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Wednesday
July 20, 1983

Federal Register

Selected Subjects

Air Pollution Control

Environmental Protection Agency

Banks, Banking

Federal Reserve System

Charter Flights

Civil Aeronautics Board

Conflict of Interests

General Services Administration

Fisheries

National Oceanic and Atmospheric Administration

Government Property Management

General Services Administration

Hazardous Waste

Environmental Protection Agency

Income Taxes

Internal Revenue Service

Manpower Training Programs

Employment and Training Administration

Marketing Agreements

Agricultural Marketing Service

Pesticides and Pests

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Radio

Federal Communications Commission

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Selected Subjects

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Navajo and Hopi Indian Relocation Commission

Surface Mining

Surface Mining Reclamation and Enforcement Office

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Federal Register

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the California raisin marketing agreement and order program. The amendment is favored by the required two-thirds majority of growers voting in a referendum. The amendment changes the method of establishing marketing policy and volume regulation to permit more timely responses to changing marketing conditions; changes committee composition and nomination procedures; abolishes the Executive Operations Committee and transfers its compliance responsibility to the Raisin Administrative Committee; adds provisions for export merchandising programs; provides authority for advertising and promotion programs; provides authority for crediting a handler's assessments for certain kinds of advertising and promotion; and provides authority to charge interest fees on delinquent assessments. The changes improve the effectiveness and operation of the program. The amendment is based on proposals submitted by the Committee which works with USDA in administering the program. These proposals were considered at a public hearing in August 1982. The referendum was conducted by the Department by mail ballot May 28-June 10, 1983.

EFFECTIVE DATE: July 20, 1983.

FOR FURTHER INFORMATION CONTACT:

Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA,

Washington, D.C. 20250, (202) 447-5053.

SUPPLEMENTARY INFORMATION: Prior documents in the proceeding: Notice of Hearing—Issued August 5, 1982, and published August 11, 1982 (47 FR 34790).

Notice of Recommended Decision—Issued March 29, 1983, and published April 6, 1983 (48 FR 14911).

Final Decision—Issued May 6, 1983, and published May 11, 1983 (48 FR 21147).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code, and therefore is not subject to the requirements of Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 989

Agricultural Marketing Service, Marketing Agreements and Orders, Grapes, Raisins, and California.

Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto. Except the findings as to the base period for parity computation, and except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed.

(a) Findings upon the basis of the hearing record.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendment of the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California.

Upon the basis of the record it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend

to effectuate the declared policy of the act;

(2) The order, as amended, and as hereby further amended, regulates the handling of raisins produced from grapes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of raisins produced from grapes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of raisins produced from grapes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make all of the amendatory provisions effective upon publication in the **Federal Register**. Any delay beyond that date would interfere with effective order administration. The marketing year begins August 1, and the improvements in program operations and procedures provided by the amendatory order should be utilized from the start of the 1983-84 season. The harvesting and drying of grapes usually begins in late August and producers and handlers need time to plan their 1983 operations accordingly. Also, some provisions of the amendatory order may require rulemaking and, therefore, should be made effective in time to enable the Raisin Administrative Committee to make such considerations before active raisin harvesting begins.

In view of the foregoing, it is hereby found and determined that good cause exists for making this amendatory order effective upon publication in the **Federal Register**, and that it would be contrary to the public interest to delay the

effective date of this order for 30 days after its publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559).

(c) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Raisins Produced from Grapes Grown in California" upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping covered by the said order, as amended, and as hereby further amended) who, during the period August 1, 1981 through July 31, 1982, handled not less than 50 percent of the volume of such raisins covered by the said order, as amended, and as hereby further amended, and

(2) The issuance of this amendatory order, amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who during the period August 1, 1981 through July 31, 1982 (which has been deemed to be a representative period), have been engaged within the State of California, in the production of grapes which were sun-dried or dehydrated by artificial means until they became raisins for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof the handling of raisins produced from grapes grown in California, shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended, as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. Section 989.10 is revised to read as follows:

§ 989.10 Varietal types.

"Varietal types" means raisins generally recognized as possessing characteristics differing from other raisins in a degree sufficient to make necessary or desirable separate identification and classification. Varietal types are the following: Natural (sun-dried) Seedless, Dipped Seedless, Golden Seedless, Muscats (including other raisins with seeds), Sultana, Zante Currant, Monukka, and Oleate and Related Seedless: *Provided*, That the

Committee may, subject to approval of the Secretary, change this list of varietal types.

§ 989.19 [Removed]

2. Section 989.19 is removed.

3. Section 989.22 is revised to read as follows:

§ 989.22 District.

"District" means any one of the geographical areas referred to in § 989.26, and designated in the rules and regulations.

4. Section 989.26 is revised to read as follows:

§ 989.26 Establishment and membership.

A Raisin Administrative Committee is hereby established consisting of 47 members of whom 35 shall represent producers, 10 shall represent handlers, 1 shall represent the cooperative bargaining association(s) and 1 shall be a public member. The producer members shall be selected as follows:

(a) Producer members representing the cooperative marketing association(s) shall be members of such association(s) engaged in the handling of raisins, each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year, and those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 35 by the ratio the cooperative marketing association(s) raisin acquisitions are to the acquisitions of all handlers during the preceding crop year.

(b) Producer members representing cooperative bargaining association(s) shall be members of such associations, and the number of those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 35 by the ratio the raisins acquired by handlers from bargaining association members are to the total acquisitions of all handlers during the preceding crop year.

(c) All other producer members who shall not be members of a cooperative bargaining association(s), cooperative marketing association(s) engaged in the handling of raisins which acquired 10 percent or more of the total acquisitions during the preceding crop year, nor sold for cash to cooperative marketing association(s), shall represent all producers not defined in paragraph (a) or (b) of this section and shall be selected in the number and, when appropriate, for the districts as designated in the rules and regulations.

(d) The handler members shall be divided into two groups and include the following:

(1) Handler members shall be selected from and represent cooperative marketing association(s) engaged in the handling of raisins each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year, and the number of those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 10 by the ratio of the cooperative marketing association(s) raisin acquisitions are to the total acquisitions of all handlers during the preceding crop year.

(2) The remaining handler members shall be selected from and represent all other handlers, which would include all independent handlers and small cooperative marketing association(s) who acquired less than 10 percent of the total raisin acquisitions during the preceding crop year. Handler nominees for this group shall be nominated by all handlers in the group in a manner determined by the Committee, with the approval of the Secretary, and specified in the rules and regulations.

(e) The "cooperative" bargaining association(s) member shall be selected from the cooperative bargaining association(s). The public member shall be nominated by the Committee and selected by the Secretary as public member.

(f) For each member of the Committee there shall be an alternate member who shall have the same qualifications as the member for whom he is an alternate.

§ 989.26a [Removed]

5. Section 989.26a is removed.

§ 989.26b [Removed]

6. Section 989.26b is removed.

§ 989.26c [Removed]

7. Section 989.26c is removed.

8. Section 989.27 is revised to read as follows:

§ 989.27 Eligibility.

No person shall be selected or continue to serve as a member or alternate member of the Committee who is not actively engaged in the business of the group which he represents either in his own behalf, or as an officer, agent, or employee of a business unit engaged in such business: *Provided*, That only producers, as defined in § 989.11, engaged as such with respect to the most recent grape crop, are eligible to serve on the Committee. Only handlers who packed or processed raisins during the then current crop year shall be eligible to represent handlers on the Committee. Any handler eligible to represent a particular group shall

continue to represent handlers for the entire term for which he was selected.

9. Section 989.28 is revised to read as follows:

§ 989.28 Term of office.

The term of office of all representatives serving on the Committee shall be for two years and shall end on April 30 of even numbered calendar years, but each such member and alternate member shall continue to serve until their successor is selected and has qualified.

10. Section 989.29 is revised to read as follows:

§ 989.29 Initial members and nomination of successor members.

(a) *Initial members.* Members and alternate members of the Committee serving immediately prior to the effective date of this amended subpart shall, if thereafter they are eligible, serve on the Committee until April 30, 1984, and until their respective successors have been selected and qualified.

(b) *Nominations for successor members.* Nominations for successor members and alternate members of the Committee shall be made as follows:

(1) The Committee shall notify the cooperative marketing association(s) engaged in handling not less than 10 percent of the total raisin acquisitions during the preceding crop year, and cooperative bargaining association(s), of the date by which nominations to fill member and alternate member positions shall be made. The Committee shall give reasonable publicity of a meeting or meetings of producers who are not members of cooperative bargaining association(s), or cooperative marketing association(s) which handled 10 percent or more of the total raisin acquisitions during the preceding crop year, and of independent handlers and cooperative marketing association(s) who handled less than 10 percent of the total raisin acquisitions during the preceding crop year, for the purpose of making nominations to fill the member and alternate member positions prescribed in § 989.26 (c) and (d): *Provided*, That member and alternate member nominations by independent handlers and cooperative marketing association(s) who acquired less than 10 percent of the total raisin acquisitions during the preceding crop year may be made to the Committee by mail in lieu of meetings.

(2) Any producer representing independent producers and producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin

acquisitions during the preceding crop year must have produced grapes which were made into raisins in the particular district for which he is nominated, to represent said district as a producer member or alternate producer member on the Committee. In the event any such nominees are engaged as producers in more than one district, they may be a nominee for only one district. One or more producers or producers affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year may be nominated for each such producer member or alternate member position. Each independent producer and producer affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall cast only one vote with respect to each position for which nominations are to be made. The person receiving the majority of the votes with respect to each such position to be filled shall be the person to be certified to the Secretary as the nominee. In the event no person receives a majority there shall be a run off vote between the two persons receiving the largest number of votes. The eligibility of each producer voting in a producer nomination meeting shall be certified by the Committee during or after the meeting, and in the event one or more producers who voted were not eligible and this may have affected the result of any nomination vote, another meeting with respect to such producer nominations shall be held.

(3) One or more eligible handlers for each handler position to be filled may be proposed for nomination to represent independent handlers and cooperative marketing association(s) which acquired less than 10 percent of the total raisin acquisitions during the preceding crop year on the Committee. Nominations shall be made by and from handlers, or employees, representatives or agents of handlers falling within such groups. Each handler shall cast only one vote with respect to each position for which nomination is to be made. The person receiving the most votes with respect to each handler member of handler alternate member position shall be the person to be certified to the Secretary as the nominee for each such position.

(4) Each vote cast shall be on behalf of the person voting, his agent, subsidiaries, affiliates, and representatives. Voting at each meeting shall be in person. The results of each ballot at each handler meeting shall be announced at that meeting. Voting at each meeting of producers shall be by

secret ballot. The results of the voting at producer meetings shall be announced by the Committee following the verifications of eligibility of those participating at such meetings.

(5) Each nomination shall be certified by the Committee to the Secretary on or before April 5 immediately preceding the commencement of the term of office of the member or alternate member position for which the nomination is certified.

11. Section 989.30 is revised to read as follows:

§ 989.30 Selection.

The Secretary shall select producer, handler, cooperative bargaining association(s), and public members and alternate members in the number specified in 989.26, as applicable, and with the qualifications specified in § 989.27. Such selections may be made from nominations certified pursuant to § 989.29 or from other eligible producers, handlers, or cooperative bargaining association(s) officers or employees.

12. Section 989.32 is revised to read as follows:

§ 989.32 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the Committee shall, prior to such selection, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

13. Section 989.35 is amended by adding a new paragraph (d) reading as follows:

§ 989.35 Powers.

(d) To receive, investigate, and report to the Secretary complaints of violations of this part.

14. Section 989.36 is amended by redesignating *seriatim* current paragraphs (b) through (k) as paragraphs (c) through (l), and adding a new paragraph (b) reading as follows:

§ 989.36 Duties.

(b) To investigate compliance and to use means available to it to prevent violations of this part.

15. Section 989.36(j), redesignated as § 989.36(k) is amended by removing the words "and the making of nominations to the Secretary for member and alternate member positions on the Executive Operations Committee".

16. Section 989.38 is amended by removing the phrase "Except as otherwise provided in § 989.45," from

the second sentence, and by removing the fifth sentence. As amended, § 989.38 reads as follows:

§ 989.38 Procedure.

The Committee shall meet at the call of the chairman, or vice-chairman when acting as chairman, or at the call of any three members. All decisions of the Committee reached shall be by majority vote of the members present. All votes shall be cast in person and a quorum must be present. The presence of 25 members shall be required to constitute a quorum. The Committee shall give to the Secretary the same notice of meetings of the Committee as it gives to its members.

§ 989.39 [Amended]

17. Section 989.39 is amended by removing the words "and the Executive Operations Committee," from the first sentence.

§§ 989.43 through 989.52 [Removed]

18. Sections 989.43 through 989.52 and the center heading "Executive Operations Committee" preceding § 989.43 are removed:

19. Section 989.53 is revised to read as follows:

§ 989.53 Research and development.

(a) *General.* The Committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving marketing research and development and marketing promotion including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption of raisins in domestic and foreign markets. These projects may include, but need not be limited to those designed to:

- (1) Improve through research the accuracy of raisin production estimates;
- (2) Improve through research the preparation for market, sanitation, quality, condition, storability, processing, or packaging of raisins;
- (3) Ascertain through research the factors affecting acceptance of raisins by manufacturers or consumers;
- (4) Promote the marketing, distribution, or consumption of raisins in domestic and foreign markets by collecting data thereon, consulting with members of the trade, and making the information available to producers, handlers, and exporters; and
- (5) Promote the marketing, distribution, or consumption of raisins in foreign markets through the use of merchandising programs.

The expense of any such project relating solely to free tonnage raisins shall be paid from funds collected

pursuant to § 989.80. The expense of any such project relating solely to reserve tonnage raisins shall be paid from the sale proceeds of such raisins. If any such project encompasses both free tonnage and reserve tonnage raisins, such as one which is designed to promote the consumption in export outlets of raisins generally on a long-term basis, the expense of the project may be allocated between the assessment fund and the pool fund.

(b) *Creditable expenditures.* The Committee, with the approval of the Secretary, may provide for crediting all or any portion of a handler's direct expenditures for marketing promotion, including paid advertising, that promotes the sale of raisins, raisin products, or their use. No handler shall receive credit for any allowable direct expenditures that would exceed the total of his assessment obligation which is attributable to that portion of his assessment designated for marketing promotion including paid advertising.

(c) *Criteria.* Before any project involving marketing promotion, including paid advertising, and the crediting of the handler's pro rata expense assessment obligation of handlers is undertaken pursuant to this section, the Secretary after recommendation by the Committee, shall approve appropriate criteria to effectively regulate such activity.

20. Section 989.54 is revised to read as follows:

§ 989.54 Marketing policy.

(a) *Trade demand.* On or before August 15 of each crop year, the Committee shall hold a meeting to review shipment data, inventory data, and other matters relating to the quantity of raisins of all varietal types. For any varietal type for which a free tonnage percentage may be recommended, the Committee shall compute a trade demand. The trade demand shall be 90 percent of the prior crop year's shipments (converted to a natural condition weight) of free tonnage and reserve tonnage sold for free use for that varietal type, into all market outlets, adjusted by the carryin on August 1 of the current crop year and the desirable carryout for the varietal type at the end of that crop year. If the prior year's shipments were limited because of crop conditions, the Committee may select the shipments of one of the three years preceding the prior crop year. The desirable carryout shall be increased from 35,000 to 50,000 tons for Natural (sun-dried) Seedless raisins at a rate of 5,000 tons per year for three crop years, following the effective date of this amended subpart.

The desirable carryout for Dipped Seedless raisins shall be 1,500 tons, and for Oleate and Related Seedless raisins, 1,500 tons. The trade demand computed by the Committee shall be announced by the Committee in accordance with paragraph (h) of this section.

(b) *Preliminary percentages.* On or before October 5 of each crop year (except that the Committee may extend this date not more than five business days if warranted by a late crop), the Committee shall estimate the production of any varietal type of raisins for which it has computed a trade demand. If the Committee determines that volume regulation is desirable during the crop year for that varietal type, it shall compute and announce preliminary free and reserve percentages for that varietal type. The Committee shall compute a preliminary free percentage to release 85 percent of the computed trade demand, if it determines that a field price has been established for that varietal type, or 65 percent of the trade demand if no field price has been established. The preliminary free percentage shall be computed by multiplying the trade demand by either 85 percent or 65 percent (as the case may be) and dividing the product by the estimated production of that varietal type and rounding the resulting percentage to the nearest full percent. The difference between 100 percent and the preliminary free percentage shall be the preliminary reserve percentage.

(c) *Interim percentages.* Prior to February 15, the Committee may modify the preliminary free and reserve percentages to release less than the trade demand.

(d) *Final percentages.* No later than February 15, the Committee shall recommend to the Secretary, final free and reserve percentages which will tend to release the full trade demand for any varietal type for which preliminary or interim percentages have been computed and announced. The difference between any final free percentage designated by the Secretary and 100 percent shall be the final reserve percentage. With its recommendation, the committee shall report on its consideration of the factors in paragraph (e) of this section.

(e) *Factors.* When computing preliminary and interim percentages, or determining final percentages for recommendation to the Secretary, the Committee shall give consideration to the following factors:

- (1) The estimated tonnage held by producers, handlers, and for the account of the Committee at the beginning of the crop year;

(2) The expected general quality and any modifications of the minimum grade standards;

(3) The estimated tonnage of standard and off-grade raisins which will be produced;

(4) If different than the computed trade demand, the estimated trade demand for raisins in free tonnage outlets;

(5) If not estimated as provided in paragraph (a) of this section, an estimated desirable carryout at the end of the crop year for free tonnage and, if applicable, for reserve tonnage;

(6) The estimated market requirements for raisins outside free tonnage outlets, considering the estimated world raisin supply and demand situation;

(7) Current prices being received and the probable general level of prices to be received for raisins by producers and handlers;

(8) The trend and level of consumer income;

(9) Any prohibition of trade practices, pursuant to § 989.62 intended for the crop year, and

(10) Any other pertinent factors bearing on the marketing of raisins including the estimated supply of and demand for other varietal types and regulations applicable thereto.

(f) *Modification.* In the event the Committee subsequently deems it advisable to modify its marketing policy on any crop, because of national emergency, crop failure, or other major change in economic conditions, it shall hold a meeting for that purpose, and file a report thereof with the Secretary within 5 days (exclusive of Saturdays, Sundays, and holidays) after the holding of such meeting, which report shall show such modification and the basis therefor.

(g) *Reserve tonnage to sell as free tonnage.* On or before November 15 of the crop year, the Committee shall make two simultaneous offers of reserve tonnage to handlers to sell as free tonnage for each varietal type for which preliminary percentages have been computed and announced. One offer shall consist of a quantity equal to 10 percent of the prior year's (or the alternative year selected by the Committee pursuant to paragraph (a) of this section) shipments of free tonnage and reserve tonnage sold for free use into all market outlets to equate the current year's supply with the prior year's shipments. This offer shall be allocated to handlers on the basis of their prior year's acquisitions. The

second offer, to provide for market expansion, shall consist of a quantity equal to 10 percent of the prior year's (or the alternative year selected by the Committee pursuant to paragraph (a) of this section) shipments of free tonnage and reserve tonnage sold for free use. This offer shall be allocated to handlers on the basis of their prior year's shipments of free tonnage and reserve tonnage sold for free use. Each offer shall be open to handlers not more than five business days, and subsequently, two offers of any tonnage unsold in the original offers open not more than two business days each, may be made. The reoffer tonnage shall be allocated to handlers who purchase 100 percent of their allocation in preceding offers, and shall be on the basis of the quantity each handler purchased, as a percentage of the total quantity purchased by all handlers eligible to participate. At the close of the second reoffer, any remaining tonnage may be offered to handlers who purchased all of their allocations from previous offers on a first-come first-served basis and such offer shall be open to handlers for one business day. Any handler who had no shipments or acquisitions of raisins during the prior crop year will be allocated raisins under these offers on the basis of his acquisition (up to the time the original offer is made) of raisins in the current crop year. If field prices are not established, the offer shall be made not more than fifteen days following such establishment. The price of reserve tonnage raisins offered to handlers to sell as free tonnage, pursuant to this paragraph, shall be the established field price for free tonnage raisins of that varietal type, plus 3 percent of the established field price, plus the estimated costs incurred by the Committee for equity holders.

(h) *Publicity.* The Committee shall promptly give reasonable publicity to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider a marketing policy or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each marketing policy report or modification thereof, filed with the Secretary and of the Secretary's action thereon. Copies of all marketing policy reports shall be maintained in the office of the Committee, where they shall be made available for examination by any producer, dehydrator, handler, or

cooperative bargaining association representative. The Committee shall notify handlers, dehydrators and the cooperative bargaining association(s), and give reasonable publicity to producers of its computation of the trade demand, preliminary percentages, and interim percentages and shall notify handlers, dehydrators, and the cooperative bargaining association(s) of the Secretary's action on percentages by registered or certified mail.

21. Section 989.55 is revised to read as follows:

§ 989.55 Regulation by the Secretary.

Whenever the Secretary finds, from the recommendation and supporting information supplied by the Committee or from other available information, that to designate final free and reserve percentages for any varietal type of standard raisins acquired by handlers, during the crop year will tend to effectuate the declared policy of the Act, the Secretary shall designate such percentages. In the event the Secretary finds that suspension or termination of any percentages computed by the Committee or designated by the Secretary tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such percentages.

22. Section 989.65 is revised to read as follows:

§ 989.65 Free and reserve tonnage.

The standard raisins acquired by handlers which are free tonnage, and any reserve tonnage purchased for free use, may be disposed of by him in any marketing channel, subject to the applicable provisions of this part. A handler's free tonnage of a varietal type of raisin shall be either the free percentage of the standard raisins of the varietal type acquired by him or all of the standard raisins of the varietal type acquired by him if no free percentage is established by the Committee or designated by the Secretary for that varietal type. A handler's reserve tonnage of a varietal type shall be the reserve percentage of the standard raisins of that varietal type acquired by him.

§ 989.66 [Amended]

23. Section 989.66 is amended by removing the proviso in paragraph (b)(1) and changing the punctuation after the word "control" from a colon (:) to a period (.).

§ 989.67 [Amended]

24. Section 989.67(j) is amended by

changing the reference from
"§ 989.54(d)" to "§ 989.54(g)".

§ 989.69 [Removed]

25. Section 989.69 is removed.

26. Section 989.73 is amended by redesignating current paragraph (c) as (d), and adding a new paragraph (c) reading as follows:

§ 989.73 Reports.

(c) Each handler shall file such reports of creditable promotion including paid advertising as recommended by the Committee and approved by the Secretary.

§ 989.76 [Amended]

27. Section 989.76 is amended by adding the following sentence at the end of that section reading as follows: The Committee, with the approval of the Secretary, may prescribe rules and regulations to include under this section handler records that detail promotion and advertising activities which the Committee may need to perform its functions under § 989.53.

§ 989.77 [Amended]

28. Section 989.77 is amended by adding at the end of the first sentences the phrase "and promotion and advertising activities conducted by handlers under § 989.53".

29. The first sentence of § 989.80(a) is amended by adding at the end of the sentence the words, "less any amounts credited pursuant to § 989.53".

30. Section 989.80 is revised by adding paragraph (d) to read as follows:

§ 989.80 Assessments.

(d) Each handler shall, with respect to administrative assessments not paid within 30 calendar days of the date of the Committee's invoice, pay to the Committee interest on the unpaid assessment at the rate of the prime rate established by the bank in which the Committee has its administrative assessment funds deposited, on the day that the administrative assessment becomes delinquent plus 2 percent; and further, that such rate of interest be added to the bill monthly until the delinquent handler's assessment plus applicable interest has been paid: *Provided*, That the Committee may, with the approval of the Secretary, modify the interest rate applicable to delinquent handler's assessment through the establishment of applicable rules and regulations.

§ 989.85 [Amended]

31. Section 989.85 is amended by removing the words "and no member or alternate member of the Executive Operations Committee".

§ 989.95 [Amended]

32. Section 989.95 is amended by removing the words: "and the Executive Operations Committee" from the first sentence; "or of the Executive Operations Committee" from the second sentence, and "or the Executive Operations Committee" from the third sentence.

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

Dated: July 14, 1983, to become effective upon publication in the Federal Register.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

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FEDERAL RESERVE SYSTEM

12 CFR Part 220

Credit by Brokers and Dealers; Comparison Chart of Old and New Regulation T Sections

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Regulation T Comparison Chart.

SUMMARY: On May 16, 1983, the Board approved a completely revised and simplified Regulation T. The new regulation is effective as of November 21, 1983 or any earlier date after June 20, 1983, at the option of the creditor. To facilitate an understanding of the new regulation, this chart provides a cross-reference of section numbers in the old Regulation T to their corresponding section numbers in the new regulation and vice versa. This chart will serve as an aid to persons tracing the regulatory treatment of specific issues addressed in Regulation T.

FOR FURTHER INFORMATION CONTACT: Douglas Blass, Attorney, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-2781.

SUPPLEMENTARY INFORMATION: The following comparison chart is being published as an aid to understanding the completely revised Regulation T.

COMPARISON CHART

Section comparison		Section comparison	
Old with new		New with old	
Sec.	Sec.	Sec.	Sec.
220.1	220.1(a)	220.1	220.1
220.2	220.2 (first sentence)	220.1(a)	220.3(a)
(a)	220.2(b)	220.1(b)(1)	220.7(e)
(b)	220.2(c)	220.1(b)(2)	
(c)	220.2(v)	220.2	
(d)	220.2(a)	First sentence	220.2(a)
(e)(1)	220.2(s)	(a)	Added
(2)	220.2(s)	(b)	220.2(b)
(3)	220.17(c)	(c)	220.2(c)
(4)	220.17(d)	(d)	Added
(5)	220.17(e)	(e)	Added
(f)	220.2(o)	(f)	Added
(g)	Deleted	(g)	Added
(h)	Deleted	(h)	Added
(i)	220.2(r)	(i)	Added
220.3		(j)	220.4(g)(2)(iv)
(a)	220.1(b)(1) and 220.4(a)	(k)	220.4(g)(2)(v)
(b)(1)(i)	220.4(b), (c) (1), (2), and (3)(i)	(l)	Added
(a)	Deleted	(m)	Added
(2)	220.4(e)	(n)	Added
		(o)	220.2(f)
		(p)	Added

COMPARISON CHART—Continued

Section comparison		Section comparison	
Old with new		New with old	
Sec.	Sec.	Sec.	Sec.
(3)	Deleted (incorporated in 220.4 and 5)	(q)	Added.
(c)(1)	220.4 (b) and (c)(1)	(r)	220.2(i).
(2)	220.4(b) and 18	(s)	220.2(e)(1), (2).
(3)	Deleted	(t)	220.4(g)(2)(ii).
(4)	220.3(g)	(u)(1)	Added.
(d)	220.4(b)	(u)(2)	220.6(k).
(1)	Deleted	(v)	220.2(d).
(2)	220.3(g) and 4(c)	(w)	Added.
(3)	220.5(b) and 18(d)	(x)	220.4(g)(2)(ii).
(4)	220.5(a)	(y)	220.4(g)(2)(ii).
(5)	220.5(c)		
(6)	Deleted	220.3	
(7)	Partially deleted and 220.5 (d) and (e)	(a)	220.4(a) (2) and 3(a).
(e)	220.4(c)(3) and (d)	(b)	220.3(a) and 4(a)(3).
(f)	220.4(c)(3)(ii)	(c)	220.7(b).
(g)(1)	220.4(c) (1) and (2)	(d)	220.6(c).
(2)	Deleted	(e)	220.6(f).
(3)	220.4(d)	(f)	220.6(e).
(4)	220.4(c)(4)	(g)	220.3(c)(4).
(5)	220.5(b)(2)	(h)	220.6(j).
(h)(1)	220.5(a)	(i)	220.7(f).
(2)	Deleted		
(i)(1)	220.5(c)(3), 18 (c), (g), (h) and (i) (with modification)	220.4	
(i) to (vi)	220.5(c)(3) (i) to (vi)	220.4(a)	220.3(a).
(2)	220.5(c)(4)(ii)	(1)	Added.
(3)	220.5(c)(4)(i)	(2)	Added.
(4)	220.5(c)(5)	(3)	Added.
(5)	220.5(c)(6)	(4)	220.3 (a), (b), (c), (d).
(6)	220.5(c)(6)	(c)(1)	220.3 (b), (c), (d), (g).
220.4		(2)	220.3 (b), (c), (d), (g).
(a)(1)	220.1(b)(1)	(3)	220.3(b)(1), (f).
(2)	220.3(a), (b) and 12(a)	(4)	220.3(g)(4).
(3)	220.3(b)	(d)	220.3(e), (g)(3).
(4)	Deleted	(e)(1)	220.3(b)(2).
(b)	220.10(a)	(2)	220.3(b)(2).
(1)	220.10(a)(1)	(3)	220.6(g)(2).
(2)	220.10(a) (1) and (2)	(f)(1)	220.6(g).
(c)(1)	220.8(a)	(2)	220.6(g)(2).
(i)	220.8(a)(1)		
(ii)	220.8(a)(2)	220.5	
(2)	220.8(b)(1)(i) and (4)	(a)(1)	220.3(h).
(3)	220.8(b)(1) (ii), (iii) and (iv)	(2)	220.3(h).
(4)	220.8(b)(3)	(b)(1)	220.3(d)(3).
(5)	220.8(b)(2)	(2)	220.3(d)(3).
(6)	220.8(d)	(c)(1)	220.4(i) (certain features added).
(7)	Partially deleted (incorporated in 220.8(b)(1), (1)(iv)(A), (2), (3), (4), (c)(1), and (2))	(2)	220.3(i)(1).
(8)	220.8 (c), (d)	(3) (i) to (vi)	220.3(i)(1) (i) to (vi).
(d)	220.7	(4)(i)	220.3(i)(3).
(e)	220.9(a)(1)	(5)	220.3(i)(2).
(f)(1)	220.11(a)(4)(ii)	(6)	220.3(i)(4).
(2)(i)	220.11(a)(3)	(d)	220.3(i) (5) and (6).
(ii)	220.11(a)(4)(i)	(e)	220.6(a).
(b)	220.11(a)(4)(ii)(A)	(f)(1)	220.6(b).
(iii)	220.11(a)(4)(ii)(B) (with modification)	(2)	220.6(d)(1).
(4)	220.11(b)		220.6(d)(2).
(3)	220.11(a)(1)	220.6	220.4(f)(6).
(5)	220.12(e)	220.7	
(6)	220.12(c)	220.7(1)	220.4(d)(1).
(7)	Deleted (transaction is permitted in 220.8)	(2)	220.4(d)(2).
(8)	220.9(a)(2)	220.8	
(9)	220.9(a)(3) and (b)	220.8(a)(1)	220.4(c)(1)(i).
(g)(1)	220.12(b)(1)	(2)	220.4(c)(1)(ii).
(2)(i)	220.2(x)	(3)	Added.
(ii)	220.2(y)	(4)(i)	Added.
(iii)	220.2(i)	(a)	Added.
(iv)	220.2(j)	(b)(1)(i)	220.4(c)(2).
(v)	220.2(k)	(ii)	220.4(c)(3).
(3)	220.12(b)(2)	(iv)	220.4(c)(3).
(i) to (vi)	220.12(b)(2) (i) to (vi)	(2)	220.4(c)(5).
(4)(i)	220.12(b)(3)(i) and (a)	(3)	220.4(c)(4).
(ii)	220.12(b)(3)(i) (with modification)	(4)	220.4(c)(2), (7).
(5)(i)	220.12(b)(3)(ii)	(c)(1)	220.4(c)(8).
(ii)	220.12(b)(3)(i) (with modification)	(2)	220.4(c)(8), (f)(6).
(iii)	220.12(b)(3)(ii) (with modification)	(d) (1) and (2)	220.4(c)(6), (8).
(6)	220.12(b)(4) (with modification)	220.9	
(7)	220.12(b)(6)	(a)(1)	220.4(e).
(8)	220.12(b)(5)	(a)(2)	220.4(f)(7).
(h)	Deleted	(a)(3)	220.4(f)(8).
(i)	Deleted (incorporated in 220.4 and 5(b)(1))	(b)	220.7(c).
(j)	Deleted (incorporated in 220.4)	220.10	220.4(b).

