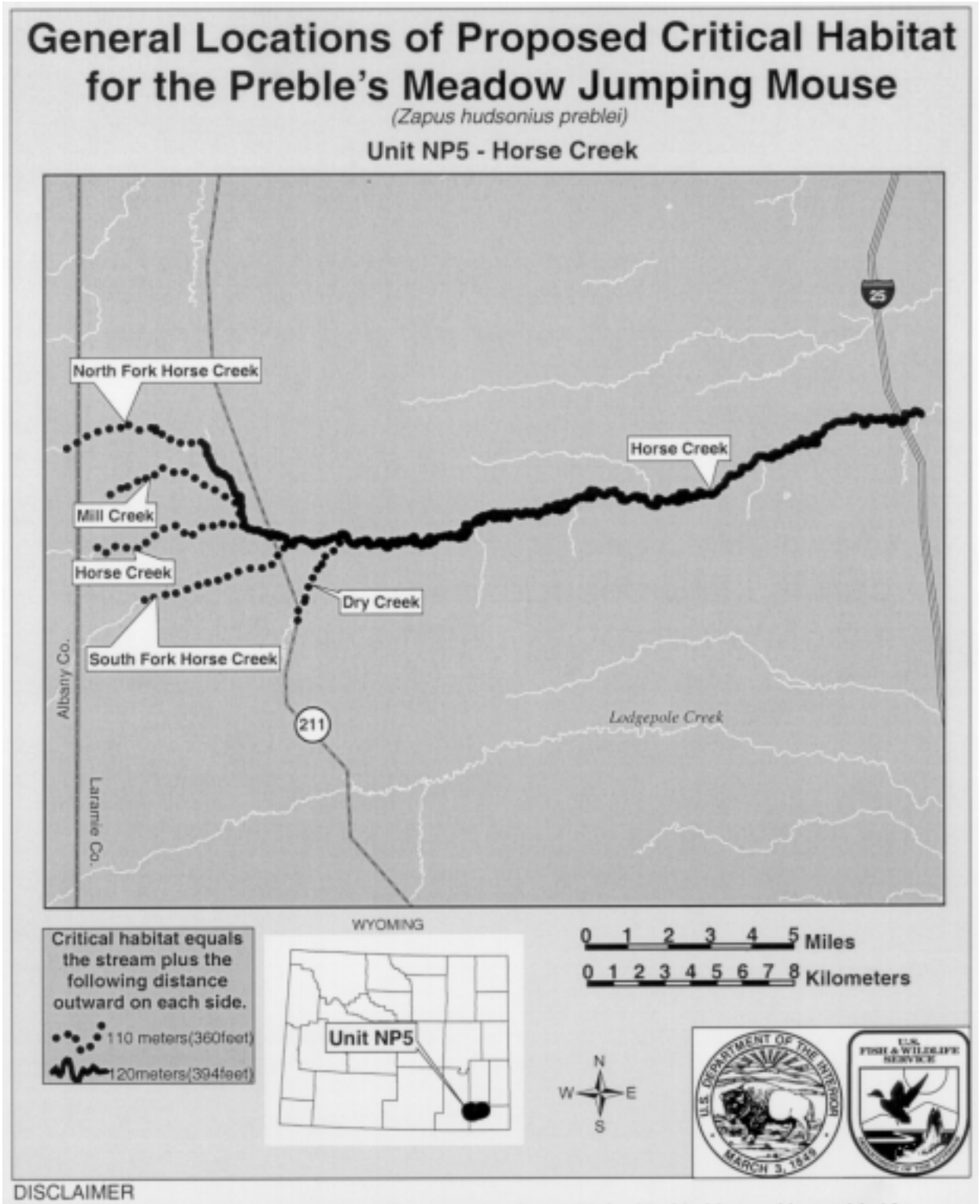
(9)Map Unit NP5: Horse Creek, Laramie County, Wyoming.

(i) This unit consists of the following:

84.1 km (52.3 mi) of streams. Horse Creek from (41 27 46N 104 52 40W, T.17N., R.67W., Sec. 10) upstream to (41 24 59N 105 15 40W, T.17N., R.70W., Sec. 29). Includes Dry Creek from its confluence with Horse Creek (41 25 12N 105 08 54W, T.17N., R.69W., Sec. 29) upstream to Highway 211 (41 23 29N 105 10 11W, T.16N., R.69W., Sec. 6). Also includes South Fork Horse Creek from its confluence with Horse Creek (41 25 07N 105 10 22W, T.17N., R.70W., Sec. 25) upstream to (41 23 52N 105 14 32W, T.17N., R.70W., Sec. 33). Also includes North Fork Horse Creek from its confluence with Horse Creek (41 25 27N 105 11 33W, T.17N., R.70W., Sec. 23) upstream to (41 27 05N 105 16 32W, T.17N., R.70W., Sec. 18). Which includes Mill Creek from its confluence with North Fork Horse Creek (41 25 40N 105 11 38W, T.17N., R.70W., Sec. 23) upstream to (41 26 06N 105 15 24W, T.17N., R.70W., Sec. 20).

(ii) Map Unit NP5 follows:

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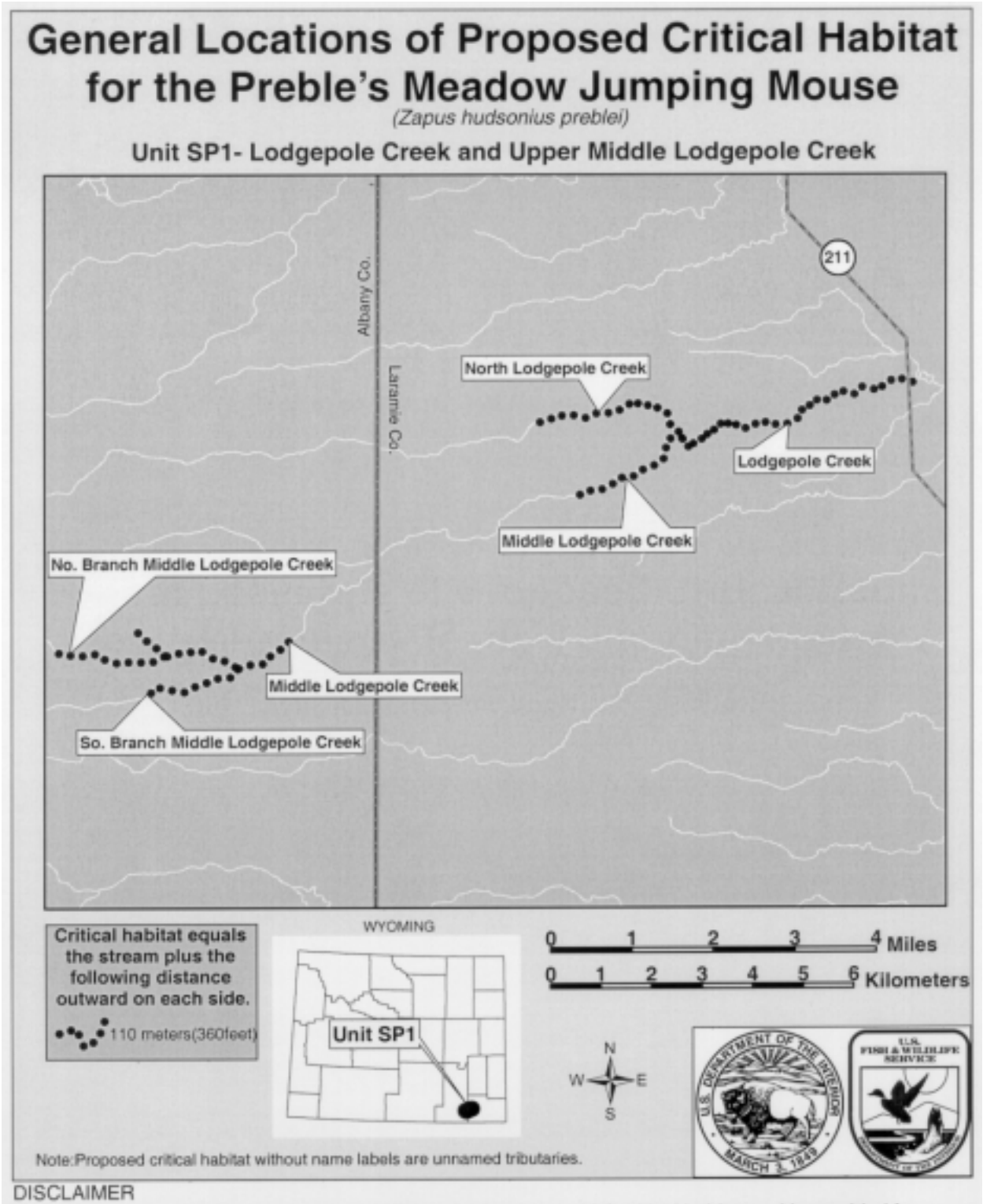
(10) Map Unit SP1: Lodgepole Creek and Upper Middle Lodgepole Creek, Laramie County, Wyoming.

(i) This unit consists of the following:

20.8 km (13 mi) of streams. Consists of 2 subunits. Subunit Lodgepole Creek, Laramie County, from Highway 211 (41 19 53N 105 08 35W, T.16N., R.69W., Sec. 29) upstream to the confluence of North Lodgepole Creek and Middle Lodgepole Creek (41 19 17N 105 11 52W, T16N., R.70W., Sec. 26). Includes North Lodgepole Creek from the aforementioned confluence (41 19 17N 105 11 52W, T16N., R.70W., Sec. 26) upstream to (41 19 27N 105 13 54W, T.16N., R.70W., west boundary Sec. 27). Also includes Middle Lodgepole Creek from (41 19 17N 105 11 52W, T16N., R.70W., Sec. 26) upstream to (41 18 40N 105 13 19W, T.16N., R.70W., Sec. 34).

Subunit Middle Lodgepole Creek, Albany County, includes Middle Lodgepole Creek from the boundary of Medicine Bow National Forest (41 17 06N 105 17 27W, T15N., R.71W., east boundary Sec. 12) upstream to the confluence of North Branch Middle Lodgepole Creek and Middle Branch Middle Lodgepole Creek (41 16 48N 105 18 10W, T.15N., R.71W., Sec. 12). Includes Middle Branch Middle Lodgepole Creek from the aforementioned confluence (41 16 48N 105 18 10W, T.15N., R.71W., Sec. 12) upstream to (41 16 29N 105 19 31W, T.15N., R.71W., Sec. 14). Also includes North Branch Middle Lodgepole Creek from the aforementioned confluence (41 16 48N 105 18 10W, T.15N., R.71W., Sec. 12) upstream to (41 16 58N 105 20 43W, T.15N., R.71W., Sec. 10). Which includes an unnamed tributary from its confluence with North Branch Middle Lodgepole Creek (41 16 56N 105 19 11W, T.15N., R.71W., Sec. 11) upstream to (41 17 12N 105 19 36W, T.15N., R.71W., Sec. 11).

(ii) Map Unit SP1 follows:

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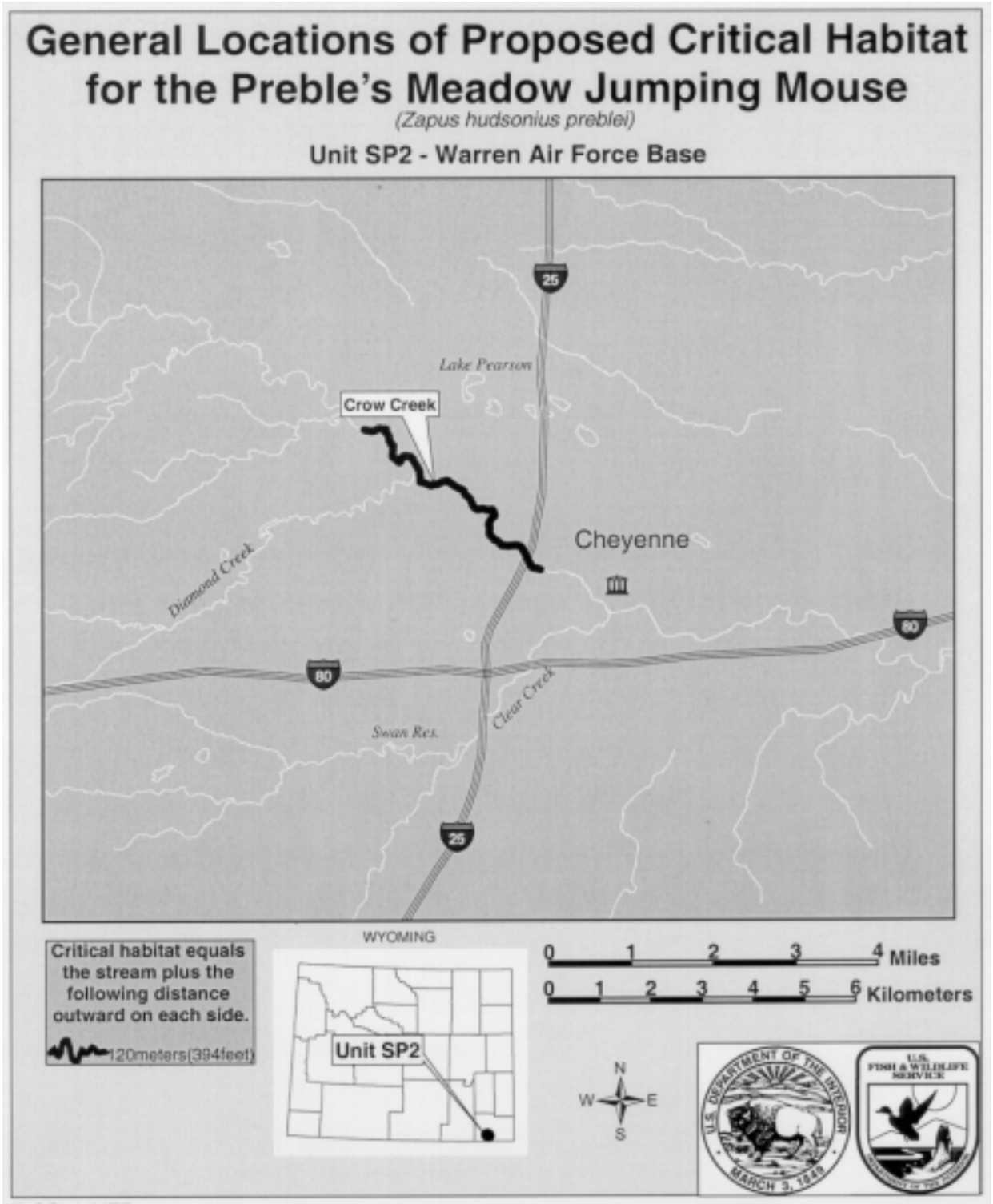
(11) Map Unit SP2: F.E. Warren Air Force Base, Laramie County, Wyoming.

(i) This unit consists of the following:

5.7 km (3.6 mi) of stream. Crow Creek within the boundary of Warren Air Force Base from (41 08 01N 104 50 21W, T.14N., R.67W., Sec. 36) upstream to (41 09 30N 104 52 48W, T.14N., R.67W., Sec. 27).

(ii) Map Unit SP2 follows:

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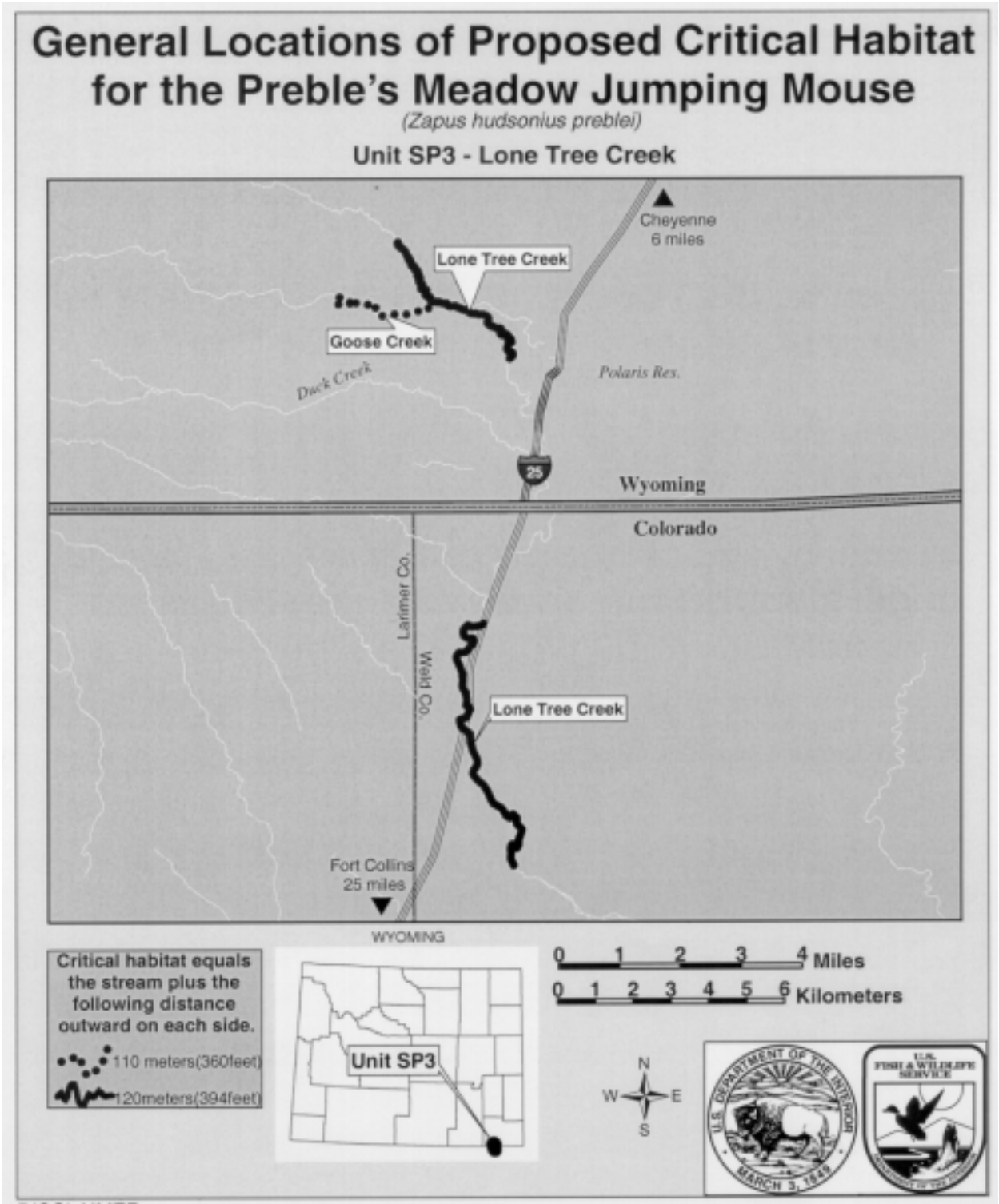
(12) Map Unit SP3: Lone Tree Creek, Laramie County, Wyoming.

(i) This unit consists of the following:

18.7 km (11.7 mi) of streams. Includes 2 subunits. Subunit Wyoming includes Lone Tree Creek from (41 02 06N 104 54 40W, T.12N., R.67W., Sec. 5) upstream to (41 03 46N 104 56 48W, T.13N., R.68W., Sec. 25). Includes Goose Creek from its confluence with Lone Tree Creek (41 02 55N 104 56 01W, T.13N., R.67W., Sec. 31) upstream to (41 03 01N 104 58 04W, T.13N., R.68W., Sec. 35). Which includes an unnamed tributary from its confluence with Goose Creek (41 02 54N 104 57 41W, T.13N., R.68W., Sec. 36) upstream to (41 02 52N 104 57 59W, T.13N., R.68W., Sec. 35).

Subunit Colorado includes Lone Tree Creek from 40 54 49N 104 54 36W, T.11N., R.67W., south boundary Sec. 17) upstream to (40 58 18N 104 55 11W, T.12N., R.67W., north boundary Sec. 32).

(ii) Map Unit SP3 (Wyoming) follows:

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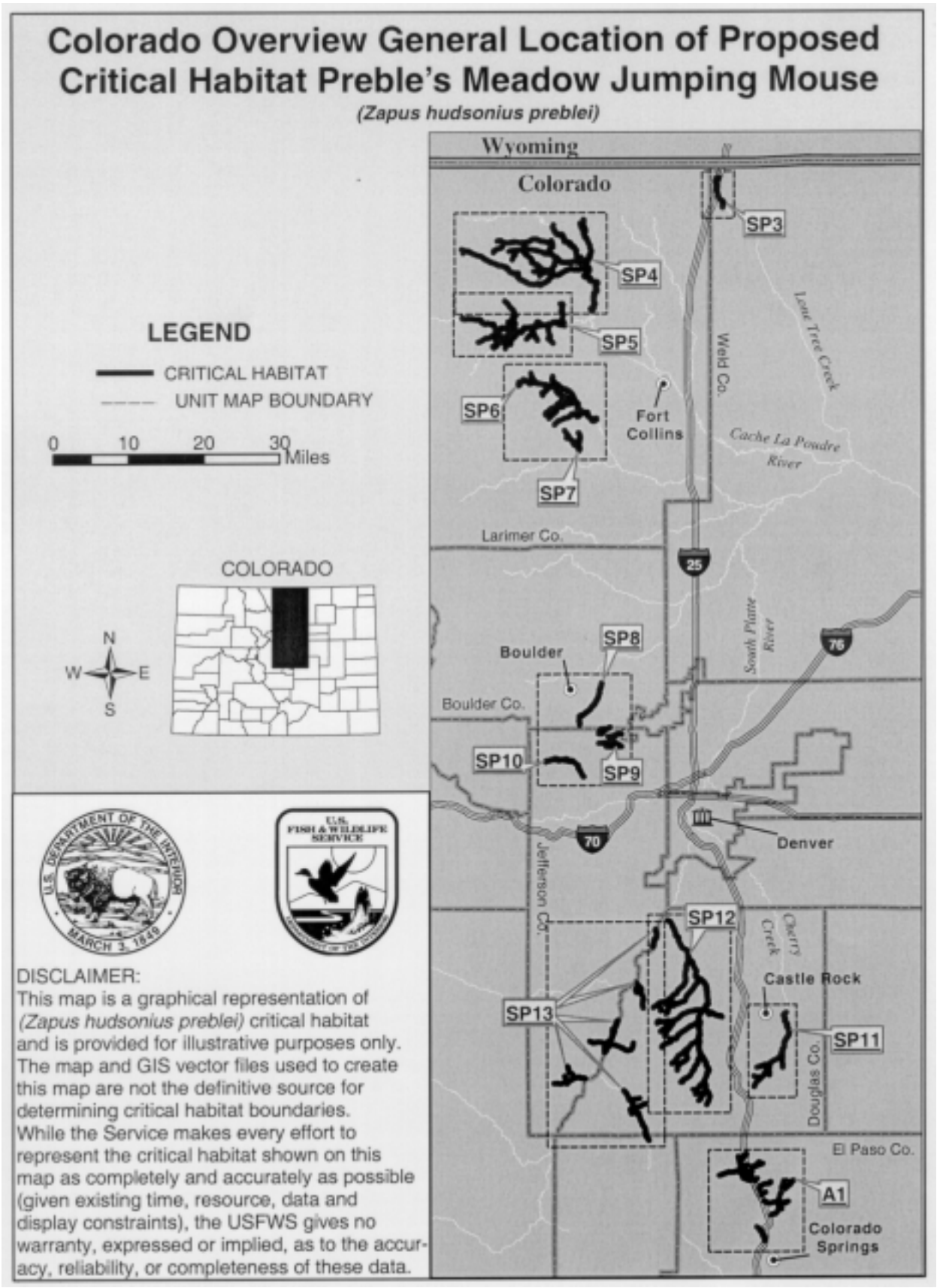
(13) Critical Habitat Units—Colorado Index Map Follows:

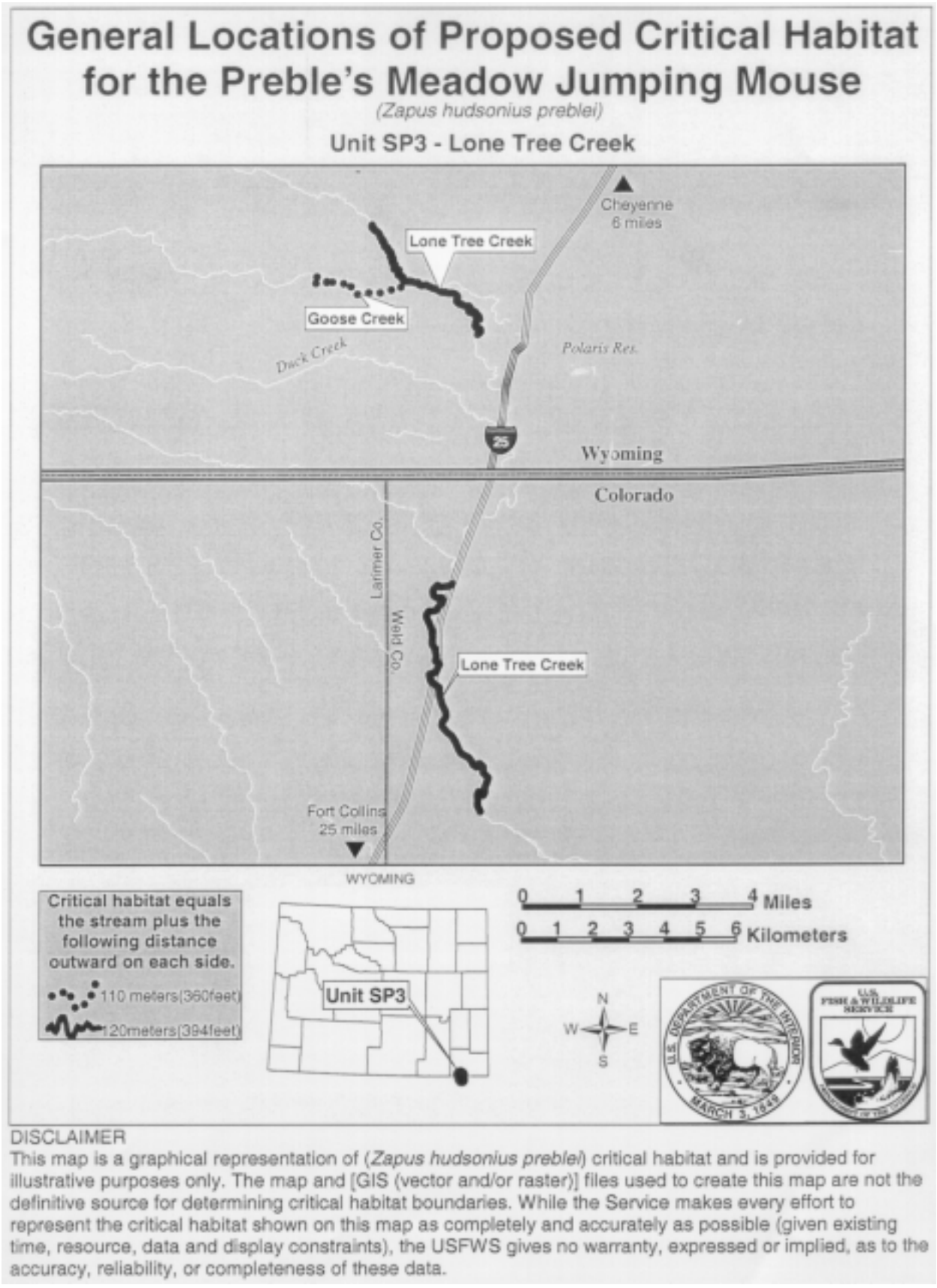


(14) Map Unit SP3: Lone Tree Creek, Weld County, Colorado.

(i) This unit consists of the following: 141.8 km (88.1 mi) of streams and rivers. North Fork Cache La Poudre River from Seaman Reservoir (40 43 03N 105 14 27W, T.9N., R.70W., Sec. 28) upstream to Halligan Reservoir spillway (40 52 49N 105 20 12W, T.11N., R.71W., Sec. 34). Includes Lone Pine Creek from its confluence North Fork Cache La Poudre River (40 47 53N 105 15 28W, T.10N., R.70W., Sec. 32) upstream and continuing upstream into North Lone Pine Creek to 7,600 feet elevation (40 49 58N 105 34 09W, T.01N., R.73W., Sec. 15). Which includes Columbine Canyon from its confluence with North Lone Pine Creek (40 49 48N 105 33 28W, T.10N., R.73W., Sec. 15) upstream to 7,600 feet elevation (40 49 33N 105 33 54W, T.10N., R.73W., Sec. 15). Also includes Stonewall Creek from its confluence with North Fork Cache La Poudre River (40 48 19N 105 15 21W, T.10N., R.70W., Sec. 29) upstream to (40 53 26N 105 15 38W, T.11N., R.70W., Sec. 29). Which includes Tenmile Creek from its confluence with Stonewall Creek (40 51 48N 105 15 30W, T.10N., R.70W., Sec. 5) upstream to Red Mountain Road (40 53 00N 105 16 09W, T.11N., R.70W., Sec. 31). Also includes Rabbit Creek from its confluence with North Fork Cache La Poudre River (40 48 30N 105 16 04W, T.10N., R.70W., Sec. 30) upstream to the confluence with North and Middle Forks of Rabbit Creek (40 49 34N 105 20 47W, T.10N., R 71W., Sec. 21). Also includes South Fork Rabbit Creek from its confluence with Rabbit Creek (40 48 40N 105 19 43W, T.10N., R.71W., Sec. 27) upstream to (40 49 39N 105 24 40W, T.10N., R.72W., north boundary Sec. 24). Which includes an unnamed tributary from its confluence with South Fork Rabbit Creek (40 47 28N 105 20 45W, T.10N., R.71W., Sec. 33) upstream to (40 47 28N 105 23 10W, T.10N., R.71W., Sec. 31). Which in turn has an unnamed tributary from their confluence at (40 47 16N 105 21 45W, T.10N., R.71W., east boundary Sec. 32) upstream to (40 46 54N 105 22 14W, T.9N., R.71W., Sec. 5). Also includes Middle Fork Rabbit Creek from its confluence with Rabbit Creek (40 49 34N 105 20 47W, T.10N., R 71W., Sec. 21) upstream to 7,600 feet elevation (40 49 46N 105 26 55W, T.10N., R.72W., Sec. 15). This includes an unnamed tributary from its confluence with Middle Fork Rabbit Creek (40 49 56N 105 25 49W, T.10N., R.72W., Sec. 14) upstream to 7,600 feet elevation (40 48 48N 105 26 26W, T.10N., R.72W., Sec. 23). This unit includes North Fork Rabbit Creek from its confluence with Rabbit Creek (40 49 34N 105 20 47W, T.10N., R.71W., Sec. 21) upstream to 7,600 feet elevation (40 49 38N 105 29 17W, T.10N., R.72W., Sec. 17). Which includes an unnamed tributary from its confluence with North Fork Rabbit Creek (40 50 45N 105 27 23W, T.10N., R.72W., Sec. 9) upstream to 7,600 feet elevation (40 50 57N 105 28 42W, T.10N., R.72W., Sec. 9).

(ii) Map Unit SP3 (Colorado) follows:

BILLING CODE 4310–55–P

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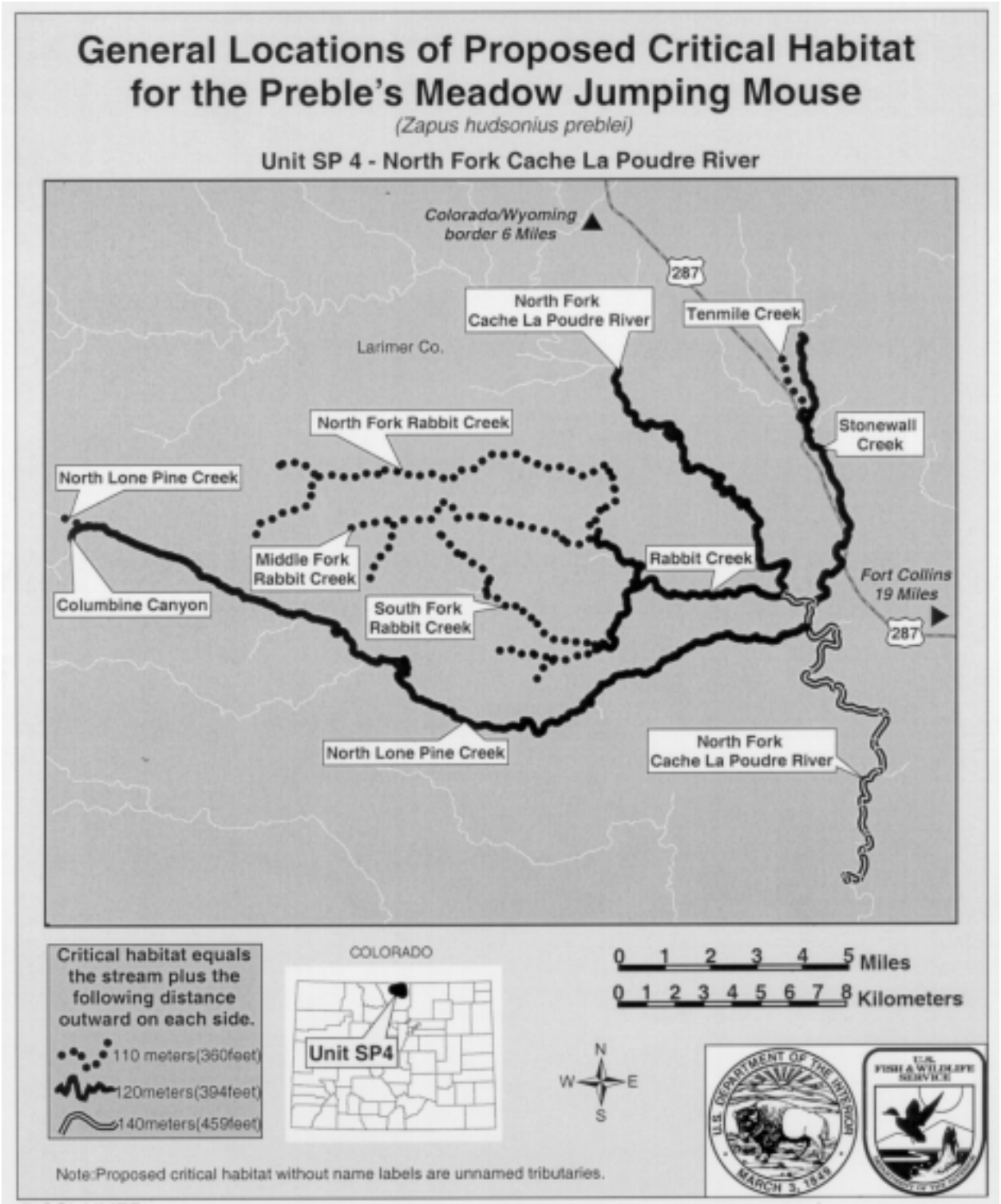
BILLING CODE 4310–55–C

(15) Map Unit SP4: North Fork Cache La Poudre River, Larimer County, Colorado.

(i) This unit consists of the following:

82.4 km (51.2 mi) of streams and rivers. Cache La Poudre River from Poudre Park (40 41 16N 105 18 25W, T.8N., R.71W., Sec. 2) upstream to (40 42 02N 105 34 01W, T.9N., R.73W., west boundary Sec. 34). Includes Hewlett Gulch from its confluence with Cache La Poudre River (40 41 16N 105 18 25W, T.8N., R.71W., Sec. 2) upstream to the boundary of Arapahoe—Roosevelt National Forest (40 43 45N 105 19 06W, T.9N., R.71W., Sec. 23). Also includes Young Gulch from its confluence with Cache La Poudre River (40 41 25N 105 20 56W, T.8N., R.71W., Sec. 4) upstream to (40 39 13N 105 20 12W, T.8N., R.71W., south boundary Sec. 15). Also includes an unnamed tributary from its confluence with Cache La Poudre River at Stove Prairie Landing (40 40 58N 105 23 21W, T.8N., R.71W., Sec. 6) upstream to (40 39 32N 105 22 34W, T.8N., R.71W., Sec. 17). Which includes Skin Gulch from its confluence with the aforementioned unnamed tributary at (40 40 33N 105 23 15W, T.8N., R.71W., Sec. 7) upstream to (40 39 41N 105 24 13W, T.8N., R.72W., Sec. 13). Unit SP5 also includes Poverty Gulch from its confluence with Cache La Poudre River (40 40 28N 105 25 42W, T.8N., R.72W., Sec. 11) upstream to 7,600 feet elevation (40 39 02N 105 26 38W, T.8N., R.72W., Sec. 22). Also includes Elkhorn Creek from its confluence with Cache La Poudre River (40 41 50N 105 26 24W, T.9N., R.72W., Sec. 34) upstream to (40 44 04N 105 27 32W, T.9N., R.72W., Sec. 21). Also includes South Fork Cache La Poudre River from its confluence with Cache La Poudre River (40 41 10N 105 26 46W, T.8N., R.72W., Sec. 3) upstream to 7,600 feet elevation (40 38 49N 105 29 20W, T.8N., R.72W., Sec. 20). Which includes Pendergrass Creek from its confluence with South Fork Cache La Poudre River (40 39 54N 105 27 27W, T.8N., R.72W., Sec. 15) upstream to 7,600 feet elevation (40 38 34N 105 27 26W, T.8N., R.72W., Sec. 22). Also included in the unit is Bennett Creek from its confluence with Cache La Poudre River (40 40 26N 105 28 37W, T.8N., R.72W., Sec. 9) upstream to 7,600 feet elevation (40 39 18N 105 31 31W, T.8N., R.73W., Sec. 13).

(ii) Map Unit SP4 follows:

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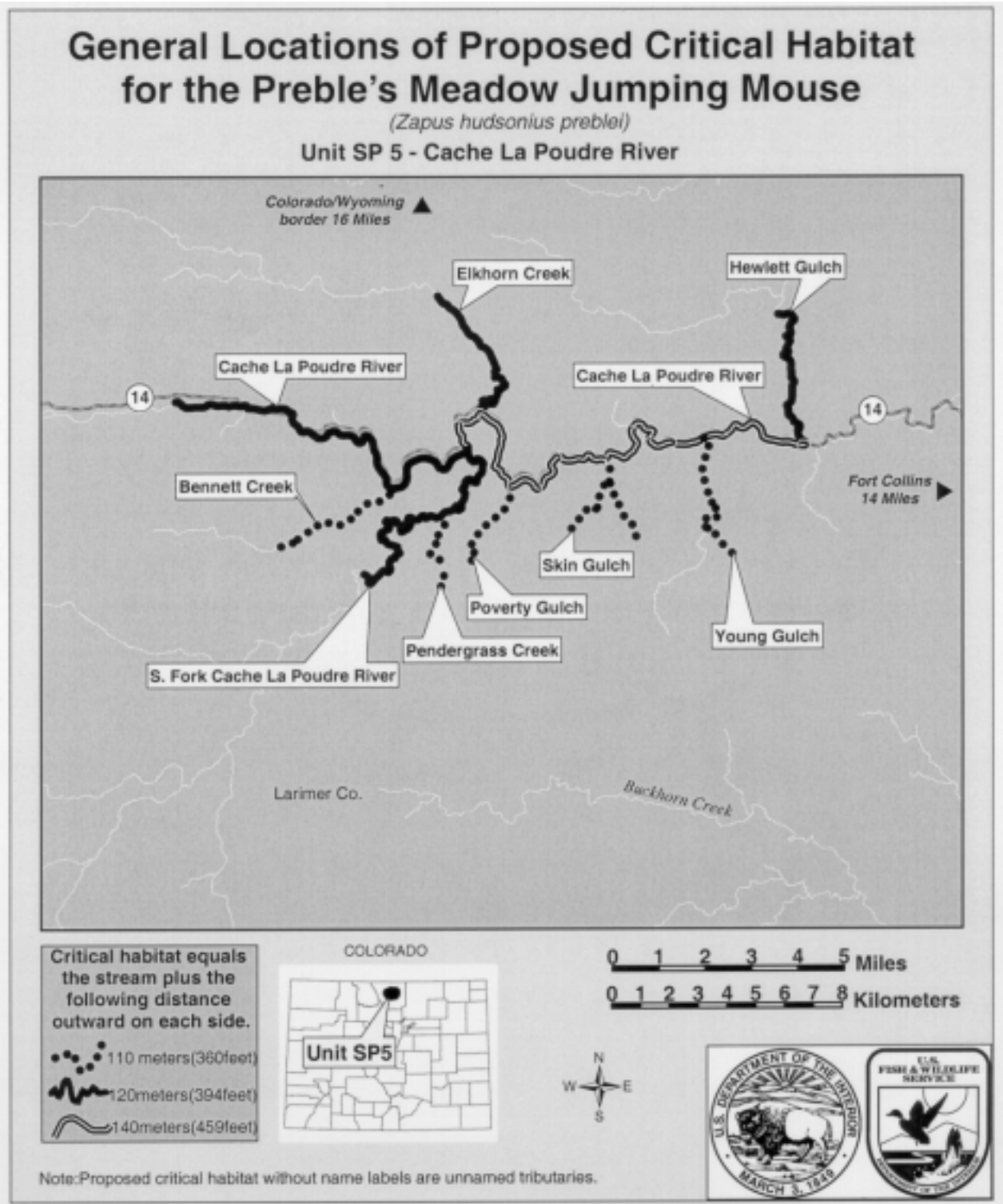
(16) Map Unit SP5: Cache La Poudre River, Larimer County, Colorado.