COMPARISON CHART—Continued

Section comparison		Section comparison	
Old with new		New with old	
Sec.	Sec.	Sec.	Sec.
(k)	Deleted	220.11	220.4(f)(3).
220.5		(a)(1)	Added.
(a)	220.14(a)	(a)(2)	220.4(f)(2)(i).
(b)	220.14(b)	(a)(3)	220.4(f)(1).
(c)	220.14(a)(3)	(a)(4)(i)	220.4(f)(2)(ii).
220.6		(a)(4)(ii)	220.4(f)(2)(ii).
(a)	220.5(d)	(b)	220.12
(b)	220.5(e)	(a)	Added.
(c)	220.3(d)	(b)(1)	220.4(g)(1).
(d)(1)	220.5(f)(1)	(2)	220.4(g)(3).
(2)	220.5(f)(2)	(i) to (vi)	220.4(g)(3) (i) to (vi).
(e)	220.3(f)(1) and (2)	(3)(i)	220.4(g)(4)(i), 5(i).
(f)(1)	220.3(e)(1)(i)	(i)	Added.
(2)	220.3(e)(1)(ii)	(ii)	220.4(g)(4)(ii), 5(ii).
(3)	220.3(e)(2) and (3)	(4)(i)	220.4(g)(6) (with modification).
(g)(1)	220.4(f)(1)	(i)	220.4(g)(6).
(2)	220.4(f)(2)	(ii)	220.4(g)(6).
(i)	Deleted	(5)	220.4(g)(8).
(a)	220.4(e)(1) and (f)(2)(i)	(6)	220.4(g)(7).
(ii)	220.4(e)(3) and (f)(2)(ii)	(c)	220.4(i)(5).
(h)	220.16	(d)	Added.
(i)	220.14(a)	(e)	220.4(f)(4).
(j)	220.3(h)	220.13	220.7(a).
(k)	220.2(i)(2)	(a)	220.7(a)(1).
220.7		(b)	220.7(a)(2).
220.7(a)	220.13	220.14	220.6(i).
(1)	220.13(a)	(a)	Added.
(2)	220.13(b)	(b)	
(b)	220.3(c)	220.15	220.5(a).
(c)	220.9(a)(3) and (b)	(a)	220.5(b).
(d)	220.1(b)(1) and 3(a)	(b)	
(e)	220.1(b)(2)	220.16	220.6(h).
(f)	220.3(i)	220.17	220.6(h).
220.8		(a)	220.6(i).
(a)	220.18 (first sentence)	(b)	220.2(e)(3).
(1)	220.18(a)	(c)	220.2(e)(4).
(2)	220.18(b)	(d)	220.2(e)(5).
(b)	220.18(b)	(e)	
(c)	220.18(a)	220.18	220.6(a)(1).
(d)	220.18(d)	(a)	220.6(a)(2), (b).
(e)	Deleted	(b)	220.6(i)(1).
(1)	Deleted	(c)	220.6(d).
(2)	Deleted	(d)	Added.
(3)	Deleted	(e)	220.3(c)(2) (with modifications).
(4)	Deleted	(f)	
(f)	Deleted	(g)(1)	220.6(i)(2).
(g)(1)	Deleted	(2)	220.6(i)(2).
(2)	Deleted	(h)	Added.
(3)	Deleted	(i)	Added.
(h)	220.17(a)		
(1)	220.17(a)(3)		
(2)	220.17(a)(1)		
(3)	220.17(a)(8)		
(4)	220.17(a)(9)		
(5)	220.17(a)(5)		
(6)	220.17(a)(4)		
(7)	220.17(a)(7)		
(8)	220.17(a)(2)		
(9)	220.17(a)(6)		
(i)	220.17(b)		
(1)	220.17(b)(3)		
(2)	220.17(b)(1)		
(3)	220.17(b)(7)		
(4)	220.17(b)(4)		
(5)	220.14(b)(6)		
(6)	220.17(b)(2)		
(7)	220.17(b)(5)		
(j)	220.18(c)		
(2)(i)	220.18(g)(1)		
(ii)	220.18(g)(2)		

Board of Governors of the Federal Reserve System, July 14, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-19569 Filed 7-19-83; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7901]

Income Tax; Taxable Years Beginning After December 31, 1953; Obligations of Certain Volunteer Fire Departments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to obligations of certain volunteer fire departments. Changes to the applicable tax law were made by section 812 of the Economic Recovery Tax Act of 1981. These regulations provide necessary guidance to issuers and holders of these obligations.

DATES: The amendments to the regulations are effective for obligations issued after December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Susan K. Thompson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3294).

SUPPLEMENTARY INFORMATION:

Background

On June 21, 1982, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 103(i) of the Internal Revenue Code of 1954 (47 FR 26686). The amendments were proposed to conform the regulations to section 812 of the Economic Recovery Tax Act of 1981 (95 Stat. 350). No public hearing was requested or held. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Consideration of Comments

Several commenters perceived an inequity between the inclusion of an organization organized and operated to provide emergency medical services within the definition of a qualified volunteer fire department under section 103(i)(2)(A) and the exclusion, under section 103(i)(1)(B), of the use of proceeds of an exempt obligation for any purpose relating to the furnishing of emergency medical services, i.e., for any purpose other than the acquisition, construction, reconstruction, or improvement of a firehouse or firetruck.

Because this limitation on the use of proceeds is set by statute, the Internal Revenue Service is powerless to expand the permissible uses of proceeds to encompass uses relating to the furnishing of emergency medical services. Any such expansion of the rules of section 103(i) would be beyond our regulatory authority and must await legislative action.

Another commenter objected to the rule set forth in § 1.103-16(c), relating to the determination whether "substantially all" of the proceeds of an issue are used for the specified purposes. Under § 1.103-16(c) of these final regulations, "substantially all" of the proceeds of an issue are so used if 90 percent or more of the proceeds are so used. Definition of "substantially all" as 90 percent is well established within the law pertaining to municipal finance. The term as thus defined is found throughout section 103 and the regulations under that section. The definition has been retained in these final regulations in order to ensure a consistent interpretation of this term. Language in paragraph (c) and a new example, § 1.103-16(e) Example (3), have been added to clarify the application of the "substantially all" test to the acquisition of a firehouse.

Another commenter inquired whether an obligation of a qualified volunteer fire department may also be an obligation described in section 103(b), relating to industrial development bonds. This commenter voiced the fear that, were this the case, qualified volunteer fire departments would be forced to seek section 501(c)(3) status in order to avail themselves of the exemption provided for "exempt persons" in section 103(b)(3)(B). This is unnecessary because the exemption provided for governmental units in section 103(b)(3)(A) applies to qualified volunteer fire departments. Section 1.103-7(b)(2) of the regulations relating to industrial development bonds states that the term "governmental unit" means a State or local governmental unit as defined in § 1.103-1. Section 1.103-1, in turn, provides that a "State or local governmental unit" refers to a State, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof. Section 103(i) provides that an obligation of a volunteer fire department is to be treated as an obligation of a political subdivision if the conditions prescribed by that section are fulfilled. Accordingly, the exemption provided for governmental units in section 103(b)(3)(A) applies to qualified volunteer fire departments and the exemption provided for exempt persons

in section 103(b)(3)(B) does not come into play.

Finally, two commenters have questioned whether a law or ordinance of a State, city, county, or municipality establishing, regulating, or funding a volunteer fire department will qualify as the "written agreement" required by section 103(i)(2)(B) and § 1.103-16(b)(2) of these final regulations. We have added language to this section of the proposed regulations to make it clear that such a law or ordinance may qualify as such an agreement.

Non-Application of Executive Order 12291

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 28, 1982.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for interpretative regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of this regulation is Susan K. Thompson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both substantively and stylistically.

List of Subjects in 26 CFR

1.61-1—1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

Adoption of amendments to the regulations

PART 1—[AMENDED]

Accordingly, the amendments to 26 CFR Part 1 are adopted as set forth below:

Title 26 CFR Part 1 is amended by adding a new § 1.103-16 immediately following § 1.103-15. New § 1.103-16 reads as follows:

§ 1.103-16 Obligations of certain volunteer fire departments.

(a) *General rule.* An obligation of a volunteer fire department issued after December 31, 1980, shall be treated as an obligation of a political subdivision of a State for purposes of section 103(a)(1) if—

(1) The volunteer fire department is a qualified volunteer fire department within the meaning of paragraph (b) of this section, and

(2) Substantially all of the proceeds of the issue of which the obligation is a part are to be used for the acquisition, construction, reconstruction, or improvement of a fire house or fire truck used or to be used by the qualified volunteer fire department.

An obligation of a volunteer fire department shall not be treated as an obligation of a political subdivision of a State for purposes of section 103(a)(1) unless both conditions set forth in this paragraph (a) are satisfied. Thus, for example, if an obligation is issued by an ambulance and rescue squad that is a qualified volunteer fire department as required by paragraph (a)(1) of this section, but substantially all of the proceeds of the issue of which the obligation is a part are to be used for the furnishing of emergency medical services, rather than for the purposes specified in paragraph (a)(2) of this section, the obligation shall not be treated as an obligation of a political subdivision of a State for purposes of section 103(a)(1).

(b) *Definition of qualified volunteer fire department.* For purposes of this section, the term "qualified volunteer fire department" means an organization—

(1) That is organized and operated to provide firefighting services or emergency medical services in an area within the jurisdiction of a political subdivision, and

(2) That is required to furnish firefighting services by written agreement with the political subdivision, and

(3) That serves persons in an area within the jurisdiction of the political subdivision that is not provided with any other firefighting services. The requirement of paragraph (b)(2) of this section that a qualified volunteer fire department be required to furnish firefighting services by written agreement with the political subdivision may be satisfied by an ordinance or statute of the political subdivision that establishes, regulates, or funds the volunteer fire department. A volunteer fire department does not fail to satisfy the requirement of paragraph (b)(3) of this section by furnishing or receiving firefighting services on an emergency basis, or by cooperative agreement with other fire departments, to or from areas outside of the area that the volunteer fire department is organized and operated to serve. The fact that tax revenues of a political subdivision served by a volunteer fire department contribute toward the support of the volunteer fire department in the form of salary, purchase of equipment, or other defrayment of expenses will not prevent

the volunteer fire department from being a "qualified volunteer fire department" within the meaning of this paragraph (b). Moreover, an obligation of a volunteer fire department receiving such support may qualify as an obligation of a political subdivision within the meaning of section 103(a)(1) independently of section 103(i) and this section if the requirements of section 103(a)(1) are satisfied. See § 1.103-1(b) for rules relating to qualification under section 103(a)(1).

(c) *"Substantially all" test.*

Substantially all of the proceeds of an issue are used for the purposes specified in paragraph (a)(2) of this section if 90 percent or more of the proceeds are so used. Thus, for example, if more than 10 percent of the proceeds of an obligation issued by a qualified volunteer fire department are used for the purchase of an ambulance or for rescue equipment not to be used in providing fire fighting services, interest on the obligation is not exempt from tax under section 103(i) and this section. In computing this percentage—

(1) Costs are allocated between providing a firehouse or firetruck and other uses of the proceeds on a pro rata basis; and

(2) The rules set forth in § 1.103-8(a)(1)(i), relating to amounts allocable to exempt and nonexempt uses and amounts chargeable to capital account, apply.

(d) *Refunding issues.* An obligation which is part of an issue issued by a qualified volunteer fire department after December 31, 1980, part or all of the proceeds of which issue are used directly or indirectly to pay principal, interest, call premium, or reasonable incidental costs of refunding a prior issue qualifies as an obligation of a political subdivision under section 103(i) and this section only if—

(1) The prior issue was issued by a qualified volunteer fire department;

(2) Substantially all of the proceeds of the prior issue were used for the purposes described in paragraph (a)(2) of this section;

(3) The prior issue was issued after December 31, 1980; and

(4) The refunding issue is issued not more than 180 days before the date on which the last obligation of the prior issue is discharged (within the meaning of § 1.103-13(b)(11)).

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). The County M Volunteer Fire and Rescue Association provides firefighting, ambulance, and emergency medical services in County M. The board of county commissioners of County M contracts with

the County M Volunteer Fire and Rescue Association for these services, and County M is not served by any other firefighting association. On August 1, 1981, the Association issues an obligation for funds to purchase a new fire truck, a new ambulance, and rescue equipment not to be used for fighting fires. Funds to be used for the purchase of the ambulance and rescue equipment constitute more than 10 percent of the proceeds of the obligation. Thus, substantially all of the proceeds of the obligations are not used for one of the purposes described in paragraph (a)(2) of this section. Although the County M Volunteer Fire and Rescue Association is a qualified volunteer fire department under paragraph (b) of this section because it provides firefighting and emergency medical services in an area within County M which is not provided with any other firefighting services and is required to provide these services by written agreement with County M, the August 1, 1981, obligation of County M Volunteer Fire and Rescue Association will not be treated as an obligation of a political subdivision of a State under section 103(i) and paragraph (a) of this section because substantially all of the proceeds of the obligation are not to be used for a purpose described in section 103(i)(1)(B) and paragraph (a)(2) of this section. Accordingly, interest on the August 1, 1981, obligation of County M Volunteer Fire and Rescue Association is not exempt from gross income under section 103(a)(1).

Example (2). County N Volunteer Fire Department provides firefighting services in County N by contract with the county, which is not served by any other firefighting association. On June 15, 1982, County N Volunteer Fire Department issues its obligation for funds to construct an addition to its firehouse to house a rescue squad, the rescue squad's vehicle, and rescue equipment not to be used in firefighting. Although the County N Volunteer Fire Department is a qualified volunteer fire department under paragraph (b) of this section, interest on its June 15, 1982, obligation will not be exempt from tax under section 103(i) and this section because the proceeds of this obligation will not be used for the purposes described in paragraph (a) of this section.

Example (3). The County O Volunteer Fire and Rescue Association provides firefighting, ambulance, and emergency medical services in County O. The board of county commissioners of County O contracts with the County O Volunteer Fire and Rescue Association for these services, and County O is not served by any other firefighting association. On September 1, 1983, the Association issues its obligations for funds to construct a new building to house its firefighting, ambulance, and rescue functions. Although the ambulance and rescue equipment will occupy space in the projected facility, the cost allocable on a pro rata basis to providing housing for the ambulance and rescue equipment represents less than 10 percent of the proceeds of the obligations. Thus, substantially all of the proceeds of the obligations are used for one of the purposes described in paragraph (a)(2) of this section. The County O Volunteer Fire and Rescue

Association is a qualified volunteer fire department under paragraph (b) of this section because it provides firefighting and emergency medical services in an area within County O which is not provided with any other firefighting services and is required to provide these services by written agreement with County O. The obligations of County O Volunteer Fire and Rescue Association will be treated as obligations of a political subdivision of a State under section 103(i) and paragraph (a) of this section because the obligations are those of a qualified volunteer fire department and because substantially all of the proceeds of the obligations are to be used for a purpose described in section 103(i)(1)(B) and paragraph (a)(2) of this section. Accordingly, interest on the September 1, 1983, issue of obligations of County O Volunteer Fire and Rescue Association is exempt from gross income under section 103(a)(1).

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: May 20, 1983.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 83-19299 Filed 7-19-83; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket No. MA 1170; A-1-FRL 2376-6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and correction.

SUMMARY: EPA is redesignating the City of Worcester, Massachusetts from nonattainment to attainment for the primary twenty-four hour total suspended particulate (TSP) standard. This action is taken under Section 107 of the Clean Air Act.

EFFECTIVE DATE: This action will be effective September 19, 1983 unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Harley F. Laing, Director, Air Management Division, Room 2312, JFK Federal Building, Boston, MA 02203. Copies of Massachusetts' request are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 2313, JFK Federal

Building, Boston, MA 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460 and the Massachusetts Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, Boston, Massachusetts 02108; Office of the Federal Register, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas Wholley, Technical Support Branch, Environmental Protection Agency, JFK Federal Building, Boston, Massachusetts 02203, telephone: (617) 223-5633, FTS: 223-5633.

SUPPLEMENTARY INFORMATION: On December 13, 1982, Massachusetts submitted a request to redesignate the City of Worcester from nonattainment to attainment for the primary twenty-four hour TSP standard. The submission included monitoring information to support the Commonwealth's request.

Based on the technical support submitted by Massachusetts, EPA is approving the redesignation of the City of Worcester from nonattainment to attainment for the primary twenty-four hour TSP standard. It should be noted that Worcester remains nonattainment for the secondary TSP standard. The rationale for this approval is summarized below:

Background

The City of Worcester was classified as nonattainment with respect to the primary twenty-four hour TSP ambient air quality standard because of violations observed at both the Narcus Department Store and the New Washington/Salem Street monitoring sites between October 1, 1975 and September 30, 1977.

EPA approved this nonattainment designation on March 3, 1978 (43 FR 9002). In July of 1979, Massachusetts prepared a State Implementation Plan (SIP) revision, which demonstrated attainment of the primary twenty-four hour TSP standard in Worcester by December of 1982. The design value for the SIP revision was based upon air quality data observed at the Narcus Department Store Station, which was determined by Massachusetts to be the "worst case" TSP monitoring site in Worcester. The New Salem/Washington Street monitoring site was determined by Massachusetts and EPA not to be representative of area-wide TSP air quality levels because it was unduly influenced by re-entrained road sand and dust.

Massachusetts has maintained an extensive TSP monitoring network in the Worcester area since 1975. Air quality

measurements observed over this period indicate that:

(1) There have been no recorded violations of the TSP primary twenty-four hour standard at the Narcus Department Store monitoring site since 1977. As previously indicated, this station was determined to be the design monitor for Worcester.

(2) There have been no recorded violations of the TSP primary twenty-four hour standard at the New Salem/Washington Street monitoring site since 1977. As previously indicated, this monitor was determined to be nonrepresentative of area-wide TSP air quality levels.

(3) Violations of the TSP primary twenty-four hour standard have not been observed at any of the other monitors in the Worcester network since 1975. The improvement in air quality measurements is attributed to the reduction in TSP emissions from the control strategies contained in the attainment plan.

EPA has reviewed Massachusetts' submission and determined that it meets EPA's requirements for redesignating an area to attainment for the primary twenty-four hour TSP standard.

Action

EPA is approving Massachusetts' request to redesignate the City of Worcester to attainment for the primary twenty-four hour TSP standard.

EPA is approving this request without prior proposal, because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal Register unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such notice is received, the public is advised that this action will be effective September 19, 1983.

Corrections

On January 10, 1980, EPA conditionally approved Massachusetts' TSP SIP (45 FR 2036). The conditions required that Massachusetts submit (1) a public participation program and (2) a new source review plan. On March 31, 1980, Massachusetts submitted a public participation program, which was approved by EPA on September 16, 1980 (45 FR 61293). On April 17, 1980,

Massachusetts submitted a new source review plan, which was approved by EPA on September 10, 1980 (45 FR 59578).

This Federal Register is going to make two corrections to the Code of Federal Regulations (CFR) that were omitted in the September 16, 1980 Federal Register (45 FR 61293). First, § 52.1166(a)(1), as published in the 1980 CFR, describing the condition of a public participation program will be deleted. The September 16, 1980 Federal Register acknowledged fulfillment of this last remaining condition to Massachusetts' TSP SIP, but it did not delete § 52.1166(a)(1). Instead, the Federal Register added a new § 52.1166(a)(1) that describes the condition of a metal coil coating regulation. Therefore, § 52.1166(a)(1) as published in the 1980 CFR will be deleted and § 52.1166(a)(1) as published in the 1981 CFR will remain.

The second correction concerns § 52.1166(a). Because the September 16, 1980 notice approved the last remaining condition to Massachusetts' TSP SIP, all references to the TSP conditional approval should have been removed from § 52.1166(a). Therefore, § 52.1166(a) as published in the 1980 and 1981 CFR is being amended to delete all reference to the TSP conditional approval.

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 1983.

This action may not be challenged later in proceedings to enforce its requirements. [See 307(b)(2).]

List of Subjects

40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide and Hydrocarbons.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 110(a) and 301(a), Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a))

Dated: July 13, 1983.

William D. Ruckelshaus,
Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart W—Massachusetts

1. Section 52.1166 is amended by revising § 52.1166(a) to read as follows:

§ 52.1166 Rules and regulations.

(a) Part D—conditional approval—The NSR program for all nonattainment areas and the revisions of December 31, 1978 and May 16, 1979 are approved as satisfying Part D requirements under the following conditions:

• • • • •

§ 81.346 Massachusetts.

MASSACHUSETTS—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified or better than national standards	Better than national standards
Worcester		X		

[FR Doc. 83-19575 Filed 7-19-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 60

[AD-FRL-2310-4]

Standards of Performance for New Stationary Sources; Total Reduced Sulfur From Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Performance Specification 5 (PS 5) for continuous emission monitoring of total reduced sulfur (TRS) emissions from kraft pulp mills was proposed in the Federal Register on July 20, 1981 (46 FR 37287). This action promulgates "Performance Specification 5—Specifications and Test Procedures for TRS Continuous Emission Monitoring Systems in Stationary Sources," which is to be added to Appendix B of 40 CFR Part 60. The intended effect is to require all applicable sources in kraft pulp mills as specified in Subpart BB of 40 CFR Part 60 to install and operate continuous emission monitoring systems (CEMS's) as prescribed in the specification within 1 year of the promulgation date. In addition, amendments to the general monitoring requirements of § 60.13 are made.

EFFECTIVE DATE: July 20, 1983.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available only by the filing of a petition for review in the U.S. Court of Appeals

2. Section 52.1166 is further amended by removing and reserving § 52.1166(a)(1) as published in the 1980 Code of Federal Regulations.

PART 81—[AMENDED]

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart C—Section 107 Attainment Status Designations

In § 81.346, the attainment status designation table for Total Suspended Particulates should read as follows:

for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: Summary of Comments and Responses. This document for the promulgated PS may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Performance Specifications for Continuous Monitoring of Total Reduced Sulfur Emissions (Proposed July 20, 1981, 46 FR 37287)—Summary of Comments and Responses, EPA 450/3-82-018." The document contains (1) a summary of all the public comments made on the proposed PS and the Administrator's response to the comments, and (2) a summary of the changes made to the PS since proposal.

Performance Specification Guidelines. This document may be obtained from Mr. Foston Curtis, Mail Drop 19, Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone number (919) 541-2237. The document has been prepared to supplement the requirements of this PS and provides vendors and operators with guidelines for equipment and performance specifications and suggested procedures for evaluating the capabilities of CEMS's.

Docket. A docket, number A-80-57, containing information considered by EPA in development of the promulgated PS, is available for public inspection

between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (A-130), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

Roger T. Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

SUPPLEMENTARY INFORMATION:

Continuous monitoring requirements for TRS emissions were promulgated on February 23, 1978 (43 FR 7568) as part of the standards of performance for new and modified kraft pulp mills. The requirements were to become effective upon promulgation of PS 5, which prescribes specifications and test procedures for evaluating the acceptability of TRS CEMS's. A 1-year delay period from the promulgation date has been granted to allow sources time to survey, purchase, and install CEMS's.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change the emission standard or make it more stringent. Rather, this rulemaking brings into effect the continuous monitoring requirements to which the affected facilities are already subject.

Public Participation

The PS was proposed and published in the *Federal Register* on July 20, 1981 (46 FR 37287). The opportunity to request a public hearing was presented to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed specifications, but no person desired to make an oral presentation. The public comment period was from July 20, 1981, to September 20, 1981. Six comment letters were received concerning issues relative to the proposed specifications. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made.

Significant Comments and Changes to the Proposed Performance Specification

Six comment letters were received on the PS. A detailed discussion of these comments and responses can be found in the document which is referred to in the ADDRESSES section of this preamble. The summary of comments and responses serves as the basis for the revisions which have been made to

the test method between proposal and promulgation. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The significant comments and subsequent method changes are listed here.

1. Several commenters requested the granting of an extension to the comment period to evaluate oxygen monitors and determine the impact of the proposed regulation on currently used monitors. An official extension to the period was not granted; however, data that were later submitted by the commenters were considered in revising the proposed PS.

2. Most commenters thought the specified limit for calibration drift (CD) was too stringent and could not be supported by the background data used to establish it. A not-to-exceed criterion would also ignore the distribution of drifts about a mean. A limit that is set based on an arithmetic mean of drifts plus the 95 percent confidence interval was preferred.

The specified CD of not exceeding 3 percent has been changed to 5 percent for 6 out of the 7 test days. This level can be supported by existing data on currently used monitors. A limit based on an arithmetic mean plus the 95 percent confidence interval would not be consistent with the requirements of other continuous monitoring PS's. The revised CD limit was set taking into account the distribution of the drifts about a mean from available data.

3. Several commenters requested a 180-day delay in the effective date after promulgation of the PS to allow sources time to review, purchase, and install monitors. All commenters requested a longer time period since the level of the proposed CD had eliminated the consideration of some candidate monitors. The latter should not be a problem with the change in the CD limit. However, an installation delay period of 1 year shall be allowed.

4. A request was made to widen the detector span level of 90 to 100 percent of span value because many instruments offer limited adjustments. The detector span level has been revised to allow a high level value between 1.5 times the pollutant concentration corresponding to the emission standard level and the span value which is specified in the applicable subpart of the regulations.

5. Two commenters said that the applicability of the CD, as proposed, was confusing. The confusion was eliminated by stating the applicability of the CD to the CEMS detector.

6. One commenter said that the procurement costs for monitors mentioned in the preamble were too low. Based upon current estimates,

procurement and installation costs in the range of \$20,000 to \$80,000 are more accurate; procurement costs are about 95 percent of the total.

7. A commenter asked that response time be explicitly specified since it is mentioned in the guideline document but not in the regulations. This serves to announce that no response time is being specified.

8. Another commenter requested that § 60.13(b) of Title 40 be modified to clarify the operational period and verification of operational status. The paragraph has been modified to add clarity and is being promulgated under a separate regulatory package for PS's 2 and 3.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated rule and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review [Section 307(d)(7)(A)].

Miscellaneous

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have an economic impact on small entities because none exist in the affected industry.

This rulemaking is issued under the authority of Sections 111, 114, and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7411, 7414, and 7601(a)].

This rule was submitted to and reviewed by the Office of Management and Budget under E.O. 12291.
William D. Ruckelshaus
Administrator.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Reporting and recordkeeping requirements.

PART 60—[AMENDED]

Section 60.13 and Appendix B of 40 CFR Part 60 are amended as follows:

1. By revising § 60.13(a), § 60.13(c), and § 60.13(e) as follows:

Subpart A—General Provisions

§ 60.13 Monitoring requirements.

(a) For the purposes of this section, all continuous monitoring systems required under applicable subparts shall be subject to the provisions of this section upon promulgation of performance specifications for continuous monitoring systems under Appendix B to this part, unless otherwise specified in an applicable subpart or by the Administrator.

(c) During any performance tests required under § 60.8 or within 30 days thereafter and at such other times as may be required by the Administrator under Section 114 of the Act, the owner or operator of any affected facility shall conduct continuous monitoring system performance evaluations and furnish the Administrator within 60 days thereof two or, upon request, more copies of a written report of the results of such tests. These continuous monitoring system performance evaluations shall be conducted in accordance with the requirements and procedures contained in the applicable performance specification of Appendix B.

(e) Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required under paragraph (d) of this section, all continuous monitoring systems shall be in continuous operation and shall meet minimum frequency of operation requirements as follows:

(1) All continuous monitoring systems referenced by paragraph (c) of this

section for measuring opacity of emissions shall complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(2) All continuous monitoring systems referenced by paragraph (c) of this section for measuring emissions, except opacity, shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

2. By adding Performance Specification 5 to Appendix B of 40 CFR Part 60 as follows:

Appendix B—Performance Specifications

Performance Specification 5—Specifications and Test Procedures for TRS Continuous Emission Monitoring Systems in Stationary Sources

1. Applicability and Principle.

1.1 Applicability. This specification is to be used for evaluating the acceptability of total reduced sulfur (TRS) and whenever specified in an applicable subpart of the regulations. (At present, these performance specifications do not apply to petroleum refineries, Subpart J.) Sources affected by the promulgation of the specification shall be allowed 1 year beyond the promulgation date to install, operate, and test the CEMS. The CEMS's may include O₂ monitors which are subject to Performance Specification 3 (PS 3). The definitions, installation specifications, test procedures, and data reduction procedures for determining calibration drifts (CD's) and relative accuracy (RA), and reporting of PS 2, Sections 2, 3, 4, 5, 6, 8, and 9 also apply to this specification and must be consulted. The performance and equipment specifications do not differ from PS 2 except as listed below and are included in this specification.

1.2 Principle. The CD and RA tests are conducted to determine conformance of the CEMS with the specification.

2. Performance and Equipment Specifications.

2.1 Instrument Zero and Span. The CEMS recorder span must be set at 90 to 100 percent of recorder full-scale using a span level between 1.5 times the pollutant concentration corresponding to the emission standard level and the span value. The CEMS design shall also allow the determination of calibration at the zero level of the calibration curve. If zero calibration is not possible or is impractical, this determination may be conducted at a low level (up to 20 percent of span value) point. The components of an acceptable permeation tube system are listed on pages 87-94 of Citation 4.2 of the bibliography.

2.2 Calibration Drift. The CEMS detector calibration must not drift or deviate from the reference value of the calibration gas by more than 5 percent (1.5 ppm) of the established span value of 30 ppm for 6 out of 7 test days. If the CEMS includes pollutant and diluent monitors, the CD must be

determined separately for each in terms of concentrations (see PS 3 for the diluent specifications).

2.3 The CEMS Relative Accuracy. The RA of the CEMS shall be no greater than 20 percent of the mean value of the reference method (RM) test data in terms of the units of the emission standard or 10 percent of the applicable standard, whichever is greater.

3. Relative Accuracy Test Procedure.

3.1 Sampling Strategy for RM Tests. Correlation of RM and CEMS Data, Number of RM Tests, and Calculations. This is the same as PS 2, Sections 7.1, 7.2, 7.3, and 7.5, respectively. Note: For Method 16, a sample is made up of at least three separate injects equally spaced over time. For Method 16A, a sample is collected for at least 1 hour.

3.2 Reference Methods. Unless otherwise specified in an applicable subpart of the regulations, Method 16, Method 16A, or other approved alternative, shall be the RM for TRS.

4. Bibliography.

4.1 Department of Commerce. Experimental Statistics. National Bureau of Standards. Handbook 91. 1963. Paragraphs 3-3.1.4, p. 3-31.

4.2 A Guide to the Design, Maintenance and Operation of TRS Monitoring Systems. National Council for Air and Stream Improvement Technical Bulletin No. 89. September 1977.

4.3 Observation of Field Performance of TRS Monitors on a Kraft Recovery Furnace. National Council for Air and Stream Improvement Technical Bulletin No. 91. January 1978.

(Secs. 111, 114, and 301(a), Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)))

[FR Doc. 83-19336 Filed 7-19-83; 6:45 am]

BILLING CODE 6580-50-M

40 CFR Part 81

[A-3-FRL 2355-7; Docket No. 107WV-4]

Air Quality Planning; Approval of Redesignation of Attainment Status for the State of West Virginia

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval in changing the air quality designation for Marshall County, West Virginia to an attainment status of the primary and secondary National Ambient Air Quality Standards for Total Suspended Particulates (TSP). This change is based on eight consecutive calendar quarters of air quality data showing attainment.

DATES: This action will be effective on September 19, 1983, unless notice is received by August 19, 1983, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Mr. Glenn Hanson of the EPA, Region III address shown below. Copies of the request for redesignation may be examined during normal business hours at the following locations:

U.S. Environmental Protection Agency,
Region III, Air Management Branch,
Curtis Building, 6th & Walnut Streets,
Philadelphia, PA 19106, Attn: Patricia
Gaughan (3AW11)

West Virginia Air Pollution Control
Commission, 1558 Washington Street,
East, Charleston, West Virginia 25311,
Attn: Mr. Carl G. Beard.

FOR FURTHER INFORMATION CONTACT:
Lillie R. Ellerbe (3AW13) 215/597-8170
at the EPA, Region III address indicated
above.

SUPPLEMENTARY INFORMATION: The
West Virginia Air Pollution Control
Commission has submitted to the U.S.
Environmental Protection Agency (EPA)
a request to have Marshall County,
West Virginia redesignated to an
attainment area for TSP under Section
107 of the Clean Air Act and 40 CFR Part
81. Marshall County is a part of the
Steubenville-Weirton Wheeling
Interstate Air Quality Control Region
(AQCR). Thus, only this portion is being
redesignated. The rest of the AQCR's air
quality designation for TSP remains
unchanged.