(i) This unit consists of the following:

82.4 km (51.2 mi) of streams and rivers. Cache La Poudre River from Poudre Park (40 41 16N 105 18 25W, T.8N., R.71W., Sec. 2) upstream to (40 42 02N 105 34 01W, T.9N., R.73W., west boundary Sec. 34). Includes Hewlett Gulch from its confluence with Cache La Poudre River (40 41 16N 105 18 25W, T.8N., R.71W., Sec. 2) upstream to the boundary of Arapahoe—Roosevelt National Forest (40 43 45N 105 19 06W, T.9N., R.71W., Sec. 23). Also includes Young Gulch from its confluence with Cache La Poudre River (40 41 25N 105 20 56W, T.8N., R.71W., Sec. 4) upstream to (40 39 13N 105 20 12W, T.8N., R.71W., south boundary Sec. 15). Also includes an unnamed tributary from its confluence with Cache La Poudre River at Stove Prairie Landing (40 40 58N 105 23 21W, T.8N., R.71W., Sec. 6) upstream to (40 39 32N 105 22 34W, T.8N., R.71W., Sec. 17). Which includes Skin Gulch from its confluence with the aforementioned unnamed tributary at (40 40 33N 105 23 15W, T.8N., R.71W., Sec. 7) upstream to (40 39 41N 105 24 13W, T.8N., R.72W., Sec. 13). Unit SP5 also includes Poverty Gulch from its confluence with Cache La Poudre River (40 40 28N 105 25 42W, T.8N., R.72W., Sec. 11) upstream to 7,600 feet elevation (40 39 02N 105 26 38W, T.8N., R.72W., Sec. 22). Also includes Elkhorn Creek from its confluence with Cache La Poudre River (40 41 50N 105 26 24W, T.9N., R.72W., Sec. 34) upstream to (40 44 04N 105 27 32W, T.9N., R.72W., Sec. 21). Also includes South Fork Cache La Poudre River from its confluence with Cache La Poudre River (40 41 10N 105 26 46W, T.8N., R.72W., Sec. 3) upstream to 7,600 feet elevation (40 38 49N 105 29 20W, T.8N., R.72W., Sec. 20). Which includes Pendergrass Creek from its confluence with South Fork Cache La Poudre River (40 39 54N 105 27 27W, T.8N., R.72W., Sec. 15) upstream to 7,600 feet elevation (40 38 34N 105 27 26W, T.8N., R.72W., Sec. 22). Also included in the unit is Bennett Creek from its confluence with Cache La Poudre River (40 40 26N 105 28 37W, T.8N., R.72W., Sec. 9) upstream to 7,600 feet elevation (40 39 18N 105 31 31W, T.8N., R.73W., Sec. 13).

(ii) Map Unit SP5 follows:

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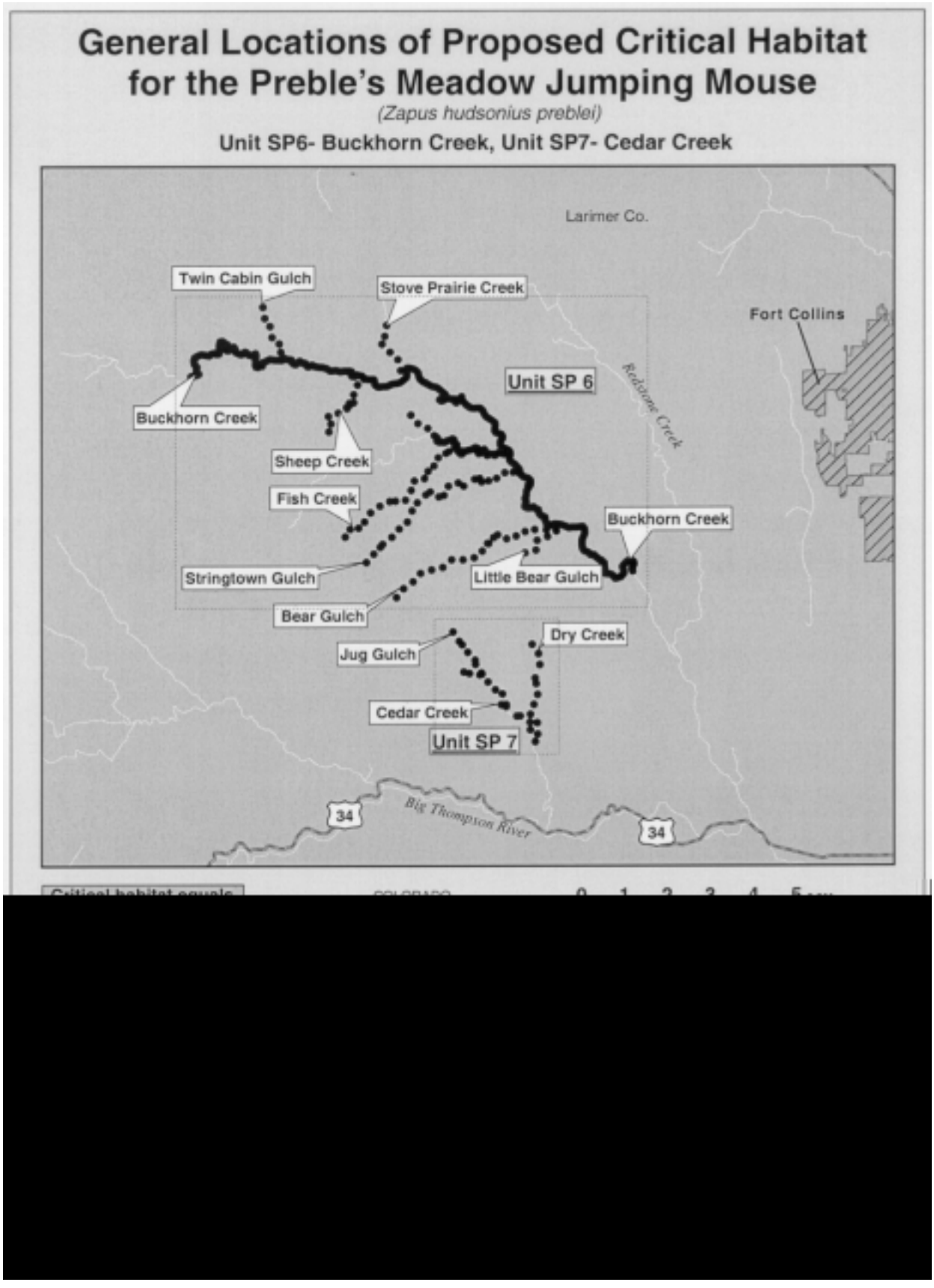
(17) Map Units SP6 and SP7: Buckhorn Creek and Cedar Creek, Larimer County, Colorado.

(i) These units consist of the following:

For SP6, Buckhorn Creek, 69.1 km (43 mi) of streams. Buckhorn Creek from (40 30 20N 105 13 39W, T.6N., R.70W., east boundary Sec. 9) upstream to 7,600 feet elevation (40 34 17N 105 25 28W, T.7N., R.72W., Sec. 14). Includes Little Bear Gulch from its confluence with Buckhorn Creek (40 31 16N 105 15 32W, T.6N., R.70W., Sec. 5) upstream to (40 30 43N 105 16 33W, T.6N., R.70W., Sec. 6). Also includes Bear Gulch from its confluence with Buckhorn Creek (40 31 15N 105 15 51W, T.6N., R.70W., Sec. 5) upstream to 7,600 feet elevation (40 29 47N 105 19 59W, T.6N., R.71W., Sec. 10). Also includes Stringtown Gulch from its confluence with Buckhorn Creek (40 32 19N 105 16 40W, T.7N., R.70W., Sec. 30) upstream to 7,600 feet elevation (40 30 30N 105 20 48W, T.6N., R.71W., Sec. 4). Also includes Fish Creek from its confluence with Buckhorn Creek (40 32 50N 105 17 05W, T.7N., R.70W., Sec. 30) upstream to 7,600 feet elevation (40 30 56N 105 21 19W, T.6N., R.71W., Sec. 4). Which includes North Fork Fish Creek from its confluence with Fish Creek (40 32 47N 105 18 18W, T.7N., R.71W., west boundary Sec. 25) upstream and following the first unnamed tributary northwest to (40 33 35N 105 19 42W, T.7N., R.71W., Sec. 22). Also includes Stove Prairie Creek from its confluence with Buckhorn Creek (40 34 15N 105 19 45W, T.7N., R.71W., Sec. 15) upstream to the dirt road crossing at (40 35 22N 105 20 16W, T.7N., R.71W., Sec. 10). Also includes Sheep Creek from its confluence with Buckhorn Creek (40 34 15N 105 20 51W, T.7N., R.71W., Sec. 16) upstream to 7,600 feet elevation (40 33 09N 105 21 46W, T.7N., R.71W., Sec. 20). Also includes Twin Cabin Gulch from its confluence with Buckhorn Creek (40 34 38N 105 23 11W, T.7N., R.71W., Sec. 18) upstream to 7,600 feet elevation (40 35 44N 105 23 33W, T.7N., R.71W., Sec. 6).

For SP7, Cedar Creek, 11.7 km (7.3 mi) of streams. Cedar Creek from the boundary of Federal land (40 26 46N 105 16 17W, T.6N., R.70W., Sec. 31) upstream to the boundary of Federal land (40 28 15N 105 18 11W, T.6N., R.71W., Sec. 24). Includes Dry Creek from its confluence with Cedar Creek (40 27 07N 105 16 16W, T.6N., R.70W., Sec. 30) upstream to the boundary of Federal land (40 28 52N 105 16 21W, T.6N., R.70W., Sec. 18). Also includes Jug Gulch from its confluence with Cedar Creek (40 28 15N 105 17 41W, T.6N., R.71W., Sec. 24) upstream to the boundary of Federal land (40 29 07N 105 18 28W, T.6N., R.71W., Sec. 14).

(ii) Map Units SP6 and SP7 follow:


General Locations of Proposed Critical Habitat for the Preble's Meadow Jumping Mouse
(Zapus hudsonius preblei)
Unit SP6- Buckhorn Creek, Unit SP7- Cedar Creek
Larimer Co.
Twin Cabin Gulch
Stove Prairie Creek
Fort Collins
Unit SP 6
Redstone Creek
Buckhorn Creek
Sheep Creek
Fish Creek
Buckhorn Creek
Stringtown Gulch
Little Bear Gulch
Bear Gulch
Dry Creek
Jug Gulch
Cedar Creek
Unit SP 7
34
Big Thompson River
34

(18) Map Units SP8, SP9, and SP10: South Boulder Creek, Boulder County, Colorado, Rocky Flats Environmental Technology Site and Ralston Creek, Jefferson County, Colorado.

(i) These units consists of the following:

For SP8, South Boulder Creek, 11.8 km (7.3 mi) of streams. Including South Boulder Creek from Baseline Road (39 59 59N 105 12 53W, T.1S., R.70W. Sec. 3) upstream to near Eldorado Springs, Colorado (39 56 7N 105 16 14W, T.1S., R.70W. Sec. 30) Also Spring Brook from the Community Ditch near Eldorado Springs (39 55 59N 105 16 8W, T.1S., R.70W. Sec. 30) upstream to South Boulder Diversion Canal (39 55 11N 105 16 11W, T.1S., R.70W. Sec. 31).

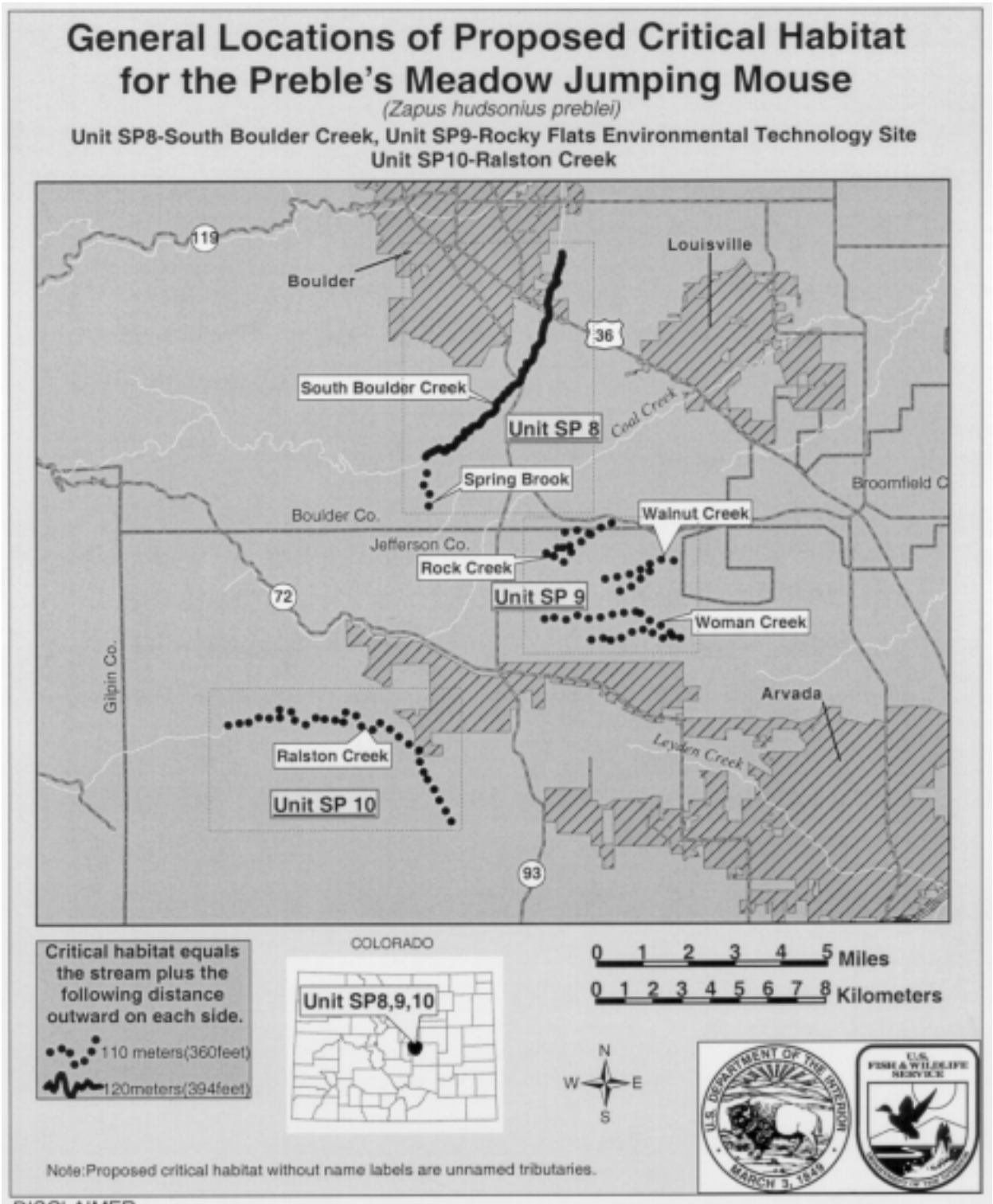
For SP9, the Rocky Flats Environmental Technology Site, 19.5 km (12.1 mi) of streams. Consists of 3 subunits. Subunit Woman Creek from Indiana Street (39 52 40N 105 9 53W, T.2S., R.70W., east boundary Sec. 13) upstream to (39 53 3N 105 13 17W, T.2S., R.70W., west boundary Sec. 15). Includes unnamed tributary from confluence with Woman Creek (39 52 43N 105 10 8W, T.2S., R.70W., Sec. 13) upstream to (39 52 39N 105 12 9W, T.2S., R.70W., west boundary Sec. 14).

Subunit Walnut Creek from Indiana Street (39 54 5N 105 9 54W, T.2S., R.70W., east boundary Sec. 1) upstream to (39 53 48N 105 11 54W, T.2S., R.70W., Sec. 11). Includes unnamed tributary from its confluence with Walnut Creek (39 54 6N 105 10 40W, T.2S., R.70W., Sec. 1) upstream to (39 53 34N 105 11 29W, T.2S., R.70W., Sec. 11).

Subunit Rock Creek from State Highway 128 (39 54 53N 105 11 37W, T.1S., R.70W., Sec. 35) upstream to (39 54 8N 105 13 18W, T.2S., R.70W., west boundary Sec. 3). Includes an unnamed tributary from its confluence with Rock Creek (39 54 40N 105 12 8W, T.2S., R.70W., east boundary Sec. 3) upstream to (39 54 41 N 105 13 00W, T.2S., R.70W., Sec. 3). Also includes an unnamed tributary from its confluence with Rock Creek at (39 54 27N 105 12 32W, T.2S., R.70W., Sec. 3) upstream to (39 54 6N 105 12 51W, T.2S., R.70W., Sec. 3). Another unnamed tributary from its confluence with Rock Creek at (39 54 23N 105 12 54W, T.2S., R.70W., Sec. 3) upstream to (39 54 18N 105 13 18W, T.2S., R.70W., west boundary Sec. 3. Another unnamed tributary from its confluence with Rock Creek at (39 54 00N 105 13 12W, T.2S., R.70W., Sec. 3) upstream to (39 54 07N 105 13 08W, T.2S., R.70W., Sec. 3).

For SP10, Ralston Creek, 13.1 km (8.1 mi) of streams. Ralston Creek from Ralston Reservoir (39 49 12N 105 15 32W, T.3S., R.70W. Sec. 6) upstream into Golden Gate Canyon State Park to 7,600 feet elevation (39 50 54N 105 21 12W, T.2S., R.71W. Sec. 29).

(ii) Map Units SP8, SP9, and SP10 follow:




DISCLAIMER

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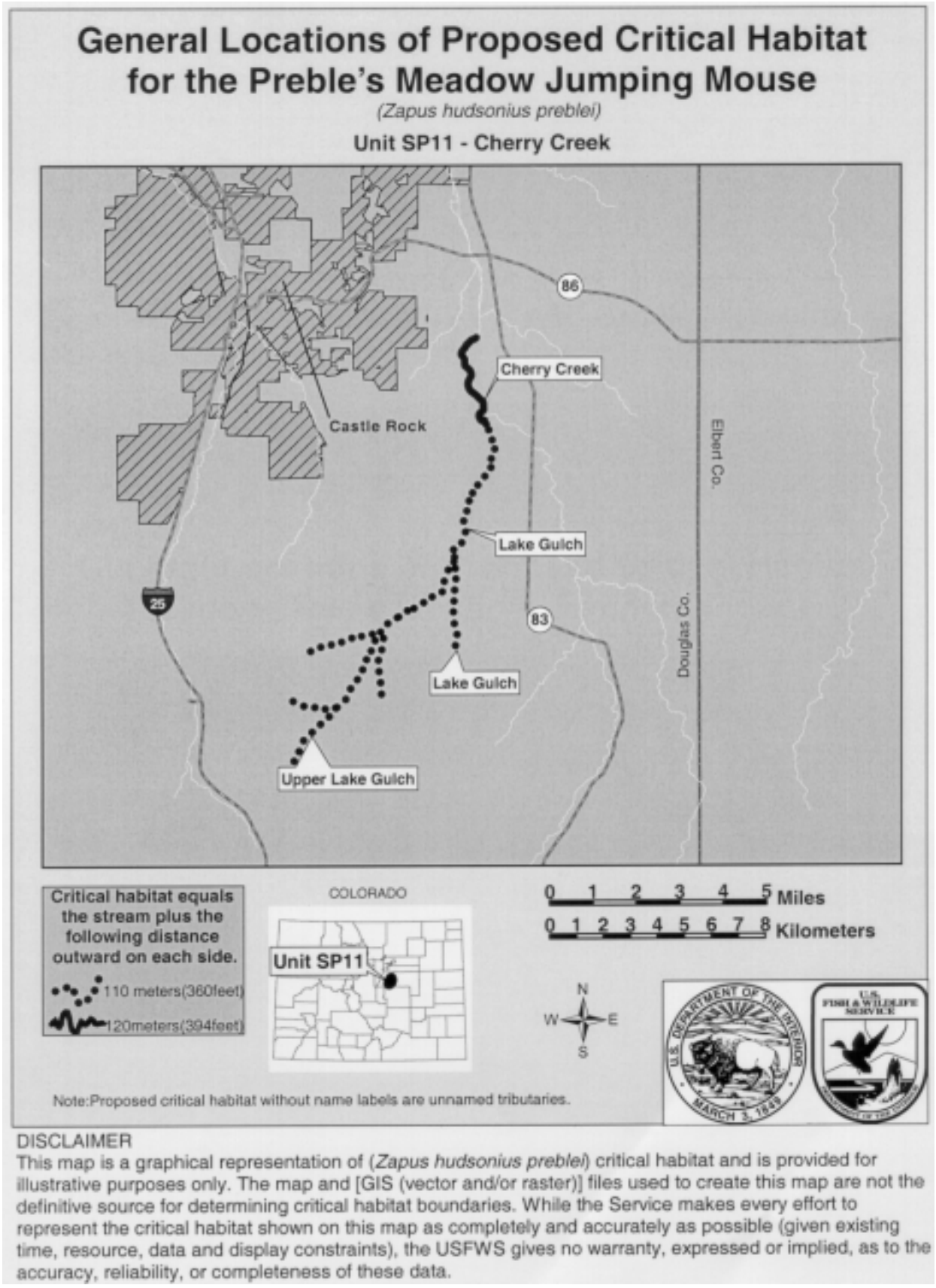
(19) Map Unit SP11: Cherry Creek, Douglas County, Colorado.

(i) This unit consists of the following:

32 km (19.9 mi) of streams. Cherry Creek from the northern boundary of Castlewood Canyon State Recreation Area (39 21 56N 104 45 31W, T.8S., R.66W., south boundary Sec. 10) upstream to the confluence with Lake Gulch (39 20 24N 104 45 36W, T.8S., R.66W., Sec. 23). Lake Gulch from the aforementioned confluence upstream to (39 15 38N 104 46 03W, T.9S., R.66W., south boundary Sec. 15). Includes Upper Lake Gulch from its confluence with Lake Gulch (39 17 26N 104 46 07W, T.9S., R.66W., Sec. 3) upstream to (39 13 25N 104 50 18W, T.9S., R.67W., mid-point Sec. 36). Also includes a unnamed tributary from its confluence with Upper Lake Gulch (39 16 06N 104 47 55W, T.9S., R.66W., Sec. 17) upstream to Upper Lake Gulch Road (39 14 45N 104 48 02W, T.9S., R.66W., south boundary Sec. 20). Also includes unnamed tributary from its confluence with Upper Lake Gulch (39 16 01N 104 48 02W, T.9S., R.66W., Sec. 17) upstream to (39 15 37N 104 49 51W, T.9S., R.67W., Sec. 13). Includes another unnamed tributary from its confluence with Upper Lake Gulch (39 14 30N 104 49 12W, T.9S., R.66W., Sec. 30) upstream to (39 14 39N 104 50 19W, T.9S., R.67W., Sec. 25).

(ii) Map Unit SP11 follows:

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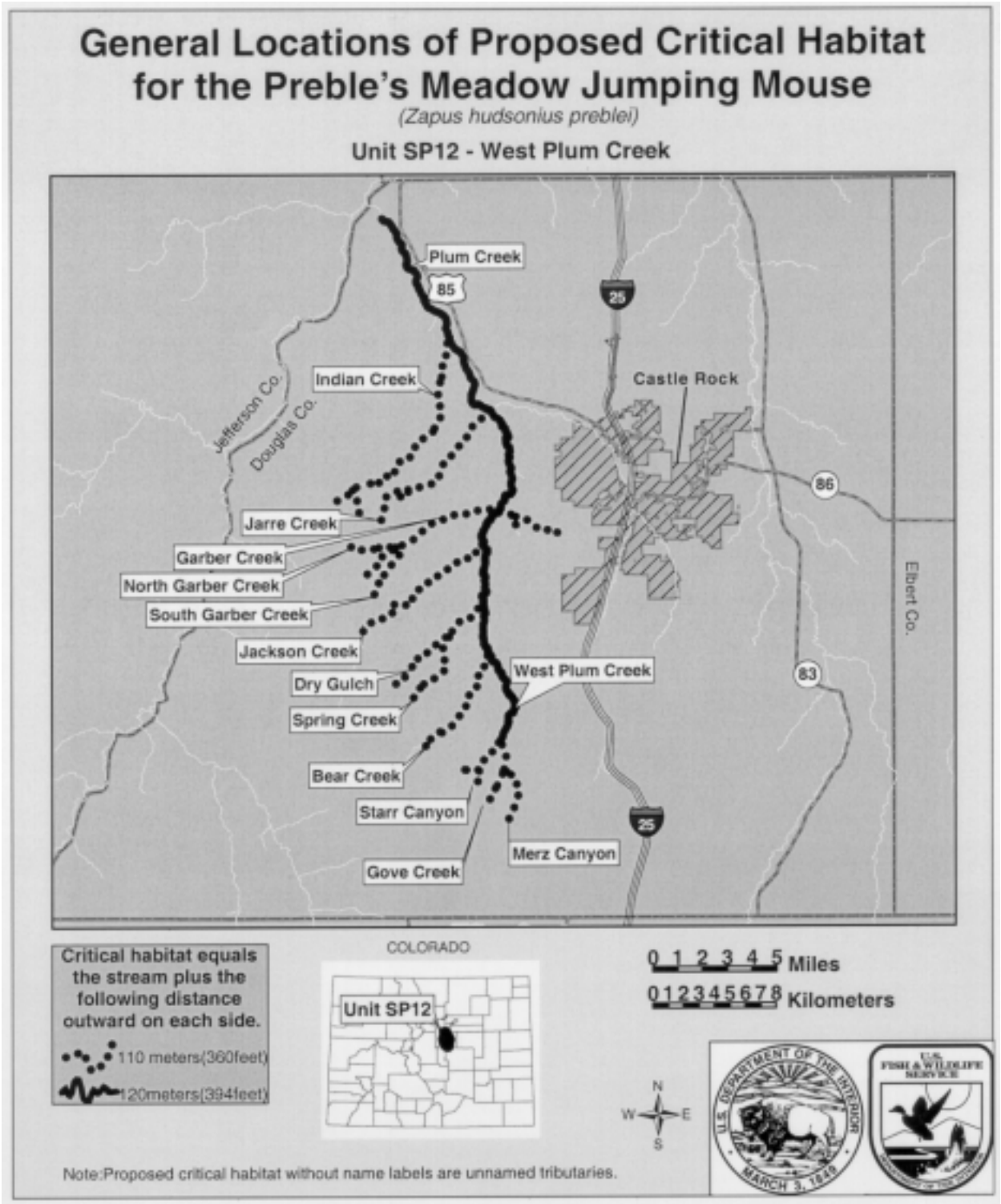
(20) Map Unit SP12: West Plum Creek, Douglas County, Colorado.

(i) This unit consists of the following:

146.6 km (91.1 mi) of streams. Plum Creek from Chatfield Lake (39 32 35N 105 03 02W, T.6S., R.68W., Sec. 7) upstream to its confluence with West Plum Creek and East Plum Creek (39 25 48N 104 58 12W, T.7S., R.68W., Sec. 23). West Plum Creek from the aforementioned confluence (39 25 48N 104 58 12W, T.7S., R.68W., Sec. 23) upstream to the boundary of Pike—San Isabel National Forest and 7,600 feet elevation (39 13 07N 104 59 18W, T.9S., R.68W., Sec. 34). Includes Indian Creek from its confluence with Plum Creek (39 28 26N 105 00 00W, T.7S., R.68W., Sec. 4) upstream to Silver State Youth Camp (39 22 34N 105 05 10W, T.8S., R.69W., Sec. 2). Indian Creek includes an unnamed tributary from its confluence with Indian Creek at Pine Nook (39 23 00N 105 04 23W, T.8S., R.69W., Sec. 2) upstream to (39 22 10N 105 04 05W, T.8S., R.69W., Sec. 12). Also includes Jarre Creek from its confluence with Plum Creek (39 25 50N 104 58 13W, T.7S., R.68W., Sec. 23) upstream to 7,600 feet elevation (39 21 52N 105 03 15W, T.8S., R.69W., Sec. 12). Jarre Creek includes an unnamed tributary from its confluence with Jarre Creek (39 22 58N 105 01 51W, T.8S., R.68W., Sec. 5) upstream to (39 22 44N 105 02 12W, T.8S., R.68W., Sec. 8). Also includes an unnamed tributary from its confluence with West Plum Creek (39 22 20N 104 57 39W, T.8S., R.68W., Sec. 11) upstream to 6320 feet elevation (39 21 27N 104 55 00W, T.8S., R.67W., Sec. 17). Which includes an unnamed tributary from its confluence with this aforementioned unnamed tributary (39 22 06N 104 57 07W, T.8S., R.68W., Sec. 12) upstream to (39 21 43N 104 56 56W, T.8S., R.68W., south boundary Sec. 12).Unit SP12 also includes Garber Creek from its confluence with West Plum Creek (39 22 16N 104 57 43W, T.8S., R.68W., Sec. 11) upstream to its confluence with South Garber Creek and Middle Garber Creek (39 21 02N 105 02 10W, T.8S., R.68W., Sec. 18). Including South Garber Creek from its confluence with Garber Creek (39 21 02N 105 02 10W, T.8S., R.68W., Sec. 18) upstream to 7,600 feet elevation (39 19 15N 105 03 28W, T.8S., R.69W., Sec. 25). Including Middle Garber Creek from its confluence with Garber Creek (39 21 02N 105 02 10W, T.8S., R.68W., Sec. 18) upstream to (39 19 48N 105 04 07W, T.8S., R.69W., west boundary Sec. 25). Including North Garber Creek from its confluence with Middle Garber Creek (39 20 55N 105 02 32W, T.8S., R.68W., Sec. 18) upstream to 7,600 feet elevation (39 20 45N 105 04 35W, T.8S., R.69W., Sec. 23). Includes Jackson Creek from its confluence with West Plum Creek (39 21 02N 104 58 28W, T.8S., R.68W., Sec. 14) upstream to 7,600 feet elevation (39 17 58N 105 03 56W, T.9S., R.69W., Sec. 1). Includes Spring Creek from its confluence with West Plum Creek at (39 18 59N 104 58 24W, T.8S., R.68W., Sec. 35) upstream to (39 15 21N 105 01 38W, T.9S., R.68W., Sec. 20). Including Dry Gulch from its confluence with Spring Creek (39 17 54N 104 59 57W, T.9S., R.68W., Sec. 4) upstream to 7,600 feet elevation (39 16 08N 105 02 27W, T.9S., R.68W., Sec. 18). Including Bear Creek from its confluence with West Plum Creek (39 17 26N 104 58 20W, T.9S., R.68W., Sec. 2) upstream to 7,600 feet elevation (39 13 58N 105 01 06W, T.9S., R.68W., Sec. 29). Including Gove Creek from its confluence with West Plum Creek (39 14 07N 104 57 40W, T.9S., R.68W., Sec. 26) upstream to 7,600 feet elevation (39 11 50N 104 58 30W, T.10S., R.68W., Sec. 11). Includes Merz Canyon stream from its confluence with Gove Creek (39 13 06N 104 57 30W, T.9S., R.68W., Sec. 36) upstream to 7,600 feet elevation (39 11 21N 104 57 18W, T.10S., R.68W., Sec. 12). Includes Starr Canyon stream from its confluence with West Plum Creek (39 13 07N 104 58 39W, T.9S., R.68W., Sec. 35) upstream to 7,600 feet elevation (39 12 34N 104 58 58W, T.10S., R.68W., Sec. 3).

(ii) Map Unit SP12 follows:

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(21) Map Unit SP13: Upper South Platte River, Jefferson and Douglas Counties, Colorado.

(i) This unit consists of the following:

83.1 km (51.6 mi) of rivers and streams. Consists of 5 subunits. Subunit South Platte River north segment, on the border of Jefferson County and Douglas County from Chatfield Lake (39 31 35N 105 04 49W, T.6S., R.69W., Sec. 14) upstream to the boundary of U.S. Army Corps of Engineers property (39 29 33N 105 05 15W, T.6S., R.69W., south boundary Sec. 26).

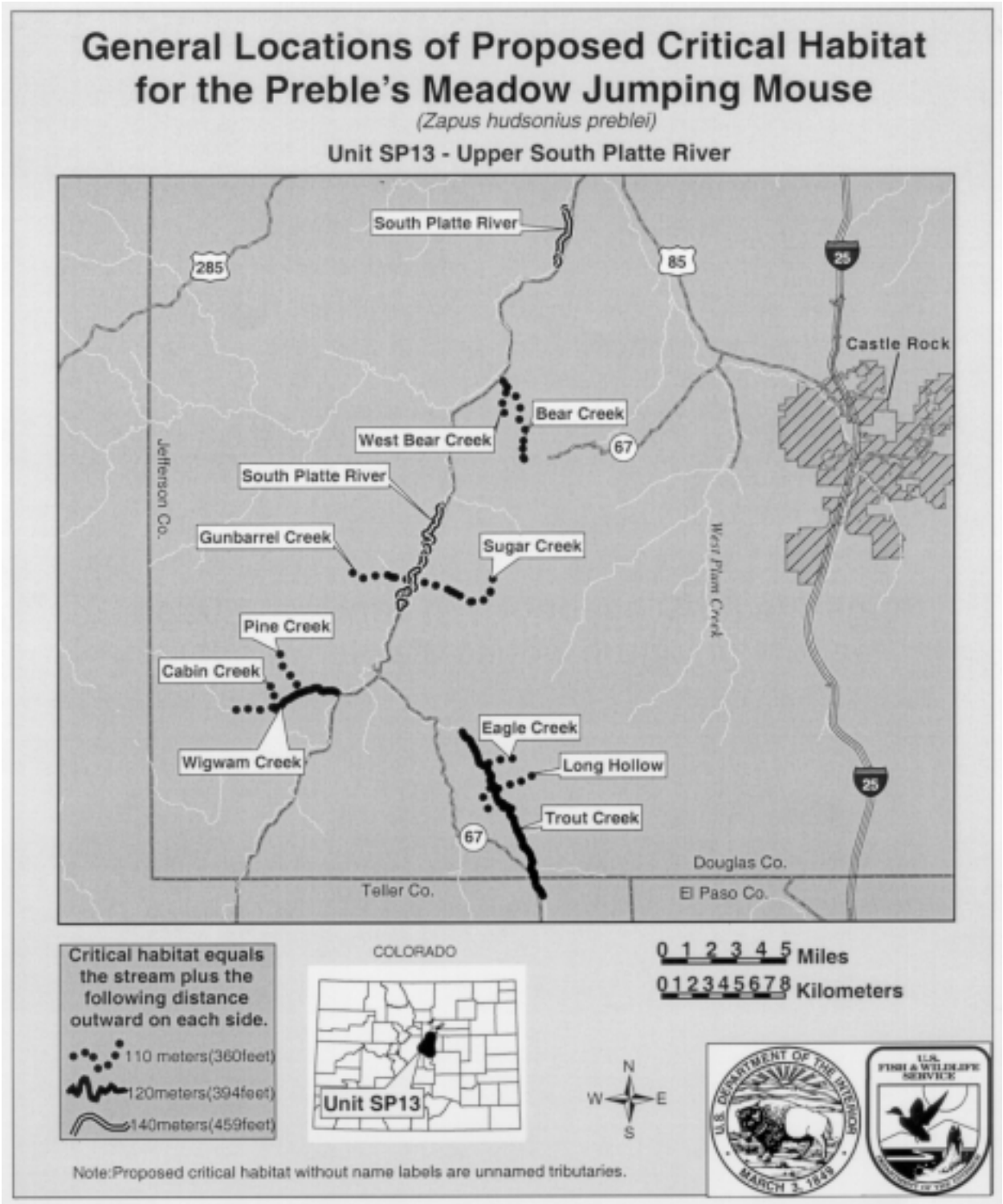
Subunit Bear Creek, Douglas County from Pike—San Isabel National Forest boundary (39 25 27N 105 07 40W, T.7S., R.69W., west boundary Sec. 21) upstream to (39 22 32N 105 06 40W, T.8S., R.69W., south boundary Sec. 4). Includes West Bear Creek from its confluence with Bear Creek (39 25 15N 105 07 30W, T.7S., R.69W., Sec. 21) upstream to a confluence with an unnamed tributary (39 24 17N 105 07 38W, T.7S., R.69W., Sec. 33).

Subunit South Platte River south segment, on the border of Jefferson County and Douglas County from Nighthawk (39 21 05N 105 10 23W, T.8S., R.70W., Sec. 13) upstream to (39 17 27N 105 12 24W, T.9S., R.70W., Sec. 3). Includes Sugar Creek, Douglas County from its confluence with South Platte River at Oxyoke (39 18 22N 105 11 47W, T.8S., R.70W., Sec. 35) upstream to 7,600 feet elevation (39 18 28N 105 08 07W, T.8S., R.69W., Sec. 32). Includes Gunbarrel Creek, Jefferson County from its confluence with South Platte River at Oxyoke (39 18 22N 105 11 47W, T.8S., R.70W., Sec. 35) upstream to (39 18 41N 105 14 34W, T.8S., R.70W., Sec. 32).

Subunit Wigwam Creek, Jefferson County from its confluence with South Platte River (39 14 26N 105 15 15W, T.9S., R.70W., Sec. 29) upstream to 7,600 feet elevation (39 13 50N 105 19 51W, T.9S., R.71W., Sec. 27). Includes Pine Creek from its confluence with Wigwam Creek (39 14 25N 105 16 52W, T.9S., R.71W., Sec. 25) upstream to 7,600 feet elevation (39 15 48N 105 17 51W, T.9S., R.71W., Sec. 14). Also includes Cabin Creek from its confluence with Wigwam Creek (39 13 55N 105 18 06W, T.9S., R.71W., Sec. 26) upstream to 7,600 feet elevation (39 14 41N 105 18 17W, T.9S., R.71W., Sec. 23).

Subunit Trout Creek, Douglas County upstream into Teller County from (39 13 02N 105 09 31W, T.9S., R.69W., Sec. 31) upstream to 7,600 feet elevation which is 1.3 km (0.8 mi) into Teller County (39 07 13N 105 05 49W, T.11S., R.69W., Sec. 3). Includes Eagle Creek from its confluence with Trout Creek (39 11 52N 105 08 27W, T.10S., R.69W., Sec. 8) upstream to 7,600 feet elevation (39 12 06N 105 07 12W, T.10S., R.69W., Sec. 9). Also including an unnamed tributary from its confluence with Trout Creek (39 11 07N 105 08 05W, T.10S., R.69W., Sec. 17) upstream to (39 10 18N 105 08 23W, T.10S., R.69W., Sec. 20). Also including Long Hollow from its confluence with Trout Creek (39 10 56N 105 08 01W, T.10S., R.69W., Sec. 17) upstream to 7,600 feet elevation (39 11 30N 105 06 19W, T.10S., R.69W., Sec. 10).