The air quality data for October 1980
through September 1982 from the State's
monitoring site in Marshall County
indicates that this area shows no
violations of the TSP air quality
standards. EPA has examined the air
quality data collected from the site used
to demonstrate attainment and found
that the data was collected in
accordance with all EPA requirements.

West Virginia has an approved SIP
control strategy pertaining to sources
located in Marshall County. This control
strategy consists of regulations
controlling TSP emissions from power
plants (Regulation II), process and
fugitive sources (Regulation VII), and
new sources (Regulation XIX).

Accordingly, EPA is approving the
Commission's request for redesignation
to attainment.

EPA is today changing the Section 107
attainment status designation for
Marshall County to an attainment status
for TSP without prior proposal. The
public is advised that this action will be
effective 60 days from the date of this
Federal Register notice. However, if
notice is received within 30 days from
today that someone wishes to submit
adverse or critical comments, this action
will be withdrawn and a subsequent
notice will be published before the

effective date. The subsequent notice
will withdraw the final action and begin
a new rulemaking by announcing a
proposal of the action and establishing a
comment period.

Conclusion

The Administrator's decision to
approve the redesignation was based on
a determination that it meets the
requirements of Section 107 of the Clean
Air Act and 40 CFR Part 81, Designation
of Areas for Air Quality Planning
Purposes.

As a result of EPA's decision to
approve this redesignation, 40 CFR Part
81, § 81.349 is being revised as shown
below.

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

Under 5 U.S.C. 805(b), the
Administrator has certified that
redesignations do not have a significant
economic impact on a substantial
number of small entities. (See 46 FR
8709).

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 (60 days from
today). This action may not be
challenged later in proceedings to
enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks,
Wilderness areas, Intergovernmental
relations.

(Section 107 of the Clean Air Act (42 U.S.C.
7407))

Dated: July 13, 1983.

William D. Ruckelshaus,
Administrator.

Part 81 of Chapter I, Title 40, Code of
Federal Regulations, is amended as
follows:

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

In § 81.349, the TSP table is amended
by listing Marshall County under the
Steubenville-Weirton Wheeling
Interstate AQCR entry to read as
follows:

§ 81.349 West Virginia.

WEST VIRGINIA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Steubenville-Weirton Wheeling Interstate AQCR:				
1. Marshall County				X
2. Remainder of AQCR	X			

[FR Doc. 83-19573 Filed 7-19-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 7E1940/R572; PH-FRL 2399-3]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Endosulfan

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a
tolerance for the combined residues of
the insecticide endosulfan and its
metabolite in or on the raw agricultural
commodity raspberries. This regulation
to establish a maximum permissible
level for residues of endosulfan in or on
the commodity was requested in a
petition submitted by the Interregional
Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on July 20,
1983.

ADDRESS: Written objections may be
submitted to the Hearing Clerk (A-110),
Environmental Protection Agency, Rm.
3708, 401 M St., SW., Washington, D.C.
20460.

FOR FURTHER INFORMATION CONTACT:
Donald Stubbs, Emergency Response
and Minor Use Section, Registration
Division (TS-787C), Environmental
Protection Agency, Rm. 716B, CM No. 2,
1921 Jefferson Davis Highway,
Arlington, VA 22202. (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA
issued a proposed rule published in the
Federal Register of June 1, 1983 (48 FR
24394) which announced that the
Interregional Research Project No. 4 (IR-
4), New Jersey Agricultural Experiment
Station, P.O. Box 231, Rutgers
University, New Brunswick, NJ 08903,
had submitted pesticide petition 7E1940
to EPA on behalf of the IR-4 Technical

Committee and the Agricultural Experiment Station of Utah.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide endosulfan (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide) and its metabolite endosulfan sulfate (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3,3-dioxide) in or on the raw agricultural commodity raspberries at 0.1 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the notice of proposed rulemaking. The pesticide is considered useful for the purpose for which the tolerance is sought. It is concluded that the tolerance would protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the *Federal Register*, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e))).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: July 6, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

Therefore, 40 CFR 180.182 is revised to read as follows:

§ 180.182 Endosulfan; tolerances for residues.

Tolerances are established for the total residues of the insecticide endosulfan (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide) and its metabolite endosulfan sulfate

(6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3,3-dioxide) in or on the raw agricultural commodities:

Commodities	Parts per million
Alfalfa, fresh	0.3
Alfalfa, hay	1.0
Almonds	0.2(N)
Almonds, hulls	1.0
Apples	2.0
Apricots	2.0
Artichokes	2.0
Barley, grain	0.1(N)
Barley, straw	0.2(N)
Beans	2.0
Beets, sugar, without tops	0.1(N)
Blueberries	0.1(N)
Broccoli	2.0
Brussels sprouts	2.0
Cabbage	2.0
Carrots	0.2
Cattle, fat	0.2
Cattle, mby	0.2
Cattle, meat	0.2
Cauliflower	2.0
Celery	2.0
Cherries	2.0
Collards	2.0
Corn, sweet (K + CWHR)	0.2
Cottonseed	1.0
Cucumbers	2.0
Eggplant	2.0
Filberts	0.2(N)
Goats, fat	0.2
Goats, mby	0.2
Goats, meat	0.2
Grapes	2.0
Hogs, fat	0.2
Hogs, mby	0.2
Hogs, meat	0.2
Horses, fat	0.2
Horses, mby	0.2
Horses, meat	0.2
Kale	2.0
Lettuce	2.0
Macadamia nuts	0.2(N)
Melons	2.0
Milk, fat (— N in whole milk)	0.5
Mustard greens	2.0
Mustard seed	0.2(N)
Nectarines	2.0
Oats, grain	0.1(N)
Oats, straw	0.2(N)
Peaches	2.0
Pears	2.0
Peas, succulent	2.0
Pecans	0.2(N)
Peppers	2.0
Pineapples	2.0
Plums	2.0
Potatoes	0.2(N)
Prunes	2.0
Pumpkins	2.0
Rape seed	0.2(N)
Raspberries	0.1
Rye, grain	0.1(N)
Rye, straw	0.2(N)
Safflower seed	0.2(N)
Sheep, fat	0.2
Sheep, mby	0.2
Sheep, meat	0.2
Spinach	2.0
Squash, summer	2.0
Squash, winter	2.0
Strawberries	2.0
Sugarcane	0.5
Sunflower seed	2.0
Sweet potatoes	0.2
Tomatoes	2.0
Turnips, greens	2.0
Walnuts	0.2(N)
Watercress	2.0
Wheat, grain	0.1(N)
Wheat, straw	0.2(N)

[FR Doc. 83-19313 Filed 7-19-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[SW-4-FRL 2401-6]

Hazardous Waste Management Program; Arkansas, Louisiana; Request for Extension of Application Deadline for Interim Authorization, Phase II

AGENCY: Environmental Protection Agency.

ACTION: Notice of Extension of Application Submission and Interim Authorization Period.

SUMMARY: Two States in Region 6, Arkansas and Louisiana, have requested an extension beyond the July 26, 1983, deadline for application for Phase II Interim Authorization under the Resource Conservation and Recovery Act of 1976, as amended. EPA is granting the extension for these states, allowing them a ninety (90) day extension until October 26, 1983, for Phase II application submission. These extensions will avoid the termination of other authorized portions of the Arkansas and Louisiana programs; both Arkansas and Louisiana have Phase I Interim Authorization, and Arkansas also has Interim Authorization for Phase II, Components A and B.

EFFECTIVE DATE: October 26, 1983.

FOR FURTHER INFORMATION CONTACT: H. J. Parr, Hazardous Materials Branch, Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270, Telephone 214-767-2645.

SUPPLEMENTARY INFORMATION:

Background

40 CFR § 271.122(c)(4) (formerly § 123.122(c)(4); 47 FR 32377, July 26, 1982) requires that States which have received any but not all Phases/Components of Interim Authorization amend their original submissions by July 26, 1983, to include all Components of Phase II. 40 CFR 271.137(a) (formerly § 123.137(a); 47 FR 32378, July 26, 1982) further provides that on July 26, 1983, Interim Authorizations terminate except where the State has submitted by that date an application for all Phases/Components of Interim Authorization.

When the authorization (approval) of the State program terminates, EPA is to administer and enforce the Federal program in those States. However, the Regional Administrator may, for good cause, extend the July 26, 1983, deadline for submission of the Interim Authorization application and the deadline for termination of the approval of the State program. [Note: 40 CFR Part 123, including the July 26, 1983,

amendments (47 FR 32373), was recodified on April 1, 1983, as 40 CFR Part 271 (48 FR 14248).]

Arkansas

Arkansas received Phase I Interim Authorization on November 19, 1980, and Phase II, Components A and B, Interim Authorization on April 19, 1982 (47 FR 16625). On May 31, 1983, Arkansas requested an extension for Phase II Component C (authority to permit land disposal facilities). Arkansas requested the extension because the draft Component C application has already been submitted and because they have committed to the following schedule: October 15, 1983—State submits official Phase II Component C application; November 15, 1983—State submits draft Final Authorization application; June 1, 1984—State submits official Final Authorization application.

Louisiana

Louisiana received Phase I Interim Authorization on December 19, 1980 (45 FR 83498). Louisiana requested an extension for all components of Phase II (authority to permit any hazardous waste treatment storage or disposal facility) on June 2, 1983. Louisiana requested the extension because additional regulatory changes may still be necessary although rulemaking for hazardous waste management regulations has been initiated. Louisiana commits to the following schedule: September 30, 1983—State forwards official application for Phase II Components A, B and C; January 13, 1984—State submits draft application for Final Authorization; July 12, 1984—State submits official Final Authorization application.

Decision

In consideration of the States' efforts and their commitment to meet the above schedules, I find there is good cause to grant the States' request for an extension to the deadline for applying for Phase II Interim Authorization. I am granting the extension for 90 days for Arkansas and Louisiana requiring them to submit a complete application for the necessary components on or before October 26, 1983. If a State fails to submit a complete application by October 26, 1983, approval of the State program will terminate automatically and administration of the hazardous waste management program will revert to EPA on that date.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands,

Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Authority: This notice is issued under the authority of Secs. 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926 and 6974(b).

Dated: July 12, 1983.

Dick Whittington, P.E.,

Regional Administrator.

[FR Doc. 83-19577 Filed 7-19-83; 8:45 am]

BILLING CODE 6560-52-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-735

[ADM 7900.9 Change]

Changes to the GSA Standards of Conduct

AGENCY: Board of Contract Appeals, GSA.

ACTION: Final rule.

SUMMARY: This regulation prescribes standards of conduct relating to the GSA Board of Contract Appeals. The purpose of these standards is to ensure that standards of conduct are observed and enforced with regard to the GSA Board of Contract Appeals so that the integrity, impartiality, and independence of the Board are preserved. The impact of these standards is primarily on the administrative judges and employees of the Board, but all GSA personnel are prohibited from making ex parte communications to administrative judges and employees of the Board that may be relevant to the merits of a proceeding before the Board. In addition, all GSA personnel are required to preserve and uphold the integrity, impartiality and independence of the Board.

EFFECTIVE DATE: July 20, 1983.

FOR FURTHER INFORMATION CONTACT: Judge Leonard J. Suchanek, Chairman, Board of Contract Appeals (202-566-0720).

List of Subjects in 41 CFR Part 105-735

Administrative practice and procedure, Conflict of interest, Reporting and recordkeeping requirements.

SUPPLEMENTARY INFORMATION:

1. The authority for Part 105-735 is as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); E.O. 11222, 3 CFR 1965 Supp.; 5 CFR 735.104.

2. The table of contents for Part 105-735 is amended by adding Subpart 105-735.7 as follows:

Subpart 105-735.7—Special Provisions Relating to the GSA Board of Contract Appeals.

Sec.	
105-735.701	Purpose.
105-735.702	GSA personnel.
105-735.703	Integrity, impartiality, and independence.
105-735.704	Impropriety and the appearance of impropriety.
105-735.705	Performance of duties.
105-735.706	Outside activities.
105-735.707	Extra-judicial activities.
105-735.708	Appropriate compensation.
105-735.709	Effective date of compliance.

3. Part 105-735 is amended by adding new Subpart 105-735.7 as follows:

Subpart 105.735.7—Special Provisions Relating to the GSA Board of Contract Appeals

§ 105-735.701 Purpose.

The GSA Board of Contract Appeals (the Board) was established in GSA as an independent statutory tribunal to hear and decide contract disputes between contractors and GSA and other agencies of the United States. The Board also furnishes hearing examiners for the GSA Suspension and Debarment Board, an administrative hearing body for suspension and debarment actions. This subpart prescribes standards of conduct relating to the Board and supplements existing statutes and regulations which govern the conduct of federal employees, including the Ethics in Government Act of 1978, the Hatch Act, and the other standards of conduct in this part. The purpose of this subpart is to ensure that standards of conduct are observed, enforced, and maintained with regard to persons appearing before the Board, members of the public, and GSA personnel so that the integrity, impartiality, and independence of the Board are preserved.

§ 105-735.702 GSA personnel.

The agency is a party before the Board. Accordingly, GSA personnel must at all times preserve and uphold the integrity, impartiality, and independence of the Board, and are prohibited from making ex parte communications to administrative judges and employees of the Board that may be relevant to the merits of a

proceeding that is or may come before the Board. Employees of the Board must comply with the directions of an administrative judge given pursuant to this subpart.

§ 105-735.703 Integrity, impartiality, and independence.

The integrity, impartiality, and independence of the Board are indispensable to its function of adjudicating disputes between the United States Government and its contractors. The administrative judges of the Board must participate in establishing, maintaining, and enforcing, and must observe, high standards of conduct so that integrity, impartiality, and independence may be preserved. The provisions of this subpart are to be construed and applied to further that objective.

§ 105-735.704 Impropriety and the appearance of impropriety.

(a) An administrative judge must respect and comply with the law, provide to litigants the procedural fairness that is due, and act at all times in a manner that promotes public confidence in the integrity, impartiality, and independence of the Board.

(b) An administrative judge must not allow family, social, or other relationships to influence official conduct or judgment. An administrative judge must not lend the prestige of the office to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position of influence.

§ 105-735.705 Performance of duties.

In the performance of an administrative judge's duties, the following standards apply:

(a) *Adjudicative responsibilities.* (1) An administrative judge must be faithful to the law and maintain professional competence in it. An administrative judge must be unswayed by partisan interests, public clamor, or fear of criticism.

(2) An administrative judge should maintain order and decorum in proceedings.

(3) An administrative judge should be patient, dignified, and courteous to litigants, witnesses, attorneys, and others with whom the administrative judge deals in an official capacity, and should require similar conduct of employees of the Board and others subject to the administrative judge's direction and control.

(4) An administrative judge must accord to all persons who are legally interested in a proceeding, or their attorneys, the full right to be heard

according to law. Except as authorized by law, an administrative judge may neither initiate nor consider ex parte communications that may be relevant to the merits of a proceeding that is pending or impending before the Board, and must require the same abstention on the part of employees of the Board. An administrative judge who receives any ex parte communication that may be relevant to the merits of a pending or impending proceeding must place on the public record of the proceeding:

- (i) All such written communications;
- (ii) Memoranda stating the substance of all such oral communications; and
- (iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (a)(4) (i) and (ii) of this section.

An administrative judge must require employees of the Board who receive any ex parte communication that may be relevant to the merits of a pending or impending proceeding to report it to an administrative judge for inclusion in the public record of the proceeding in accordance with paragraph (a)(4) of this section.

(5) An administrative judge should dispose promptly of pending business of the Board.

(6) An administrative judge should abstain from public comment about a pending or impending proceeding or issue before the Board and should require similar abstention on the part of employees of the Board and other persons subject to the administrative judge's direction and control. This subdivision does not prohibit administrative judges from explaining for public information the procedures of the Board.

(7) An administrative judge should prohibit broadcasting, televising, or taking photographs in the hearing room and areas immediately adjacent thereto during proceedings or recesses between proceedings, except that, in the administrative judge's discretion, the use of electronic, video, or photographic recording may be authorized.

(b) *Administrative responsibilities.* An administrative judge must diligently discharge assigned administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other administrative judges and employees of the Board.

(2) An administrative judge should require employees of the Board and other persons subject to the administrative judge's direction and control to observe the standards of

fidelity and diligence that apply to the administrative judge.

(3) An administrative judge should criticize and correct unprofessional conduct of lawyers of which the administrative judge may become aware in the performance of official duties, and, if adverse comment is not a sufficient corrective, should initiate appropriate disciplinary measures with the proper authorities.

(c) *Disqualification.* (1) An administrative judge must disqualify himself or herself in any proceeding in which the administrative judge's impartiality might reasonably be questioned, including, but not limited to, instances when:

(i) The administrative judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(ii) In private practice or governmental employment the administrative judge served as attorney or participated in another representative or advisory capacity in the matter in controversy; or a lawyer or other person with whom the administrative judge was previously associated served during such association as a representative or advisory participant in the matter; or the administrative judge or such associate has been a witness concerning the matter;

(iii) The administrative judge knows that he or she, individually or as a fiduciary, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected by the outcome of the proceeding;

(iv) The administrative judge or the administrative judge's spouse, child, parent, brother, sister, uncle, aunt, nephew, or niece:

(A) Is a party to the proceeding, or an officer, director, or trustee of a party;

(B) Is acting as an attorney in the proceeding;

(C) Is known by the administrative judge to have a financial or other interest that could be affected by the outcome of the proceeding; or

(D) Is to the administrative judge's knowledge likely to be a witness in the proceeding.

(2) An administrative judge must be knowledgeable about his or her personal and fiduciary financial interests, and make a reasonable effort to be informed about the personal financial interests of his or her spouse and minor children residing in the administrative judge's household.

(3) For the purposes of this paragraph the following words or phrases shall have the meaning indicated:

(i) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(ii) "Proceeding" includes prehearing, hearing, or any other stage of litigation.

§ 105-735.706 Outside activities.

An administrative judge, subject to the proper performance of judicial duties, may engage in the following activities, if in doing so doubt is not cast on the capacity to decide impartially any issue that may come before the Board:

(a) Speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

(b) Unless otherwise prohibited by law or this subpart, appear at a public hearing before an executive or legislative body or official and otherwise consult with an executive or legislative body or official.

(c) Serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. An administrative judge may assist such an organization in raising funds but should not personally participate in public fund-raising activities. An administrative judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions. An administrative judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

§ 105-735.707 Extra-judicial activities.

(a) *Avocational activities.* An administrative judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the office or interfere with the performance of judicial duties.

(b) *Civic and charitable activities.* An administrative judge may participate in civic and charitable activities that do not reflect adversely upon impartiality or interfere with the performance of judicial duties. An administrative judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its

members, subject to the following limitations:

(1) An administrative judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the administrative judge or will be regularly engaged in adversary proceedings before the Board.

(2) An administrative judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the administrative judge's office for that purpose.

(3) An administrative judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

(c) *Financial activities.* (1) An administrative judge must refrain from financial and business dealings that tend to reflect adversely on impartiality, interfere with the proper performance of judicial duties, exploit the administrative judge's judicial position, or involve the administrative judge in frequent transactions with lawyers or persons likely to come before the Board.

(2) Subject to the requirements of paragraph (c)(1) of this section, an administrative judge may hold and manage his or her investments, including real estate, and engage in other remunerative activity.

(3) An administrative judge must manage his or her financial interests to minimize the number of cases in which the administrative judge is disqualified. As soon as the administrative judge can do so without serious financial detriment, the administrative judge must divest himself or herself of financial interests that might require frequent disqualification.

(d) *Fiduciary activities.* An administrative judge may not serve as an executor, administrator, trustee, guardian or other fiduciary, if such service will interfere with the proper performance of judicial duties. He or she should not serve if it is likely that as a fiduciary the administrative judge will be engaged in proceedings that would ordinarily come before the Board, or if the estate, trust, or ward becomes involved in proceedings before the Board. While acting as a fiduciary, an administrative judge is subject to the same restrictions on financial activities that apply to the administrative judge in the administrative judge's personal capacity.

(e) *Arbitration.* An administrative judge may not act as an arbitrator or mediator.

(f) *Practice of law.* An administrative judge may not engage in the practice of law for compensation unless otherwise permitted by this part.

(g) *Extra-judicial appointments.* An administrative judge may not accept appointment to a government committee, commission, or other position that is concerned with issues of fact or policy on matters which are likely to come before the Board.

§ 105-735.708 Appropriate compensation.

Subject to statute and GSA regulations, an administrative judge may receive compensation and reimbursement of expenses for activities outside the scope of judicial duties permitted by § 105-735.706 and § 105-735.707.

§ 105-735.709 Effective date of compliance.

A person to whom this subpart becomes applicable must arrange his or her affairs as soon as reasonably possible to comply with it.

Dated: July 12, 1983.

Ray Kline,

Acting Administrator.

[FR Doc. 83-19455 Filed 7-19-83; 8:45 am]

BILLING CODE 6820-34-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[Gen. Docket No. 82-625; RM-3504; RM-3534; FCC 83-301]

Providing High Frequency Spectrum for Use by Eligibles in the Special Industrial, Petroleum, Telephone Maintenance and Power Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends Parts 2 and 90 of the Rules and Regulations to allow licensees eligible in the Special Industrial, Power, Petroleum, and Telephone Maintenance Radio Services to access high frequency spectrum (2 to 25 MHz) for long distance communications in emergency and/or disaster situations where safety of life and property are concerned or to support operations which are highly important to the national interest and where other means of telecommunication are unavailable.

DATES: Effective August 15, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
Keith Plourd, Private Radio Bureau,
Washington, D.C. (202) 634-2443.

List of Subjects

47 CFR Part 2

Frequency allocations.

47 CFR Part 90

Radio, Administrative practice and procedure, Industrial radio services, Public safety radio services, Land transportation radio service, Radiolocation radio service.

Report and Order

In the matter of amendment of parts 2 and 90 of the Commission's rules to provide high frequency spectrum for use by eligibles in the Special Industrial, Petroleum, Telephone Maintenance and Power Radio Services; Gen Docket No. 82-625; RM-3504, RM-3534.

Adopted: June 29, 1983.

Released: July 8, 1983.

By the Commission: Commissioner Fogarty not participating.

Summary

1. The Commission adopts rules establishing licensing procedures for industrial uses of "HF" (2-25 MHz) frequencies. This allocation of spectrum recognizes the public interest in allowing fixed and mobile use of these frequencies for exploration for energy and mineral resources, restoration of electric power distribution systems, and provision of backup communications circuits.

Background

2. In response to petitions filed by the Utilities Telecommunications Council (UTC) and the Central Committee on Telecommunications of the American Petroleum Institute (API), the Commission issued a *Notice of Proposed Rule Making* on September 14, 1982 (47 FR 46399). The *Notice* proposed procedures for licensing Industrial Radio Service eligibles on HF frequencies for backup communications for disrupted communications circuits which involve safety of life or property, and for purposes involving the national interest where other communications circuits are not available or feasible. In proposing rules, the Commission followed the guidelines which it had established in General Docket No. 80-740 (46 FR 51249).¹ Thus it proposed limiting eligibility to the Power, Petroleum, Special Industrial and Telephone Maintenance Radio Services and limiting uses to specific purposes in order to minimize the risk of

interference to the operations of other countries on these frequencies.²

3. The *Notice* proposed to grant authorizations for operation on a number of bands of frequencies with the requirement that the radio equipment be frequency agile, to alleviate interference if it occurred. It sought suggestions for post-authorization coordination to determine specific frequency assignments. Further, technical requirements were proposed which would comport with international requirements.

Discussion

Eligibility

4. We have considered all of the comments carefully. In the *Notice of Proposed Rule Making*, we stressed our concern to limit the use of HF frequencies to necessary activities so as to minimize the potential of international interference, while providing long distance communications circuits to aid in responding to emergencies and to support activities important to the national interest and security. These circuits would enable energy and mineral exploration activities to be carried out in remote areas where they frequently occur.³ We believe the requirements of Radiolocation licensees for voice communications in setting up and maintaining their radiolocation systems are adequately provided for in the Special Industrial Radio Service. In those instances in which Racal-Decca Survey, Inc. (RDSI) and Offshore Navigation, Inc. (ONI) can establish requirements in support of exploration

¹ Paragraph 8 of the *Notice* provided:

Accordingly, we propose to limit eligibility in the Power Radio Service to utilities and power pools engaged in the distribution of electric power or the distribution by pipeline of fuels or water. In the Petroleum Radio Service, we propose to limit eligibility to persons engaged in exploring for petroleum or petroleum products. In the Telephone Maintenance Radio Service, we propose to limit eligibility to communications common carriers, for the repair of communications links important to the national interest. In the Special Industrial Radio Service, we propose to limit eligibility to use HF frequencies to persons engaged in any one of the following activities:

—Exploratory efforts in mining for solid fuels, minerals, and metals important to the national interest;

—Repair of pipelines being used for the transmission of fuel or water; or

—Services supporting the exploration for energy or mineral resources important to the national interest, without which such exploration cannot be conducted.

² We would permit licensees to share excess capacity as provided for in our recent decision in Docket No. 18921 (*Memorandum Opinion and Order on Reconsideration*, Dkt. No. 18921, adopted April 27, 1983, released June 6, 1983, FCC 83-175). Of course, lessees would have to meet the same eligibility and use criteria as the primary licensee.

(petroleum and gas), we would consider such authorizations on a case-by-case basis. However, radiolocation itself, we conclude, should be conducted in spectrum allocation to that service and not be allowed routinely in this HF spectrum. Similarly, we are not persuaded by the record before us that agricultural and heavy construction uses should be licensed on a routine basis in this spectrum. In situations in which applicants can demonstrate particular requirements satisfying the criteria of General Docket No. 80-740, *supra*, the Chief of the Private Radio Bureau is hereby authorized to consider them on a case-by-case basis.

Plans

5. Our proposal to require the submission of a communications plan prior to authorization was generally supported. However, in consideration of the comments, we believe that not all of the requirements we proposed are necessary. Since Section 90.266 specifies uses of HF by Industrial Radio Service licensees and since an applicant is required to show in the plan that no alternative to the HF link is appropriate, we are eliminating certain reporting requirements we had proposed.⁴

6. While we had inquired whether power licensees should be eligible to use HF frequencies only if their system operated at a voltage exceeding a minimum level, we find that there is little correlation between communication distance requirements and the voltage applied to a power utility's transmission line, so we are removing that limitation also.

Allocation of Frequencies.

7. It should be recognized that the Table of Frequency Allocations shown in Appendix A identifies those bands currently available for the type of operations envisioned. These bands are subject to change upon final implementation of the WARC-79 via the Second Report and Order in General Docket No. 80-739.

Distance

8. The frequency bands we have proposed will allow licensees to meet

³ The portions of the showing (plan) we are removing are:

(1) How the communications link fits into the overall communications plans of the applicant;

(2) Locations of the fixed sites and the intended link(s) between them and all mobile or itinerant fixed stations; and

(3) Where the link(s) provides a standby backup circuit for another communications circuit, a description of the supported circuit's traffic sufficient to show that the circuit's disruption endangers life, property or the national interest.

⁴ *Report and Order*, released October 13, 1981, FCC 81-431.

communications needs which span distances up to several hundred miles. We proposed to place a minimum distance requirement of 100 miles to avoid unnecessary use of HF. We did this because VHF radio links generally can be used to satisfy communications needs below approximately 75 to 100 miles. However, we recognize that there are situations in which HF is necessary even for distances below 75 miles due to propagation characteristics in some areas and due to requirements of mobile platforms to maintain radio contact while in motion. We will not foreclose relief to the relatively few requirements for HF use over these distances. Retaining our requirement that applicants provide "(a) description of the communication requirement sufficient to demonstrate that no alternative to the link is appropriate and that there is no reasonable way to abbreviate the link" eliminates the need for a separate distance requirement. Therefore, we are not adopting a distance limitation as proposed.

Prospecting

9. API requested clarification of the term, "prospecting," as it applies to eligibility for use of the frequencies. Prospecting does include exploratory drilling and other exploration activities short of production. Once production begins we expect licensees to use other forms of communication and terminate the use of HF links.

Coordination

10. The comments contained few suggestions for post-authorization coordination, although several recognized the need that a licensing data base be maintained, the resources

for doing so appear to be available.* In consideration of the need for an accurate data base, we have decided to grant blanket authorizations for particular frequency bands, with licensees operating on individual frequencies which have been cleared by the Commission through the Interdepartment Radio Advisory Committee (IRAC) and announced by the Commission's Private Radio Bureau through Public Notice.** The licensee's selection of a particular frequency within the groups of frequencies identified by the Commission as available may be based on a recommendation from a frequency coordinator recognized by the Commission.* The Commission will not assign a licensee a specific frequency for use. The licensee will be expected to cooperate with the HF community in avoiding and resolving interference conditions.

Training/Administrative Traffic

11. We agree that to limit the testing and training on these systems to one hour per week is unduly restrictive, so we will relax this restriction to permit

* Both the Special Industrial Radio Service Association (SIRSA) and UTC have indicated an interest in maintaining a data base.

** Current licensees will be permitted to continue to operate on assigned frequencies unless they become unavailable.

* Clearance through IRAC does not convey protection to or from international operations. Commission licensees are still under obligation to terminate operations if interference occurs to internationally recognized operations.

* Congress recently sanctioned the role of frequency coordinators in the Private Land Mobile Radio Services licensing process. See "The Communications Amendments Act of 1982," Pub. L. 97-259, 96 Stat. 1087, September 13, 1982.

transmission for up to 7 hours per week. The use of administrative and routine traffic will also be allowed as part of the testing procedures.

Technical Standards

12. There were few objections to the technical requirements other than the equipment grandfathering provisions. Since we are requiring all licensees to vacate frequencies upon notification by the FCC in cases of interference, we see no need to limit the grandfathering provisions, so we will permit the use of current equipment for an indefinite period. We caution licensees, however, that it is in their best interest to upgrade their systems to the frequency agile equipment to assure the availability of the communications link(s). As proposed, we will permit the following emission types within the 2.8A3J emission type bandwidth: A1, A2, A3J, A4, A9, F1, F2 and F9.

Decision

13. For all the aforementioned reasons, we are amending the rules essentially as proposed, as set forth in the attached Appendix. Accordingly, It is ordered, effective August 15, 1983, That Parts 2 and 90, 47 CFR Parts 2 and 90, are amended as shown in the Appendix attached hereto. The authority for this action is found in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) & 303.

14. It is further ordered, that this proceeding is terminated.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303).

Federal Communications Commission.

William J. Tricarico,
Secretary.

Appendix A

The Commission amends Title 47 of the Code of Federal Regulations, Parts 2 and 90, as follows:

PART 2—[AMENDED]

1. Section 2.106, the Table of Frequency Allocations, columns 7 through 11, are amended by revising certain entries as follows:

§ 2.106 Table of Frequency Allocations

FEDERAL COMMUNICATIONS COMMISSION

Band (kHz)	Service	Class of Station	Frequency (kHz)	Nature of services of stations
7	8	9	10	11
4000-4063	FIXED	Fixed		AERONAUTICAL FIXED, FIXED (in Alaska), INDUSTRIAL, INTERNATIONAL FIXED, PUBLIC, LOCAL GOVERNMENT.