(ii) Map Unit SP13 follows:

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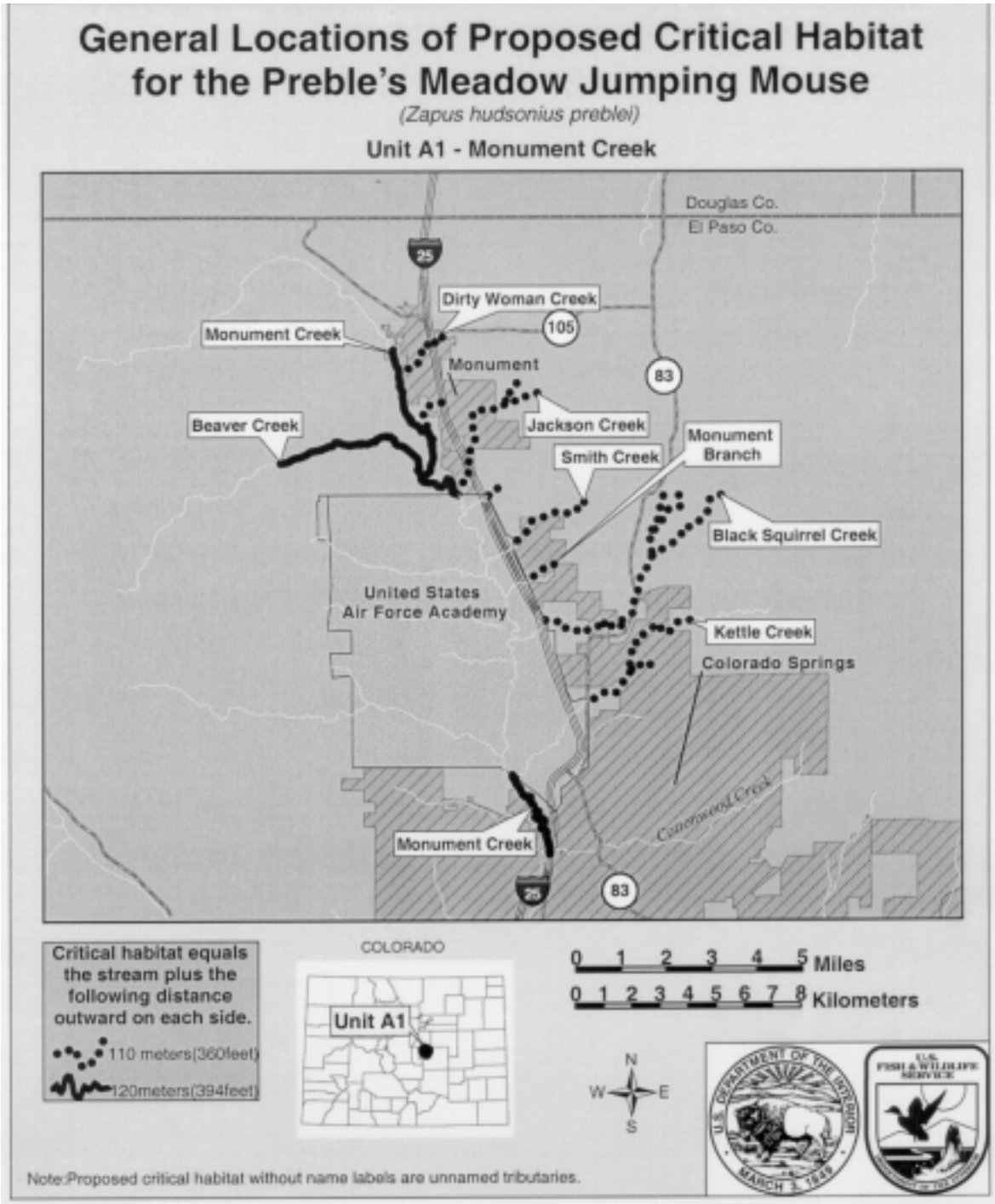
(22) Map Unit A1: Monument Creek, El Paso County, Colorado.

(i) This unit consists of the following:

56.3 km (35 mi) of streams. Monument Creek from its confluence with Cottonwood Creek (38 55 36N 104 48 51W, T.13S., R66W., Sec. 7) upstream to the southern property boundary of the U.S. Air Force Academy (38 57 06N 104 49 46W, T.13S., R.66W., Sec. 6). Then Monument Creek from the northern property boundary of the U.S. Air Force Academy (39 02 31N 104 51 06W, T.12S., R.67W., north boundary Sec. 2) upstream to Monument Lake (39 05 19N 104 52 41W, T.11S., R.67W., Sec. 15). Includes Kettle Creek from its confluence with Monument Creek (38 57 01N 104 49 42W, T.13S., R.66W., Sec 6) upstream to the property boundary of the U.S. Air Force Academy (38 57 04N 104 49 41W, T.13S., R.66W., Sec 6). Then continues from the property boundary of the U.S. Air Force Academy (38 58 33N 104 47 55W, T.12S., R.66W., Sec. 29) upstream to its intersection with a road at (39 00 06N 104 45 21W, T.12S., R.66W., east boundary Sec. 15). Which includes an unnamed tributary from its confluence with Kettle Creek (38 59 06N 104 46 51W, T.12S., R.66W., Sec. 21) upstream to (38 59 14N 104 46 19W, T.12S., R.66W., Sec. 22). Also includes Black Squirrel Creek from the property boundary of the U.S. Air Force Academy (39 00 06N 104 49 00W, T.12S., R.66W., Sec. 18) upstream to (39 02 30N 104 44 34W, T.12S., R.66W., north boundary Sec. 2). Including an unnamed tributary from its confluence with Black Squirrel Creek (39 01 20N 104 46 17W, T.12S., R.66W., Sec. 10) upstream to (39 02 30N 104 45 39W, T.12S., R.66W., north boundary Sec. 3). Which includes another unnamed tributary from (39 01 49N 104 46 17W, T.12S., R.66W., Sec. 3) upstream to (39 02 30N 104 46 01W, T.12S., R.66W., north boundary Sec. 3). Unit A1 also includes Monument Branch from the property boundary of the U.S. Air Force Academy (39 00 49N 104 49 23W, T.12S., R.66W., Sec. 7) upstream to (39 01 11N 104 48 42W, T.12S., R.66W., east boundary Sec. 7). Also includes Smith Creek from the property boundary of the U.S. Air Force Academy (39 01 30N 104 49 46W, T.12S., R.66W., Sec. 7) upstream to (39 02 23N 104 47 57W, T.12S., R.66W., Sec. 5). Also includes an unnamed tributary from the property boundary of the U.S. Air Force Academy (39 02 30N 104 50 23W, T.12S., R.67W., Sec. 1) upstream to 6,800 feet elevation (39 02 45N 104 49 54W, T.11S., R.67W., Sec. 36). Also includes Jackson Creek from its confluence with Monument Creek (39 02 33N 104 51 13W, T.11S., R.67W., Sec. 35) upstream to (39 04 30N 104 49 06W, T.11S., R.66W., Sec. 19). Includes an unnamed tributary from its confluence with Jackson Creek (39 04 11N 104 50 02W, T.11S., R.67W., Sec. 25) upstream to Higby Road (39 04 41N 104 49 38W, T.11S., R.66W., Sec. 19). Also includes Beaver Creek from its confluence with Monument Creek (39 02 53N 104 52 00W, T.11S., R.67W., Sec. 35) upstream to 7,600 feet elevation (39 03 08N 104 55 29W, T.11S., R.67W., Sec. 31). Also includes Teachout Creek from its confluence with Monument Creek (39 03 45N 104 51 50W, T.11S., R.67W., Sec. 26) upstream to Interstate 25 (39 04 19N 104 51 27W, T.11S., R.67W., Sec. 23). Also includes Dirty Woman Creek from its confluence with Monument Creek (39 04 48N 104 52 48W, T.11S., R.67W., Sec 22) upstream to Highway 105 (39 05 35N 104 51 28W, T.11S., R.67W., Sec 14).

(ii) Map Unit A1 follows:

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* * * * *

Dated: July 9, 2002.

**Paul Hoffman,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 02–17716 Filed 7–16–02; 8:45 am]

**BILLING CODE 4310–55–C**


Federal Register

**Wednesday,**
**July 17, 2002**

**Part IV**

# Department of Housing and Urban Development

**24 CFR Part 570**

**Requirement of HUD Approval Before a Grantee May Undertake CDBG-Assisted Demolition of HUD-Owned Housing Units; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 570**

**[Docket No. FR–4698–F–02]**

**RIN 2506–AC10**

## Requirement of HUD Approval Before a Grantee May Undertake CDBG-Assisted Demolition of HUD-Owned Housing Units

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Community Development Block Grant (CDBG) Entitlement program regulations by requiring grantees to obtain HUD's approval to demolish HUD-owned housing units. The amendment will ensure that HUD receives notification of a grantee's intent to use CDBG funds to demolish HUD-owned housing units. In addition, the application of this rule will aid in preserving the supply of affordable housing that is available to low- and moderate-income persons. This final rule follows publication of a proposed rule on January 22, 2002, which elicited one comment. The one comment supported the rule, which HUD is adopting without change.

**DATES:** Effective Date: August 16, 2002.

**FOR FURTHER INFORMATION CONTACT:** Sue Miller, Director, Entitlement Communities Division, Office of Block Grant Assistance, Room 7282, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1577 (this is not a toll-free number). Hearing- or speech-impaired individuals may access the telephone number listed in this section by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background—The January 22, 2002, Proposed Rule

On January 22, 2002 (67 FR 2958), HUD published a proposed rule to revise the CDBG Entitlement program regulations at 24 CFR 570.201(d), to prohibit grantees from using CDBG funds for the demolition of HUD-owned housing units without prior approval from HUD. Before this amendment, the regulation at § 570.201(d) required that a grantee obtain HUD's approval to demolish HUD-assisted housing units. The preamble to the proposed rule indicated that, although the CDBG regulations did not contain a definition of the term ''HUD-assisted housing units,'' the term had been considered to include various forms of subsidized housing such as section 8 or public housing. It had not been HUD policy to interpret the regulation as including HUD-owned properties. Thus, this amendment to § 570.201(d) will ensure that CDBG-assisted demolition of HUD-owned housing units could be carried out only with the prior approval of HUD.

The proposed rule also stated that HUD believed that the amendment will aid in achieving three primary objectives: (1) Ensure that grantees notify HUD of their plans to demolish HUD-owned housing units; (2) prevent grantees from demolishing, without reasonable cause, HUD-owned housing units; and, (3) ensure that grantees preserve the supply of affordable housing available to low- and moderate-income persons.

### II. This Final Rule

This final rule follows publication of the January 22, 2002, proposed rule. The proposed rule invited public comment on the revision to 24 CFR 570.201(d). The comment period closed on March 25, 2002. One comment was received that urged HUD to adopt the rule. Accordingly, because the commenter encouraged the adoption of the rule, and because HUD believes this final rule will achieve the objectives described in the proposed rule of January 22, 2002, and restated above, HUD is adopting the proposed rule without change.

### III. The Public Comment

The one comment received in response to the issuance of the proposed rule on January 22, 2002, supported the rule. The commenter stated that it believes ''requiring HUD approval before CDBG funds can be used to demolish HUD-owned properties will help ensure the existence of integrated housing opportunities and the continued supply of affordable housing for minority and low- and moderate-income communities.'' The commenter wrote that HUD oversight of CDBG funds used in the demolition of HUD-owned housing units will help to ensure that grantees do not violate the anti-discrimination provisions of the Fair Housing Act. The commenter further added that adoption of the rule is critical to ensure the financial stability of the FHA mortgage insurance program. According to the commenter, the costs of unnecessary demolitions, often resulting in liens being placed on the property, and the decrease in value of the property after demolition, result in the FHA insurance program suffering significant losses.

### IV. Findings and Certifications

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment was 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 (42 U.S.C. 4223). The Finding of No Significant Impact remains available for public inspection weekdays between the hours of 7:30 a.m. and 5:30 p.m. in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

*Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that need to be complied with by small entities.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose a Federal mandate on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance program number is 14.218.

**List of Subjects in 24 CFR Part 570**

Administrative practice and procedure, American Samoa, Community development block grant, Grant programs-education, Grant program-housing and community development, Guam, Indians, Loan programs-housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 570 to read as follows:

## PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 5301–5320.

2. Section 570.201 is amended by revising paragraph (d) to read as follows:

**§ 570.201 Basic eligible activities.**

* * * * *

(d) *Clearance activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD-assisted or HUD-owned housing units may be undertaken only with the prior approval of HUD.

* * * * *

Dated: June 27, 2002.

**Donna M. Abbenante,**

*General Deputy Assistant Secretary for Community Planning and Development.*

[FR Doc. 02–17928 Filed 7–16–02; 8:45 am]

BILLING CODE 4120–29–P


Federal Register

**Wednesday,**
**July 17, 2002**

**Part V**

# Department of Housing and Urban Development

**24 CFR Part 2002**
**Implementation of the Electronic Freedom of Information Act; Final Rule**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 2002

**[Docket No.FR–4716–F–02]**

**RIN 2508–AA12**

## Implementation of the Electronic Freedom of Information Act

**AGENCY:** Office of Inspector General, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends The Office of Inspector General's Freedom of Information Act (FOIA) regulation, and implements the statutory requirements of the Electronic Freedom of Information Act (EFOIA). This final rule follows publication of a March 12, 2002, proposed rule. There were no comments on the proposed rule and HUD is adopting the proposed regulatory amendments without change.

**DATES:** Effective date: August 16, 2002.

**FOR FURTHER INFORMATION CONTACT:** Bryan Saddler, Counsel to the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8260, Washington, DC 20410, (202) 708–1613 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services.

**SUPPLEMENTARY INFORMATION:**

### Background

HUD regulations at 24 CFR part 15 contain the policies and procedures governing public access to HUD records under the FOIA. Under the Inspector General Act of 1978 (5 U.S.C. App.3), which ''create independent and objective units'' to perform various investigative and monitoring functions within Executive agencies of the Federal Government, the Office of the Inspector General (OIG) issued 24 CFR part 2002, to explain the procedures for requesting information from the OIG under the FOIA.

On March 12, 2002, HUD published (67 FR 11208) a proposed rule that amends 24 CFR part 2002. Specifically, the proposed rule implements the statutory requirements of the Electronic Freedom of Information Act (EFOIA) (Pub. L. 104–231). Among other things, the proposed rule provides for an electronic reading room, modifies the FOIA timeframes, and establishes multiple ''tracks'' for processing requests.

This final rule adopts the revisions in HUD's March 12, 2002, proposed rule in their entirety. The public comment period for the proposed rule closed on May 13, 2002. HUD did not receive any public comments on the proposed rule. As a result, HUD is adopting the March 12, 2002, proposed rule without change.

### Findings and Certifications

*Environmental Review*

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this issuance is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321).

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule contains no anti-competitive discriminatory aspects with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order. Rather, this rule would amend OIG's FOIA regulation and implement the statutory requirements of EFOIA.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

### List of Subjects in 24 CFR Part 2002

Freedom of Information.

Accordingly, 24 CFR chapter XII, Part 2002, is amended as follows:

## PART 2002—AVAILABILITY OF INFORMATION TO THE PUBLIC

1. The authority citation for part 2002 is revised to read as follows:

**Authority:** 5 U.S.C. 552; Electronic Freedom of Information Act (Pub. L. 104–231); Freedom of Information Reform Act of 1986 (Pub. L. 99–579); 5 U.S.C. App. 3 (Inspector General Act of 1978); 42 U.S.C. 3535(d); Delegation of Authority, Jan. 9, 1981 (46 FR 2389).

2. Section 2002.1 is revised to read as follows:

#### § 2002.1 Scope of the part and applicability of other HUD regulations.

(a) General. This part contains the regulations of the Office of Inspector General which implement the Freedom of Information Act (5 U.S.C. 552). It informs the public how to request records and information from the Office of Inspector General and explains the procedure to use if a request is denied. Requests for documents made by subpoena or other order are governed by procedures contained in part 2004 of this chapter. In addition to the regulations in this part, the following provisions of part 15 of this title covering the production or disclosure of material or information apply (except as limited in paragraph (b) of this section) to the production or disclosure of material in the possession of the Office of Inspector General:

§ 15.2—What definitions apply to this part?

§ 15.3—What exemptions are authorized by 5 U.S.C. 552?;

§ 15.108—What are HUD's policies concerning designating confidential commercial or financial information under Exemption 4 of the FOIA and responding to requests for business information?

§ 15.110—What fees will HUD charge?

(b) Limited applicability of section 15.110. For purposes of this part, paragraphs (d) through (k) of § 15.110 are not applicable.

(c) Use of the term ''HUD''. For purposes of this part, and when the words ''HUD'' or ''Department'' are used in this part or §§ 15.2(b), 15.3, 15.108 and 15.110 of this title, the term means the Office of the Inspector General.

(d) Request for declassification and release of classified material. Section

15.107 of this title contains provisions for requesting declassification and release of declassified material.

3. Section 2002.3 is revised to read as follows:

**§ 2002.3 OIG's overall policy concerning discloseable records and requests for OIG records.**

(a) The Office of Inspector General will fully and responsibly disclose its identifiable records and information consistent with competing public interests, such as national security, personal privacy, grand jury and investigative secrecy, complainant confidentiality, agency deliberative process, as are recognized by FOIA and other federal statutes.

(b) A request for Office of Inspector General records may be made in person during normal business hours at any office where Office of Inspector General employees are permanently stationed. Although oral requests may be honored, a requester may be asked to submit the request in writing. A written request shall be addressed to: The Office of Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8260, Washington, DC 20410.

(c) Each request must reasonably describe the desired record including the name, subject matter, and number or date, where possible, so that the record may be identified and located. The request should also include the name, address and telephone number of the requester, and the format in which the requester would like the desired record to be reproduced. In order to enable the Office of Inspector General to comply with the time limitations set forth in § 2002.17, both the envelope containing a written request and the letter itself should clearly indicate that the subject is a Freedom of Information Act request.

(d) The request must be accompanied by the fee or an offer to pay the fee as determined in § 15.110.

(e) Copies of available records will be made as promptly as possible. Copying service will be limited to not more than 10 copies of any single page. Records that are published or available for sale need not be reproduced.

(f) To the extent that records are readily reproducible, the Office of Inspector General will send records in the form requested, including electronic format.

4. Section 2002.7 is revised to read as follows:

**§ 2002.7 OIG processing of requests.**

(a) Multitracking. (1) The Office of Inspector General places each request in one of two tracks. The Office of Inspector General places requests in its simple or complex track based on the amount of work and time involved in processing the request. Factors the Office of Inspector General will consider in assigning a request in the simple or complex track will include whether the request involves the processing of voluminous documents and/or whether the request involves responsive documents from more than one organizational unit. Within each track, the Office of Inspector General processes requests in the order in which they are received.

(2) For requests that have been sent to the wrong office, the Office of Inspector General will assign the request within each track using the earlier of either:

(i) The date on which the request was referred to the appropriate office; or, (ii) The end of the ten (10) working day period in which the request should have been referred to the appropriate office.

(b) Expedited processing. The Office of Inspector General may take your request or appeal out of normal order if the Office of Inspector General determines that you have a compelling need for the records or in other cases as determined by the Office of Inspector General. If the Office of Inspector General grants your request for expedited processing, the Office of Inspector General will give your request priority and will process it as soon as practicable. The Office of Inspector General will consider a compelling need to exist if:

(1) Your failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or a threatened loss of substantial due process rights; or, (2) You are primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged Federal Government activity.

5. Section 2002.9 is revised to read as follows:

**§ 2002.9 Where to review records.**

(a) You may inspect and copy hardcopy records that section 552(a)(2) of FOIA requires the Office of Inspector General make available to the public in reading rooms. At the Headquarters and DC Offices, this would be at HUD's Library, Room 8141, 451 Seventh St., SW, Washington, DC 20410, and should be coordinated through Counsel's Office to the Inspector General, Room 8260. Local offices may coordinate for local requests.

(b) For records created on or after November 1, 1996, this information is available to you through the Office of Inspector General's Internet website at *http://www.hud.gov/oig/oigindex.html.*

6. In § 2002.11, paragraph (a) is revised to read as follows:

**§ 2002.11 Review of records, aggregating requests and waiving or reducing fees.**

(a) Review of records. Only requesters who are seeking documents for commercial use may be charged for the time HUD spends reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review (i.e., the review undertaken the first time HUD analyzes the applicability of a specific exemption to a particular record or portion of a record). HUD will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable. Review time will be assessed at the same rates established for search time in § 15.110 of this title.

* * * * *

7. In § 2002.15, paragraph (b) is revised to read as follows:

**§ 2002.15 Advance Payments.**

* * * * *

(b) When HUD acts under paragraph (a)(1) or (a)(2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after HUD has received fee payments described in paragraph (a) of this section.

8. In § 2002.17, paragraph (a) is revised to read as follows:

**§ 2002.17 Time limitations.**

(a) Upon receipt of a request for records, the appropriate Assistant Inspector General or an appointed designee will determine within twenty (20) working days whether to grant the request. The Assistant Inspector General or designee will notify the requestor immediately in writing of the determination and the right of the person to request a review by the Inspector General of an adverse determination.

* * * * *

9. Sections 2002.5, 2002.13, 2002.19, 2002.21, 2002.23 and 2002.25 shall remain as they currently exist.

Dated: July 8, 2002.

**Kenneth M. Donohue, Sr.,**

*Inspector General.*

[FR Doc. 02–17929 Filed 7–16–02; 8:45 am]

**BILLING CODE 4210–78–P**


Federal Register

**Wednesday,**
**July 17, 2002**

**Part VI**

# Department of Education

**Office of Educational Research and Improvement; Fund for the Improvement of Education—Ready To Teach; Digital Educational Programming; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002; Notices**

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.286B]**

## Office of Educational Research and Improvement; Fund for the Improvement of Education—Ready To Teach: Digital Educational Programming; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

*Purpose of Program:* The purpose of this program is to support grants to eligible entities to enable them to develop, produce, and distribute innovative educational and instructional programming that is designed for use by elementary schools or middle schools and based on challenging State academic content and student academic achievement standards in reading or mathematics.

For FY 2002 this competition for new awards focuses on projects designed to meet the priorities we describe in the Priorities section of this application notice.

*Eligible Applicants:* An eligible applicant is a local public telecommunications entity, as defined in section 397(12) of the Communications Act of 1934, that is able to demonstrate a capacity for the development and distribution of educational and instructional television programming of high quality. Section 397(12) of the Communications Act of 1934 provides that:

The term *public telecommunications entity* means any enterprise which—

(A) Is a public broadcast station or a noncommercial telecommunications entity; and

(B) Disseminates public telecommunications services to the public.

*Applications Available:* July 17, 2002.

The application package for this competition is available online at: *http://ed.gov/GrantApps/*.

*Deadline for Transmittal of Applications:* August 15, 2002.

*Deadline for Intergovernmental Review:* September 15, 2002.

*Estimated Available Funds:* $2,300,000.

*Estimated Range of Awards:* $250,000 to $2,300,000 per year.

*Estimated Number of Awards:* 1 to 4.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* 36 months.

*Budget Period:* 12 months.

*Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers will use to evaluate your application. It is strongly suggested that you limit the narrative to the equivalent of no more than 20 pages using the following standards:

- A page is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative.
- Use a font that is either 12 point or larger and no smaller than 10 pitch (characters per inch).

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

### Priorities

This competition focuses on projects designed to meet the following priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet the absolute priority.

*Absolute Priority*

The project shall develop, produce, and distribute digital instructional programming to assist teachers in implementing reading or mathematics instruction for students in kindergarten through grade 8. Programming for reading shall include the essential components of reading instruction as defined in Title I of the Elementary and Secondary Education Act of 1965 as reauthorized by the No Child Left Behind Act of 2001. Programming for mathematics shall include both problem solving and mental computation. The programming developed shall include tools for classroom-based instructional assessment, which evaluates children's learning based on systematic observations by teachers of children performing academic tasks that are part of their daily classroom experience and is used to improve instruction. Applicants may choose to develop programming for certain grades rather than all grades between kindergarten and eighth or for certain types of learners, such as students with limited English proficiency, students with learning disabilities, or students with low levels of readiness for reading or mathematics, rather than all learners.

*Competitive Preference*

Under 34 CFR 75.105(c)(2)(i), we award up to an additional 20 points to an application, depending on how well the application meets the following competitive preference. These points are in addition to any points the application earns under the selection criteria.

The project shall be designed to determine whether the programming developed with the grant funds produces meaningful effects on student learning. In order to do this, the project preferably employs an experimental design with random assignment. If random assignment is not feasible, the project may employ a quasi-experimental design with carefully matched comparison conditions. For experimental designs, random assignment to the ready to teach program being evaluated versus one or more comparison conditions should occur at the level of students or classrooms or schools. Alternatively, in a quasi-experimental design, students or classrooms or schools that are receiving the ready to teach program are matched with comparable students, classrooms, or schools that are not receiving the ready to teach program. Data from reliable and valid measures of reading or mathematics achievement in children and related instructional practices should be collected before and after participation in the ready to teach program or the comparison condition.

*Selection Criteria:* We will use a peer review process to select eligible entities to receive grants under this program. Peer reviewers will use the following criteria to evaluate applications. The maximum score for all these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (20 points)

(2) The quality of the plan for developing, producing, and distributing innovative educational and instructional video programming that is based on challenging State academic content standards and can be distributed through digital broadcasting and school digital networks. (30 points)

(3) The extent to which the programming to be developed will include built-in teacher utilization and support components to ensure that teachers understand and can easily use the content of the programming with group instruction or for individual student use. (20 points)

(4) The extent to which the applicant will enter into multiyear content development collaborative arrangements with State educational agencies and local educational agencies. (20 points)

(5) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings. (10 points)

**SUPPLEMENTARY INFORMATION:**

### Background

Grants are awarded under this program to facilitate the development of

educational programming that: (1) Includes student assessment tools to provide feedback on student academic achievement; (2) includes built-in teacher utilization and support components to ensure that teachers understand and can easily use the content of the programming with group instruction or for individual student use; (3) is created for, or adaptable to, challenging State academic content standards and student academic achievement standards; and (4) may be distributed through digital broadcasting and school digital networks.

An entity that receives a grant under this program must enter into multiyear content development collaborative arrangements with State educational agencies, local educational agencies, institutions of higher education, businesses, or other agencies or organizations.

To be eligible to receive a grant under this program, an entity must contribute to the activities assisted under such grant non-Federal matching funds in an amount equal to not less than 100 percent of the amount of the grant. Such matching funds may include funds provided for the transition to digital broadcasting, as well as in-kind contributions.

An entity that receives a grant under this program may not use more than 5 percent of the amount received under the grant for administrative costs.

**Waiver of Proposed Rulemaking**

Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed requirements. Section 437(d)(1) of the General Education Provisions Act, however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program authority. This is the first competition under the Fund for the Improvement of Education: Ready to Teach Digital Educational Programming Program, which was substantially revised by the No Child Left Behind Act of 2001. The requirements will apply to the FY 2002 grant competition only.

**Application Procedures**

The Government Paperwork Elimination Act (GPEA) of 1998, (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999, (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications to the FY 2002 Ready to Teach Digital Educational Programming Program be submitted electronically using e-Application available through the Education Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://www.e-grants.ed.gov*.

Applicants who are unable to submit an application through the e-GRANTS system may apply for a waiver to the electronic submission requirement. To apply for a waiver, applicants must explain the reason(s) that prevent them from using the Internet to submit their applications. The reasons(s) must be outlined in a letter addressed to: Tawanna Coles, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522K, Washington, DC 20208–5645. We must receive your letter no later than two weeks before the closing date.

Any application that receives a waiver to the electronic submission requirement will be given the same consideration in the review process as an electronic application.

**Pilot Project for Electronic Submission of Applications**

In fiscal year 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Fund for the Improvement of Education: Ready to Teach Digital Educational Programming Program (84.286B) is one of the programs included in the pilot project. If you are an applicant under the Ready to Teach Digital Educational Programming Program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-Application, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We shall continue to evaluate its success and solicit suggestions for improvement.

Please note the following:

- On the deadline date, the deadline time for transmitting applications is 4:30 p.m. Washington, DC time.
- If you wait until the deadline date to submit your application electronically and you are unable to access the e-Application system, you must contact the Help Desk by 4:30 p.m. Washington, DC time on the deadline date.
- Keep in mind that e-Application is not operational 24 hours a day every day of the week. Click on Hours of Web Site Operation for specific hours of access during the week.
- You will have access to the e-Application Help Desk for technical support: 1–888–336–8930 (TTY: 1–866–697–2696, local 202–401–8363). The Help Desk hours of operation are limited to: 8 a.m. to 6 p.m. Washington, DC time Monday through Friday.
- If you submit your application electronically by the transmittal date but also wish to submit a paper copy of your application, then you must mail the paper copy of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.286B, 7th and D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424 Standard Face Sheet), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424 Standard Face Sheet) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.

2. Make sure that the institution's Authorized Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of ED 424.

5. Fax ED 424 to the Application Control Center at 202–260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Ready to Teach Digital Educational Programming Program at: *http://e-grants.ed.gov.*

**FOR FURTHER INFORMATION CONTACT:** Tawanna Coles, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522K, Washington, DC 20208–5645. Telephone: (202) 219–2143, FAX: 202–208–4046, or via the Internet: *tawanna.coles@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format, e.g., Braille, large print, audiotape, or computer diskette, on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities also may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC, area at 202–512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access/gpo.gov/nara/index.html.*

**Program Authority:** 20 U.S.C. 5484.

Dated: July 11, 2002.

**Grover J. Whitehurst,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 02–18030 Filed 7–16–02; 8:45 am]

**BILLING CODE 4000–01–P**


Federal Register

**Wednesday,**
**July 17, 2002**

## Part VII

# Department of the Interior

**Fish and Wildlife Service**

**50 CFR Part 20**

**Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations and Regulatory Alternatives for the 2002–03 Duck Hunting Season; Notice of Meetings; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

**RIN 1018–AI30**

## Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations and Regulatory Alternatives for the 2002–03 Duck Hunting Season; Notice of Meetings

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; supplemental.

**SUMMARY:** The U.S. Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2002–03 early-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in early seasons. Early seasons may open as early as September 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. These frameworks are necessary to allow State selections of specific final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions. This supplement to the proposed rule of March 19, 2002, also provides the final regulatory alternatives for the 2002–03 duck hunting season.

**DATES:** We will accept all comments on the proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons that are postmarked or received in our office by July 30, 2002, and for the forthcoming proposed late-season frameworks by August 30, 2002.

**ADDRESSES:** Send your comments on these proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634-Arlington Square, 1849 C Street, NW, Washington, DC 20240 or fax comments to (703) 358–2272. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Robert Blohm, Acting Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

**SUPPLEMENTARY INFORMATION:**

### Regulations Schedule for 2002

On March 19, 2002, we published in the **Federal Register** (67 FR 12501) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2002–03 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 11, 2002, we published in the **Federal Register** (67 FR 40128) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 2002–03 duck hunting season. The June 11 supplement also provided detailed information on the 2002–03 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

This document, the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations, deals specifically with proposed frameworks for early-season regulations and the final regulatory alternatives for the 2002–03 duck hunting season. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2002–03 season. We have considered all pertinent comments received through June 21, 2002, on the March 19 and June 11, 2002, rulemaking documents in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES**. We will publish final regulatory frameworks for early seasons in the **Federal Register** on or about August 20, 2002.

### Service Migratory Bird Regulations Committee Meetings

Participants at the June 19–20, 2002, meetings reviewed information on the current status of migratory shore and upland game birds and developed 2002–03 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the U.S. Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl. Participants at the previously announced July 31 and August 1, 2002, meetings will review information on the current status of waterfowl and develop recommendations for the 2002–03 regulations pertaining to regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In accordance with Department of the Interior policy, these meetings are open to public observation and you may submit written comments to the Director of the Service on the matters discussed.

### Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds.

*May Breeding Waterfowl and Habitat Survey*

The May Breeding Waterfowl and Habitat Survey was delayed and extended due to the unusually cold and late spring and only recently completed. Thus, this information is preliminary and population estimates are not yet available. Habitat conditions in May for breeding waterfowl in Canada and the U.S. are generally worse this year than they were last year, due primarily to lack of water in the prairies and cold spring temperatures in the East.

Most survey areas started this spring with a water deficit left over from the winter. Spring rains helped recharge wetlands in the most of northeast, but conditions remained very dry in the west. Conditions in the southern Saskatchewan prairies were the driest in over 30 years. Much of southern Manitoba also was dry this year, and drought continued in most of Alberta. There were fewer wetlands available to birds, because most temporary and seasonal wetlands were dry. In the Dakotas, Montana, and southern Saskatchewan, birds were forced to crowd onto the remaining semi-permanent and permanent ponds. A bright spot in the prairies was the Dakotas, where permanent wetlands remained in good condition from the wet period of 1993–2001. Preliminary reports and survey results suggest that many ducks over-flew these dry areas in the prairies to the boreal forest, where water levels are more stable.

A further negative impact on nesting waterfowl this year was the cold spring temperatures. Winter-like conditions hit the entire surveyed area in early May, and snowstorms and cold temperatures caused birds to halt migration. Migration was delayed for several weeks, as many birds waited for

temperatures to warm up and ice to thaw. Snow and cold may have caused some nest loss in the prairies. In many of the northern survey areas, survey biologists reported that this was the latest spring ice break-up in memory. Break-up was so late in northern Ontario, northern Quebec, and Labrador that survey biologists suspected that it came too late for waterfowl to breed in these northeastern areas. However, spring break-up was not too late to prevent breeding in the northwestern areas, from the northern portions of the prairie provinces to Alaska. Conditions there were generally good, but the cold temperatures likely had a negative impact on early-nesting species such as mallards, green-winged teal, and pintails. The only region where habitat conditions for breeding waterfowl are better this year than they were last year is Alaska, where conditions went from poor/fair in 2001 to fair/good in 2002. This improvement is a result of the warmer post-thaw temperatures this year than last year. However, because the ice-melt was very rapid when it finally happened, nests may have been flooded out in parts of Alaska and Labrador.

Since the surveys were flown, water conditions have improved in Montana, the western Dakotas, southern Saskatchewan, and southern Alberta. These areas have received from several inches to a foot or more of rain and/or snow. However, this amount of moisture in such a short period of time has resulted in a lot of flooding, and most biologists think that the rain was probably too late to help nesting waterfowl this year. These improved conditions may help some broods, and may lead to improved water conditions next year.

In summary, waterfowl production is expected to be below normal in most southwestern survey areas, except for the Dakotas, where conditions are better. Production in the northwestern survey areas is harder to assess, because habitat conditions are good but cold spring temperatures likely will have a negative impact on early-nesting species. In the eastern survey areas, conditions ranged from good to excellent in the southern regions, to poor in the north where ice-thaw came too late.

*Status of Teal*

Preliminary estimates for blue-winged teal from surveyed areas total 4.2 million blue-winged teal, which is below the 4.7 million needed to trigger the 16-day teal season in the Central and Mississippi Flyways.

The 2001–02 season was the fourth consecutive year of an extended (16 days vs. 9 days) September teal season in the Central and Mississippi Flyways. The Atlantic Flyway also had a 9-day teal season. Harvest estimates are not available at this time.

The Division of Migratory Bird Management is working with the Central, Mississippi, and Atlantic Flyways on a comprehensive review of teal population and harvest information. The purposes of this review are to (1) evaluate the effects of extending the September teal season from 9 to 16 days in the Central and Mississippi Flyways, (2) evaluate the effects of the 9 day teal season in the Atlantic Flyway (implemented in 1998), and (3) evaluate the effect of all (September and regular season) harvest on teal populations. Progress is continuing on this review.

*Sandhill Cranes*

The Mid-Continent Population of Sandhill Cranes has generally stabilized at comparatively high levels, following increases in the 1970s. The Central Platte River Valley, Nebraska, spring index for 2002, uncorrected for visibility, was 313,600 cranes. The photo-corrected 3-year average for 1999–2001 was 396,167, which is within the established population-objective range of 343,000–465,000 cranes. All Central Flyway States, except Nebraska, allowed crane hunting in portions of their respective States in 2001–02. About 8,650 hunters participated in these seasons, which was 24 percent higher than the number participating in the previous year. An estimated 13,964 cranes were harvested in the Central Flyway during 2001–02 seasons, which was similar to the previous year's estimate. Retrieved harvests in the Pacific Flyway, Canada, and Mexico were estimated to be about 12,381 cranes for the 2001–02 period. The total North American sport harvest, including crippling losses, was estimated at 28,821, about 13 percent lower than the previous year's estimate. The long-term trend analysis for the Mid-Continent Population during 1982–2000 indicates that harvests have been increasing at a higher rate than the trend in population growth over the same period.

The fall 2001 pre-migration survey estimate for the Rocky Mountain Population of sandhill cranes was 16,559, which was similar to the previous year's estimate of 19,990. Limited special seasons were held during 2001 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulting in a record high harvest of 898 cranes.

*Woodcock*

Singing-ground and wing-collection surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). Singing-ground Survey data for 2002 indicate that the number of displaying woodcock in the Eastern Region was 1.3 percent lower than levels observed in 2001; however, this decrease was not significant ($P>0.10$). In the Central Region, there was a 7.9 percent decrease in the number of woodcock heard displaying; however, this change was also not significant. Trends from the Singing-ground Survey during 1992–2002 were –2.1 and –1.5 percent change per year for the Eastern and Central regions, respectively ($P<0.01$). There were long-term (1968–02) declines ($P<0.01$) of 2.3 percent per year in the Eastern Region and 1.6 percent per year in the Central Region.

The 2001 recruitment index for the Eastern Region (1.4 immatures per adult female) was the same as the 2000 index, but was 18 percent below the long-term regional average. The recruitment index for the Central Region (1.3 immatures per adult females) was slightly higher than the 2000 index of 1.2 immatures per female, but was 23 percent below the long-term regional average. The index of daily hunting success in the Eastern Region was 2.0 woodcock per successful hunt in both 2000 and 2001, and seasonal hunting success was 8.7 woodcock per successful hunter in both years. In the Central Region, the daily success index increased slightly from 2.0 woodcock per successful hunt in 2000 to 2.1 in 2001; but seasonal hunting success decreased from 10.7 to 10.5 woodcock per successful hunter.

*Band-tailed Pigeons and Doves*

A significant decline in the Coastal population of band-tailed pigeons occurred during 1968–2001, as indicated by the Breeding Bird Survey (BBS); however, no trend was noted over the most recent 10 years. Additionally, mineral-site counts at 10 selected sites in Oregon indicate a general increase over the most recent 10 years. Call-count surveys conducted in Washington showed a significant increase during 1997–01 and a non-significant increase during 1975–01. The Interior band-tailed pigeon population is stable with no trend indicated by the BBS over the short- or long-term periods.

Analyses of Mourning Dove Call-count Survey data indicated significant declines in doves heard over both the most recent 10 years and the entire 37 years of the survey in the Central and

Western Management Units. In the Eastern Unit, a significant decline was detected over 37 years but no significant trend was indicated over the most recent 10 years. In contrast, a significant increase was found for doves seen over the 10-year period, in the Eastern Unit, while no trends were found in the Central and Western Units. Over the 37-year period, no trend was found for doves seen in the Eastern and Central Units, while a decline was indicated for the Western Unit. A project is under way to develop mourning dove population models for each unit to provide guidance for improving our decision-making process with respect to harvest management. Additionally, a small-scale banding study is being planned to obtain additional information.