FEDERAL COMMUNICATIONS COMMISSION—Continued

Band (kHz)	Service	Class of Station	Frequency (kHz)	Nature of services of stations
7	8	9	10	11
4750-4995	FIXED	Fixed		AERONAUTICAL FIXED, FIXED (in Alaska), INDUSTRIAL, INTERNATIONAL FIXED PUBLIC, LOCAL GOVERNMENT.
5000-4550	FIXED	Fixed		AERONAUTICAL FIXED, FIXED (in Alaska), INDUSTRIAL, INTERNATIONAL FIXED PUBLIC, LOCAL GOVERNMENT.
5730-5950	FIXED	Fixed		AERONAUTICAL FIXED, FIXED (in Alaska), INDUSTRIAL, INTERNATIONAL FIXED PUBLIC, LOCAL GOVERNMENT.
6765-7000	FIXED	Fixed		AERONAUTICAL FIXED, FIXED (in Alaska), INDUSTRIAL, INTERNATIONAL FIXED PUBLIC, LOCAL GOVERNMENT.
7300-8195	FIXED	Fixed		AERONAUTICAL FIXED, FIXED (in Alaska), INDUSTRIAL, INTERNATIONAL FIXED PUBLIC, LOCAL GOVERNMENT.
9040-9500	FIXED	Fixed		AERONAUTICAL FIXED, FIXED (in Alaska), INDUSTRIAL, INTERNATIONAL FIXED PUBLIC, LOCAL GOVERNMENT.
9775-9995	FIXED	Fixed		AERONAUTICAL FIXED, FIXED INDUSTRIAL, INTERNATIONAL FIXED PUBLIC, LOCAL GOVERNMENT.
10100-10150	FIXED	Fixed		AERONAUTICAL FIXED, INTERNATIONAL FIXED PUBLIC.
10150-11175	FIXED	Fixed		AERONAUTICAL FIXED, INDUSTRIAL, INTERNATIONAL FIXED PUBLIC.
11400-11700	FIXED	Fixed		AERONAUTICAL FIXED, INDUSTRIAL, INTERNATIONAL FIXED PUBLIC.
11975-12330	FIXED	Fixed		AERONAUTICAL FIXED, INDUSTRIAL, INTERNATIONAL FIXED PUBLIC.
13360-14000 (217)	FIXED	Fixed	13560	AERONAUTICAL FIXED, INDUSTRIAL, INTERNATIONAL FIXED PUBLIC, Industrial, scientific and medical equipment.
14350-14990	FIXED	Fixed		AERONAUTICAL FIXED, INDUSTRIAL, INTERNATIONAL FIXED PUBLIC.
15450-16460	FIXED	Fixed		AERONAUTICAL FIXED, INDUSTRIAL, INTERNATIONAL FIXED PUBLIC.
17360-17700	FIXED	Fixed		AERONAUTICAL FIXED, INDUSTRIAL, INTERNATIONAL FIXED PUBLIC.
18030-18068	FIXED	Fixed		AERONAUTICAL FIXED, INDUSTRIAL, INTERNATIONAL FIXED PUBLIC.

FEDERAL COMMUNICATIONS COMMISSION—Continued

Band (kHz)	Service	Class of Station	Frequency (kHz)	Nature of services of stations
7	8	9	10	11
18068-18168	FIXED	Fixed		AERONAUTICAL FIXED INTERNATIONAL FIXED PUBLIC
18168-19990	FIXED	Fixed		AERONAUTICAL FIXED INDUSTRIAL INTERNATIONAL AL FIXED PUBLIC
20010-21000	FIXED	Fixed		AERONAUTICAL FIXED INDUSTRIAL INTERNATIONAL AL FIXED PUBLIC
21750-21850	FIXED	Fixed		AERONAUTICAL FIXED INDUSTRIAL INTERNATIONAL AL FIXED PUBLIC
22720-23200	FIXED	Fixed		AERONAUTICAL FIXED INDUSTRIAL INTERNATIONAL AL FIXED PUBLIC
23350-24890	FIXED	Fixed		AERONAUTICAL FIXED INDUSTRIAL INTERNATIONAL AL FIXED PUBLIC
24890-24990	FIXED	Fixed		AERONAUTICAL FIXED INTERNATIONAL FIXED PUBLIC

PART 90—[AMENDED]

2. In § 90.63, "Power radio service," amend paragraph (c), "Frequencies available," to add an entry to the Kilohertz band and revise paragraph (d)(1), to read as follows:

§ 90.63 Power radio service.

(c) * * *

Power Radio Service Frequency Table

Frequency or band	Class of stations(s)	Limitations
Kilohertz: 2000 to 25,000	Fixed, base or mobile	1

(d) Explanation of assignment limitations appearing in the frequency tabulation of paragraph (c) of this section:

(1) Only utilities and power pools engaged in the distribution of electric power, or the distribution of by pipeline of fuels or water are eligible to use this spectrum, and then only in accordance with § 90.266. Except as provided in this Part, licensees may not use these frequencies in the place of other operational circuits permitted by the Commission's Rules. Circuits operating on these frequencies may be used only for the following purposes:

(i) Providing backup standby communications for circuits which have been disrupted and which are used for

coordinating inter-utility, intra-utility, and power pool distribution of electric power; or.

(ii) Coordinating the repair of inter-utility, intra-utility, and power pool electric power distribution networks, or the repair of pipelines.

3. In § 90.65, "Petroleum radio service," amend paragraphs (b), "Frequencies available," by revising the Kilohertz band and by revising paragraph (c)(1) to read as follows:

§ 90.65 Petroleum radio service.

(b) * * *

Petroleum Radio Service Frequency Table

Frequency or band	Class of stations(s)	Limitations
Kilohertz: 1614	Base or mobile	1,2,3,4
1628	do	1,2,3,4
1652	do	1,2,3,4
1676	do	1,2,3,4
1700	do	1,2,3,4
2000 to 25,000	Fixed, base or mobile	1
2292	Base or mobile	1,2,4,5
2398	do	1,2,4,5
4637.5	do	1,2,4,5

(c) Explanation of assignment limitations appearing in the frequency table of paragraph (b) of this section:

(1) Only entities engaged in prospecting for petroleum, natural gas or petroleum products are eligible to use

this spectrum, and then only in accordance with § 90.266. Except as provided in this Part, licensees may not use these frequencies in the place of other operational circuits permitted by the Commission's Rules. Circuits operating on these frequencies may be used only for the following purposes:

(i) Providing standby backup communications for circuits which have been disrupted and which directly affect the safety of life, property, or the national interest; or,

(ii) Providing operational circuits during exploration.

4. In § 90.73, "Special Industrial Radio Service," amend paragraph (c), "Frequencies available," by adding an entry to the kilohertz band, by revising paragraph (d)(1), and add a new paragraph (f)(5), to read as follows:

§ 90.73 Special Industrial Radio Service.

* * * * *

(c) * * *

Special Industrial Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
Kilohertz: 2,000 to 25,000	Fixed, base or mobile	1

(d) Explanation of assignment limitations appearing in the frequency table of paragraph (c) of this section:

(1) Only entities engaged in exploration, its support services, and the repair of pipelines are eligible to use this spectrum, and then only in accordance with § 90.266. Except as provided in this Part, licensees may not use these frequencies in the place of other operational circuits permitted by the Commission's Rules. The use of these frequencies is not subject to § 90.73(f). Circuits operating on these frequencies may be used only for the following purposes:

- (i) Exploratory efforts in mining for solid fuels, minerals, and metals important to the national interest;
- (ii) Repair of pipelines used for the transmission of fuel or water; and,
- (iii) Services supporting the exploration for energy or mineral resources important to the national interest, without which such exploration cannot be conducted.

(f) * * *

(5) This limitation shall not apply to paragraph (d)(1) of this section.

§ 90.81 [Amended]

5. Amend 90.81, "Telephone Maintenance Radio Service," as follows:

A. Amend paragraph (c) by adding a kilohertz band before megahertz band to the Telephone Maintenance Radio Service Frequency Table, as follows:

(c) * * *

Telephone Maintenance Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
Kilohertz: 2,000 to 25,000	Fixed, base or mobile	13

B. Amend paragraph (d) by adding new paragraph (13), to read as follows:

(d) * * *

(13) Only entities engaged in the repair of telecommunications circuits are eligible to use this spectrum, and then only in accordance with § 90.266. Except as provided in this Part, licensees may not use these frequencies in the place of other operational circuits permitted by the Commission's Rules. Circuits operating on these frequencies may be used only for coordinating the

repair of wireline or point-to-point microwave circuits.

6. In § 90.129, "Supplemental information to be routinely submitted with applications," add paragraph (n) to read as follows:

§ 90.129 Supplemental information to be routinely submitted with applications.

Each application shall be accompanied by the appropriate information listed below:

(n) Applicants requesting licenses to operate on frequencies pursuant to § 90.63(d)(1), § 90.65(c)(1), § 90.73(d)(1) and § 90.81(d)(13) must submit communications plans containing the following information:

- (1) a description of the communication requirement sufficient to demonstrate that no alternative to the link is appropriate and that there is no reasonable way to abbreviate the link;
- (2) The frequency bands and the number of frequencies necessary for the link(s);
- (3) The name and phone number of the person(s) responsible for ceasing operations of the licensee's stations in the event of interference; and,
- (4) Where the link(s) provides a standby backup circuit for another communications circuit, a brief description of the supported circuit and its vulnerability to disruption.

7. In § 90.207, paragraphs (e) and (f), revise the text to read as follows:

§ 90.207 Types of emissions.

(e) For radio teleprinter operations that may be authorized in accordance with § 90.237, only F2 or F9 emissions will be authorized above 25 MHz, and A2 or F2 emissions below 25 MHz.

(f) For radioteleprinter operations that may be authorized in accordance with § 90.237, only F4 emissions will be authorized above 25 MHz, and A4 emissions below 25 MHz.

8. Revise paragraph (g) of § 90.237 to read as follows:

§ 90.237 Interim provisions for operation of radioteleprinter and radiofacsimile devices.

(g) For single sideband operations in accordance with Section 90.266, transmitters type-accepted under this part for use of A3J emissions may also be used for A2 and F2 emissions for radioteleprinter transmissions. Transmitters type-accepted under this part for use of A3J emissions in accordance with Sections 90.63(d)(1),

90.65(c)(1), 90.73(d)(1) and 90.81(d)(13) may also be used for A2, F2, A9, F9, and A4 emissions to provide standby backup circuits for operational telecommunications circuits which have been disrupted, where so authorized in other sections of this part.

9. Add new § 90.266 to read as follows:

§ 90.266 Long distance communications on frequencies between 2 and 25 MHz.

(a) The use of any particular frequency between 2 and 25 MHz is limited to those frequencies falling within the bands allocated to the fixed and land mobile services as indicated in Section 2.106 of the Commission's Rules and Regulations.

(b) Only in the following circumstances will authority be extended to stations to operate on the frequencies between 2 and 25 MHz:

- (1) To provide communications circuits to support operations which are highly important to the national interest and where other means of telecommunication are unavailable;
- (2) To provide standby and/or backup communications circuits to regular domestic communications circuits which have been disrupted by disasters and/or emergencies.

(c) No protection is afforded to users of these frequencies from harmful interference caused by foreign operations.

(d) In the event that a complaint of harmful interference resulting from operation of these circuits is received from a foreign source, the offending circuit(s) must cease operation on the particular frequency concerned immediately upon notification by the Commission.

(e) In order to accommodate the situations described in (c) and (d), the equipment shall be capable of transmitting and receiving on any frequency within the bands between 2 and 25 MHz and capable of immediate change among the frequencies, provided, however, that this requirement does not apply to equipment manufactured prior to August 15, 1983.

(f) Only 2.8A3J, 0.1A1 and those emission types listed in § 90.237(g) are permitted.

(g) Applicants must fulfill eligibility requirements set out in §§ 90.63(d)(1), 90.65(c)(1), 90.73(d)(1) or 90.81(d)(13) and shall submit communications plans pursuant to § 90.129(n).

(h) Exercises or circuits tests which require use of these frequencies for more than seven hours per week cumulative are prohibited unless prior written

approval is obtained from the Commission.

10. In § 90.555, revise the kilohertz portion of the combined frequency list in paragraph (b) as follows:

§ 90.555 Combined frequency listing.

(b) Combined frequency list.

Frequency	Services	Special limitations
Kilohertz		
70-90	IR	Radiolocation.
10	IR	Radiolocation.
110-130	IR	Radiolocation.
530	PL	Travelers' information stations.
1610	PL	Do.
1605-1715	IR	Radiolocation.
1610	PP	
1614	IP	
1626	PP	
1628	IP	
1630	PF	
1634	PP	
1642	PP	
1650	PP	
1652	IP	
1658	PP	
1666	PP	
1674	PP	
1676	IP	
1682	PP	
1700	IP	
1706	PP	
1714	PP	
1715-1750	IR	Radiolocation.
1722	PP	
1730	PP	
1750-1800	IR	Radiolocation.
2000-3000	PS, PL, IS, IW, IP, IT	Communications with public coast, disaster communications, long distance circuits.
2212	PO	
2226	PO	
2236	PO	
2244	PO	
2292	IP	
2366	PP	
2382	PP	
2390	PP	
2398	IP	
2406	PP	
2430	PP	
2442	PP	
2450	PP	
2458	PP	
2482	PP	
2490	PP	
2505-3500	PL, PS	State guard.
2726	PL, PS	Do.
3000-10,000	PL, IS, IW, IP, IT	Disaster communications, long distance circuits.
3201	PS	
3230-3400	IR	Radiolocation.
4363.8	(2)	Alaska emergency frequency.
4637.5	IW, IP, IM, IS	
10,000-25,000	IS, IW, IP, IT	Long distance circuits.

11. Revise footnote 4 of the Frequency Tolerance Table in paragraph (a) of Section 90.213 to read as follows:

§ 90.213 Frequency tolerance.

(a) * * *

⁴For disaster communications and long distance circuit operations according to §§ 90.264 and 90.266, transmitters exceeding

200 W peak envelope power shall maintain the carrier frequency to within 20 Hz of the authorized carrier frequency.

12. Revise footnote 9 of the power table in § 90.205 to read as follows:

§ 90.205 Power.

(b) * * *

⁹For disaster communications and long distance circuit operations as provided for in § 90.264 and § 90.266, peak envelope power is limited to 1 kW.

Appendix B

Comments were filed by:
Special Industrial Radio Service Association (SIRSA)

Utilities Telecommunications Council (UTC)
Offshore Navigation, Inc. (ONI)
American Telephone and Telegraph Co. (AT&T)

Racal-Decca Survey, Inc. (RDSI)
American Radio Relay League, Inc. (ARRL)

Reply comments were filed by:
American Radio Relay League, Inc. (ARRL)
Utilities Telecommunications Council (UTC)
Central Committee on Telecommunications of the American Petroleum Institute (API).

[FR Doc. 83-19285 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-20; RM-4236]

FM Broadcast Stations in Cave Junction, Oregon; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Class C FM Channel 274 to Cave Junction, Oregon, in response to a petition filed by Illinois Valley Radio. The assigned channel could provide a first FM service to that community.

DATE: Effective: September 12, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Cave Junction, Oregon): MM Docket No. 83-20, RM-4236.

Adopted: June 8, 1983.

Released: July 12, 1983.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 48 FR 4696, published February 2, 1983, proposing the assignment of Class C FM Channel 274 to Cave Junction, Oregon, as its first FM broadcast service, in response to a petition filed by Illinois Valley Radio ("petitioner"). Petitioner submitted comments in support of the *Notice* and reiterated its intention to apply for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements. No opposing comments were received.

2. The Commission has determined that the public interest would be served by assigning Channel 274 to Cave Junction, Oregon, since it could provide a first local FM broadcast service to that community.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204 and 0.283 of the Commission's Rules, it is ordered, That effective September 12, 1983, § 73.202(b) of the Commission's Rules is amended with respect to the following community:

City	Channel
Cave Junction, Oregon	274

4. It is further ordered, That this proceeding is terminated.

5. For further information, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-19531 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-125; RM-4326]

TV Broadcast Stations in Dillingham, Alaska; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns and reserves VHF Channel *2 to Dillingham, Alaska, for noncommercial

educational use, in response to a petition filed by the State of Alaska.

DATE: Effective: September 12, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order; Proceeding terminated

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Dillingham, Alaska); MM Docket No. 83-125, RM-4326.

Adopted: June 8, 1983.

Released: July 12, 1983.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 11302, published March 17, 1983, which invited comments on a proposal to assign VHF Television Channel 2 (reserved for educational use) to Dillingham, Alaska, in response to a petition filed by the State of Alaska ("petitioner"). Petitioner filed comments in support of the *Notice* and reaffirmed its interest in applying for the channel, if assigned. No opposing comments were received.

2. We believe that the petitioner has adequately demonstrated the need for a first noncommercial educational television service at Dillingham, Alaska, and that the public interest would be served by assigning and reserving VHF Television Channel *2 for noncommercial educational use at that community.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It is ordered, That effective September 12, 1983, the Television Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the following community:

City	Channel No.
Dillingham, Alaska	*2, 10

4. It is further ordered, That this proceeding is terminated.

5. For further information contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-19536 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-91; RM-4257]

TV Broadcast Station in Jacksonville, Texas; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 56 to Jacksonville, Texas, as its first television assignment, in response to a petition filed by George E. Gunter.

DATE: Effective: September 12, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau (202) 634-6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Jacksonville, Texas); MM Docket No. 83-91, RM-4257.

Adopted: June 8, 1983.

Released: July 12, 1983.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 8513, published March 1, 1983, which invited comments on a proposal to assign UHF Television Channel 56 to Jacksonville, Texas, in response to a petition filed by George E. Gunter ("petitioner"). Petitioner filed comments in support of the *Notice* and reaffirmed his intention to apply for the channel, if assigned. No opposing comments were received.

2. We believe that the petitioner adequately demonstrated the need for a first television assignment to Jacksonville, Texas, and that the public interest would be served by assigning UHF commercial Television Channel 56 to that community.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It is ordered,

That effective September 12, 1983, the Television Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the community listed below:

City	Channel No.
Jacksonville, Texas	56

4. It is further ordered, That this proceeding is terminated.

5. For further information contact Mark N. Lipp, Mass Media Bureau (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-19530 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-92; RM-4267]

TV Broadcast Stations in Redwood Falls, Minnesota; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 43 to Redwood Falls, Minnesota, as its first television assignment, in response to a petition filed by Hubbard Broadcasting, Inc.

DATE: Effective: September 12, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73.

Television broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.606(b), table of assignments, TV broadcast stations. (Redwood Falls, Minnesota); MM Docket No. 83-92, RM-4267.

Adopted: June 8, 1983.

Released: July 12, 1983.

By the Chief, Policy and Rules Division.

1. The Commission herein consider the *Notice of Proposed Rule Making*, 48 FR 8510, published March 1, 1983, which

invited comments on a proposal to assign UHF Television Channel 43 to Redwood Falls, Minnesota, in response to a petition filed by Hubbard Broadcasting, Inc. ("petitioner"). Petitioner submitted information in support of the *Notice* and reaffirmed its intention to apply for the channel, if assigned. No opposing comments were received.

2. We believe that petitioner adequately demonstrated the need for a first local television assignment to Redwood Falls, Minnesota, and that the public interest would be served by assigning UHF Television Channel 43 to that community.

3. Accordingly, pursuant to the authority contained in §§ 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective September 12, 1983, the Television Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the community listed below:

City	Channel No.
Redwood Falls, Minn.	43

4. It is further ordered, That this proceeding is terminated.

5. For further information contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.
(Secs. 4, 303, 48 Stat. as amended, 1068 1082; 47 U.S.C. 154, 303)

Roderick K. Porter,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-19528 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[FCC 83-298]

Business Communications in the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Amateur Radio Service Rules to state more clearly the prohibition against an amateur radio operator transmitting business messages. The amendment is necessary in order to make explicit the implied prohibition that business messages are prohibited for non-third party communications.

DATES: Effective August 31, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

List of Subjects in 47 CFR Part 97

Radio.

Order

In the matter of business communications in the Amateur Radio Service.

Adopted: June 29, 1983.

Released: July 12, 1983.

By the Commission: Commissioner Fogarty not participating.

1. The purpose of these rule amendments is to state clearly the prohibition against the transmission of business communications in the Amateur Radio Service. The International Radio Regulations and various rule sections in Part 97 of the Commission's Rules¹ clearly establish the personal and non-pecuniary nature of the Amateur Radio Service. However, there is no explicit prohibition regarding business communications, except in § 97.114, which is applicable only to third party traffic messages.²

2. We continue to receive inquiries asking whether business messages are permitted in the Amateur Radio Service. To put an end to the uncertainty which seems to persist on the subject, it is desirable to include in Part 97 a rule which specifically forbids the sending of business communications. Classic examples of business communications are those which deal with calling the office from an automobile by way of amateur radio in order to receive and

¹ International Radio Regulations, Article 1, paragraph 53:

Amateur Service: A radio communication service for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, that is, by duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest.

FCC Rule § 97.3(a). Amateur radio service: A radio communication service of self-training, intercommunication, and technical investigation carried on by amateur radio operators.

FCC Rule § 97.3(b). Amateur radio communication: Noncommercial radio communication by or among amateur radio stations solely with a personal aim and without pecuniary or business interest.

² FCC Rule § 97.114 Third party traffic.

The transmission or delivery of the following amateur radiocommunication is prohibited:

(c) Except for an emergency communication as defined in this part, third party traffic consisting of business communications on behalf of any party. For the purpose of this section business communication shall mean any transmission or communication the purpose of which is to facilitate the regular business or commercial affairs of any party.

leave business message, or with providing a regular communications service to an employer, a local government or other entity. It should be noted, however, that there are no restrictions as to message content when an amateur radio communication directly relates to the immediate safety of the life of an individual or the immediate protection of property. For example, an amateur radio operator may use an amateur station to obtain emergency roadside assistance when the overriding consideration is the saving of human life. On the other hand, an amateur radio station may not be used for a medical or law enforcement communication which does not fall within the exception of immediate danger to life or property. For example, using an amateur station to call in a medical prescription or in conjunction with a normal police patrol is prohibited. In short, the Amateur Radio Service should not be used as an alternative to the land mobile, broadcast, maritime, or common carrier radio services, all of which have been established by appropriate regulatory processes.

3. Part 97 is amended to add a new section which explicitly states the prohibition against the transmission of business communications. Also, the definition of the term "business communications" is moved from § 97.114, Third Party Traffic, to § 97.3, Definitions. These amendments will result in a clearer statement that the prohibitions against business communications applies to both third party communications and non-third party communications. The term "business communications", in this instance, is used in the broadest context. It includes all types of communications which are intended to facilitate the regular business or commercial affairs of any party, whether individual or organization, whether for profit or not-for-profit, whether charitable or commercial, and whether government or non-government.

4. The rules are also amended by adding a new section pertaining to the limitations on international amateur radio communications. Although the international limitations are presently contained in Appendix 2 of Part 97, the amendment will help make clearer that international communications must be confined to remarks of a personal character or discussions of a technical nature relating to tests.³

³ Article 32, paragraph 2732, International Radio Regulations, Geneva, 1962.

5. We are dispensing with notice and comment rule making proceedings. Such proceedings are unnecessary since these rule amendments are interpretative in nature. Business communications are not now permitted in the amateur radio service and we have consistently so advised amateur radio operators who inquire. Moreover, in evaluating messages to see if a violation has occurred, we have uniformly taken the position that any message that relates to a business matter is a violation of the amateur rules. Our only purpose here is to have rules which explicitly prohibit the sending of business messages in both third party and non-third party communications. Likewise, notice and comment are not required for the addition of the limitations on international amateur communications since the insertion of that requirement in the rules merely implements an international requirement.

6. In view of the foregoing, It is ordered, That Part 97 is amended as set forth in the Appendix hereto, effective August 31, 1983. This action is taken pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

7. It is further ordered, That the Secretary shall cause a copy of this Order to be published in the *Federal Register*.

8. Information in this matter may be obtained by contacting Maurice J. DePont, (202) 632-4964, Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554. (Secs. 4, 303, 48 Stat., as amended, 1066, 1062; 47 U.S.C. 154, 303) Federal Communications Commission. William J. Tricarico, Secretary.

Appendix

PART 97—[AMENDED]

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

1. In § 97.3, a new paragraph (bb) is added, after paragraph (aa), as follows:

§ 97.3 Definitions.

(bb) *Business communications*. Any transmission or communication the purpose of which is to facilitate the regular business or commercial affairs of any party.

2. In Subpart E of Part 97, entitled Prohibited Practices and Administrative Sanctions, a new § 97.110 is added, prior to § 97.112, as follows:

§ 97.110 Business communications prohibited.

The transmission of business communications by an amateur radio station is prohibited, except for emergency communications as defined in this part.

3. In Subpart E of Part 97, entitled Prohibited Practices and Administrative Sanctions, a new § 97.111 is added, between new Section 97.110 and present § 97.112, as follows:

§ 97.111 Limitations on international communications.

Transmissions between amateur radio stations of different countries, when permitted, must be limited to messages of a technical nature relating to tests, and, to remarks of a personal character for which, by reason of their unimportance, recourse to the public telecommunications service is not justified.

4. Section 97.114(c) is amended by deleting the second sentence thereof. As amended, § 97.114(c) reads, as follows:

§ 97.114 Third party traffic.

(c) Except for emergency communications as defined in this part, third party traffic consisting of business communications on behalf of any party.

[FR Doc. 83-19534 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

Private Land Mobile Radio Services; Amendment of the Commission's Rules Pursuant to Its Unregulatory Program; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects tables of available frequencies in the Forest Products, Special Industrial, and Business Radio Services to eliminate typographical errors.

These corrections are necessary because previous editorial amendments published on page 9273 of the *Federal Register* of March 4, 1983, repeated some errors and introduced new ones in the frequency tables.

FOR FURTHER INFORMATION CONTACT: Richard Kenney, (202) 632-6497.

Erratum

Released: July 13, 1983.

In the matter of amendment of Parts 0, 1, and 90 of the Commission's rules and regulations pursuant to its unregulatory program.

An order in the above captioned matter was released by the Commission on February 15, 1983 (Mimeo 32827), and published in the *Federal Register* on March 4, 1983 (48 FR 9271). This erratum corrects errors and omissions in the Appendix of the order amending Part 90, §§ 90.67, 90.73, and 90.75 of Title 47 of the Code of Federal Regulations (47 CFR).

PART 90—[AMENDED]

§ 90.67 [Amended].

1. In § 90.67(b), in the frequency table, delete 43.18, 457.000, 457.025, and 457.075; change "47.44" to "37.44"; and correct class of station(s) and limitations for 152.465 and 157.725, so that table reads as follows:

§ 90.67 Forest products radio service.

(b) * * *

FOREST PRODUCTS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class or station(s)	Limitations
Megahertz:		
29.71	Base or mobile	
31.76	do	30
37.44	do	
37.86	do	
43.02	do	30
43.26	do	30
152.465	Base or mobile	29
154.625	Base or mobile	5
157.725	do	29
157.740	do	5
456.175	Mobile	18
456.750	do	2
457.100	do	28

2. In § 90.73(c), in the frequency table, delete 72.68 and 157.74; change "153.363" to "153.365"; and correct limitations for 33.12, 43.18, and 152.465, so that table reads as follows:

§ 90.73 Special industrial radio service.

(c) * * *

SPECIAL INDUSTRIAL RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Megahertz:		
33.12	Mobile	3, 34
35.28	Base or mobile	34
43.18	do	2
72.70	Operational-Fixed	6
72.44	Mobile	7
72.48	do	7

SPECIAL INDUSTRIAL RADIO SERVICE
FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
72.52	do	7
72.56	do	7
72.60	do	7
75.44	do	7
75.48	do	7
75.52	do	7
75.56	do	7
75.60	do	7
151.490	Base or mobile	2, 8
152.465	do	2, 28
153.350	do	2, 30
153.365	do	2, 30
153.380	do	2, 30
157.725	do	2, 28
157.740	do	2, 9

3. In § 90.75(b), in the frequency table, delete 27.39 and 27.41; correct class of station(s) for 463.200, 465.000, and 466.050; and correct limitations for several frequencies between 460.975 and 469.775, so that table reads as follows:

§ 90.75 Business radio service

(b) * * *

BUSINESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Megahertz:		
27.43	Base or mobile	1, 2
27.45	do	1, 2
460.975	do	1, 2, 28, 39, 40
461.000	do	1, 2, 28, 39, 40
463.200	Base or mobile	1, 2, 28
463.225	do	1, 2, 28
464.600	do	1, 26
464.625	do	1, 26
464.650	do	1, 26
464.675	do	1, 2, 26, 29
464.700	do	1, 26
464.725	do	1, 26
464.750	do	1, 26
465.000	Base	10, 30
465.650	Mobile	2, 4, 25, 26, 31
465.900	do	1, 2, 27, 39
465.925	do	1, 2, 27, 39
465.950	do	1, 2, 27, 39
465.975	do	1, 2, 27, 39
466.000	do	1, 2, 27, 39
466.025	do	1, 2, 26
466.050	do	1, 2, 26
469.550	do	3, 30
469.575	do	1, 2, 26
469.600	do	1, 26
469.625	do	1, 26
469.650	do	1, 26
469.675	do	1, 2, 26
469.700	do	1, 26
469.725	do	1, 26
469.750	do	1, 26

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 83-19532 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

50 CFR Part 285

[Docket No. 30526-96]

Atlantic Tuna Fisheries; Monitoring of
the Status of Stock

Correction

In FR Doc. 83-16358 beginning on page 27745 in the issue of Friday, June 17, 1983, make the following corrections:

1. On page 27757, first column, § 285.4, in the first line of paragraph (b), "NVFS" should have read "NMFS".

2. On the same page, § 285.20, third column, paragraph (b)(3), line five, "under § 285.22(d)" should have read "under § 285.25(d)".

3. In § 285.21, page 27758, second column, paragraph (j), ninth line, "261" should have read "621".

4. In § 285.23(b), page 27759, first column, second line from the top of the page, "10 percent of weight" should have read "10 percent by weight".

5. Same column, paragraph (d), fifteenth line, "other onboard" should have read "other fish onboard".

6. Same page, second column, § 285.24, paragraph (a), seventh line, "the catch" should have read "the total catch".

BILLING CODE 1505-01-M

50 CFR Part 652

[Docket No. 30617-111]

Atlantic Surf Clam and Ocean Quahog
Fisheries

Correction

In FR Doc. 83-17261 beginning on page 29518 in the issue of Monday, June 27, 1983, make the following correction:

Under **FOR FURTHER INFORMATION CONTACT:**, the telephone number now

reading "617-228-3600" should have read "617-281-3600".

BILLING CODE 1505-01-M

50 CFR Part 655

[Docket No. 30715-129]

Atlantic Mackerel, Squid, and
Butterfish Fisheries; Final Initial
Annual Specifications

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rule-related notice; final initial annual specifications.

SUMMARY: NOAA issues this notice to provide final initial annual specifications for the Atlantic mackerel, squid, and butterfish fisheries. Regulations governing these fisheries require that the Secretary publish his final determination of initial annual specifications for the current fishing year. This action is intended to promote development and orderly operation of the fisheries.

EFFECTIVE DATE: July 18, 1983.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617-281-3600, ext. 273.

SUPPLEMENTARY INFORMATION: An emergency interim rule to implement Amendment No. 3 to the Fishery Management Plans for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) was effective on April 1, 1983 (48 FR 14554, April 4, 1983). Section 655.21(b) of the regulations requires the Secretary of Commerce (Secretary) to determine annual specifications of the respective optimum yields (OYs) and the amounts for domestic annual harvest (DAH), domestic annual processing (DAP), and total allowable level of foreign fishing (TALFF) for Atlantic mackerel, *Illex* and *Loligo* squids, and butterfish. Procedures and determining the initial annual amounts are set out under § 655.22 of these regulations. Section 655.22(b) requires the Secretary to publish a notice that specifies preliminary initial amounts of OY, DAH, DAP, TALFF, and reserve, if any, for each species by February 1 of each year and to provide for a 30-day comment period on the preliminary specifications. Regulations to implement Amendment No. 3 were not effective until April 1, 1983; thus the preliminary specifications

could not be made according to the schedule specified in the regulations.

A notice of preliminary initial specifications and a request for comments was published on April 26, 1983 [48 FR 18818]. Comments were received by NOAA until May 26, 1983, and this notice responds to comments on the preliminary initial annual specifications. This notice also sets out the Secretary's final determination of the initial annual specifications for the Atlantic mackerel, squid, and butterfish fisheries for the fishing year 1983-1984. Comments received which focused on the definitions of terms under Amendment No. 3, rather than on the determination of preliminary specifications for the 1983-1984 fishing year, will be considered and addressed as comments on the emergency interim rule to implement Amendment No. 3.

Specifications

The following table lists the final initial annual specifications for OYs, DAHs, DAPs, reserves, and TALFFs for *Illex* and *Loligo* squids, Atlantic mackerel, and butterfish in metric tons (mt):

Species	OY	DAH	DAP	Re- serve	TALFF
Squid:					
<i>Illex</i>	30,000	27,100	5,000	1,450	1,450
<i>Loligo</i>	44,000	22,000	10,300	11,000	11,000
Mackerel	101,700	30,000	5,000	35,850	35,850
Butterfish ¹	up to 16,000	11,000	11,000	0	1,200

¹ See text.