The number of white-winged doves in Arizona has been fairly stable since the 1970s. The average number of doves heard per route in 2002 was 26.7. Estimated harvests (99,900 in 2001) are low compared to those occurring several decades ago. In Texas, the range and density of white-winged doves continue to expand. In 2002, the whitewing population in Texas was estimated to be 2,329,000 birds, an increase of 5.7 percent from 2001. A more inclusive count in San Antonio documented more than 1 million birds. An estimated 197,000 whitewings were taken during the special whitewing season in south Texas, with an additional 986,000 birds taken statewide during the regular mourning dove season. The expansion of whitewings northward and eastward from Texas has led to nesting being reported in Louisiana, Arkansas, Oklahoma, Kansas, and Missouri. They have been sighted in Colorado, Montana, Nebraska, Iowa, and Minnesota. Whitewings are believed to be expanding northward from Florida and have been seen in Georgia, the Carolinas, and Pennsylvania.

White-tipped doves are maintaining a relatively stable population in the Lower Rio Grande Valley of Texas. They are most abundant in cities and, for the most part, are not available to hunting. The count in 2002 averaged 0.97 birds per stop, a 43 percent increase over the count in 2001. The estimated harvest during the special 4-day whitewing season was about 2,400 birds.

**Review of Public Comments**

The preliminary proposed rulemaking (March 19 **Federal Register**) opened the public comment period for migratory game bird hunting regulations and the proposed regulatory alternatives for the 2002–03 duck hunting season. The supplemental proposed rule (June 11 **Federal Register**) re-opened the public comment period for the proposed regulatory alternatives until June 21, 2002. Comments concerning early-season issues and the proposed alternatives are summarized below and numbered in the order used in the March 19 **Federal Register** document. Only the numbered items pertaining to early-seasons issues and the proposed regulatory alternatives for which written comments were received are included. Consequently, the issues do not follow in direct numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below. We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the March 19, 2002, **Federal Register** document.

*1. Ducks*

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, including specification of framework dates, season length, and bag limits, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

*Council Recommendations:* The Mississippi Flyway Council supported the proposed correction factor for biases in predicted annual growth rates and revision to the procedure for comparing predicted and observed population sizes.

*Written Comments:* The Mississippi Department of Wildlife, Fisheries, and Parks cited numerous complaints with the Adaptive Harvest Management (AHM) process, and recommended that the Service temper their use of AHM as the primary decision tool because of its current uncertainty and variability.

The Iowa Department of Natural Resources, the Georgia Department of Natural Resources, the Minnesota Department of Natural Resources, the Colorado Division of Wildlife, the Missouri Department of Conservation, and 3 individual commented in support of the proposed correction for the bias in predicted mallard growth rates and revision to the procedure for comparing predicted and observed population sizes.

The Mississippi Flyway Council reiterated their support for the proposed correction factor for biases in predicted annual growth rates and revision to the procedure for comparing predicted and observed population sizes.

An organization expressed concern about the AHM population models and the reliance on inaccurate population data and models.

*Service Response:* AHM was developed cooperatively by the Service, the U.S. Geological Survey (USGS), the Flyway Councils, and the States, and since its implementation in 1995 has enjoyed widespread support among both federal and state waterfowl technicians and administrators. Moreover, the AHM process has been subject to extensive, ongoing review from the scientific community since its development in the early 1990's, and no credible technical arguments have been presented that would cause us to abandon the process. AHM represents state-of-the-art science, and its predictive capabilities provide greater insights to population dynamics than that of most other natural-resource management programs. Moreover, AHM's iterative process of resource monitoring, assessment, and decision-making provides a formal mechanism for learning from experience, thus improving future regulatory decisions.

The essential elements of AHM are: (a) unambiguous management objectives; (b) a finite set of regulatory alternatives; (c) alternative models (or hypotheses) of population dynamics, which predict the effect of hunting regulations and uncontrolled environmental factors; and (d) a resource monitoring program. The alternative models are the product of over 50 years of waterfowl research and assessment, and represent descriptions of duck biology that are plausible given the limits of current understanding. The alternative models influence the choice of hunting regulations to the extent that their respective predictions agree with observations from the resource monitoring program. Because of the scrutiny these population models receive, the Service and USGS were able to identify a bias common to all models

that resulted in overly optimistic projections of population growth. This bias has now been corrected, and we appreciate the support we have received for implementing this revision.

While the AHM population models are a product of science, the specification of harvest-management objectives and regulatory alternatives involve value-based judgements. While decisions regarding management objectives and regulatory alternatives certainly have biological implications, the decisions are inherently subjective. The AHM process merely provides a way to combine these subjective elements with population biology to produce hunting opportunities consistent with the long-term viability of the waterfowl resource.

To help chart the future course of AHM with as much of a consensus among stakeholders as possible relative to the subjective elements of AHM, we are proposing to convene a task force comprised of recognized state and federal leaders in waterfowl management, whose charge will be to collaborate with the AHM Working Group and Flyway Councils to examine current harvest-management goals, objectives, constraints, and the set of regulatory alternatives and develop policy-level guidance for the Service regarding these non-technical aspects of AHM.

B. Regulatory Alternatives

*Council Recommendations:* The Atlantic Flyway Council recommended that regulatory alternatives for duck hunting seasons in the Atlantic Flyway for 2002–03 should be the same as those used in 1997–2001, except that the ''liberal'' and ''moderate'' regulatory alternatives should have an opening date of the Saturday nearest September 24th and a closing date of the last Sunday in January on an experimental basis. The Atlantic Flyway Council also recommended that annual changes in regulations should be limited to no more than one step up or down among the regulatory alternatives (e.g., from ''liberal'' to ''moderate,'' ''moderate'' to ''restrictive'').

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the AHM regulatory alternatives be modified as follows, beginning in 2002–03: (a) Eliminate the ''very restrictive'' alternative; (b) limit increments of year-to-year change to single regulation steps; and (c) replace closed seasons for some combinations of population size and pond numbers with the ''restrictive'' alternative so that seasons could be open at similar mallard population levels that were hunted in the past.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that duck season framework dates for 2002–03 be the Saturday nearest September 24th and the last Sunday in January in the ''moderate'' and ''liberal'' regulatory alternatives, as noted in the March 19th **Federal Register**, provided that if the extended framework dates result in a more conservative hunting season, mid-latitude States (all States in the Upper Region except Minnesota, Wisconsin and Michigan) would be allowed an additional 7 days in season length. The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended the outside framework dates for the regular duck season in the ''moderate'' and ''liberal'' alternatives be the Saturday nearest September 24 and the last Sunday in January with no penalty in season length, and that this option be available either Statewide or in individual zones.

The Central Flyway Council recommended the elimination of the ''very restrictive'' regulatory alternative and the replacement of closed-season cells for some combinations of mallard breeding population size and pond numbers with the ''restrictive'' alternative in order that seasons could be opened when similar population levels were hunted in the past. The Central Flyway Council also recommended that the Service adopt the proposed 2002–03 regulatory alternatives and species/sex restrictions for the Central Flyway, except for the following modifications: (a) The opening date will be the Saturday closest to September 24th in the ''liberal'' and ''moderate'' AHM regulation alternatives, there will be no offset penalties (reduced or restricted bag limits or reduction in season length), and the framework closing date in the Central Flyway will remain the Sunday closest to January 20th; and (b) if the earlier framework dates are selected, the Central Flyway Council recommends the Special September Teal Season be allowed according to established criteria throughout September without penalty (using regular season days).

The Pacific Flyway Council recommended that the Service examine how eliminating the closed season and the ''very restrictive'' alternative from the set of regulatory alternatives may influence optimal regulations decisions, considering proposed model revisions. If the results of this evaluation are consistent with past analyses conducted by the Mississippi Flyway, the Council would support elimination of the ''very restrictive'' alternative. The Council believes closed seasons should not be considered when breeding populations and pond numbers exist at levels at which seasons have been offered in the past. The Pacific Flyway Council also supports duck season framework extensions and evaluation of their impacts to harvest distribution and rates as outlined in the Service's March 19, 2002, **Federal Register**.

*Written Comments:* The Mississippi Flyway Council reiterated their previous recommendations to eliminate the ''very restrictive'' alternative, limit increments of year-to-year change to single regulation steps, and replace closed seasons for some combinations of population size and pond numbers with the ''restrictive'' alternative so that seasons could be open at similar mallard population levels that were hunted in the past.

The Nebraska Game and Parks Commission and the Illinois Department of Natural Resources supported elimination of the ''very restrictive'' alternative and providing for open seasons at similar mallard population levels that were hunted in the past, but opposed limiting increments of year-to-year change to single regulations steps.

The Alabama Department of Conservation and Natural Resources, Iowa Department of Natural Resources, Minnesota Department of Natural Resources, Louisiana Department of Wildlife and Fisheries, Missouri Department of Conservation, one organization, and one individual supported the recommendations to eliminate the ''very restrictive'' regulatory alternative, limit increments of year-to-year change to single regulations steps, and provide for open seasons at similar mallard population levels that were hunted in the past.

The Florida Fish and Wildlife Conservation Commission, the Pennsylvania Game Commission, and the Maryland Department of Natural Resources supported limiting increments of year-to-year change to single regulations steps.

The South Dakota Department of Game, Fish, and Parks supported elimination of the ''very restrictive'' alternative and providing for open seasons at similar mallard population levels that were hunted in the past.

One individual supported providing for open seasons at similar mallard population levels that were hunted in the past, but did not support elimination of the ''very restrictive'' alternative or limiting increments of year-to-year change to single regulations steps.

An organization supported tabling the proposed recommendations from the Flyway Councils until a more solid understanding of the various outcomes can be generated.

One individual opposed the recommendations to eliminate the ''very restrictive'' regulatory alternative, limit increments of year-to-year change to single regulations steps, and provide for open seasons at similar mallard population levels that were hunted in the past.

The Mississippi Department of Wildlife, Fisheries, and Parks, Louisiana Department of Wildlife and Fisheries, Alabama Department of Conservation and Natural Resources, Georgia Department of Natural Resources, South Dakota Department of Game, Fish, and Parks, Pennsylvania Game Commission, two organizations, and five individuals supported the proposal to extend the duck hunting framework opening and closing dates to the Saturday nearest September 24 and the last Sunday in January.

The Minnesota Department of Natural Resources, Illinois Department of Natural Resources, Nebraska Game and Parks Commission, Kansas Department of Wildlife and Parks, Missouri Department of Conservation, Ohio Department of Natural Resources, Wyoming Game and Fish Department, 10 organizations, and 39 individuals opposed the extension of framework opening and closing dates. The Illinois Department of Natural Resources also indicates that if the Service decides to extend framework dates, they recommend that mid-latitude states be offered 7 additional days in season length for ''restrictive'' and ''moderate'' packages.

The Florida Fish and Wildlife Conservation Commission recommended a fixed framework closing date of January 31.

The Maryland Department of Natural Resources recommended fixed framework dates of an October 1 opening, a January 31 closing in the ''liberal'' regulatory alternative, and a January 20 closing in the other alternatives.

The South Carolina Department of Natural Resources supported the extension of framework dates, except that the closing date should be a fixed date of January 31.

The Oklahoma Department of Wildlife Conservation and 1 individual supported the proposed extension of the framework opening date, but opposed extension of the closing date.

The Connecticut Department of Environmental Protection opposed the extension of the framework opening date and recommended that any framework-date changes be limited to the ''liberal'' regulatory alternative.

One organization and one individual opposed the extension of the framework opening date. Three individuals opposed any reductions in season length. Eight individuals requested that both season length and bag limit be reduced. One individual requested that the ''liberal'' regulatory alternative not be used. Four individuals requested a longer duck season with a lower daily bag limit. One individual requested a lower daily bag limit. Five individuals recommended several season-length and/or bag-limit modifications to the regulatory alternatives.

*Service Response:* We have decided to implement the framework-date extensions for the ''moderate'' and ''liberal'' regulatory alternatives as proposed in the March 19, 2002 **Federal Register**. In the absence of more definitive information, we are assuming that harvest rates of mid-continent and eastern mallards will increase by 15 percent and 5 percent, respectively. These projected increases will be taken into account in the selection of a regulatory alternative for the 2002–03 hunting season. Projected changes in mallard harvest rates will be revised next year after estimates of harvest rates resulting from implementation of the framework-date extensions become available. Our ability to predict changes in the mortality and reproductive rates of other duck stocks that might occur as a result of the framework-date extensions is limited. However, changes in harvest of all duck stocks will be closely monitored and regulatory action will be taken if adverse impacts are perceived.

We also considered the requests to modify the set of regulatory alternatives in other ways. However, we have decided not to implement any of these changes until a more comprehensive review of the regulatory alternatives and harvest-management objectives has been completed (see our response under A. General Harvest Strategy).

Therefore, for the 2002–03 hunting season, there will be no modifications to the four regulatory alternatives proposed in the March 19 **Federal Register** (see accompanying table for specifics). Alternatives are specified for each Flyway and are designated as ''VERY RES'' for the very restrictive, ''RES'' for the restrictive, ''MOD'' for the moderate, and ''LIB'' for the liberal alternative. We will propose the choice of regulatory alternative for the 2002–03 hunting season in August.

D. Special Seasons/Species Management

i. September Teal Seasons

*Council Recommendations:* The Central Flyway Council recommended that the geographic boundaries for the September teal season in Colorado be amended to include Lake and Chaffee Counties and all lands east of I–25.

*Service Response:* We concur with the Central Flyway Council's recommendation for a geographic boundary change for the September teal season in the Central Flyway portion of Colorado. The change is included in the framework proposed.

iv. Canvasbacks

*Council Recommendations:* The Pacific Flyway Council recommended annotation in the Service's Canvasback Harvest Strategy that Alaska will retain fixed frameworks in lieu of annual prescriptions.

*Service Response:* We concur with the Pacific Flyway Council's recommendation.

*4. Canada Geese*

A. Special Seasons

*Council Recommendations:* The Atlantic Flyway Council recommended that Georgia and Lake Seminole in Florida be offered an early Canada goose hunting season not to exceed 30 days between September 1–30, with a bag limit not to exceed 5 geese daily (10 in possession). They further recommended that Connecticut's Special September Canada goose season framework be extended from September 25 to September 30.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that Minnesota be allowed to continue their experimental special September experimental Canada goose season (1-week extension) in 2002 while the 3-year evaluation is being completed.

*Service Response:* We concur with the Atlantic Flyway Council's recommended changes. The addition of Georgia and Lake Seminole in Florida will have no impact to migrant Canada geese and would allow the harvest of resident Canada geese during their September teal season. Regarding Connecticut's special September Canada goose season, leg-band recoveries and neck-collar observations suggest few migrants are available. Additionally, this season would be experimental.

We also concur with the extension of Minnesota's experimental special season to allow completion of the evaluation.

B. Regular Seasons

*Council Recommendations:* The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2002.

*Service Response:* We concur with the earlier regular Canada goose season opening dates in Michigan and Wisconsin.

*9. Sandhill Cranes*

*Council Recommendations:* The Central Flyway Council recommended accepting the 2002 Rocky Mountain sandhill crane population harvest allocation of 833 birds as proposed by the Pacific Flyway. However, during the next revision of the Cooperative Population Management Plan, the Council desires a better definition of what factors will be used to determine when a survey should be considered unreliable.

The Pacific Flyway Council recommended establishing an experimental season for Rocky Mountain Population sandhill cranes for 2002–03, in Uintah County, Utah. The framework for the 30-day season would be September 1 to January 31, 2003, with a bag limit not to exceed 3 daily and 9 per season. Participants must have a valid permit, issued by the appropriate State, in their possession while hunting. Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils.

*Service Response:* The Service concurs with the recommended changes.

*14. Woodcock*

*Council Recommendations:* The Atlantic Flyway Council recommended that the hunting regulations framework dates for American woodcock in the Eastern Region be changed back to the pre-1997 dates of October 1 to January 31.

*Service Response:* In 1997, the framework opening date for American woodcock in the Eastern Region was changed from October 1 to October 6. This change, coupled with a reduction in the season length from 45 days to 30 days, was made in an effort to reduce overall harvest. An analysis of daily wing-receipt data suggests that changing the framework opening date back to October 1 likely will not result in a meaningful increase in harvest, given that the season length is only 30 days. Therefore, we concur with the Council's recommendation.

*17. White-Winged and White-Tipped Doves*

*Council Recommendations:* The Central Flyway Council recommended that the hunting area for white-winged doves be expanded from its current area in New Mexico and Texas to include the remainder of the Central Flyway States that are in the Central Management Unit. The white-winged dove season should run concurrently with the mourning dove season with an aggregate bag.

*Service Response:* We concur with the Council's recommendation to allow all Central-Flyway states in the Central Management Unit to select a white-winged dove season that runs concurrently with the mourning dove season with an aggregate bag limit. However, we believe that this change should apply to all States in the Central Management Unit, rather than just those in the Central-Flyway portion of the unit.

**Public Comment Invited**

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, nongovernmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under the caption **ADDRESSES.**

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified is contrary to the public interest.

Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. However, as in the past, we will summarize all comments received during the comment period and respond to them in the final rule.

**NEPA Consideration**

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under the caption **ADDRESSES.**

**Endangered Species Act Consideration**

Prior to issuance of the 2002–03 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemakings.

**Executive Order 12866**

While this individual supplemental rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under Executive Order 12866. Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including

answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

**Regulatory Flexibility Act**

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 1998. Copies of the Analysis are available upon request from the address indicated under the caption **ADDRESSES.**

**Small Business Regulatory Enforcement Fairness Act**

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808 (1).

**Paperwork Reduction Act**

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned control number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned control number 1018–0023 (expires 07/31/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Unfunded Mandates Reform Act**

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this proposed rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

**Civil Justice Reform—Executive Order 12988**

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

**Energy Effects—Executive Order 13211**

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this supplemental proposed rule is not expected to significantly affect energy supplies, distribution, or use, this proposed action is not a significant energy action and no Statement of Energy Effects is required.

**Takings Implication Assessment**

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges, and, therefore, reduces restrictions on the use of private and public property.

**Federalism Effects**

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2002–03 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a-j.

Dated: July 9, 2002.

**Paul Hoffman,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

**Proposed Regulations Frameworks for 2002–03 Early Hunting Seasons on Certain Migratory Game Birds**

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposed frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates

within which States may select hunting seasons for certain migratory game birds between September 1, 2002, and March 10, 2003.

**General**

*Dates:* All outside dates noted below are inclusive.

*Shooting and Hawking (taking by falconry) Hours:* Unless otherwise specified, from one-half hour before sunrise to sunset daily.

*Possession Limits:* Unless otherwise specified, possession limits are twice the daily bag limit.

**Flyways and Management Units**

*Waterfowl Flyways*

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

**Management Units**

*Mourning Dove Management Units*

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

*Woodcock Management Regions*

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

**Special September Teal Season**

*Outside Dates:* Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

*Atlantic Flyway*—Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia. All seasons are experimental.

*Mississippi Flyway*—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

*Central Flyway*—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas. The season in Nebraska is experimental.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days. The daily bag limit is 4 teal.

Shooting Hours

*Atlantic Flyway*—One-half hour before sunrise to sunset except in Maryland, where the hours are from sunrise to sunset.

*Mississippi and Central Flyways*—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

**Special September Duck Seasons**

Florida, Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

*Iowa:* Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 21). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

**Special Youth Waterfowl Hunting Days**

*Outside Dates:* States may select two consecutive days (hunting days in Atlantic Flyway States with compensatory days) per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

*Daily Bag Limits:* The daily bag limits may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

*Shooting Hours:* One-half hour before sunrise to sunset.

*Participation Restrictions:* Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult could not duck hunt but may participate in other seasons that are open on the special youth day.

**Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)**

*Outside Dates:* Between September 15 and January 20.

*Hunting Seasons and Daily Bag Limits:* Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea-duck species, of which no more than 4 may be scoters.

*Daily Bag Limits During the Regular Duck Season:* Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

*Areas:* In all coastal waters and all waters of rivers and streams seaward

from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

**Special Early Canada Goose Seasons**

*Atlantic Flyway*

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland and Delaware. Seasons not to exceed 20 days during September 1–20 may be selected for the Northeast Hunt Unit of North Carolina. Seasons not to exceed 30 days during September 1–30 may be selected by New Jersey. Except for experimental seasons described below, seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

*Daily Bag Limits:* Not to exceed 5 Canada geese.

Experimental Seasons

Experimental Canada goose seasons of up to 25 days during September 1–25 may be selected for the Montezuma Region of New York and the Lake Champlain Region of New York and Vermont. Experimental seasons of up to 30 days during September 1–30 may be selected by Connecticut, Florida, Georgia, New York (Long Island Zone), North Carolina (except in the Northeast Hunt Unit), Rhode Island, and South Carolina. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

*Daily Bag Limits:* Not to exceed 5 Canada geese.

*Mississippi Flyway*

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Experimental Seasons

An experimental Canada goose season of up to 7 consecutive days during September 16–22 may be selected by Minnesota, except in the Northwest Goose Zone. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 2 Canada geese.

*Central Flyway*

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Experimental Seasons

An experimental Canada goose season of up to 14 consecutive days during September 16–27 may be selected by South Dakota. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 10 consecutive days during September 22–30 may be selected by Oklahoma. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 7 consecutive days during September 16–20 may be selected by North Dakota. The daily bag limit may not exceed 5 Canada geese.

*Pacific Flyway*

General Seasons

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Colorado may select a 9-day season during the period of September 1–15 in Grand County, excluding Shadow Mountain Reservoir, and that portion of Summit County north of U.S. Interstate 70. The daily bag limit is 3.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW goose management zone in Oregon, a 15-day season may be selected during the period September 1–20. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 7-day season in the special East Canada Goose Zone, as described in State regulations, during the period September 1–15. All participants must have a valid State permit, and the total number of permits issued is not to exceed 110 for this zone. The daily bag limit is 2.

Idaho may select a 7-day Canada Goose Season during the period September 1–15 in Nez Perce County, with a bag limit of 4.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

2. All participants must have a valid State permit for the special season.

3. A daily bag limit of 3, with season and possession limits of 6, will apply to the special season.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

**Regular Goose Seasons**

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

**Sandhill Cranes**

Regular Seasons in the Central Flyway:

*Outside Dates:* Between September 1 and February 28.

*Hunting Seasons:* Seasons not to exceed 37 consecutive days may be selected in designated portions of North Dakota (Area 2) and Texas (Area 2). Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

*Daily Bag Limits:* 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

*Permits:* Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

*Special Seasons in the Central and Pacific Flyways:* Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

*Outside Dates:* Between September 1 and January 31.

*Hunting Seasons:* The season in any State or zone may not exceed 30 days.

*Bag limits:* Not to exceed 3 daily and 9 per season.

*Permits:* Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

*Other provisions:* Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils with the following exceptions:

1. In Utah, the requirement for monitoring the racial composition of the harvest in the experimental season is waived, and 100 percent of the harvest will be assigned to the RMP quota;

2. In Arizona, the annual requirement for monitoring the racial composition of the harvest is changed to once every 3 years;

3. In Idaho, seasons are experimental, and the requirement for monitoring the racial composition of the harvest is waived; 100 percent of the harvest will be assigned to the RMP quota; and

4. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

**Common Moorhens and Purple Gallinules**

*Outside Dates:* Between September 1 and January 20 in the Atlantic Flyway, and between September 1 and the Sunday nearest January 20 (January 19) in the Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

*Hunting Seasons and Daily Bag Limits:* Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

*Zoning:* Seasons may be selected by zones established for duck hunting.

**Rails**

*Outside Dates:* States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

*Hunting Seasons:* The season may not exceed 70 days, and may be split into 2 segments.

*Daily Bag Limits:* Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

**Common Snipe**

*Outside Dates:* Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

*Hunting Seasons and Daily Bag Limits:* Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

*Zoning:* Seasons may be selected by zones established for duck hunting.

**American Woodcock**

*Outside Dates:* States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 21) and January 31.

*Hunting Seasons and Daily Bag Limits:* Seasons may not exceed 30 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

*Zoning:* New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

**Band-Tailed Pigeons**

*Pacific Coast States (California, Oregon, Washington, and Nevada)*

*Outside Dates:* Between September 15 and January 1.

*Hunting Seasons and Daily Bag Limits:* Not more than 9 consecutive days, with a daily bag limit of 2 band-tailed pigeons.

*Zoning:* California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

*Four-Corners States (Arizona, Colorado, New Mexico, and Utah)*

*Outside Dates:* Between September 1 and November 30.

*Hunting Seasons and Daily Bag Limits:* Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

*Zoning:* New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

**Mourning Doves**

*Outside Dates:* Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

*Eastern Management Unit*

*Hunting Seasons and Daily Bag Limits:* Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

*Zoning and Split Seasons:* States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, and Louisiana, may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

*Central Management Unit*

*Hunting Seasons and Daily Bag Limits:* Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

*Zoning and Split Seasons:* States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Daily bag limits are aggregate bag limits with mourning, white-winged, and white-tipped doves (see white-winged dove frameworks for specific daily bag limit restrictions).

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

*Western Management Unit*

*Hunting Seasons and Daily Bag Limits:* Idaho, Oregon, Utah, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves.

Nevada—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves, except in Clark and Nye Counties where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is 10 mourning doves. In California, the daily bag limit is 10 mourning doves, except in Imperial, Riverside, and San Bernardino Counties where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

**White-Winged and White-Tipped Doves**

*Hunting Seasons and Daily Bag Limits*

Except as shown below, seasons must be concurrent with mourning dove seasons.

*Eastern Management Unit*

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the remainder of the Eastern Management Unit, the season is closed.

*Central Management Unit*

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which no more than 2 may be white-tipped doves. In addition, Texas also may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

In the remainder of the Central Management Unit, the daily bag limit may not exceed 12 (15 under the alternative) mourning and white-winged doves in the aggregate.

*Western Management Unit*

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In the remainder of the Western Management Unit, the season is closed.

**Alaska**

*Outside Dates:* Between September 1 and January 26.

*Hunting Seasons:* Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

*Closures:* The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

*Daily Bag and Possession Limits*

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24, respectively. The basic limits may include no more than 1 canvasback daily and 3 in possession and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese—A basic daily bag limit of 3 and a possession limit of 6.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16. A special, permit-only Canada goose season may be offered on Middleton Island. No more than 10 permits can be issued. A mandatory goose identification class is required. Hunters must check-in and check-out. Bag limit of 1 daily and 1 in possession. Season to close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

2. In Unit 10 (except Unimak Island), the taking of Canada geese is prohibited.

3. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limits of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1–October 31.

3. In Game Management Unit (GMU) 17, an experimental season may be selected. No more than 200 permits may be issued for this during the experimental season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season. An evaluation of the season must be completed, adhering to the guidelines for experimental seasons as described in the Pacific Flyway Management Plan for

the Western Population of (tundra) Swans.

4. In Game Management Unit (GMU) 18, no more than 500 permits may be issued during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 22, no more than 300 permits may be issued during the operational season. Each permittee may be authorized to take up to 3 tundra swan per permit. No more than 1 permit may be issued per hunter per season.

6. In GMU 23, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season.

**Hawaii**

*Outside Dates:* Between October 1 and January 31.

*Hunting Seasons:* Not more than 65 days (75 under the alternative) for mourning doves.

*Bag Limits:* Not to exceed 15 (12 under the alternative) mourning doves.

**Note:** Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

**Puerto Rico**

*Doves and Pigeons*

*Outside Dates:* Between September 1 and January 15.

*Hunting Seasons:* Not more than 60 days.

*Daily Bag and Possession Limits:* Not to exceed 10 Zenaida, mourning, and white-winged doves in the aggregate. Not to exceed 5 scaly-naped pigeons.

*Closed Areas:* There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

*Ducks, Coots, Moorhens, Gallinules, and Snipe*

*Outside Dates:* Between October 1 and January 31.

*Hunting Seasons:* Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

*Daily Bag Limits*

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

*Closed Seasons:* The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

*Closed Areas:* There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

**Virgin Islands**

*Doves and Pigeons*

*Outside Dates:* Between September 1 and January 15.

*Hunting Seasons:* Not more than 60 days for Zenaida doves.

*Daily Bag and Possession Limits:* Not to exceed 10 Zenaida doves.

*Closed Seasons:* No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

*Closed Areas:* There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

*Local Names for Certain Birds:* Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

*Ducks*

*Outside Dates:* Between December 1 and January 31.

*Hunting Seasons:* Not more than 55 consecutive days.

*Daily Bag Limits:* Not to exceed 6.

*Closed Seasons:* The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

**Special Falconry Regulations**

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

*Extended Seasons:* For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

*Framework Dates:* Seasons must fall between September 1 and March 10.

*Daily Bag and Possession Limits:* Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

*Regular Seasons:* General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

**Area, Unit, and Zone Descriptions**

*Mourning and White-Winged Doves*

Alabama

South Zone—Baldwin, Barbour, Coffee, Conecuh, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Georgia

Northern Zone—That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County; thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County, to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the

western border of Evans to Candler County; thence east along the northern border of Evans County to U.S. Highway 301; thence northeast along U.S. Highway 301 to the South Carolina line.

South Zone—Remainder of the State.

Louisiana

North Zone—That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone—The remainder of the State.

Nevada

White-winged Dove Open Areas—Clark and Nye Counties.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

*Band-tailed Pigeons*

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

**Washington**

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

*Woodcock*

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

**Special September Canada Goose Seasons**

*Atlantic Flyway*

Connecticut

North Zone—That portion of the State north of I–95.

Maryland

Eastern Unit—Anne Arundel, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties, and those portions of Baltimore, Howard, and Prince George's Counties east of I–95.

Western Unit—Allegany, Carroll, Frederick, Garrett, Montgomery, and Washington Counties, and those portions of Baltimore, Howard, and Prince George's Counties west of I–95.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone—Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Counties of Bertie, Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

South Carolina

Early-season Hunt Unit—Clarendon County and those portions of Orangeburg County north of SC Highway 6 and Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S–8–31 and west of the Santee Dam.

Vermont

*Lake Champlain Zone:* The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

*Interior Zone:* That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending

from the Massachusetts border at Interstate 91; north along Interstate 91 to US 2; east along US 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

*Connecticut River Zone:* The remaining portion of Vermont east of the Interior Zone.

*Mississippi Flyway*

Illinois

Northeast Canada Goose Zone—Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

*North Zone:* That portion of the State outside the Northeast Canada Goose Zone and north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

*Central Zone:* That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

*South Zone:* The remainder of Illinois.

Iowa

*North Zone:* That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

*South Zone:* The remainder of Iowa.

Michigan

*North Zone:* The Upper Peninsula.

*Middle Zone:* That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

*South Zone:* The remainder of Michigan.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone—That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

*Central Flyway*

Kansas

September Canada Goose Kansas City/Topeka Unit—That part of Kansas bounded by a line from the Kansas-Missouri State line west on K–68 to its junction with K–33, then north on K–33 to its junction with U.S.-56, then west on U.S.-56 to its junction with K–31, then west-northwest on K–31 to its junction with K–99, then north on K–99 to its junction with U.S.-24, then east on U.S.-24 to its junction with K–63, then north on K–63 to its junction with K–16, then east on K–16 to its junction with K–116, then east on K–116 to its junction with U.S.-59, then northeast on U.S.-59 to its junction with the Kansas-Missouri line, then south on the Kansas-Missouri line to its junction with K–68.

September Canada Goose Wichita Unit—That part of Kansas bounded by a line from I–135 west on U.S. 50 to its junction with Burmac Road, then south on Burmac Road to its junction with 279 Street West (Sedgwick/Harvey County line), then south on 279 Street West to its junction with K–96, then east on K–96 to its junction with K–296, then south on K–296 to its junction with 247 Street West, then south on 247 Street West to its junction with U.S.-54, then west on U.S.-54 to its junction with 263 Street West, then south on 263 Street West to its junction with K–49, then south on K–49 to its junction with 90 Avenue North, then east on 90 Avenue North to its junction with KS–55, then east on KS–55 to its junction with KS–15, then east on KS–15 to its junction with U.S.-77, then north on U.S.-77 to its junction with Ohio Street, then north on Ohio to its junction with KS–254, then east on KS–254 to its junction with KS–196, then northwest on KS–196 to its junction with I–135, then north on I–135 to its junction with U.S.-50.

South Dakota

September Canada Goose North Unit—Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts County.

September Canada Goose South Unit—Beadle, Brookings, Hanson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, and Turner Counties,

*Pacific Flyway*

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Area 1—Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone)—Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum counties.

Area 2B (SW Quota Zone)—Pacific and Grays Harbor counties.

Area 3—All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4—Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5—All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Teton Area—Those portions of Teton County described in State regulations.

Bridger Valley Area—The area described as the Bridger Valley Hunt Unit in State regulations.

**Ducks**

*Atlantic Flyway*

New York

*Lake Champlain Zone:* The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

*Long Island Zone:* That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

*Western Zone:* That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

*Northeastern Zone:* That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

*Southeastern Zone:* The remaining portion of New York.

*Mississippi Flyway*

Indiana

*North Zone:* That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

*Ohio River Zone:* That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S.

Highway 50, then northeast along U.S. 50 to the Ohio border.

*South Zone:* That portion of the State between the North and Ohio River Zone boundaries.

Iowa

*North Zone:* That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

*South Zone:* The remainder of Iowa.

*Central Flyway*

Colorado

*Special Teal Season Area:* Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

*High Plains Zone:* That portion of the State west of U.S. 283.

*Low Plains Early Zone:* That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S. 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S. 183, south along U.S. 183 to KS 4, east along KS 4 to I–135, south along I–135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

*Low Plains Late Zone:* The remainder of Kansas.

Nebraska

Special Teal Season Area: That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A; east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

New Mexico (Central Flyway Portion)

*North Zone:* That portion of the State north of I–40 and U.S. 54.

*South Zone:* The remainder of New Mexico.

*Pacific Flyway*

California

*Northeastern Zone:* In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada state line ; north along the California-Nevada state line to the junction of the California-Nevada-Oregon state lines west along the California-Oregon line state to the point of origin.

*Colorado River Zone:* Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

*Southern Zone:* That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

*Southern San Joaquin Valley Temporary Zone:* All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

*Balance-of-the-State Zone:* The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

**Canada Geese**

*Michigan*

*North Zone:* The Upper Peninsula.

*Middle Zone:* That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

*South Zone:* The remainder of Michigan.

**Sandhill Cranes**

*Central Flyway*

Colorado

The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance and Bernallilo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I–25; on the north by I–25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone—Sierra, Luna, Dona Ana Counties, and those portions of Grant and Hidalgo Counties south of I–10.

Oklahoma

That portion of the State west of I–35.

Texas

Area 1—That portion of the State west of a line beginning at the International Bridge at Laredo, north along I–35 to the Oklahoma border.

Area 2—That portion of the State east and south of a line from the International Bridge at Laredo northerly along I–35 to U.S. 290; southeasterly along U.S. 290 to I–45; south and east on I–45 to State Highway 87, south and east on TX 87 to the channel in the Gulf of Mexico between Galveston and Point Bolivar; EXCEPT: That portion of the State lying within the area bounded by the Corpus Christi Bay Causeway on U.S. 181 at Portland; north and west on U.S. 181 to U.S. 77 at Sinton; north and east along U.S. 77 to U.S. 87 at Victoria; east and south along U.S. 87 to Texas Highway 35; north and east on TX 35 to the west end of the Lavaca Bay Bridge; then south and east along the west shoreline of Lavaca Bay and Matagorda Island to the Gulf of Mexico; then south and west along the shoreline of the Gulf of Mexico to the Corpus Christi Bay Causeway.

North Dakota

Area 1—That portion of the State west of U.S. 281.

Area 2—That portion of the State east of U.S. 281.

South Dakota

That portion of the State west of U.S. 281.

Montana

The Central Flyway portion of the State except that area south of I–90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—Portions of Park and Big Horn Counties.

*Pacific Flyway*

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area—See State regulations.

Utah

Special-Season Area—Rich, Cache, and Unitah Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Eden-Farson Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10 (Unimak Island only).

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

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## FINAL REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2002-03 SEASON

| | ATLANTIC FLYWAY | | | | MISSISSIPPI FLYWAY | | | | CENTRAL FLYWAY (a) | | | | PACIFIC FLYWAY (b)(c) | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | VERY RES | RES | MOD | LIB | VERY RES | RES | MOD | LIB | VERY RES | RES | MOD | LIB | VERY RES | RES | MOD | LIB |
| Beginning Shooting Time | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise |
| Ending Shooting Time | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset |
| Opening Date | Oct. 1 | Oct. 1 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 | Sat. nearest Oct. 1 | Sat. nearest Oct. 1 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 | Sat. nearest Oct. 1 | Sat. nearest Oct. 1 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 | Sat. nearest Oct. 1 | Sat. nearest Oct. 1 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 |
| Closing Date | Jan. 20 | Jan. 20 | Last Sunday in Jan. | Last Sunday in Jan. | Sun. nearest Jan. 20 | Sun. nearest Jan. 20 | Last Sunday in Jan. | Last Sunday in Jan. | Sun. nearest Jan. 20 | Sun. nearest Jan. 20 | Last Sunday in Jan. | Last Sunday in Jan. | Sun. nearest Jan. 20 | Sun. nearest Jan. 20 | Last Sunday in Jan. | Last Sunday in Jan. |
| Season Length (in days) | 20 | 30 | 45 | 60 | 20 | 30 | 45 | 60 | 25 | 39 | 60 | 74 | 38 | 60 | 86 | 107 |
| Daily Bag/ Possession Limit | 3<br>6 | 3<br>6 | 6<br>12 | 6<br>12 | 3<br>6 | 3<br>6 | 6<br>12 | 6<br>12 | 3<br>6 | 3<br>6 | 6<br>12 | 6<br>12 | 4<br>8 | 4<br>8 | 7<br>14 | 7<br>14 |
| **Species/Sex Limits within the Overall Daily Bag Limit** | | | | | | | | | | | | | | | | |
| Mallard (Total/Female) | 3/1 | 3/1 | 4/2 | 4/2 | 2/1 | 2/1 | 4/1 | 4/2 | 3/1 | 3/1 | 5/1 | 5/2 | 3/1 | 3/1 | 5/2 | 7/2 |
| Pintail | <----------ACCORDING TO THE PINTAIL INTERIM HARVEST STRATEGY----------> | | | | | | | | | | | | | | | |
| Black Duck | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | - | - | - | - | - | - | - | - |
| Scaup (d) | <----------TO BE DETERMINED BASED ON CURRENT SCAUP STATUS INFORMATION----------> | | | | | | | | | | | | | | | |
| Canvasback | <----------0 OR 1, ACCORDING TO THE CANVASBACK HARVEST STRATEGY----------> | | | | | | | | | | | | | | | |
| Redhead | 2 | 2 | 2 | 2 | 1 | 1 | 2 | 2 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 |
| Wood Duck | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | - | - | - | - |
| Whistling Ducks | 1 | 1 | 1 | 1 | - | - | - | - | - | - | - | - | - | - | - | - |
| Harlequin | Closed | Closed | Closed | Closed | - | - | - | - | - | - | - | - | - | - | - | - |
| Mottled Duck | 1 | 1 | 1 | 1 | 3 | 3 | 3 | 3 | 1 | 1 | 1 | 1 | - | - | - | - |

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway with the exception of season length. Additional days would be allowed under the various alternatives as follows: very restrictive - 8, restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different than the remainder of the Pacific Flyway. The bag limit would be 5-7 under the very restrictive and restrictive alternatives, and 8-10 under the moderate and liberal alternatives. There would be no restrictions on pintails, and canvasback limits would follow those for the remainder of the Pacific Flyway. Under all alternatives, season length would be 107 days and framework dates would be Sep 1 - Jan 26.

(d) Scaup daily bag limits will be based on current scaup status information until an agreed upon harvest strategy is completed and implemented.

[FR Doc. 02–17937 Filed 7–16–02; 8:45 am]

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## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT JULY 17, 2002

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**Animal and Plant Health Inspection Service**
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## LIST OF PUBLIC LAWS

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**H.R. 327/P.L. 107–198**

Small Business Paperwork Relief Act of 2002 (June 28, 2002; 116 Stat. 729)

**S. 2578/P.L. 107–199**

To amend title 31 of the United States Code to increase the public debt limit. (June 28, 2002; 116 Stat. 734)

**Last List June 26, 2002**

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