The specifications shown in the table reflect due consideration of comments on the preliminary initial annual specifications, as discussed below, and allow a margin for the uncertainties in the pattern of anticipated growth of the U.S. harvest this fishing year. The Agency has attempted to balance the U.S. interests to the extent permissible under the Magnuson Fishery Conservation and Management Act (Magnuson Act) to facilitate growth in the U.S. squid fishery.

Comments and Responses

The Joint Venture Review Process: A number of comments questioned the preliminary specifications for the squids on the grounds that joint venture processing (JVP) amounts were not adequately considered. There was substantial discussion and review, however, by the Mid-Atlantic and New England Fishery Management Councils and at the NOAA Regional and Washington Office levels of the squid joint venture applications, which affected the preliminary squid

specifications. NOAA concludes that the record supports as reasonable its evaluation of the utilization by domestic processors of the squids and the other species and by joint ventures, and its specifications for DAHs, DAPs, and TALFFs.

The joint venture applications were initially evaluated by the Mid-Atlantic and New England Fishery Management Councils under guidelines that were adopted by both Councils in 1982. The applications for *Illex* squid were discussed by the New England Council at meetings on February 22 and 23, 1983, and on April 6 and 7, 1983. The New England Council also discussed three applications for *Loligo* squid joint ventures at the same meeting. The Mid-Atlantic Fishery Management Council requested comments on applications by January 3, 1983, and considered applications for joint ventures and comments on February 9 and 10, March 9 and 10, and April 6 and 7, 1983. The Mid-Atlantic Council also developed its recommendation on the specifications of OY, DAH, DAP, TALFF and reserves for the mackerel, squid, and butterfish fisheries on January 5 and 6, 1983. Notices of the discussion of joint ventures as agenda items were published in advance of the meetings. Notices of availability of the joint venture applications were published in the *Federal Register* by the Department of State after filing by the applicants. The recommendations of the respective Councils as to the various joint ventures became a matter of record which the Secretary of Commerce considered in making the final disposition of the joint venture applications. In addition, the Mid-Atlantic Fishery Management Council submitted a revised proposal for initial annual specifications for the squid, mackerel and butterfish fisheries based on its review of joint ventures.

NOAA reviewed this record, applying criteria to evaluate joint venture applications for *Illex* squid that were published in a notice of initial approval of joint ventures in the *Federal Register* at 48 FR 18864, April 26, 1983.

Opportunity to appeal was provided through this notice to "Applicants whose permits were denied or who claim they did not know about the cut-off date for submitting JV applications * * *."

NOAA believes that it has adequately considered first the needs of domestic processors and then those of the joint venture applicants in determining these final initial specifications. With regard to DAP, NOAA considered past squid landings, potential future growth based upon discussions and information

provided by the industry and the Councils. Additionally, ample opportunities were given to domestic processors to comment on their proposed utilization in the course of the review of individual joint ventures within the process outlined above. Finally, the needs of both the shoreside processors and joint venture participants were adequately considered.

Following are responses to comments on specific preliminary specifications appearing in the *Federal Register* of April 26, 1983.

Squids: *Illex*. The DAH for *Illex* has been maintained at 27,100 mt. Some comments stated that the JVP component of DAH had been overestimated. As described above, the Councils and NOAA engaged in a thorough process of evaluation of joint venture applications. These applications were considered before determining the *Illex* DAH. Under the procedures outlined above, NOAA obtained information from joint venture applicants (as submitted on forms provided by the Department of State), and through additional questions, and applied evaluative criteria developed by the Councils and NOAA to this information. All concerned parties were given an opportunity to discuss publicly the joint ventures and to submit additional comments in writing. NOAA concludes that it was adequately informed of the joint venture arrangements and acted reasonably in factoring them into the selection of annual specifications.

Certain reductions of the amounts approved for *Illex* squid joint ventures were necessary to reflect the Agency's evaluation of the DAH. A representative of a foreign interest alleged discrimination in the *Illex* squid determination because of the disapproval of his client's joint venture applications and the simultaneous denial of any opportunity for foreign allocations for directed fisheries for *Illex* squid. Disapproval of the joint venture applications should have been appealed as provided for in the "Notice of intent to approve joint venture applications" (48 FR 18864, April 26, 1983), since such disapproval is not within the context of this rulemaking. The challenge to the level of *Illex* squid foreign allocations is addressed below.

The reserve and TALFF specifications for *Illex* squid are retained at 1,450 mt each.

One commenter claimed that the low level of foreign allocations for *Illex* squid violated the Magnuson Act and undermined the Governing International

Fishing Agreement (GIFA). However, domestic harvest represented by the estimate of DAH (which includes the amounts estimated for joint ventures), has priority under the Magnuson Act. The estimates of DAH increased to such a level that only sufficient TALFF remains for incidental foreign catch of squid. Thus, foreign allocations for directed *Illex* squid fisheries will not be available for any nation which formerly conducted such fisheries because of the greatly increased DAH for *Illex* squid. This TALFF specification does not violate the Magnuson Act or undermine the GIFA. The GIFA provides that a TALFF for a fishery will be available only if a surplus exists in the OY after considering U.S. utilization.

Loligo. The *Loligo* OY is retained at 44,000 mt. One commenter criticized the *Loligo* OY specification, stating in effect that the *Loligo* OY should be lowered (1) through a downward adjustment from MSY similar to the decrease in the *Illex* MSY because of uncertainties in the stock assessment; and/or (2) to match landing statistics in prior years, which have totaled approximately 20,000 mt.

In response to these comments, there is no basis provided in the current FMP or regulations for lowering the OY to make either change suggested in the context of setting initial annual specifications.

The DAH for *Loligo* is retained at 22,000 mt. Although commenters challenged the portion of DAH to the extent that the figure is based on joint ventures, NOAA has concluded that it has acted reasonably in relying on data gathered through the review process described above.

The DAP for *Loligo* has been retained at 10,300 mt. This figure was criticized by one foreign commenter as being too high and by one domestic commenter as being too low. Neither commenter presented new evidence for revision of the amount initially proposed, which was a reasonable estimate of the utilization capacity of domestic processors based on information available to NOAA. As stated in the initial notice, a three-fold growth for U.S. shoreside processors is viewed as realistic and can provide for the industry's predicted growth. If additional growth occurs as cited by the domestic commenter, the reserve amount can be utilized.

NOAA has taken into consideration the shoreside processors' concern that U.S.-harvested *Loligo* squid delivered to foreign processing vessels would

displace shoreside landings. NOAA has also learned that an estimated 6,500 mt of *Loligo* were landed by domestic vessels during the period from April 1 to June 10, 1983. This amount exceeds the entire annual *Loligo* landings of 1982 of 3,770 mt, demonstrating that JVP has not significantly affected shoreside processors. NOAA has considered this increase in landings and the amounts which would be used by joint ventures. It has concluded that a DAH of 22,000 mt together with the reserve will be sufficient for the total U.S. harvest. Therefore, the Secretary will maintain the estimated *Loligo* DAP of 10,300 mt.

The specifications for *Loligo* reserve and TALFF are retained at 11,000 mt respectively. A foreign commenter argued that his initial share of foreign allocation might be too low because only 50 percent of the TALFF may be allocated initially and because that portion would be distributed among a number of countries. Under § 201(e) of the Magnuson Act, adjustments within a nation's aggregate allocations may be made to accommodate needs of individual fisheries if such accommodation is needed. Also, the total available for both TALFF and reserve should be sufficient to cover a foreign harvest at levels near those of the 1982-1983 fishing year. The commenter's protests of potential harm are at this point speculative.

Mackerel: The sole comment on specifications for this fishery was a challenge to the permissible designation of the TALFF at the incidental catch level. The 35,850 mt each specified for both TALFF and Reserve for mackerel is well above the incidental catch level. Since the comment addressed a structural aspect of the FMP, the point will be addressed in response to the comments on the emergency regulations to implement Amendment No. 3, and not in the context of these final specifications.

Butterfish: Comments were received criticizing the designation of the butterfish TALFF at the incidental catch level and the calculation of OY by adding DAH and TALFF. These comments raise questions about the structural aspects of the FMP and will be addressed in responses to the comments on the emergency regulations to implement Amendment No. 3.

The DAH specification for butterfish is maintained at 11,000 mt, but the DAP is increased to 11,000 mt. This change has been made in response to the contention by domestic processors that

they will utilize the entire DAH. The OY for butterfish is the amount U.S. fishermen harvest plus TALFF, up to a maximum of 16,000 mt, and thus can change. The TALFF specified for incidental catch is determined by applying fixed percentages based upon TALFFs for *Loligo* and *Illex* squid, Atlantic mackerel, silver hake, and red hake.

In setting these specifications, NOAA continues to provide an opportunity for increasing DAH specifications to a maximum of 13,800 mt. This increase could be considered if required for DAP or such an increase could be provided for a butterfish joint venture. A joint venture would be allowed only after the peak of the domestic butterfish fishery is past. The exact conditions under which a joint venture would be allowed within the butterfish fishery would be discussed among the Council(s), the industry and the public after an application was filed.

NOAA has reasonably factored such potential joint ventures into its annual specifications because the Agency will not preclude considering future joint venture arrangements not in conflict with domestic use. When an application has actually been filed and is under review, the domestic processors may submit any arguments relative to their capacity to handle amounts applied for under a joint venture.

The initial TALFF for butterfish is 1,200 mt, after application of fixed percentages to initial TALFF's for the squids, hakes, and mackerel. The butterfish TALFF is changed to read 1,200 mt, but it may not exceed 2,200 mt. However, the maximum butterfish TALFF of up to 2,200 mt for this fishing year could be provided if the Secretary of State increases the allocation of squids, mackerel, and hakes to foreign fishing nations (§ 655.21(b)(3)).

Classification

This action is required by 50 CFR Part 655, and complies with E.O. 12291.

List of Subjects in 50 CFR Part 655

Fish, Fisheries, Fishing, Reporting requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: July 15, 1983.

Joe P. Clem,

Chief, Fees, Permits and Regulation Division,
National Marine Fisheries Service.

[FR Doc. 83-19622 Filed 7-18-83; 8:45 am]

BILLING CODE 3510-25-M

Proposed Rules

Federal Register

Vol. 48, No. 140

Wednesday, July 20, 1983

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Docket No. R-0470]

Bank Holding Companies and Change in Bank Control; Proposed Revision of Regulation Y

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Extension of comment period.

SUMMARY: The Board of Governors of the Federal Reserve System has extended the period for receipt of public comment until August 1, 1983, on the proposed revision of Regulation Y (Docket No. R-0470) (48 FR 23520), May 25, 1983, its regulation implementing the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) and the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)). The comment period is extended due to requests from The American Bankers Association and the Association of Bank Holding Companies.

DATE: Comments must be received by August 1, 1983.

ADDRESS: All comments, which should refer to Docket No. R-0470, should be mailed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room-2223, 20th & Constitution Avenue NW., Washington, D.C., between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: James McAfee, Associate Secretary (202/452-3259).

SUPPLEMENTARY INFORMATION: On May 19, 1983, the Board requested comment by July 18, 1983, on its proposed revision of Regulation Y. The proposed revision reorganized the regulation, incorporated statutory material and numerous Board interpretations into the regulation, and revised the procedures for filing and processing applications required under

the regulation. The American Bankers Association and the Association of Bank Holding Companies requested an extension of the comment period on the proposal in order to provide interested parties with additional time in which to present their views. In light of the extensive nature of the revisions and the significant issues involved in the proposed revision, and in order to encourage public participation in this matter, the comment period has been extended to August 1, 1983.

List of Subjects in 12 CFR Part 225

Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, securities.

By order of the Board of Governors, acting through its Secretary under delegated authority, effective July 13, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-19402 Filed 7-19-83; 8:45 am]

BILLING CODE 6210-01-M

CIVIL AERONAUTICS BOARD

[EDR-456A/SPDR-88A; Econ. Regs. Docket 40336]

14 CFR Parts 207, 208, 212, 298, and 380

Charter Rules for Direct and Indirect Carriers; Extension of Comment Period

Dated: June 3, 1983.

AGENCY: Civil Aeronautics Board.

ACTION: Extension of comment period.

SUMMARY: The CAB is extending for one month the comment and reply comment period for its notice of proposed rulemaking on charter rules for direct and indirect air carriers. This action is taken in response to a request by Irving Trust Company.

DATES: Comments by July 15, 1983.

Reply comments by July 29, 1983.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 40336, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple

copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Associate General Counsel, Rules and Legislation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION:

In EDR-456/SPDR-88, 48 FR 15639, April 12, 1983, the Board proposed new charter rules for direct and indirect air carriers. The proposed rule would retain the financial protections of existing rules for direct air carriers while eliminating many other requirements. In addition, they would retain a security instrument and depository system for indirect air carriers, along with contract rules for public protection. The Board invited interested persons to file comments by June 13, 1983, and reply comments by June 28, 1983.

On May 31, 1983, the Irving Trust Company asked the Board to extend the comment period until July 30, 1983. It argued that it needs further time to fully evaluate the substantial number of operational changes proposed by the rule, especially since May through July is the peak of the charter season. It stated that no one would be prejudiced by the extension of the comment period because the proposed rules could not be implemented in time for this summer's charter season. In addition, Irving Trust argued that an extension would be in the public interest because it would give all interested persons more time to focus and comment on the proposed changes.

The Board wants to ensure that all interested persons have adequate notice of the proposed changes to the charter rule and a reasonable opportunity to state their views. The charter rulemaking is particularly important because the proposal would make significant changes that would affect many people. The Board is especially interested in hearing from experts in the field such as Irving Trust Company because such commenters are often in the best position to analyze the practical effects of the proposal. Because Irving Trust has shown good cause, the comment and reply comment period are each extended approximately 1 month. The reply comment period will close on July 29 rather than on July 30 because

the Board does not accept filings on weekends.

Accordingly, under authority delegated in 14 CFR 385.20(d), the time for filing comments is extended to July 15, 1983, and the time for reply comments is extended to July 29, 1983.

List of Subjects in 14 CFR Parts 207, 208, 212, 298, and 380

Advertising, Air carriers, Air taxis, Air transportation—foreign, Antitrust, Charter flights, Consumer protection, Educational study programs, Insurance, Military air transportation, Reporting and recordkeeping requirements, Surety bonds, Travel agents.

(Sec. 204, 401, 402, 403, 404, 407, 408, 409, 411, 416 Pub. L. 85-726, as amended, 72 Stat. 743, 754, 757, 758, 760, 766, 767, 768, 769, 771, 49 U.S.C. 1324, 1371, 1372, 1373, 1374, 1377, 1378, 1379, 1381, 1386)

By the Civil Aeronautics Board.

Richard B. Dyson,

Associate General Counsel Rules and Legislation.

[FR Doc. 83-19600 Filed 7-19-83; 8:45 am]

BILLING CODE 6320-01-M

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

25 CFR Part 700

Commissions Operations and Relocation Procedures; Eligibility

AGENCY: Navajo and Hopi Indian Relocation Commission.

ACTION: Proposed rule.

SUMMARY: This notice proposes amendment of rules regarding eligibility standards for receipt of benefits under P.L. 93-531, the Navajo and Hopi Indian Relocation Act.

As a result of administrative review and court action, it has become apparent to the Commission that the present rules are confusing, ill-defined and provide no certainty to applicants as to what constitutes eligibility. The proposed revision is necessary to clarify the current rules and to bring the rules more closely in line with the language of the Act and intent of Congress.

DATE: Comments must be received by September 19, 1983.

ADDRESS: Comments may be sent to Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, AZ, 86002.

FOR FURTHER INFORMATION CONTACT: Paul M. Tessler, CFR Liaison Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, AZ, 86002, Telephone (602) 527-7350, FTS: 765-7350.

SUPPLEMENTARY INFORMATION: The principal author of this proposed rulemaking is E. Susan Crystal, Attorney at Law, of the Navajo and Hopi Indian Relocation Commission.

Section 700.69 of the proposed rule revises the definition of head of household. The present rule is wordy and confusing, creating interpretive problems for those affected by it. The cut-off date for determination of when an individual becomes self-supporting has been eliminated to provide that an individual only need be self-supporting while he/she was residing on the Hopi Partitioned Land.

Section 700.69(c) provides that an individual must be a custodial parent while they were residing on the Hopi Partitioned Land. The present regulation would allow people who were minors at the time they left the Hopi Partitioned Land but who subsequently grew up and had children to receive benefits separately from their parents. It is the Commission's position that Congress did not intend there to be an ever expanding group of eligible heads of household once they left the Hopi Partitioned Land. Individuals who reside on the Hopi Partitioned Land will continue to become eligible if they meet the other criteria of the rule.

Section 700.97, as proposed, defines resident as current occupancy or residence as of December 22, 1974, by the head of household or his family. The present rule requires that a person may maintain his/her residence on the Hopi Partitioned Land while recognizing that persons are temporarily away for a variety of reasons. The present rule requires that a person who is temporarily away must maintain substantial and recurring contacts with the Hopi Partitioned Land while being away.

The term "resident" in the proposed rule is meant to be given its legal meaning which requires an examination of a person's intent to reside with manifestations of that intent. An individual who is away from the Hopi Partitioned Land may still be able to prove legal residence.

The proposed rule eliminates the consideration of substantial, recurring contacts and limits the determination of residence to a specific point in time (ie.: December 22, 1974, the date of the passage of Pub. L. 93-531). The Commission has experienced difficulty in the interpretation of the term "substantial and recurring contacts" and the United States District Court for the District of Arizona has noted the lack of definite criteria. The term "residence" in the proposed rule does not require the use of that standard. The maintenance

of contacts after December 1974 is not essential to the determination of residence.

Section 700.147, as proposed, revises the rules concerning eligibility in providing benefits to those persons who moved from an area which was partitioned to a tribe of which they were not members. The proposed rule is consistent with a Comptroller General's Opinion of August 9, 1978, which states that "those persons who moved after the passage of the Act * * * may have their moves considered as being made pursuant to the Act only if the Commission is able to make the determination * * * necessary to support the payment of relocation benefits and if, after the final partition line is drawn, such households would have been required to move." Those persons who moved after December 22, 1974, from land which was later partitioned to their own tribe would not be eligible. The present regulation would provide benefits to anyone who moved from the F.J.U.A. even if they were Navajo families moving from Navajo land. These families were not required to relocate pursuant to the Act. The intent of Congress was to relocate those families living on land partitioned to the tribe of which they are not members.

List of Subjects in 25 CFR Part 700

Administrative practice and procedure, Conflict of interests, Freedom of information, Grant program—Indians, Indian claims, Privacy, Real property acquisition, Relocation assistance.

PART 700—REVISED

Accordingly, the Commission proposes to revise §§ 700.69, 700.97(a), and 700.147 to read as follows:

§ 700.69 Head of Household

(a) *Household.* A household is:

(1) A group of two or more persons living together at a specific location who form a unit of permanent and domestic character. An extended family group may be composed of several households, i.e., married sisters and brothers and their children; a single daughter with a child.

(2) A single person who has actually maintained and supported himself/herself while residing on the Hopi Partitioned Lands.

(b) *Head of Household.* The head of household is that individual who speaks on behalf of the members of the household and who is determined by the Commission to represent the household.

(c) In order to qualify as a Head of Household, the individual must have been a Head of Household as of the time

they moved from the Hopi Partitioned Lands.

§ 700.97 Resident.

(a) Residency is established by fulfilling either of the following criteria:

- (1) Current occupancy as limited by Sections 14(c) and 15(c) of the Act, or
- (2) Residence as of December 22, 1974, by the Head of Household and/or his immediate family.

§ 700.147 Eligibility.

(a) To be eligible as a displaced person for services provided for under the Act, and these regulations, the person must be a resident of an area which was partitioned to the tribe of which he is not a member on December 22, 1974.

(b) If the person was a resident of an area which was initially partitioned to the Hopi Tribe in 1975, and the area was later partitioned to the Navajo Tribe, and the person moved based on the initial partition line in the belief that he was living on land partitioned to the tribe, then that person would be determined eligible.

(c) The burden of proof to determine residence is on the applicant.

(d) Eligibility for certain benefits is further restricted by Sections 14(c) and 15(c) of the Act.

Authority: 25 U.S.C. 640d, Pub. L. 93-531, 25 U.S.C. 640d-14.

Ralph Watkins,

Chairman, Navajo-Hopi Indian Relocation Commission.

[FR Doc. 83-19551 Filed 7-19-83; 8:45 am]

BILLING CODE 7560-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20 and 25

[LR-200-76]

Regulations Project Relating to Qualified Conservation Contributions; Extension of Comment Period

AGENCY: Internal Revenue Service, Treasury.

ACTION: Extension of time for comments.

SUMMARY: This document provides notice of an extension of time for submitting comments with respect to proposed regulations under the Internal Revenue Code of 1954 concerning the requirements for qualified conservation contributions.

DATES: The extended deadline for submission of comments is September 1, 1983.

ADDRESS: Send comments to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-200-76), Washington, D.C. 20224

FOR FURTHER INFORMATION CONTACT: Lou Ann Craner of the Legislation and Regulations Division Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attn: CC:LR:T, 202-566-3935, not toll-free call.

SUPPLEMENTARY INFORMATION: By an invitation for public comments published in the *Federal Register* for Monday, May 23, 1983 (48 FR 22940), comments with respect to proposed regulations concerning the requirements for qualified conservation contributions under section 170 of the Internal Revenue Code of 1954 were to be delivered or mailed to the Commissioner of Internal Revenue, Attention: CC:LR:T (LR-200-76), Washington, D.C. 20224, by July 22, 1983. The date by which such comments must be delivered or mailed is hereby extended to September 1, 1983. There is also a notice of public hearing with regard to the proposed regulations printed in this issue of the *Federal Register*.

James J. McGovern,

Acting Director, Legislation and Regulations Division.

[FR Doc. 83-19597 Filed 7-19-83; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 1, 20, and 25

[LR-200-76]

Qualified Conservation Contributions; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to contributions of partial interests in property for conservation purposes.

DATES: The public hearing will be held on Thursday, September 15, 1983, beginning at 10 a.m. Outlines of oral comments must be delivered or mailed by Thursday, September 1, 1983.

ADDRESS: The public hearing will be

held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-200-76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Lou Ann Craner of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 170 of the Internal Revenue Code of 1954. The proposed regulations appeared in the *Federal Register* for Monday, May 23, 1983 (48 FR 22940). Elsewhere in this issue there is printed a notice of extension of time for submitting public comments.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who submit written comments within the time prescribed in the notice of proposed rulemaking and in the notice of extension of time for submitting public comments, and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than September 1, 1983, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

James J. McGovern,

Acting Director, Legislation and Regulations Division.

[FR Doc. 83-19598 Filed 7-19-83; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 31

(LR-208-81)

Income From Sources Without the United States; Citizens or Residents of the United States Living Abroad**AGENCY:** Internal Revenue Service, Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the treatment of income earned abroad by citizens or residents of the United States. Changes to the applicable tax law were made by the Economic Recovery Tax Act of 1981. The regulations would provide the public with guidance needed to comply with that act and would affect certain United States citizens or residents with income earned abroad.

DATES: Written comments and requests for a public hearing must be delivered or mailed by September 19, 1983. The amendments are proposed to be effective for taxable year beginning after December 31, 1981.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Carol T. Doran of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3289).

SUPPLEMENTARY INFORMATION:**Background**

This document contains proposed amendments to the Income Tax Regulations and Employment Tax Regulations (26 CFR Parts 1 and 31) under sections 119, 911, and 3401 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to changes made to the Internal Revenue Code by sections 111, 112, and 113 of the Economic Recovery Tax Act of August 13, 1981, (Pub. L. 97-34, 95 Stat. 190, 196) and are to be issued under the authority contained in section 911 (95 Stat. 194; 26 U.S.C. 911) and section 7805 (68A Stat. 917; 26 U.S.C. 7805).

Section 911, as amended by the Economic Recovery Tax of 1981 (ERTA), provides that certain U.S. citizens or residents living and working abroad may claim two exclusions and one deduction from gross income. The exclusions are for foreign earned income

up to a ceiling (which starts at \$75,000 a year in 1982 and increases by \$5,000 a year until it reaches \$95,000 in 1986) and for a qualified individual's housing cost amount to the extent attributable to employer provided amounts. The deduction is for the housing cost amount not attributable to employer provided amounts. However, not more than the total of the individual's foreign earned income is eligible for exclusion of deduction for the taxable year. These new exclusions and deduction replace the deductions for certain expenses of living abroad which were contained in section 913 and the exclusion available to certain persons living in camps or performing qualified charitable services which was contained in section 911.

Section 119 as amended by ERTA provides that lodging furnished in a camp located in a foreign country shall be considered to be part of the business premises of the employer and, thus, the value of the lodging will be excludable under section 119(a)(2). Former section 911(c)(7) provided a similar exclusion for lodging in a camp.

Explanation of Provisions

The proposed amendments of the regulations under section 119 provide that lodging furnished in a camp shall be considered to be part of the business premises of the employer and thus the value of the lodging will be excludable under section 119(a)(2). Section 1.119-1(d) of the proposed regulations defines the term "camp." The definition of camp is substantially similar to the definition contained in § 1.911-1(c) except that the lodging need not be substandard.

The proposed amendments to the regulations under section 911 would revise the existing rules to conform them to the new provision. Section 1.911-1 outlines the basic foreign earned income exclusion and housing cost amount exclusion and deduction provided under section 911.

Section 1.911-2 provides rules for determining whether an individual qualifies to make an election under section 911. These rules include definitions of the terms "bona fide residence," "physical presence," "tax home," "United States," and "foreign country." The definition of the term "bona fide residence" is the same as under prior law. The definition of the term "physical presence" has been modified in that the period of presence in a foreign country required to qualify has been shortened; otherwise, the definition is the same as under prior law. The tax home requirement was added by ERTA. Thus, the definition in § 1.911-2(b) is new. The terms "United

States" and "foreign country" are clarified in §§ 1.911-2 (g) and (h) respectively. Section 1.911-2(f) contains rules concerning waiver of a period of stay in a foreign country due to war or civil unrest.

Section 1.911-3 provides rules for determining the amount of the foreign earned income exclusion. The terms "foreign earned income," "earned income," and "qualifying days" are defined as under prior law. Paragraph (c) specifies amounts that are excluded from foreign earned income. Paragraph (d) provides rules for determining the section 911(a)(1) limitation. The section 911(a)(1) limitation is the lesser of a qualified individual's foreign earned income for the taxable year in excess of amounts that the individual elected to exclude from gross income under section 911(a)(2) or the product of the annual rate for the taxable year multiplied by a fraction the numerator of which is the individual's qualifying days in the taxable year and the denominator of which is the number of days in the individual's taxable year. If the individual elects a housing cost amount exclusion under section 911(a)(2), the individual must compute his housing cost amount exclusion before his earned income exclusion under section 911(a)(1). Thus, foreign earned income taken into account in determining the section 911(a)(1) limitation is reduced by amounts excluded under section 911(a)(2).

Section 1.911-3(e) provides the general rules for attributing income to the taxable year in which services are performed. These rules are required by section 911(b)(2)(B) which provides that amounts received for services performed in prior years must be allocated to the taxable year in which the services were performed in order to determine the portion of such income that may be excluded. Section 1.911-3(e) provides special rules for allocating amounts (such as bonuses, substantially nonvested property, and moving expense reimbursements) that are received in one year and that are attributable to services performed over a period of years to such years.

Section 1.911-4(e) provides rules for determining the amount of a qualifying individual's housing cost amount exclusion or deduction. The housing cost amount is determined by subtracting a base housing amount from the individual's housing expenses. The "base housing amount" is sixteen percent of the salary of an employee of the United States whose salary grade is step 1 of grade GS-14 multiplied by a

fraction the numerator of which is the individual's qualifying days in the individual's taxable year and the denominator of which is the number of days in the taxable year. Section 1.911-4 contains definitions of the terms "housing expenses," "adverse living conditions," and "employer provided amounts." The definition of adverse living conditions is the same as under prior law. The definition of housing expenses has been revised.

Section 1.911-4(d)(2) provides that employer provided amounts are amounts paid or incurred on behalf of the individual by the individual's employer that are foreign earned income included in the individual's gross income for the taxable year (without regard to section 911). This term includes any amount paid to the employee or any amount spent on his behalf. For example, it includes the salary of an employee, the fair rental value of company-owned housing provided the employee, amounts paid by the employer to third parties for housing expenses of the employee, amounts paid by the employer to the employee as part of a tax equalization plan, or amounts paid to the employee or some third party for the educational expenses of the employee's dependents. An amount is only a non-employer provided amount if it is attributable to self-employment. Section 1.911-4(d)(3) provides rules for determining the extent to which the housing cost amount is attributable to employer provided amounts and therefore is excludable.

Portions of the housing cost amount that are not attributable to employer provided amounts are deductible to the extent of foreign earned income that has not been excluded under section 911(a)(1) or (2). Section 1.911-4(e) provides rules for determining the individual's housing cost amount deduction and, if the individual cannot use the entire deduction in a taxable year, the amount that may be carried over and used in the subsequent year.

Section 1.911-5 provides special rules applicable to married couples. If both spouses are qualified individuals, both may elect to exclude their foreign income and exclude or deduct their housing cost amount. Section 1.911-5(a)(3) contains rules for determining the housing cost amount depending on whether the spouses reside together or apart and whether they file joint or separate returns.

Section 1.911-6 provides rules concerning the disallowance of any deduction, exclusion, or credit to the extent it is properly allocable to or chargeable against amounts excluded from gross income under section 911(a).

Section 1.911-6(a) provides that amounts made excludable or deductible by sections 911 or 119 by reason of residence or presence abroad shall not be allocable or chargeable to other amounts excluded under section 911(a). Thus, the housing cost amount exclusion or deduction is not apportioned in part to the individual's excluded foreign earned income. Without such a rule a portion of the housing cost amount deduction or exclusion would be denied. Section 1.911-6(b) provides a special rule for disallowing portions of the moving expense deduction attributable to excluded amounts. Section 1.911-6(c) provides rules for disallowing the deduction or credit for foreign taxes paid or accrued to the extent attributable to amounts excluded under section 911. For the purpose of determining the extent to which foreign taxes are disallowed, the housing cost amount deduction is treated as definitely related to foreign earned income that is not excluded.

Section 1.911-7 provides procedural rules for making and revoking the elections to exclude foreign earned income and the housing cost amount and rules concerning filing of returns and extensions of time to file. The filing rules are the same as under prior law. In general, an election is made by filing a statement with the individual's income tax return, or with an amended return, for the first taxable year for which an election is to be effective. An election may be revoked by filing a statement that the individual is revoking an election with the individual's income tax return or amended return for the first taxable year for which the revocation is to be effective. Once the taxpayer revokes an election, the taxpayer may not, without the consent of the Commissioner, again make the same election until the sixth taxable year following the taxable year for which the revocation was effective.

The regulations under section 3401(a)(8), exempting amounts excluded under section 911 from the definition of wages, have been revised to reflect changes in section 911. In addition, the sample statements contained in § 31.3401(a)(8)(A)-1(a) have been deleted.

The Economic Recovery Tax Act also repealed section 913. The regulations thereunder are obsolete and the proposed regulations would delete them.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and

that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. § 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Ch. 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the *Federal Register*.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of this regulation is Carol T. Doran of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subjects

26 CFR Parts 1.61-1 through 1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Parts 1.861-1 through 1.997-1

Income taxes, Aliens, Exports, DISC, Foreign investments in United States.

Foreign tax credit, Sources of income, United States investment abroad.

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

Adoption of Amendments to the Regulations

The proposed amendments to 26 CFR Parts 1 and 31 are as follows:

Income Tax Regulations

Paragraph 1. Section 1.119-1 is amended by revising paragraph (c), by redesignating paragraph (d) as paragraph (f), and by adding paragraphs (d) and (e). The revised and added paragraphs read as follows:

§ 1.119-1 Meals and lodging furnished for the convenience of the employer.

(c) *Business premises of the employer.*—(1) *In general.* For purposes of this section, the term "business premises of the employer" generally means the place of employment of the employee. For example, meals and lodging furnished in the employer's home to a domestic servant would constitute meals and lodging furnished on the business premises of the employer. Similarly, meals furnished to cowhands while herding their employer's cattle on leased land would be regarded as furnished on the business premises of the employer.

(2) *Certain camps.* For taxable years beginning after December 31, 1981, in the case of an individual who is furnished lodging by or on behalf of his employer in a camp (as defined in paragraph (d) of this section) in a foreign country (as defined in § 1.911-2(h)), the camp shall be considered to be part of the business premises of the employer.

(d) *Camp defined.*—(1) *In general.* For the purposes of paragraph (c)(2) of this section, a camp is lodging that is all of the following:

(i) Provided by or on behalf of the employer for the convenience of the employer because the worksite of the employee is in a remote area where satisfactory housing is not available to the employee on the open market within a reasonable commuting distance of the worksite;

(ii) Located as near as practicable to, and in the vicinity of, the worksite of the employee; and

(iii) Furnished in a common area or enclave which is not available to the general public for lodging or accommodations and which normally

accommodates ten or more persons who perform services at the employee's worksite.

(2) *Availability of satisfactory housing.*—(i) *Facts and circumstances.* For purposes of paragraph (d)(1)(i) of this section, facts and circumstances to be considered in determining whether satisfactory housing is available to the employee on the open market include but are not limited to:

(A) The number of housing units available on the open market in relation to the number of housing units required for the employer's employees;

(B) The cost of housing available on the open market;

(C) The quality of housing available on the open market; and

(D) The presence of warfare or civil insurrection within the area where housing would be available which would subject U.S. citizens to unusual risk of personal harm or property loss.

(ii) *Presumptions.* Satisfactory housing will generally be considered to be unavailable to the employee on the open market if either of the following conditions is satisfied:

(A) The foreign government requires the employer to provide housing for its employees other than housing available on the open market; or

(B) An unrelated person awarding work to the employer requires that the employer's employees occupy housing specified by such unrelated person.

The condition of either paragraph (d)(2)(ii) (A) or (B) of this section is not satisfied if the requirement described therein and imposed either by a foreign government or unrelated person applies primarily to U.S. employers and not to a significant number of third country employers or applies primarily to employers of U.S. employees and not to a significant number of employers of third country employees.

(3) *Reasonable commuting distance.* For purposes of paragraph (d)(1)(i) of this section, in determining whether a commuting distance is reasonable, the accessibility of the worksite due to geographic factors, the quality of the roads to the worksite, and the customarily available transportation to the worksite shall be taken into account.

(4) *Common area or enclave.* A cluster of housing units does not satisfy paragraph (d)(1)(iii) of this section if it is adjacent to or surrounded by substantially similar housing available to the general public. Two or more common areas or enclaves that house employees who work on the same project (for example, a highway project) are considered to be one common area or enclave in determining whether they normally accommodate ten or more

persons performing services at the employee's worksite.

(e) *Rules.* The exclusion provided by section 119 applies only to meals and lodging furnished in kind by an employer to his employee. If the employee has an option to receive additional compensation in lieu of meals or lodging in kind, the value of such meals and lodging is not excludable from gross income under section 119. However, the mere fact that an employee, at his option, may decline to accept meals tendered in kind will not of itself require inclusion of the value thereof in gross income. Cash allowances for meals or lodging received by an employee are includible in gross income to the extent that such allowances constitute compensation.

Par. 2. Sections 1.911-1 through 1.911-7 are removed and new §§ 1.911-1 through 1.911-8 are added to read as follows:

§ 1.911-1 Partial exclusion for earned income from surces within a foreign country and foreign housing costs.

(a) *In general.* Section 911 provides that a qualified individual may elect to exclude the individual's foreign earned income and the housing cost amount from the individual's gross income for the taxable year. Foreign earned income is excludable to the extent of the applicable limitation for the taxable year. The housing cost amount for the taxable year is excludable to the extent attributable to employer provided amounts.

If a portion of the housing cost amount for the taxable year is attributable to non-employer provided amounts, such amount may be deductible by the qualified individual subject to a limitation. The amounts excluded under section 911(a) and the amount deducted under section 911(c)(3)(A) for the taxable year shall not exceed the individual's foreign earned income for such taxable year. Foreign earned income must be earned during a period for which the individual qualifies to make an election under section 911(d)(1). A housing cost amount that would be deductible except for the application of this limitation may be carried over to the next taxable year and is deductible to the extent of the limitation for that year. Except as otherwise provided, §§ 1.911-1 through 1.911-7 apply to taxable years beginning after December 31, 1981.

(b) *Scope.* Section 1.911-2 provides rules for determining whether an individual qualifies to make an election under section 911. Section 1.911-3

provides rules for determining the amount of foreign earned income excludable under section 911(a)(1). Section 1.911-4 provides rules for determining the housing cost amount and the portions excludable under section 911(a)(2) or deductible under section 911(c)(3).

Section 1.911-5 provides special rules applicable to married couples. Section 1.911-6 provides for the disallowance of deductions, exclusions, and credits attributable to amounts excluded under section 911. Section 1.911-7 provides procedural rules for making or revoking an election under section 911.

§ 1.911-2 Qualified individuals.

(a) *In general.* An individual is a qualified individual if:

(1) The individual's tax home is in a foreign country or countries throughout the period of bona fide residence or physical presence described in paragraph (a)(2) of this section; and

(2) The individual is either:

(i) A citizen of the United States who establishes to the satisfaction of the Commissioner or his delegate that the individual has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year; or

(ii) A citizen or resident of the United States who has been physically present in a foreign country or countries for at least 330 full days during any period of twelve consecutive months.

(b) *Tax home.* For purposes of paragraph (a)(1) of this section, the term "tax home" had the same meaning which it has for purposes of section 162(a)(2) (relating to travel expenses away from home). Thus, under section 911, an individual's tax home is considered to be located at his regular or principal (if more than one regular) place of business or, if the individual has no regular or principal place of business because of the nature of the business, then at his regular place of abode in a real and substantial sense. An individual shall not, however, be considered to have a tax home in a foreign country for any period for which the individual's abode is in the United States. Temporary presence of the individual in the United States does not necessarily mean that the individual's abode is in the United States during that time.

(c) *Determination of bona fide residence.* For purposes of paragraph (a)(2)(i) of this section, whether an individual is a bona fide resident of a foreign country shall be determined by applying, to the extent practical, the

principles of section 871 and the regulations thereunder, relating to the determination of the residence of aliens. Bona fide residence in a foreign country or countries for an uninterrupted period may be established, even if temporary visits are made during the period to the United States or elsewhere on vacation or business. An individual with earned income from sources within a foreign country is not a bona fide resident of that country if:

(1) The individual claims to be a nonresident of that foreign country in a statement submitted to the authorities of that country; and

(2) The earned income of the individual is not subject, by reason of nonresidency in the foreign country, to the income tax of that country.

If an individual has submitted a statement of nonresidence to the authorities of a foreign country the accuracy of which has not been resolved as of any date when a determination of the individual's bona fide residence is being made, then the individual will not be considered a bona fide resident of the foreign country as of that date.

(d) *Determination of physical presence.* For purposes of paragraph (a)(2)(ii) of this section, the following rules apply.

(1) *Twelve-month test.* A period of twelve consecutive months may begin with any day but must end on the day before the corresponding day in the twelfth succeeding month. The twelve month period may begin before or after arrival in a foreign country and may end before or after departure.

(2) *330-day test.* The 330 full days

need not be consecutive but may be interrupted by periods during which the individual is not present in a foreign country. In computing the minimum 330 full days of presence in a foreign country or countries, all separate periods of such presence during the period of twelve consecutive months are aggregated. A full day is a continuous period of twenty-four hours beginning with midnight and ending with the following midnight. An individual who has been present in a foreign country and then travels over areas not within any foreign country for less than twenty-four hours shall not be deemed outside a foreign country during the period of travel, so long as the individual does not travel within the United States.

(3) *Illustrations of the physical presence requirement.* The physical presence requirement of paragraph (a)(2)(ii) of this section is illustrated by the following examples:

Example (1). B, a U.S. citizen, arrives in Venezuela from New York at 12 noon on April 24, 1982. B remains in Venezuela until 2 p.m. on March 21, 1983, at which time B departs for the United States. Among other possible twelve month periods, B is present in a foreign country an aggregate of 330 full days during each of the following twelve month periods: March 21, 1982 through March 20, 1983; and April 25, 1982 through April 24, 1983.

Example (2). C, a U.S. citizen, travels extensively from the time C leaves the United States on March 5, 1982, until the time C departs the United Kingdom on January 1, 1984, to return to the United States permanently. The schedule of C's travel and the number of full days at each location are listed below:

Country	Time and date of arrival	Time and date of departure	Full days in foreign country
United States		10 p.m. (by air) Mar. 5, 1982	
United Kingdom	9 a.m. Mar. 6, 1982	10 p.m. (by ship) June 25, 1982	110
United States	11 a.m. June 30, 1982	1 p.m. (by ship) July 19, 1982	0
France	3 p.m. July 24, 1982	11 a.m. (by air) Aug. 22, 1983	393
United States	4 p.m. Aug. 22, 1983	9 a.m. (by air) Sept. 4, 1983	0
United Kingdom	9 a.m. Sept. 5, 1983	9 a.m. (by air) Jan. 1, 1984	117
United States	1 p.m. Jan. 1, 1984		

Among other possible twelve month periods, C is present in a foreign country or countries an aggregate of 330 full days during the following twelve month periods: March 2, 1982 through March 1, 1983; and January 21, 1983 through January 20, 1984. The computation of days with respect to each twelve month period may be illustrated as follows:

First twelve month period (March 2, 1982 through March 1, 1983):

	Full days in foreign country
Mar. 2, 1982 through Mar. 6, 1982	0
Mar. 7, 1982 through June 24, 1982	110
June 25, 1982 through July 24, 1982	0
July 25, 1982 through Mar. 1, 1983	220
Total full days	330

Second twelve month period (January 21, 1983 through January 20, 1984):

	Full days in foreign country
Jan. 21, 1983 through Aug. 21, 1983	213
Aug. 22, 1983 through Sept. 5, 1983	0
Sept. 6, 1983 through Dec. 31, 1983	117
Jan. 1, 1984 through Jan. 20, 1984	0
Total full days	330

(e) *Special rules.* For purposes only of establishing that an individual is a qualified individual under paragraph (a) of this section, residence or presence in a foreign country while there employed by the U.S. government or any agency or instrumentality of the U.S. government counts towards satisfaction of the requirements of § 1.911-2(a). (But see section 911(b)(1)(B)(ii) of § 1.911-3(c)(3) for the rule excluding amounts paid by the U.S. government to an employee from the definition of foreign earned income.) In addition, time spent in a foreign country prior to January 1, 1982, counts toward satisfaction of the bona fide residence and physical presence requirements, even though no exclusion or deduction may be allowed under section 911 for income attributable to services performed during that time.

(f) *Waiver of period of stay in foreign country due to war or civil unrest.* Notwithstanding the requirements of paragraph (a) of this section, an individual whose tax home is in a foreign country, and who is a bona fide resident of, or present in, a foreign country for any period, who leaves the foreign country after August 31, 1978, before meeting the requirements of paragraph (a) of this section, may, as provided in this Paragraph, qualify to make an election under section 911(a) and § 1.911-7(a). If the Secretary determines, after consultation with the Secretary of State or his delegate, that war, civil unrest, or similar adverse conditions existed in a foreign country, then the Secretary shall publish the name of the foreign country and the dates between which such conditions were deemed to exist. In order to qualify to make an election under this paragraph, the individual must establish to the satisfaction of the Secretary that the individual left a foreign country, the name of which has been published by the Secretary, during the period when adverse conditions existed and that the individual could reasonably have expected to meet the requirements of paragraph (a) of this section but for the adverse conditions. The individual shall attach to his return for the taxable year a statement that the individual expected to meet the requirements of paragraph (a) of this section but for the conditions in the foreign country which precluded the

normal conduct of business by the individual. Such individual shall be treated as a qualified individual, but only for the actual period of residence or presence. Thus, in determining the number of the individual's qualifying days, only days within the period of actual residence or presence shall be counted.

(g) *United States.* The term "United States" when used in a geographical sense includes any territory under the sovereignty of the United States. It includes the states, the District of Columbia, the possessions and territories of the United States, the territorial waters of the United States, the air space over the United States, and the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources.

(h) *Foreign country.* The term "foreign country" when used in a geographical sense includes any territory under the sovereignty of a government other than that of the United States. It includes the territorial waters of the foreign country (determined in accordance with the laws of the United States), the air space over the foreign country, and the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the foreign country and over which the foreign country has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources.

§ 1.911-3 Determination of amount of foreign earned income to be excluded.

(a) *Definition of foreign earned income.* For purposes of section 911 and the regulations thereunder, the term "foreign earned income" means earned income (as defined in paragraph (b) of this section) from sources within a foreign country (as defined in § 1.911-2(h)) that is earned during a period for which the individual qualifies under § 1.911-2(a) to make an election. Earned income is from sources within a foreign country if it is attributable to services performed by an individual in a foreign country or countries. The place of receipt of earned income is immaterial in determining whether earned income is attributable to services performed in a foreign country of countries.

(b) *Definition of earned income—(1) In general.* The term "earned income" means wages, salaries, professional fees, and other amounts received as compensation for personal services actually rendered including the fair

market value of all remuneration paid in any medium other than cash. Earned income does not include any portion of an amount paid by a corporation which represents a distribution of earnings and profits rather than a reasonable allowance as compensation for personal services actually rendered to the corporation.

(2) *Earned income from business in which capital is material.* In the case of an individual engaged in a trade or business (other than in corporate form) in which both personal services and capital are material income producing factors, a reasonable allowance as compensation for the personal services actually rendered by the individual shall be considered earned income, but the total amount which shall be treated as the earned income of the individual from such trade or business shall in no case exceed thirty percent of the individual's share of the net profits of such trade or business.

(3) *Professional fees.* Earned income includes all fees received by an individual engaged in a professional occupation (such as doctor or lawyer) in the performance of professional activities. Professional fees constitute earned income even though the individual employs assistants to perform part or all of the services, provided the patients or clients are those of the individual and look to the individual as the person responsible for the services rendered.

(c) *Amounts not included in foreign earned income.* Foreign earned income does not include an amount:

(1) Excluded from gross income under section 119;

(2) Received as a pension or annuity (including social security benefits);

(3) Paid to an employee by an employer which is the U.S. government or any U.S. government agency or instrumentality;

(4) Included in the individual's gross income by reason of section 402(b) (relating to the taxability of a beneficiary of a nonexempt trust) or section 403(c) (relating to the taxability of a beneficiary under a nonqualified annuity or under annuities purchased by exempt organizations);

(5) Included in gross income by reason of § 1.911-6(b)(4); or

(6) Received after the close of the first taxable year following the taxable year in which the services giving rise to the amounts were performed. For treatment of amounts received after December 31, 1962, which are attributable to services performed on or before December 31, 1962, and with respect to which there existed on March 12, 1962, a right

(whether forfeitable or nonforfeitable to receive such amounts, see § 1.72-8.

(d) *Determination of the amount of foreign earned income that may be excluded under section 911(a)(1)*—(1) *In general.* Foreign earned income described in § 1.911-3 may be excluded under section 911(a)(1) and this paragraph only to the extent of the limitation specified in paragraph (d)(2) of this section. Income is considered to be earned in the taxable year in which the services giving rise to the income are performed. The determination of the amount of excluded earned income in this manner does not affect the time for reporting any amounts included in gross income.

(2) *Limitation*—(i) *In general.* The term "section 911(a)(1) limitation" means the amount of foreign earned income for a taxable year which may be excluded under section 911(a)(1). The section 911(a)(1) limitation shall not exceed the lesser of the qualified individual's foreign earned income for the taxable year in excess of amounts that the individual elected to exclude from gross income under section 911(a)(2) or the product of the annual rate for the taxable year (as specified in paragraph (d)(2)(ii) of this section) multiplied by the following fraction:

$$\frac{\text{The number of qualifying days in the taxable year}}{\text{The number of days in the taxable year}}$$

(ii) *Annual rate for the taxable year.* In the case of taxable years beginning after December 31, 1981, the annual rate is:

In the case of a taxable year beginning in	Annual rate
1982	\$75,000
1983	80,000
1984	85,000
1985	90,000
1986 and thereafter	95,000

(3) *Number of qualifying days.* For purposes of section 911 and the regulations thereunder, the number of qualifying days is the number of days in the taxable year within the period during which the individual met the tax home requirement and either the bona fide residence requirement or the physical presence requirement of § 1.911-2(a). Although the period of bona fide residence must include an entire taxable year, the entire uninterrupted period of residency may include fractional parts of a taxable year. For instance, if an individual who was a calendar year taxpayer

established a tax home and a residence in a foreign country as of November 1, 1982, and maintained the tax home and the residence until March 31, 1984, then the uninterrupted period of bona fide residency includes fractional parts of the years 1982 and 1984, and all of 1983. The number of qualifying days in 1982 is sixty-one. The number of qualifying days in 1983 is 365. The number of qualifying days in 1984 is ninety. The period during which the physical presence requirement of § 1.911-2(a) is met is any twelve consecutive month period during which the individual is physically present in one or more foreign countries for 330 days and the individual's tax home is in a foreign country throughout the period of physical presence. Such period may include days when the individual is not physically present in a foreign country. Such period may include fractional parts of a taxable year. Thus, if an individual's period of physical presence is the twelve-month period beginning June 1, 1982, and ending May 31, 1983, the number of qualifying days in 1982 is 214 and the number of qualifying days in 1983 is 151.

(e) *Attribution rules*—(1) *In general.* Foreign earned income is considered to be earned in the taxable year in which the individual performed the services giving rise to the income. If income is earned in one taxable year and received in another taxable year, then, for purposes of determining the amount of foreign earned income that the individual may exclude under section 911(a), the individual must attribute the income to the taxable year in which the services giving rise to the income were performed. Thus, any reimbursement would be attributable to the taxable year in which the services giving rise to the obligation to pay the reimbursement were performed, not the taxable year in which the reimbursement was received. Foreign earned income attributable to services performed in a preceding taxable year shall be excludable from gross income in the year of receipt only to the extent such amount could have been excluded under paragraph (d)(1) in the preceding taxable year, had such amount been received in the preceding taxable year. The taxable year to which income is attributable will be determined on the basis of all the facts and circumstances.

(2) *Attribution of bonuses and substantially nonvested property to taxable years in which services were performed*—(i) *In general.* If an individual receives a bonus or substantially nonvested property (as defined in § 1.83-3(b)) and it is

determined to be attributable to services performed in more than one taxable year, then, for purposes of determining the amount eligible for exclusion from gross income in the year the bonus is received or the property vests, a portion of such amount shall be treated as attributable to services performed in each taxable year (or portion thereof) during the period when services giving rise to the bonus or the substantially nonvested property were performed. Such portion shall be determined by dividing the amount of the bonus or the excess of the fair market value of the vested property over the amount paid, if any, for the vested property, by the number of months in the period when services giving rise to such amount were performed, and multiplying the quotient by the number of months in such period in the taxable year. For purposes of this section, the term "month" means a calendar month. A fraction of a calendar month shall be deemed a month if it includes fifteen or more days.

(ii) *Example.* The following example illustrates the application of this subparagraph.

Example (1). X corporation offers its employees a bonus of \$40,000 if the employee accepts employment in a foreign country and remains in a foreign country for a period of at least four years. A, an employee of X, is a calendar year and cash basis taxpayer. A accepts employment with X in foreign country F. A begins work in F on July 1, 1983 and continues to work in F for X until June 30, 1987. In 1987 X pays A a \$40,000 bonus. The bonus is attributable to services A performed from July 1, 1983 through June 30, 1987. The amount of the bonus attributable to 1987 is \$5,000 $((\$40,000 \div 48) \times 6)$. The amount of the bonus attributable to 1986 is \$10,000 $((\$40,000 \div 48) \times 12)$. A may exclude the \$10,000 attributable to 1986 only to the extent that amount could have been excluded under section 911(a)(1) had A received it in 1986. The remaining \$25,000 is attributable to services performed in taxable years before 1986. Such amounts may not be excluded under section 911 because they are received after the close of the taxable year following the taxable year in which the services giving rise to the income were performed.

(iii) *Special rule for elections under section 83(b).* If an individual receives substantially nonvested property and makes an election under section 83(b) and § 1.83-2(a) to include in his gross income the amount determined under section 83(b)(1) (A) and (B) and § 1.83-2(a) for the taxable year in which the property is transferred (as defined in § 1.83-3(a)), then, for the purpose of determining the amount eligible for exclusion in the year of receipt, the individual may elect either of the following options:

(A) Substantially nonvested property may be treated as attributable entirely to services performed in the taxable year in which an election to include it in income is made. If so treated, then the amount otherwise included in gross income as determined under § 1.82-2(a) will be excludable under section 911(a) for such year subject to the limitation provided in § 1.911-3(d)(2) for such year.

(B) A portion of the substantially nonvested property may be treated as attributable to services performed or to be performed in each taxable year during which the substantial risk of forfeiture (as defined in section 83(c) and § 1.83-3(c)) exists. The portion treated as attributable to services performed or to be performed in each taxable year is determined by dividing the amount of the substantially nonvested property included in gross income as determined under § 1.83-2(a) by the number of months during the period when a substantial risk of forfeiture exists. The quotient is multiplied by the total number of months in the taxable year during which a substantial risk of forfeiture exists. The amount determined to be attributable to services performed in the year the election is made shall be excluded from gross income for such year as provided in paragraph (d)(2) of this section. Amounts treated as attributable to services performed in subsequent taxable years shall be excludable in the year of receipt only to the extent such amounts could be excluded under paragraph (d)(2) of this section in such subsequent year. An individual may obtain such additional exclusion by filing an amended return for the taxable year in which the property was transferred. The individual may only amend his or her return within the period provided by section 6511(a) and the regulations thereunder.

(3) Moving expense reimbursements.

(i) For the purpose of determining whether a moving expense reimbursement is attributable to services performed within a foreign country or within the United States, in the absence of evidence to the contrary, the reimbursement shall be attributable to future services to be performed at the new principal place of work. Thus, a reimbursement received by an employee from his employer for the expenses of a move to a foreign country will generally be attributable to services performed in the foreign country. A reimbursement received by an employee from his employer for the expenses of a move from a foreign country to the United States will generally be attributable to services performed in the United States.

For purposes of this subparagraph, evidence to the contrary includes, but is not limited to, an agreement, between the employer and the employee, which is reduced to writing before the move to the foreign country and which is entered into as an inducement for the move to the foreign country. The agreement must state the employer will reimburse the employee for moving expenses incurred in returning to the United States regardless of whether the employee continues to work for the employer after the employee returns to the United States. In no case will an oral agreement between the employer and the employee concerning moving expenses be considered evidence to the contrary.

(ii) If a reimbursement for moving expenses is determined to be from foreign sources under paragraph (e)(3)(i) of this section, then for the purpose of determining the amount eligible for exclusion in accordance with § 1.911-3(d)(2), the reimbursement shall be considered attributable to services performed in the year of the move. However, if the individual does not qualify under section 911(d)(1) and § 1.911-2(a) for the entire taxable year of the move, then the individual shall treat a portion of the reimbursement as attributable to services performed in the succeeding taxable year, if the move is from the United States to a foreign country, or to the prior taxable year, if the move is from a foreign country to the United States. The portion of the reimbursement treated as attributable to service performed in the year succeeding or preceding the move shall be determined by multiplying the total reimbursement by the following fraction:

The number of qualifying days (as defined in § 1.911-3(d)(3)) in the year of the move

The number of days in the taxable year in the year of the move.

and subtracting the product from the total reimbursement. Amounts treated as attributable to services performed in a year succeeding or preceding the year of the move shall be excludable in the year of receipt only to extent such amounts could be excluded under § 1.911-3(d)(2) in such succeeding or preceding year.

(f) *Examples.* The following examples illustrate the application of this section.

Example (1). A is a U.S. citizen and calendar year taxpayer. A's tax home was in foreign country F and A was physically present in F for 330 days during the period from July 4, 1982 through July 3, 1983. The number of A's qualifying days in 1982 as determined under paragraph (d)(2) of this section is 181. In 1982 A receives \$40,000 attributable to services performed in foreign country F in 1982. Under paragraph (d)(2) of

this section A's section 911(a)(1) limitation is \$37,192; that is the lesser of \$40,000 (foreign earned income) or

$$\frac{\$75,000}{(\text{annual rate})} \times \frac{181 (\text{qualifying days})}{365 (\text{days in taxable year})}$$

Example (2). The facts are the same as in example (1) except that in 1982 A receives \$30,000 attributable to services performed in foreign country F. A excludes this amount from gross income under paragraph (d). In addition, in 1983 A receives \$10,000 attributable to services performed in F in 1982 and \$35,000 attributable to services performed in F in 1983. On his return for 1983, A must report \$45,000 of income. A's section 911(a)(1) limitation for 1983 is the lesser of \$35,000 (foreign earned income) or \$40,329, the annual rate for the taxable year multiplied by a fraction the numerator of which is A's qualifying days in the taxable year and the denominator of which is the number of days in the taxable year (\$80,000 × 184/365). On his tax return for 1983 A may exclude \$35,000 attributable to services performed in 1983. A may only exclude \$7,192 of the \$10,000 received in 1983 attributable to services performed in 1982 because such amount is only excludable in 1983 to the extent such amount could have been excluded in 1982 subject to the section 911(a)(1) limitation for 1982 which is \$37,192 (\$75,000 × 181/365). No portion of amounts attributable to services performed in 1982 may be used in calculating A's section 911(a)(1) limitation for 1983. Thus, even though A could have excluded an additional \$5,329 in 1983 if A had had more foreign earned income attributable to 1983, A may not exclude the \$2,808 of remaining foreign earned income attributable to 1982.

Example (3.) C is a U.S. citizen and calendar year taxpayer. C establishes a bona fide residence and a tax home in foreign country J on March 1, 1982, and maintains a tax home and residence in J until December 31, 1986. In March of 1982 C's employer, Y corporation, transfers stock in Y to C. The stock is subject to forfeiture if C returns to the U.S. before January 1, 1985. C elects under section 83(b) to include \$15,000, the amount determined with respect to such stock under section 83(b)(1), in gross income in 1982. C's other foreign earned income in 1982 is \$58,000. C elects under paragraph (e)(2)(ii)(B) of this section to treat the stock as if earned over the period of the substantial risk of forfeiture. The number of months in the period of the substantial risk of forfeiture is thirty-four. The number of months in the taxable year 1982 within the period of foreign employment is ten. For purposes of determining C's section 911(a)(1) limitation, \$4,412 ((\$15,000/34 × 10) of the amount included in gross income under section 83(b) is treated as attributable to services performed in 1982, \$5,294 is treated as

attributable to services to be performed in 1983, and \$5,294 is treated as attributable to services to be performed in 1984. In 1982, C excludes \$62,412 under section 911(a)(1). This is the lesser of foreign earned income for 1982 (\$58,000 + 41,412) or the annual rate for the taxable year multiplied by a fraction the numerator of which is C's qualifying days in the taxable year and the denominator of which is the number of days in the taxable year ($\$75,000 \times 306/365$). C continues to perform services in foreign country J throughout 1983 and 1984. C would be able to exclude the remaining \$5,294 attributable to services performed in 1983 and \$5,294 attributable to services performed in 1984 if those amounts would be excludable if they had been received in 1983 or 1984 respectively. If C is entitled to exclude the additional amounts, C must claim the exclusion by filing an amended return for 1982.

§ 1.911-4 Determination of housing cost amount eligible for exclusion or deduction.

(a) *Definition of housing cost amount.* The term "housing cost amount" means an amount equal to the reasonable expenses paid or incurred (as defined in section 7701(a)(25)) during the taxable year by or on behalf of the individual attributable to housing in a foreign country for the individual and any spouse or dependents who reside with the individual (or live in a second foreign household described in paragraph (b)(5) of this section) less the base housing amount as defined in paragraph (c) of this section. The housing cost amount must be reduced by the amount of any military or section 912 allowance or similar allowances excludable from gross income that is intended to compensate the individual or the individual's spouse in whole or in part for the expenses of housing located within a reasonable commuting distance (as defined in § 1.119-1(d)(3)) of the individual's tax home (or second foreign household if paragraph (b)(5) applies), during the same period for which the individual claims a housing cost amount exclusion or deduction.

(b) *Housing expenses*—(1) *Included expenses.* For purposes of paragraph (a) of this section, housing expenses include rent, the fair rental value of housing provided in kind by the employer, utilities (other than telephone charges), real and personal property insurance, occupancy taxes not described in paragraph (b)(2)(v) of this section, nonrefundable fees paid for securing a leasehold, rental of furniture and accessories, and household repairs.

(2) *Excluded expenses.* Housing expenses do not include:

(i) The cost of house purchase, improvements, and other costs that are capital expenditures;

(ii) The cost of purchased furniture or accessories or domestic labor (maids, gardeners, etc);

(iii) Amortized payments of principal with respect to an evidence of indebtedness secured by a mortgage on the taxpayer's housing;

(iv) Depreciation of housing owned by the taxpayer, or amortization or depreciation of capital improvements made to housing leased by the taxpayer;

(v) Interest and taxes deductible under section 163 or 164 or other amounts deductible under section 216(a) (relating to deduction of interest and taxes by cooperative housing corporation tenant);

(vi) The expenses of more than one foreign household except as provided in paragraph (b)(5) of this section;

(vii) Expenses excluded from gross income under section 119;

(viii) Expenses claimed as deductible moving expenses under section 217; or

(ix) The cost of a cable television subscription.

(3) *Limitation.* Housing expenses are taken into account for purposes of this section only to the extent attributable to housing for portions of the taxable year within the period during which the individual satisfies the requirements of § 1.911-2(a). Housing expenses are not taken into account for the period during which the value of the individual's housing is excluded from gross income under section 119, unless the individual maintains a second foreign household described in paragraph (b)(5) of this section. If an individual maintains two foreign households, only expenses incurred with respect to the abode which bears the closest relationship, not necessarily geographic, with respect to the individual's tax home shall be taken into account, unless one of the households is a second foreign household.

(4) *Reasonableness.* An amount paid for housing shall not be treated as reasonable, for purposes of paragraph (a) of this section, to the extent that the expense is lavish or extravagant under the circumstances.

(5) *Expenses of a second foreign household*—(i) *In general.* The term "second foreign household" means a separate abode maintained by an individual outside of the U.S. for his or her spouse or dependents (who, if minors, are in the individual's legal custody or the joint custody of the individual and the individual's spouse) at a place other than the tax home of the individual because of adverse living conditions at the individual's tax home, if an individual maintains a second foreign household the expenses of the second foreign household may be

included in the individual's housing expenses under paragraph (b)(1) of this section. Under no circumstances shall an individual be considered to maintain more than one second foreign household at the same time.

(ii) *Adverse living conditions.* Solely for purposes of paragraph (b)(5)(i) of this section, adverse living conditions are living conditions which are dangerous, unhealthful, or otherwise adverse. Adverse living conditions include a state of warfare or civil insurrection in the general area of the individual's tax home. Adverse living conditions exist if the individual resides on the business premises of the employer for the convenience of the employer and, because of the nature of the business (for example, a construction site or drilling rig), it is not feasible for the employer to provide housing for the individual's spouse or dependents. The criteria used by the Department of State in granting a separate maintenance allowance are relevant, but not determinative, for purposes of determining whether a separate household is provided because of adverse living conditions.

(c) *Base housing amount*—(1) *In general.* The base housing amount is equal to the product of 16 percent of the annual salary of an employee of the United States who is compensated at a rate equal to the annual salary rate paid for step 1 of grade GS-14, multiplied by the following fraction:

$$\frac{\text{The number of qualifying days}}{\text{The number of days in the taxable year}}$$

For purposes of the above fraction, the number of qualifying days is determined in accordance with § 1.911-3(d)(3).

(2) *Annual salary of step 1 of grade GS-14.* The annual salary rate for a step 1 of grade GS-14 is determined on January first of the calendar year in which the individual's taxable year begins.

(d) *Housing cost amount exclusion*—(1) *Limitation.* A qualified individual who has elected to exclude his or her housing cost amount may only exclude the lesser of the full amount of either the individual's housing cost amount attributable to employer provided amounts or the individual's foreign earned income for the taxable year. A qualified individual who elects to exclude his or her housing cost amount may not claim less than the full amount of the housing cost exclusion determined under this paragraph.

(2) *Employer provided amounts.* For purposes of this section, the term "employer provided amounts" means any amount paid or incurred on behalf of the individual by the individual's employer which is foreign earned income included in the individual's gross income for the taxable year (without regard to section 911). Employer provided amounts includes, but is not limited to, the following amounts: any salary paid by the employer to the employee; any reimbursement paid by the employer to the employee for housing expenses, educational expenses for the individual's dependents, or as part of a tax equalization plan; the fair market value of compensation provided in kind (including lodging, unless excluded under section 119, relating to meals and lodging furnished for the convenience of the employer); and any amount paid by the employer to any third party on behalf of the employee. An individual will only have earnings that are not employer provided amounts if the individual has earnings from self-employment.

(3) *Housing cost amount attributable to employer provided amounts.* For the purpose of determining what portion of the housing cost amount is excludable and what portion is deductible the following rules apply. If the individual has no income from self-employment, then the entire housing cost amount is attributable to employer provided amounts and is, therefore, excludable to the extent of the limitation provided in § 1.911-4(d)(1). If the individual only has income from self-employment, then the entire housing cost amount is attributable to non-employer provided amounts and is, therefore, deductible to the extent of the limitation provided in § 1.911-4(e). In all other instances, the housing cost amount attributable to employer provided amounts shall be determined by multiplying the housing cost amount by the following fraction: employer provided amounts over foreign earned income for the taxable year. The housing costs amount attributable to non-employer provided amounts shall be determined by subtracting the portion of the housing cost amount attributable to employer provided amounts from the total housing cost amount.

(e) *Housing cost amount deduction—*

(1) *In general.* If a portion of the individual's housing cost amount is determined under paragraph (d)(3) of this section to be attributable to non-employer provided amounts, the individual may deduct that amount from gross income for the taxable year but only to the extent of the individual's

foreign earned income (as defined in § 1.911-3) for the taxable year in excess of foreign earned income excluded and the housing cost amount excluded from gross income for the taxable year under §§ 1.911-3 and 1.911-4.

(2) *Carryover.* If any portion of the individual's housing cost amount deduction is disallowed for the taxable year under paragraph (e)(1) of this section, such portion shall be carried over and treated as a deduction from gross income in the succeeding taxable year (but only for the succeeding taxable year) to the extent of the excess, if any, of:

(i) The amount of foreign earned income for the succeeding taxable year less the foreign earned income and the housing cost amount excluded from gross income under §§ 1.911-3 and 1.911-4 for the succeeding taxable year over,

(ii) The portion, if any, of the housing cost amount that is deductible under § 1.911-4(e)(1) for the succeeding taxable year.

(f) *Examples.* The following examples illustrate the application of this section. In all examples the annual rate for a step 1 of GS-14 as of January first of the calendar year in which the individual's taxable year begins is \$39,689.

Example (1). B, a U.S. citizen, is a calendar year taxpayer who was a bona fide resident of and whose tax home was located in foreign country G for the entire taxable year 1982. B receives an \$80,000 salary from B's employer for services performed in G. B incurs no business expenses. B receives housing provided by B's employer with a fair rental value of \$15,000. The value of the housing furnished by B's employer is not excluded from gross income under section 119. B pays \$10,000 for housing expenses. B's gross income and foreign income for 1982 is \$95,000. B elects the foreign earned income exclusion of section 911(a)(1) and the housing cost amount exclusion of section 911(a)(2). B must first compute his housing cost amount exclusion. B's housing cost amount is \$18,650 determined by reducing B's housing expenses, \$25,000 (\$15,000 fair rental value of housing and \$10,000, other expenses), by the base housing amount of \$6,350 $((\$39,689 \times .16) \times 365/365)$. Because B has no income from self-employment the entire amount is attributable to employer provided amounts and, therefore, is excludable. B's section 911(a)(1) limitation is \$75,000. That is the lesser of $\$75,000 \times 365/365$ or $\$95,000 - \$18,650$. B's total exclusion for 1982 under section 911(a)(1) and (2) is \$93,650.

Example (2). The facts are the same as in example (1) except that B's salary for 1982 is \$70,000. B's foreign earned income for 1982 is \$85,000. B's housing cost amount is \$18,650 all of which is attributable to employer provided amounts. B's housing cost amount is excludable to the extent of the lesser of B's housing cost amount attributable to employer provided amounts, \$18,650, or the foreign

earned income for the taxable year, \$85,000. Thus, B excludes \$18,650 under section 911(a)(2). B's section 911(a)(1) limitation for 1982 is \$66,350 (the lesser of $\$75,000 \times 365/365$ or $\$85,000 - \$18,650$). B's total exclusion for 1982 under section 911(a)(1) and (2) is \$85,000.

Example (3). The facts are the same as in example (2) except that in 1983, B receives \$5,000 attributable to services performed in 1982. B may exclude the entire \$5,000 in 1983 because such amount would have been excludable under § 1.911-3(d)(1) had it been received in 1982.

Example (4). C is a U.S. citizen, self-employed, and a calendar year and cash basis taxpayer. C arrived in foreign country H on October 3, 1982, and departed from H on March 8, 1984. C's tax home was located in H throughout that period. C was physically present for 330 full days during the twelve consecutive month period August 30, 1982, through August 29, 1983. The number of C's qualifying days in 1982 is 124. During 1982 C had \$35,000 of foreign earned income, none of which was attributable to employer provided amounts, and \$8,000 of reasonable housing expenses. C's housing cost amount is \$5,843 $(\$8,000 - ((\$39,689 \times .16) \times 124/365))$. C elects to exclude her foreign earned income under § 1.911-3(d)(1). C's section 911(a)(1) limitation for 1982 is \$25,479 (the lesser of C's foreign earned income for the taxable year (\$35,000) or the annual rate for the taxable year multiplied by the number of C's qualifying days over the number of days in the taxable year $(\$75,000 \times 124/365 = \$25,479)$). C may not claim the housing cost amount exclusion under section 911(a)(2) because no portion of the housing cost amount is attributable to employer provided amounts. C may deduct the lesser of her housing cost amount (\$5,843), or her foreign earned income in excess of amounts excluded under section 911(a) $(\$35,000 - \$25,479 = \$9,521)$. Thus, C's housing cost amount deduction is \$5,843.

Example (5). The facts are the same as in example (4) except that C had \$30,000 of foreign earned income for 1982 none, of which was attributable to employer provided amounts. C elects to exclude \$25,479 under § 1.911-3(d)(1). C may only deduct \$4,521 of her housing cost amount under § 1.911-4(e)(1) because her foreign earned income in excess of amounts excluded under section 911(a) is \$4,521 $(\$30,000 - \$25,479)$. The \$1322 of unused housing cost amount deduction may be carried over to the subsequent taxable year.

Example (6). The facts are the same as in example (4) except that C had \$15,000 of foreign earned income for 1982, none of which was attributable to employer provided amounts. C elects to exclude the entire \$15,000 under § 1.911-3(d)(1). C is not entitled to a housing cost amount deduction for 1982 since she has no foreign earned income in excess of amounts excluded under section 911(a). C may carryover her entire housing cost amount deduction to 1983.

Example (7). The facts are the same as in example (6). In addition, during taxable year 1983 C had \$115,000 of foreign earned income none of which was attributable to employer provided amounts, and \$40,000 of housing expenses. C elects to exclude her foreign

earned income under § 1.911-3(d)(1). C's limitation is the lesser of \$115,000 or \$80,000 (\$80,000 × 365/365). C's housing cost amount for 1983 is \$33,650 [40,000 - ((39,689 × 16) × 365/365)]. Since no portion of that amount is attributable to employer provided amounts C may not claim a housing cost amount exclusion. C may deduct the lesser of her housing cost amount (\$33,650) or her foreign earned income in excess of amounts excluded under section 911(a) (\$115,000 - 80,000 = 35,000). Thus, C may deduct her \$33,650 housing cost amount in 1983. In addition, C may deduct \$1,350 of the housing cost amount deduction carried over from taxable year 1982 (\$115,000 - 80,000 - 33,650 = \$1,350). The remaining \$4,493 (\$5,843 - 1,350) of the housing cost amount deduction carried over from taxable year 1982 may not be deducted in 1983 or carried over to 1984.

Example (8): D is a U.S. citizen and a calendar year and cash basis taxpayer. D is a bona fide resident of and maintains his tax home in foreign country J for all of taxable year 1984. In 1984, D earns \$80,000 of foreign earned income, \$60,000 of which is an employer provided amount and \$20,000 of which is a non-employer provided amount. D's total housing cost amount for 1984 is \$25,000. D elected to exclude the portion of his housing cost amount that is attributable to employer provided amounts. D's excludable housing cost amount is \$18,750; that is the total housing cost amount (\$25,000) multiplied by employer provided amounts for the taxable year (\$60,000) over foreign earned income for the taxable year (\$80,000). D also elected to exclude his foreign earned income under § 1.911-3(d)(1). D's section 911(a)(1) limitation for 1984 is \$81,250 [the lesser of \$80,000 - 18,650 or \$85,000 × 365/365]. D cannot claim a housing cost amount deduction in 1984 because D has no foreign earned income in excess of his foreign earned income and housing cost amount excluded from gross income for the taxable year under §§ 1.911-3 and 1.911-4. D may carryover his housing cost amount deduction of \$8,250, the total housing cost amount less the portion attributable to employer provided amounts (\$25,000 - 18,750), to taxable year 1985.

§ 1.911-5 Special rules for married couples.

(a) *Married couples with two qualified individuals*—(1) *In general.* In the case in which a husband and wife both are qualified individuals under § 1.911-2(a), each individual may make one or more elections under § 1.911-7 and exclude from gross income foreign earned income and exclude or deduct housing costs amounts subject to the rules of paragraph (a) (2) and (3) of this section.

(2) *Computation of excluded foreign earned income.* The amount of excludable foreign earned income is determined separately for each spouse under the rules of § 1.911-3 on the basis of the income attributable to the services of that spouse. If the spouses file separate returns each may exclude

the amount of his or her foreign earned income attributable to his or her services subject to the limitations of § 1.911-3(d)(2). If the spouses file a joint return, the sum of these foreign earned income amounts so determined for each spouse may be excluded. For example, H and W both qualify under § 1.911-2(a)(2)(i) for the entire 1983 taxable year. During 1983 W earns \$100,000 of foreign earned income and H earns \$45,000 of foreign earned income. H and W file a joint return for 1983. On their joint return H and W may exclude from gross income a total of \$125,000. That amount is determined by adding W's section 911(a)(1) limitation, \$80,000 (the lesser of \$80,000 × 365/365 or \$100,000), an H's section 911(a)(1) limitation, \$45,000 (the lesser of \$80,000 × 365/365 or \$45,000).

(3) *Computation of housing cost amount*—(i) *Spouses residing together.* If the spouses reside together and both claim a housing cost amount exclusion or deduction, then the spouses may compute their housing cost amount either separately or jointly. If, however, the spouses file separate returns, they must compute their housing cost amount separately. If the spouses compute their housing cost amount separately, then each spouse must compute his or her housing expenses and his or her base housing amount. If the spouses compute their housing cost amount jointly, then only one of the spouses may claim the housing cost amount exclusion. Either spouse may claim the housing cost amount exclusion; however if the spouses have different periods of residence or presence and the spouse with the shorter period of residence or presence claims the exclusion, then only the expenses incurred in that shorter period may be claimed as housing expenses. The spouse claiming the exclusion may aggregate the couple's housing expenses, and subtract his or her base housing amount. For example, H and W reside together and file a joint return. H was a bona fide resident of and maintained his tax home in foreign country M from August 17, 1982 through December 31, 1983. W was a bona fide resident of and maintained her tax home in foreign country M from September 15, 1982 through December 31, 1983. During 1982, H and W earn and receive, respectively, \$25,000 and \$10,000 of foreign earned income. H paid \$10,000 for qualified housing expenses in 1982, \$7,500 of that was for qualified housing expenses incurred from September 15, 1982 through December 31, 1982. W paid \$3,000 for qualified housing expenses in 1982 all of which were incurred during her period of residence. H and W may choose to compute their housing cost amount jointly. If they do so and H

claims the housing cost amount exclusion his exclusion would be \$10,617. H's housing expenses would be \$13,000 (\$10,000 + \$3,000) and his base housing amount would be \$2,383 ((39,689 × 16) × 137/365 = \$2,383). If instead W claims the housing cost amount exclusion her exclusion would be \$8,621. W's housing expenses would be \$10,500 (\$7,500 + \$3,000) and her base housing amount would be \$1,879 ((39,689 × 16) × 108/365 = \$1,879). If H and W file jointly and both claim a housing cost amount exclusion or if they file separately, then H's and W's housing cost amounts would be, respectively \$7,617 (\$10,000 - 2,383) and \$1,121 (\$3,000 - 1,879).

(ii) *Spouses residing apart.* If the spouses reside apart, both spouses may exclude or deduct their housing cost amount if the spouses have different tax homes that are not within reasonable commuting distance (as defined in § 1.119-1(d)(3)) of each other and the abodes are not within a reasonable commuting distance of each other. Regardless of whether the spouses file joint or separate returns, the amount of the housing cost amount exclusion or deduction must be determined separately for each spouse under the rules of § 1.911-4. If both spouses claim a housing cost amount exclusion or deduction directly as qualified individuals, neither may claim any such exclusion or deduction under section 911(c)(2)(B)(ii), relating to a second foreign household maintained for the other spouse. If one spouse fails to claim a housing cost amount exclusion or deduction which that spouse could claim directly, the other spouse may claim such exclusion or deduction under section 911(c)(2)(B)(ii) relating to a second foreign household maintained for the first spouse provided that all the requirements of that section are met. Spouses may not claim more than one second foreign household and the expenses of such household may only be claimed by one spouse. For example, if both H and W are qualified individuals and H's tax home is in London and W's tax home is in Paris, then both H and W may exclude or deduct their housing costs amount; however, H and W must compute these amounts separately regardless of whether they file joint or separate returns. If instead of living in Paris, W lives in an area where there are adverse living conditions and W maintains H's home in London, then W may add those housing expenses to her housing expenses and compute one base housing amount. In that case H may not claim a housing cost amount exclusion or deduction.

(b) *Married couples with community income.* The amount of excludable foreign earned income of a husband and wife with community income is determined separately for each spouse in accordance with the regulations under § 1.911-5(a) on the basis of income attributable to that spouse's services without regard to community property laws. See sections 879 and 6013 (g) and (h) for special rules regarding treatment of community income of a nonresident alien individual married to a U.S. citizen or resident.

§ 1.911-6 Disallowance of deductions, exclusions, and credits.

(a) *In general.* No deduction or exclusion from gross income under Subtitle A or credit against the tax imposed by chapter 1 shall be allowed to the extent the deduction, exclusion, or credit is properly allocable to or chargeable against amounts excluded from gross income under section 911(a). For purposes of the preceding sentence, deductions, exclusions, and credits which are definitely related (as provided in § 1.861-8), in whole or in part, to earned income shall be allocated and apportioned to foreign earned income and U.S. source earned income in accordance with the rules contained in § 1.861-8. Deductions that are allocated and apportioned to foreign earned income must then be allocated and apportioned to foreign earned income that is excluded under section 911(a). Deductions, exclusions, or credits which are not definitely related to any class of gross income shall not be allocable or chargeable to excluded amounts and are, therefore, deductible to the extent allowed by chapter 1 of the Code. Examples of deductions that are not definitely related to a class of gross income are personal and family medical expenses, qualified retirement contributions (but see section 219(b)(1)), real estate taxes and mortgage interest on a personal residence, charitable contributions, alimony payments, and deductions for personal exemptions. In addition, for purposes of this section, amounts excludable or deductible under section 911 or 119 shall not be allocable or chargeable to other amounts excluded under section 911(a). Thus, an individual's housing cost amount which is excludable or deductible under § 1.911-4(d) for a taxable year is not apportioned in part to the individual's foreign earned income which is excluded for such year under § 1.911-3(d). Therefore, the entire amount of such exclusion or deduction is allowed to the extent provided in § 1.911-4.

(b) *Moving expenses—(1) In general.* No deduction shall be allowed for

moving expenses under section 217 to the extent the deduction is properly allocable to or chargeable against amounts of foreign earned income excluded from gross income under section 911(a). If an individual's new principal place of work is in a foreign country, deductible moving expenses will be allocable to foreign earned income. If an individual treats a reimbursement from his employer for the expenses of a move from a foreign country to the United States as attributable to services performed in a foreign country under § 911-3(e)(3)(ii), then deductible moving expenses attributable to that move will be allocable to foreign earned income. If the individual is a qualified individual who elects to exclude foreign earned income under section 911(a), then some or all of such moving expenses must be disallowed as a deduction.

(2) *Individual qualifies for the entire taxable year of the move.* If the individual is a qualified individual for the entire taxable year of the move, then the amount of moving expenses disallowed shall be determined by multiplying the moving expense deduction otherwise allowable by a fraction the numerator of which is the foreign earned income excluded under section 911(a) for the taxable year of the move and the denominator of which is the foreign earned income for the same taxable year.

(3) *Individual qualifies for less than the entire taxable year of the move.* If the individual is a qualified individual for less than the entire taxable year of the move, then, for the purpose of determining the portion of the otherwise allowable moving expense deduction that is disallowed, the individual must attribute a portion of the otherwise allowable moving expense deduction either to the succeeding taxable year, if the move is from the United States to a foreign country, or to the prior taxable year, if the move is from a foreign country to the United States. The portion of the moving expense deduction treated as attributable to services performed in the year of the move shall be determined by multiplying the otherwise allowable moving expense deduction by the following fraction:

The number of qualifying days (as defined in § 1.911-3(d)(3)) in the year of the move

The number of days in the taxable year of the move.

The portion of the moving expense deduction treated as attributable to the year succeeding or preceding the move shall be determined by subtracting the

portion of the moving expense deduction that is attributable to the year of the move from the total moving expense deduction. The allocation of a portion of the moving expense deduction to a succeeding or preceding taxable year does not affect the time for claiming the allowable moving expense deduction. The portion of the moving expense deduction that is disallowed shall be determined by multiplying the moving expense deduction attributable to the year of the move or the succeeding or preceding year, as the case may be, by a fraction the numerator of which is amounts excluded under section 911(a) for that year and the denominator of which is foreign earned income for that year.

(4) *Recapture of moving expense deduction.* An individual may claim a moving expense deduction in the taxable year in which the amount of the expense is paid or incurred even if attributable, in part, to the succeeding year. If, however, some amount of the moving expense deduction is, under paragraph (b)(3) of this section, attributable to the individual's succeeding taxable year, then, a portion of that amount of the moving expense deduction that is so attributable is subject to recapture in the succeeding taxable year. The portion subject to recapture is the amount, determined under paragraph (b)(3) of this section, to be attributable to amounts excluded under section 911(a) for the succeeding taxable year. The portion subject to recapture shall be included in gross income for such succeeding taxable year and is not foreign earned income (see § 1.911-3(c)(5)).

(c) *Foreign taxes.* No deduction or credit is allowed for foreign income, war profits, or excess profits taxes paid or accrued with respect to amounts excluded from gross income under section 911. To determine the amount of disallowed foreign taxes, multiply the foreign tax imposed on foreign earned income (as defined in § 1.911-3(a)) for the taxable year by a fraction, the numerator of which is amounts excluded under section 911(a) less deductible expenses properly allocated to such amounts (see paragraphs (a) and (b) of this section), and the denominator of which is foreign earned income (as defined in § 1.911-3(a)) less deductible expenses properly allocated or apportioned thereto. For the purpose of determining the extent to which foreign taxes are disallowed, the housing cost amount deduction is treated as definitely related to foreign earned income that is not excluded. If the foreign tax is imposed on earned income

and some other income (for example some other type of income or an amount not subject to tax in the United States), and the taxes on the other amount cannot be segregated, then the denominator equals the total of the amounts subject to tax less deductible expenses allocable to all such amounts.

(d) *Examples.* The following examples illustrate the application of this section.

Example (1). In 1982 A, an architect, operates his business as a sole proprietorship in which capital is not a material income producing factor. A receives \$1,000,000 in gross receipts, all of which is foreign source earned income, and incurs \$500,000 of otherwise deductible business expenses definitely related to the foreign earned income. A elects to exclude \$75,000 under section 911(a)(1). The expenses must be apportioned to excluded earned income as follows: $\$500,000 \times \$75,000 / \$1,000,000$. Thus, \$37,500 of the business expenses are not deductible.

Example (2). B is a U.S. citizen, calendar year and cash basis taxpayer. B moves to foreign country N and establishes a tax home and a bona fide residence there as of July 1, 1982. B pays \$6,000 of otherwise deductible moving expenses in 1982. B maintains his bona fide residence and tax home in N throughout the remainder of 1982 and all of 1983. B is not a qualified individual for the entire 1982 taxable year. The number of B's qualifying days in 1982 is 184. For 1982, B's foreign earned income is \$45,000 and his section 911(a)(1) limitation is \$36,712 on his income tax return for 1982. B claims a moving expense deduction in the amount of \$3,532 determined as follows. The portion of the moving expense deduction that is allocable to 1982 is determined by multiplying the otherwise allowable moving expense deduction by B's qualifying days in taxable year 1982 over the total number of days in taxable year 1982 ($\$6,000 \times 184 / 365 = \$3,025$). The remainder ($\$6,000 - \$3,025 = \$2,975$) is allocable to taxable year 1983. To determine the portion of the moving expense deduction allocable to 1982 that is disallowed, multiply the portion of the deduction that is allocable to 1982 by a fraction the numerator of which is amounts excluded under section 911(a) for that year and the denominator of which is foreign earned income for the same year ($\$3,025 \times \$36,712 / \$45,000 = \$2,468$). In 1983, B's foreign earned income is \$85,000 and his section 911(a)(1) limitation is \$80,000. To determine the portion of the moving expense deduction allocable to 1983 that is disallowed, multiply the portion of the deduction that is allocable to 1983 by a fraction the numerator of which is amounts excluded under section 911(a) for 1983 and the denominator of which is foreign earned income for 1983 ($\$2,975 \times \$80,000 / \$85,000 = \$2,800$). B must either file an amended return for 1982 and reduce his moving expense deduction to \$732 or include the \$2,800 that is subject to recapture as gross income in 1983.

Example (3). C is a U.S. citizen, a self-employed individual, and a cash basis and calendar year taxpayer. For the entire 1982 taxable year C maintained his tax home and

his bona fide residence in foreign country P. During 1982 C earned and received \$120,000 of foreign earned income, none of which was attributable to employer provided amounts. C paid \$40,000 of business expenses. C elected to exclude foreign earned income under section 911(a)(1) and claimed a housing cost amount deduction of \$15,000. C received \$10,000 of foreign source interest income which was included with C's earned income in a single tax base and taxed at graduated rates. For 1982, C paid \$30,000 in income tax to foreign country P. The amount of C's business expenses that is properly apportioned to excluded amounts (and therefore, not deductible) equals \$25,000, which is determined by multiplying the otherwise allowable deductions by C's excluded amounts over C's foreign earned income ($\$40,000 \times \$75,000 / \$120,000$). The amount of country P tax that is properly apportioned to excluded amounts (and therefore, not deductible or creditable) equals \$20,000, which is determined by multiplying the tax of \$30,000 by the following fraction:

$$\frac{\$50,000 (\$75,000 \text{ excluded amounts less } \$25,000 \text{ of deductible expenses allocable thereto})}{\$75,000}$$

$$((\$120,000 \text{ foreign earned income less } \$40,000 \text{ of deductible expenses allocable thereto}) \text{ less } \$15,000 \text{ housing cost amount deduction allocable thereto}) \text{ plus } \$10,000 \text{ other taxable income}.$$

§ 1.911-7 Procedural rules.

(a) *Elections of a qualified individual.* In order to receive either exclusion provided by section 911(a), a qualified individual must elect, separately with respect to each exclusion, to exclude foreign earned income under section 911(a)(1) and the housing cost amount under section 911(a)(2). Each election must be timely filed (including any extension of time to file granted under § 1.911-7(c)(2)) either with the income tax return, or with an amended return, for the first taxable year of the individual for which the election is to be effective. An election once made remains in effect for that year and all future years unless revoked under paragraph (b) of this section. Each election shall contain information sufficient to determine whether the individual is a qualified individual as provided in § 1.911-2. The statement shall include the following information:

- (1) The individual's name, address, and social security number;
- (2) The name of the individual's employer;
- (3) Whether the individual claimed exclusions under section 911 for earlier years after 1981 and within the five preceding taxable years;
- (4) Whether the individual has revoked a previously made election and the taxable year for which such revocation was effective;

(5) The exclusion or exclusions the individual is electing;

(6) The foreign country or countries in which the individual's tax home is located and the date when such tax home was established;

(7) The status (either bona fide residence or physical presence) under which the individual claims the exclusion;

(8) The individual's qualifying period of residence or presence;

(9) The individual's foreign earned income for the taxable year including the fair market value of all noncash remuneration; and,

(10) If the individual elects to exclude the housing cost amount, the individual's housing expenses.

Any such elections may be made on Form 2555 or on a comparable form. An individual does not have to make an election in order to claim the housing cost amount deduction. However, such individual must provide the Commissioner with information sufficient to determine the individual's correct amount of tax. Such information shall include the following: the individual's name, address, and social security number; the name of the individual's employer; the foreign country in which the individual's tax home was established; the status under which the individual claims the deduction; the individual's qualifying period of residence or presence; the individual's foreign earned income for the taxable year; and the individual's housing expenses.

(b) *Revocation of election—(1) In general.* An individual may revoke any election made under paragraph (a) of this section for any taxable year after the first taxable year for which the election was effective. Once an individual makes an election under paragraph (a) of this section, the individual may not, by filing an amended return, revoke that election for the taxable year for which the election was first effective. A revocation must be made separately with respect to each election. The individual may revoke an election by filing a statement that the individual is revoking one or more of the previously made elections either with the income tax return, or with an amended return, for the first taxable year of the individual for which the revocation is to be effective. If an election is revoked, the individual may not, without the consent of the Commissioner, again make the same election until the sixth taxable year following the taxable year for which the revocation was effective.

(2) *Reelection before sixth taxable year after revocation.* If an individual revoked an election under paragraph (b)(1) of this section and within five taxable years the individual wishes to reelect the same exclusion, then the individual may apply for consent to the reelection. The application for consent shall be made by requesting a ruling from the Associate Chief Counsel (Technical), National Office, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224. In determining whether to consent to a reelection the Associate Chief Counsel or his delegate shall consider the following facts and circumstances: a period of United States residence; whether the individual moved from one foreign country to another foreign country with differing tax rates; and any other facts or circumstances that may be relevant to the determination.

(c) *Returns and extensions—(1) In general.* Any return filed before completion of the period necessary to qualify an individual for any exclusion or deduction provided by section 911 shall be filed without regard to any exclusion or deduction provided by that section. A claim for a credit or refund of any overpayment of tax may be filed, however, if the taxpayer subsequently qualifies for any exclusion or deduction under section 911. See section 6012(c) and § 1.6012-1(a)(3), relating to returns to be filed and information to be furnished by individuals who qualify for any exclusion or deduction under section 911.

(2) *Extensions.* An individual desiring an extension of time (in addition to the automatic extension of time granted by § 1.6081-2) for filing a return until after the completion of the qualifying period described in paragraph (c)(1) of this section for claiming any exclusion or deduction under section 911 may apply for an extension. The individual may make such application on Form 2350 or a comparable form. The application must be filed with the Director, Internal Revenue Service Center, Philadelphia, Pennsylvania 19255. The application must set forth the facts relied on to justify the extension of time requested and must include a statement as to the earliest date the individual expects to become entitled to any exclusion or deduction by reason of completion of the qualifying period.

(d) *Declaration of estimated tax.* In estimating gross income for the purpose of determining whether a declaration of estimated tax must be made for any taxable year, an individual is not required to take into account income which the individual reasonably believes will be excluded from gross

income under the provisions of section 911. In computing estimated tax, however, the individual must take into account, among other things, the denial of the foreign tax credit for foreign taxes allocable to the excluded income (see § 1.911-7(b)(c)).

§ 1.911-6 Former deduction for certain expenses of living abroad.

For rules relating to the deduction for certain expenses of living abroad applicable to taxable years beginning before January 1, 1982, see 26 CFR §§ 1.913-1 through 1.913-13 as they appeared in the Code of Federal Regulations revised as of April 1, 1982.

§ 1.913-1—1.913-13 [Removed]

Par. 3. Sections 1.913-1 through 1.913-13 are removed.

Employment Tax Regulations

Par. 4. Section 31.3401(a)(8)(A)-1 is amended by revising paragraphs (a)(1)(ii), (2)(i) and (3), and adding paragraph (a)(4). The revised and added paragraphs read as follows:

§ 31.3401(a)(8)(A)-1. Remuneration for services performed outside the United States by citizens of the United States.

(a) * * *

(1) * * *

(ii) Remuneration paid by an employer to an employee constitutes wages, and hence is subject to withholding, only to the extent that the remuneration is paid after the aggregate amount which is excludable from the employee's gross income under section 911(a) is exceeded. For this purpose, an employer is not required to ascertain information with respect to amounts received by his employee from any other source; but, if the employer has such information, he shall take it into account in determining whether the earned income of the employee is in excess of the applicable limitation. For purposes of section 911(d)(5) and § 1.911-2(c), relating to an employee who states to the authorities of a foreign country that he is not a resident of that country, the employer is not required to ascertain whether such a statement has been made; but if an employer knows that such a statement has been made, he shall presume that the employee is not a bona fide resident of that country, unless the employer also knows that the authorities of the foreign country have determined, notwithstanding the statement, that the employee is a resident of that country. For purposes of section 911(d)(1) or § 1.911-2(a) relating to the definition of a qualified individual, the reasonable belief contemplated by the statute may be based on a presumption as set forth in

subparagraph (2) or (3) of this paragraph. For purposes of sections 911(a)(2) and 911(c)(2) and §§ 1.911-4 (b) and (d)(1), relating to the housing cost amount exclusion and the definition of housing expenses, the reasonable belief contemplated by the statute may be based on the presumption set forth in subparagraph (4) of this paragraph.

(2) (i) The employer may, in the absence of cause for a reasonable belief to the contrary, presume that an employee will maintain a tax home in a foreign country or countries and be a bona fide resident of a foreign country or countries, within the meaning of section 911(d)(1), for an uninterrupted period which includes each taxable year of the employee, or applicable portion thereof, in respect of which the employee properly executes and delivers to the employer a statement that the employee meets or will meet the requirement of § 1.911-2(a) relating to maintaining a tax home and a bona fide residence in a foreign country for the taxable year. This statement must set forth the facts alleged as the basis for this determination and contain a declaration by the employee that the statement is made under the penalties of perjury. Sample forms of acceptable statements may be obtained by writing to the Foreign Operations District, Internal Revenue Service, Washington, D.C. 20225 (Form 10-673).

(ii) * * *

(3) The employer may, in the absence of cause for a reasonable belief to the contrary, presume that an employee will maintain a tax home in a foreign country or countries and be present in a foreign country or countries during at least 330 full days during any period of twelve consecutive months, within the meaning of section 911(d)(1), and that such period includes each taxable year of the employee, or applicable portion thereof, in respect of which the employee properly executes and delivers to the employer a statement that the employee meets or will meet the requirements of § 1.911-2(a) relating to maintaining a tax home and being physically present in a foreign country for the taxable year. This statement must set forth the facts alleged as the basis for this determination and contain a declaration by the employee that the statement is made under the penalties of perjury. Sample forms of acceptable statements may be obtained by writing to the Foreign Operations District, Internal Revenue Service, Washington, D.C. 20225 (Form 10-673).

(4) The employer may, in the absence of cause for a reasonable belief to the contrary, presume that an employee's

housing cost amount will be the amount shown on a statement properly executed and delivered to the employer. This statement must set forth the employee's estimation of the following items: housing expenses (as defined in § 1.911-4(b)), the housing cost amount exclusion (as defined in § 1.911-4(d)(1)), and the qualifying period (as defined in § 1.911-2(a)). The statement must contain a declaration by the employee that it is made under the penalties of perjury. Sample forms of acceptable statements may be obtained by writing to the Foreign Operations District, Internal Revenue Service, Washington, D.C. 20225 (10-673). The employer may not rely on a statement from an employee if the employer, based on his or her knowledge of housing costs in the vicinity of the employee's tax home (as defined in § 1.911-2(b)), believes the employee's housing expenses are lavish or extravagant under the circumstances.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 83-18506 Filed 7-19-83; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Permanent State Regulatory Program of Pennsylvania

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a program amendment submitted by Pennsylvania to satisfy certain conditions imposed by the Secretary of the Interior on the approval of the Pennsylvania State Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment consists of a policy statement intended to satisfy condition (j)(2) of the Secretary's approval. The policy statement describes the proposed procedures for a mandatory review of permits for a pattern of violations and suspension or revocation of a permit.

This document sets forth the times and locations that the Pennsylvania program and proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and

information pertinent to the public hearing.

DATE: Written comments relating to Pennsylvania's proposed modification of its program not received on or before 4:00 p.m. on August 19, 1983, will not necessarily be considered.

If requested, a public hearing will be held on August 24, 1983, beginning at 10:00 a.m. at the location shown below under "ADDRESSES."

ADDRESSES: Written comments should be mailed or hand-delivered to: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101.

If a public hearing is held, its location will be at: The Penn Harris Gator Inn and Convention Center at the Camp Hill bypass at U.S. 11 and 15, Camp Hill, Pennsylvania at the Keystone-A Convention Room.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Pennsylvania program, the proposed amendment, and a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSM offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 L Street, N.W., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101

Pennsylvania Department of Environmental Resources, Fulton Bank Building, Third and Locust Streets, Harrisburg, Pennsylvania 17120

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than Harrisburg, Pennsylvania,

will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business four working days before the date of the hearing. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on Conditional Approval

Under 30 CFR 732.13(j), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set in the notice of conditional approval.

III. Background on the Pennsylvania State Program

Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanations of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, *Federal Register* (47 FR 33050).

At the time of the Secretary's conditional approval, Pennsylvania agreed to meet ten minor conditions, many of which contained several parts.

IV. Submission of Material to Satisfy Conditions

In accepting the Secretary's approval, Pennsylvania agreed to correct deficiency (j)(2) by May 1, 1983. In the *Federal Register* dated May 25, 1983 (48 FR 23416), the Secretary extended the time until June 1, 1983, to correct deficiency (j)(2). The State requested an additional one month to satisfy condition (j)(2) in a letter dated June 1, 1983. OSM published the State's request for this extension in the *Federal Register* dated June 30, 1983 (48 FR 30149).

In a letter dated July 1, 1983, from the Commonwealth, OSM received a policy statement intended to meet condition (j)(2). See PA 430. The policy statement provides procedures for a mandatory review of permits for a pattern of violations and suspension or revocation of permits. The statement also provides guidance for determining whether a pattern of violation exists and defines key terms for establishing such a pattern.

Condition (j)(2) requires Pennsylvania to provide a mandatory review of permits for a pattern of violations and suspension or revocation of a permit based on a pattern of three or more violations within a 12-month period of committed willfully or through unwarranted failure to comply to the same or similar as 30 CFR 843.13 and no less stringent than Section 521(a)(4) of SMCRA.

In the material submitted dated July 1, 1983, Pennsylvania claims to satisfy condition (j)(2) by providing for the suspension or revocation of permits if a pattern of violations is detected and found to be the result of an unwarranted failure to comply or from willful conduct.

Pennsylvania defines "pattern of violation" as three or more occasions where violations of the same or closely related requirements occurred in a twelve month period. Pennsylvania further defines "closely related

requirements" as violations of the same performance standards.

The State offers the following definitions for: (1) "willful conduct" as an act or omission committed by a person who intends the result which actually occurred and (2) "unwarranted failure to comply", as a failure to prevent the occurrence of any violation, due to indifference or lack of diligence.

The proposed amendment provides guidance for the State's response to a pattern of violation and procedures for enforcing "show cause orders".

The Secretary seeks public comment on whether the material submitted satisfies the condition (j)(2). If the program amendment is approved, condition (j)(2) in 30 CFR 938.11 will be removed.

Procedural Matters

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements, which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

(Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 *et seq.*)

Dated: July 14, 1983.

James R. Harris,
Director, Office of Surface Mining.

[FR Doc. 83-19618 Filed 7-19-83; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[W-4-FRL-2399-7]

State Program Requirements; Kentucky: Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program

AGENCY: Environmental Protection Agency.

ACTION: Public notice of application for NPDES approval.

SUMMARY: The Commonwealth of Kentucky has submitted a request to the Environmental Protection Agency (EPA) for approval to administer the National Pollutant Discharge Elimination System (NPDES) program for regulating discharges of pollutants into waters of the Commonwealth. The NPDES program would be administered by the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC). This notice provides for public hearings and a comment period on Kentucky's request. Under EPA regulations, the Administrator will approve or disapprove this request after taking into consideration all comments received.

DATES: Comments must be received on or before September 6, 1983. Public hearings will be held on August 23 and 25, 1983.

ADDRESSES: Comments should be addressed to: U.S. EPA, Region IV, Water Management Division, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Attn: Earline Hanson.

Public hearings have been scheduled for 10:00 am and 7:00 pm on August 23, 1983 at the Executive Inn-Rivermont, One Executive Blvd., Owensboro, Kentucky and at 10:00 am and 7:00 pm on August 25, 1983 at the Lexington Center, Civic Center Mall, 430 West Vine Street, Lexington, Kentucky.

Kentucky's submission for the NPDES program may be examined and copied at the following locations:

U.S. EPA, Region IV, Library, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Kentucky National Resources and Environmental Protection Cabinet,

Capital Plaza Tower, Frankfort,
Kentucky 40601
Division of Water, Paducah, Kentucky
42001, 1390 Irvin Cobb Dr.
Madisonville, Kentucky 42421, Old TB
Hospital, North Laffon Street
Bowling Green, Kentucky 42101, 210
East 10th Street
Florence, Kentucky 41042, 7964 KY
Drive, Suite No. 8
Frankfort, Kentucky 40601, 18 Reilly
Road, Ft. Boone Plaza
London, Kentucky 40741, Regional State
Office Bldg. Room 343
Morehead, Kentucky 40531, Mabra
Building, KY 32 South
Hazard, Kentucky 41701, 213 Lovern
Street

A copy of the entire submittal may be obtained for \$10.00 from either the EPA office in Atlanta or the NREPC office in Frankfort. Copies of part or all of the submittal (which is about 300 pages long) may be obtained for 25¢ per page from any of the NREPC offices or for 20¢ per page from the EPA office in Atlanta.

FOR FURTHER INFORMATION CONTACT: Jim Patrick, Chief, Permits Section, U.S. EPA Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30385, 404/881-3012 or Karen Armstrong-Cummings, Kentucky DEP, Fort Boone Plaza, 18 Reilly Rd., Frankfort, KY 40601, 502/564-3410.

SUPPLEMENTARY INFORMATION: Section 402 of the Federal Clean Water Act created the NPDES under which the Administrator of the United States Environmental Protection Agency (EPA) may issue permits for the discharge of pollutants into waters of the United States under conditions required by that Act. This Act also provides that a State may be authorized to administer the NPDES program upon request and showing that the State has authority and a program sufficient to meet requirements of the Federal act.

The Governor of Kentucky has requested NPDES program approval and submitted a complete program description (including funding, personnel requirements and organization, and enforcement procedures), a General Counsel's statement, copies of applicable State statutes and regulations, and a Memorandum of Agreement (MOA) executed by the Regional Administrator, Region IV, EPA and the Secretary, Kentucky Natural Resources and Environmental Protection Cabinet. Upon approval by the Administrator of EPA of Kentucky's NPDES program, the MOA, which establishes procedures for administration and enforcement of the Commonwealth's program, would become effective. The Administrator is

required to approve each such submitted program within 90 days of submittal unless it does not meet the requirements of section 402(b) of the Act and EPA regulations, which include, among other things, authority to issue permits which comply with the Federal Act, authority to impose civil and criminal penalties for permit violations, and authority to insure that the public is given notice and opportunity for a hearing on each proposed NPDES permit issuance.

At the close of the comment period (including the public hearing), the Administrator of EPA will decide to approve or disapprove Kentucky's NPDES program. In accordance with EPA regulations, EPA and NREPC have agreed to extend the review period beyond the ninety (90) day statutory period until September 30, 1983.

The decision to approve or disapprove Kentucky's NPDES program will be based on the requirements of Section 402 of the CWA and 40 CFR Part 123. If the Kentucky NPDES program is approved, the Administrator will so notify the Commonwealth. Notice will be published in the Federal Register and, as of the date of program approval, EPA will suspend issuance of NPDES permits in Kentucky. The Commonwealth's program will implement Federal law and operate in lieu of the EPA administered program. However, EPA will retain the right to object to NPDES permits proposed to be issued by the Commonwealth. If the Administrator disapproves Kentucky's NPDES program, the Administrator will notify the Commonwealth of the reasons for disapproval and of any revisions or modification to the program which are necessary to obtain approval.

The Kentucky submittal may be reviewed during normal business hours, Monday through Friday, excluding holidays, by the public at the Kentucky NREPC and EPA offices at the address appearing earlier in this Notice.

Public hearings to consider Kentucky's request to administer the NPDES permit program have been scheduled as shown at the beginning of this Notice.

The Hearing Panel will include representatives of EPA, Region IV, EPA Headquarters and the Kentucky NREPC.

The following are policies and procedures which shall be observed at the public hearing:

1. The Presiding Officer shall conduct the hearing in a manner that permits open and full discussion of any issues involved;
2. Any person may submit written statements or documents for the record;
3. The Presiding Officer may, in his discretion, exclude oral testimony if

such testimony is overly repetitious of previous testimony or is not relevant to the decision to approve or require revision of the submitted State program;

4. Members of the Hearing Panel may ask questions of witnesses and respond to questions and statements of witnesses;

5. The transcript taken at the hearing, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Administrator; and

6. The hearing record shall be left open until the deadline for receipt of comments specified at the beginning of this notice to permit any person to submit additional written statement or to present views or evidence tending to rebut testimony presented at the public hearing. Immediately following the public comment period the Regional Administrator shall forward a copy of the complete hearing record to the Administrator.

Hearing statements may be oral or written. Written copies of oral statements are urged for accuracy of the record and for use of the hearing panel and other interested persons. Statements should summarize any extensive written materials.

All comments or objections received by EPA Region IV by the deadline for receipt of comments or presented at the public hearing will be considered by EPA before taking final action on the Kentucky Request for NPDES Program Approval.

Please bring the foregoing to the attention of persons whom you know will be interested in this matter.

Review Under the Regulatory Flexibility Act and Executive Order 12291

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. The approval of the Kentucky NPDES permit program, merely transfers responsibilities for administration of permitted facilities from the Federal to State government. No new substantive requirements are established by this action. Therefore, since this Notice does not have a significant impact on a substantial number of small entities, a Regulatory Flexibility Analysis is not needed.

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

List of Subjects in 40 CFR Part 123

Administrative practice and procedures, Confidential business information, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

Dated: July 7, 1983.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 83-19571 Filed 7-19-83; 8:45 am]

BILLING CODE 6550-50-M

40 CFR Part 271

[SW-6-FRL 2401-7]

Hazardous Waste Management Program; New Mexico Application for Interim Authorization, Phase I and Phase II, Components A and B

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and of a public hearing.

SUMMARY: Today EPA is announcing the availability for public review of the New Mexico application for Phase I, and Phase II, Components A and B, Interim Authorization, Hazardous Waste Management Program, inviting public comment, and giving notice that EPA will hold a public hearing on the application. EPA is also inviting comment on its intention to consider identical, jointly-issued state permits to be RCRA permits.

DATE: A public hearing is scheduled for August 24, 1983 at 9:00 a.m. A second session of the public hearing will convene at 2:00 p.m. This session will close immediately if there are no commentors. All written comments on the New Mexico Interim Authorization application must be received by the close of business on August 24, 1983.

ADDRESSES: EPA will hold a public hearing on New Mexico's application for Interim Authorization on August 24, 1983, at 9:00 a.m., at the Albuquerque Convention Center, Picuris Room, 401 Second Street, NW., Albuquerque, New Mexico.

Written comments on the application must be sent to: U.S. Environmental Protection Agency, Region VI, Air and Waste Management Division, Attn: H. J. Parr, Hazardous Materials Branch, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2645.

Copies of the New Mexico Interim Authorization application for Phase I and Phase II, Components A and B are available during normal business hours at the following addresses for inspection

and copying:

Community Support Services Bureau,
New Mexico Environment
Improvement Division, 725 Saint
Michael's Drive, Crown Building,
Santa Fe, New Mexico 87504
Environmental Protection Agency,
Region VI, Library, 28th Floor, 1201
Elm Street, Dallas, Texas 75270, (214)
767-7341

EPA Headquarters Library, 401 M St.
SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:
H. J. Parr, Hazardous Materials Branch,
U.S. Environmental Protection Agency,
Region VI, Dallas, Texas 75270, (214)
767-2645.

SUPPLEMENTARY INFORMATION: In the May 19, 1980, Federal Register (45 FR 33063), the Environmental Protection Agency promulgated regulations, pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, to protect human health and the environment from the improper management of hazardous waste. These regulations included provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State program can be granted Interim Authorization. The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect.

Phase I of the program contains standards for persons that generate or transport hazardous waste and Interim Status Standards that persons treating, storing or disposing of hazardous waste must comply with pending the receipt of a permit under Phase II of the program.

In the January 28, 1981 Federal Register (46 FR 7965), the Environmental Protection Agency announced the availability of portions or components of Phase II of Interim Authorization. Component A, published in the Federal Register January 12, 1981 (46 FR 2802), contains standards for permitting containers, tanks, surface impoundments and waste piles. Component A was subsequently modified on July 26, 1982 (47 FR 14148) to contain standards for permitting the storage of hazardous waste only in tanks and containers. Component B, published in the Federal Register January 23, 1981 (46 FR 7666), contains standards for permitting hazardous waste incinerators.

A full description of the requirements

and procedures for State Interim Authorization is included in 40 CFR Part 271, Subpart F (48 FR 33479).

Prior to being authorized for a component of Phase II, Interim Authorization, a state may require facilities that treat, store or dispose of hazardous waste to obtain a state permit. There are no provisions within RCRA or the federal hazardous waste regulations for designating these pre-authorization state permits as RCRA permits. RCRA permits can be issued only by EPA or an authorized state. Authorization requirements ensure that an authorized state will be using procedures substantially equivalent to the federal permitting procedures (state procedures must meet the requirements of Section 7004(b) of RCRA) and will be requiring facilities to comply with standards providing substantially the same degree of protection as the federal technical standards.

The State of New Mexico and EPA are jointly processing a permit for New Mexico State University A-Mountain Hazardous Waste Storage Facility in Las Cruces, New Mexico. Should EPA determine, through review of the application, that the State's permitting procedures and technical standards are substantially equivalent to the federal procedures and standards, EPA is proposing to terminate the federally issued RCRA permit where an identical state permit has been issued. (Termination shall occur with the agreement of the permittee or for one of the causes for termination in 40 CFR 270.43). If the federal permit is not terminated, then the facility will operate under two identical permits.

As noted on the May 19, 1980 Federal Register, copies of complete state submittals for Interim Authorization are to be made available for public inspection and comment. In addition, a public hearing is to be held on the submittal.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indians—land, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business formation.

Authority: Solid Waste Disposal Act, amended by Resource Conservation and Recovery Act of 1976 and Solid Waste Disposal Act Amendments of 1980. 42 U.S.C. 6901 et seq.

Dated: July 12, 1983.
 Dick Whittington,
Regional Administrator.
 [FR Doc. 83-19578 Filed 7-19-83; 8:45 am]
 BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-29

Use of Metric System of Measurement in Federal Standardization Documents

AGENCY: Office of Acquisition Policy,
GSA.

ACTION: Proposed rule.

SUMMARY: This proposed amendment to the Federal Property Management Regulations will implement Pub. L. 94-168 by providing an approach for eliminating barriers to the procurement of metric goods and services. The proposed provisions will expand the procurement base of Federal agencies by placing products produced in U.S. customary units and metric units on an equal competitive basis.

DATE: Comments must be received by August 15, 1983.

ADDRESS: Send comments to: General Services Administration, Office of Acquisition Policy (VC), Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Zabych, GSA Metrication Coordinator, Office of Acquisition Management and Contract Clearance, Office of Acquisition Policy (VC), (202) 523-4873.

SUPPLEMENTARY INFORMATION: On December 23, 1975, the President signed the Metric Conversion Act of 1975 (Pub. L. 94-168; 15 U.S.C. 205a) which declared that the policy of the United States shall be to coordinate and plan the increasing use of the metric system in the United States. Since the private sector of our economy has demonstrated the capability to provide metric products and services at reasonable or competitive prices, Federal agencies will consider the acquisition and use of such products or services to the maximum extent permitted by law and policy.

The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or

significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net costs to society.

List of Subjects in 41 CFR Part 101-29

Government property management.

PART 101-29—FEDERAL SPECIFICATIONS AND STANDARDS

(1) The table of contents for Part 101-29 is amended by adding one entry as follows:

Sec.
 101-29.104 Use of metric system of measurement in Federal standardization documents.

Subpart 101-29—General

(2) Section 101-29.104 is added as follows:

§ 101-29.104 Use of metric system of measurement in Federal standardization documents.

(a) The policy of the United States is to coordinate and plan the increasing use of the metric system in the United States, (Pub. L. 94-168, 15 U.S.C. 205a).

(b) In furtherance of this policy, the Administrator of General Services shall develop procedures and plan for the increasing use of metric products by requiring agencies to:

(1) Maintain close coordination with and continuous monitoring of conversion plans of other Federal agencies, State and local governments, and the private sector.

(2) Review, prepare and revise Federal standardization documents to eliminate barriers to the procurement of metric goods and services. Such review and revision of documents shall be performed concurrently with the overage document review by FSC class or when specifically informed by the private sector that metric products can be produced in a specific FSC class.

Dated: July 12, 1983.

Allan W. Beres,
Assistant Administrator for Acquisition Policy.

[FR Doc. 83-19454 Filed 7-19-83; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

National Taxidermists Association's Petition To Amend Permit Regulation To Authorize Private, Non-Commercial Salvage of Accidentally Killed Migratory Birds; Correction

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a typographical error concerning the number of birds killed annually by the agency of man found in the Petition for Rulemaking submitted by the national Taxidermists Association (NTA) that appeared at page 32034 in the *Federal Register* of Wednesday, July 13, 1983 (48 FR 32034).

DATES: Comments on the notice must be received in writing by September 12, 1983.

ADDRESSES: Comments may be mailed to Director (LE), Fish and Wildlife Service, P.O. Box 28006, Washington, D.C. 20005, or delivered weekdays to the Division of Law Enforcement, Fish and Wildlife Service, 3rd Floor, 1375 K Street, NW., Washington, D.C. between 8:00 am and 4:00 pm. Comments should bear the identifying notation REG 21-03.

All materials received, NTA's petition, and Law Enforcement Memorandum LE-91 may be inspected weekdays during normal business hours at the Service's Division of Law Enforcement, 3rd Floor, 1375 K Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John R. Thomas, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 28006, Washington, D.C. 20005, telephone: (202) 343-9242.

The following correction is made in FR Doc. 83-18692 appearing at page 32034 in the issue of July 13, 1983:

On page 32035 in the third column under the heading "NTA Justification for the Rule," the number of birds killed annually by the agency of man is corrected to read "189,887,810."

A. Ray Arnot,
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-19552 Filed 7-19-83; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 48, No. 140

Wednesday, July 20, 1983

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Section 800.6(b)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that on August 8, 1983 at 7:00 p.m., a public information meeting will be held at the City Hall Council Chambers, 3rd Floor, 801 Plum Street, Cincinnati, Ohio 45202.

This meeting is being called by the Executive Director of the Council in accordance with Section 800.6(b)(3) of the Council's regulations.

The purpose of the meeting is to provide an opportunity for national, State, and local units of government, representatives of public and private organizations, and interested citizens to receive information and express their views concerning the proposal by Raymond Wandstrat to construct a barge loading facility at Ohio River Mile 477.3 right bank, Anderson Ferry, Hamilton County, Ohio. This proposal requires permits from U.S. Army Corps of Engineers under Section 10 of the River and Harbors Act of 1899 and Section 404 of Pub. L. 92-500. It has been determined that this facility will adversely affect the Anderson Ferry, a property listed in the National Register of Historic Places. The meeting also will address the issuance of related but separate Section 10 and Section 404 permits to Mr. Wandstrat for building a floating restaurant and dock facility at Ohio River Mile 477.3. It has been determined that this undertaking also will adversely affect the Anderson Ferry. Consideration will be given to the

two separate undertakings, their effects on the National Register property, and alternative courses of action that could avoid, mitigate or minimize adverse effects on this property.

The following is a summary of the agenda of the meeting:

I. An explanation of the procedures and purpose of the meeting by a representative of the Executive Director of the Council.

II. Discussion of the barge loading facility.

a. A description of the barge loading facility undertaking and an evaluation of its effects on the property by the U.S. Army Corps of Engineers.

b. Statements by the Ohio and Kentucky State Historic Preservation Officers.

c. Statements from local officials, private organizations, and the public on the effects of the undertaking and possible alternatives.

d. A general question period.

III. Discussion of the floating restaurant and dock.

a. A description of the floating restaurant and dock undertaking and an evaluation of its effects on the property by the U.S. Army Corps of Engineers.

b. Statements by the Ohio and Kentucky State Historic Preservation Officers.

c. Statements from local officials, private organizations, and the public on the effects of the undertaking and possible alternatives.

d. A general question period.

Speakers should limit their statements to 5 minutes. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1522 K Street, N.W., Washington, D.C. 20005, telephone (202) 254-3974, Attention: Dr. Janet Friedman.

Dated: July 15, 1983.

Robert R. Garvey, Jr.,
Executive Director.

[FR Doc. 80-19522 Filed 7-19-1983; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 15, 1983.

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

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

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Marshall L. Dantzer, Acting Department Clearance Officer, USDA, OIRM, Room 108-W Admin. Bldg., Washington, D.C. 20250, (202) 447-6201.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revised

- Statistical Reporting Service
- Monthly Cold Storage Report
- Monthly, biennially
- Businesses: 15,820 responses; 6,553 hours; not applicable under 3504(h)
- Lee Sandberg (202) 447-6820
- Economic Research Service
- Cost of Production—Major Crops
- On occasion

• Farms: 5,952 responses; 5,952 hours;
not applicable under 3504(h)
James Johnson (202) 447-4190
Marshall L. Dantzer,
Acting Department Clearance Officer.
[FR Doc. 83-19586 Filed 7-19-83; 8:45 am]
BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

(A-588-053)

Birch 3-Ply Doorskins From Japan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade
Administration.

ACTION: Notice of final results of
administrative review of antidumping
finding.

SUMMARY: On January 31, 1983, the
Department of Commerce published the
preliminary results of its administrative
review of the antidumping finding on
birch 3-ply doorskins from Japan. The
review covers 23 of the 25 known
manufacturers and/or exporters of this
merchandise to the United States
currently covered by the finding and the
period February 1, 1981 through January
31, 1982.

Interested parties were given an
opportunity to submit oral or written
comments on the preliminary results.
One exporter submitted written
comments. After our analysis of the
comments received, with the exception
of correction of clerical errors in the
calculation of margins for two of the
manufacturer/exporter combinations,
the final results of review are unchanged
from those presented in the preliminary
results of review.

EFFECTIVE DATE: July 20, 1983.

FOR FURTHER INFORMATION CONTACT:
Laurie Lucksinger or Susan Crawford,
Office of Compliance, International
Trade Administration, U.S. Department
of Commerce, Washington, D.C. 20230,
telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 1976, the Treasury
Department published in the *Federal
Register* (41 FR 7389) an antidumping
finding with respect to birch 3-ply
doorskins from Japan. On January 31,
1983, the Department of Commerce ("the
Department") published in the *Federal
Register* (48 FR 4310-1) the preliminary
results of its last administrative review
of the finding. The Department has now
completed that administrative review.

Scope of the Review

Imports covered by the review are
shipments of birch 3-ply doorskins,
manufactured in a variety of glue types,
sizes, and colors. Birch 3-ply doorskins
are currently classifiable under items
240.1420, 240.1440, and 240.1460 of the
Tariff Schedules of the United States
Annotated.

The review covers 23 of the 25 known
manufacturers and/or exporters of
Japanese birch 3-ply doorskins to the
United States currently covered by the
finding and the period February 1, 1981
through January 31, 1982.

Analysis of Comments Received

Interested parties were invited to
comment on the preliminary results. One
importer, C. Itoh (America) Inc.,
submitted written comments.

Comment 1: C. Itoh (America) argues
that the Department should use the price
from Sanmoku Lumber Co., Ltd. to a
related trading company, Mitsui & Co.,
Ltd. (Japan), to establish foreign market
value rather than the price from Mitsui
(Japan) to an unrelated purchaser in
Canada. C. Itoh argues that the
Department should accept the "arms-
length transaction" between Sanmoku
and Mitsui (Japan) as a legitimate basis
of comparison. C. Itoh cites the related
party valuation standard for the
Customs Service set forth in the Tariff
Act of 1930 ("the Tariff Act") as
justification that, if there is evidence
that a relationship does not affect the
price, the price between related parties
may be used as the basis for
comparison. As further justification, C.
Itoh argues that, since the price between
Sanmoku and Mitsui (Japan) is
comparable to the price between
Sanmoku and C. Itoh, in accordance
with section 353.22(b) of the Commerce
Regulations, the Department should
determine the foreign market value by
using the price between Sanmoku and
Mitsui (Japan).

Department's Position: The
calculation of foreign market value is in
accordance with section 773 of the Tariff
Act, which is unrelated to Customs
valuation principles. The Department
does not disagree that the price between
Sanmoku and C. Itoh (Japan) is
comparable to the price between
Sanmoku and Mitsui (Japan). However,
to determine if we can use the price
between related parties, we must have
unrelated home market sales to compare
with such sales. The sales between
Sanmoku and C. Itoh are for exportation
to the U.S. Therefore, the Department
lacks sufficient evidence that the price
between Sanmoku and Mitsui (Japan) is
not affected by their relationship.

Comment 2: If the Department
determines not to alter the basis of
calculation of foreign market value, C.
Itoh contends that the Department
should make an adjustment for level of
trade differences, because foreign
market value sales are made to an
unrelated Canadian purchaser while
United States price sales are made to an
unrelated trading company in Japan. The
unrelated Canadian purchaser is an end-
user while the unrelated Japanese
trading company is a wholesaler
reselling to end-users in the United
States. The foreign market value should
be reduced by the amount of mark-up
reflected in Mitsui's sales to the
Canadian purchaser.

Department's Position: The Hokkaido
Plywood Manufacturers Association
and Mitsui raised this same argument,
for Sanmoku sales to the U.S. through
Mitsui, in the last administrative review.
Our position remains unchanged. Mitsui
sells to the independent Canadian
purchaser on the same terms that it buys
from Sanmoku, that is, f.o.b. Hokkaido.
Therefore, any differences in level of
trade are due purely to other expenses
arising from selling the merchandise to
the Canadian purchaser. As described
below, we have received no evidence to
suggest what these expenses are or their
magnitude. Lacking adequate
quantification, we would not make an
adjustment for differences in level of
trade.

Comment 3: If we do not alter our
basis of comparison, C. Itoh suggests
that we make an adjustment for
differences in circumstances of sale. It
contends that Mitsui incurred expenses
relating to its Canadian sales that
Sanmoku did not incur in its sales to C.
Itoh (Japan). An adjustment is
appropriate to account for those
expenses.

Department's Position: We have no
evidence that the selling expenses
involved in Canadian sales are different
than those involved in selling to the
unrelated Japanese trading company.
We therefore made no adjustment.

Comment 4: Again assuming that the
Department continues to use its original
choice of foreign market value, C. Itoh
argues that the Department should make
a circumstance of sale adjustment for
the commission paid by Mitsui to its
Canadian office.

Department's Position: Commissions
paid to related parties are considered
intra-company transfers of funds which
do not constitute expenses to the
corporate entity. We do not make
adjustments for commissions to related
parties.

Final Results of the Review

As a result of correction of clerical errors, we changed the margins for Sanmoku/C. Itoh and Satturu Veneer Co., Ltd./Mitsubishi Corp. The final results of review for all other firms are the same as those presented in the preliminary results of review, and we determine that the following weighted-average margins exist for the period February 1, 1981 through January 31, 1982:

Manufacturer (exporter)	Margin (percent)
Matsumoku Industries, Ltd.: (C. Itoh & Co., Ltd.) (Mitsubishi Corp.)	1.0 1.0
Nitta Veneer (C. Itoh & Co., Ltd.)	0
Sanmoku Lumber Co., Ltd.: (C. Itoh & Co., Ltd.) (Associated Lumber Co., Ltd.) (Toyo Menka Kaisha, Ltd.)	3.11 1.0 0
Satturu Veneer Co., Ltd.: (C. Itoh & Co., Ltd.) (Mitsubishi Corp.) (Mitsui & Co., Ltd.) (Toyo Menka Kaisha, Ltd.) (Yuasa Trading Co., Ltd.)	0 0 0.54 0 0
Teshigahara Lumber Co., Ltd. (Ikeuchi Industry Co., Ltd.)	0
Atsaka & Co.	15.0
Fujikawa Veneer Co., Ltd.	10
Hokusei Plywood	15.0
Iwakura Gum: (Mitsubishi Corp.) (Toyo Menka Kaisha Ltd.) (All other exporters)	1.0 1.0 1.2
Keisei Lumber Co., Ltd.	1.0
Kiyosat Rinsan: (Nissho-Iwai) (All other exporters) Okura & Co. Shingu Shoko Showa Lumber Tokwa Plywood	1.6 0.7 1.6 1.0 1.0 1.6

¹ No shipments during the period.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries with purchase dates during the period of review. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisal instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on all shipments of Japanese birch 3-ply doorskins from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. For any shipment from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after January 31, 1982, and who is unrelated to any covered firm, a cash deposit of 3.11 percent shall be required on future entries. These deposit requirements shall remain in effect until

publication of the final results of the next administrative review.

The Department intends to begin immediately the next administrative review. The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

July 12, 1983.

[FR Doc. 83-19621 Filed 7-19-83; 8:45 am]

BILLING CODE 3510-25-M

President's Export Council; Open Meeting

A meeting of the President's Export Council's Agriculture Subcommittee will be held August 5, 1983, 10:00 a.m., at the U.S. Department of Agriculture South Building, Room 5066, Independence Avenue between 12th & 14th Streets. (Use 4th Wing Entrance—Mid Bldg.—Bring ID for security.) The Council's purpose is to advise the President on matters relating to United States export trade.

Agenda: Legislative Issues, including agricultural subsidies, cargo preference, agricultural export promotion; Foreign Agricultural Service trade promotion slide presentation; agricultural trade policy issues.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Suzanne Sakolsky, (202) 377-1125, Room 3213, U.S. Department of Commerce, Washington, D.C. 20230.

Dated: July 15, 1983.

Henry Misisco,

Acting Director, Office of Planning and Coordination.

[FR Doc. 83-19620 Filed 7-19-83; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Sanctuaries

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for Louisiana, Rhode Island, Virgin Islands, Texas and Georgia Coastal Zone Management Programs, and/or Coastal Energy Impact Programs and/or National Estuarine Sanctuaries. Section 312 of the Coastal Zone Management Act of 1972, as amended, requires a continuing review of the performance of each coastal state with respect to the implementation of its federally approved Coastal Management Program, Coastal Energy Impact Program, and National Estuarine Sanctuary financial assistance awards. The states and territories evaluated were found to be adhering both to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making satisfactory progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in Section 303(2)(A)-(I) of the Coastal Zone Management Act.

A copy of the assessment and detailed findings for these programs may be obtained on request from: D. H. (Bill) Stearns, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street, NW., Washington, D.C. 20235 (telephone: 202/634-4245).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 13, 1983.

K. E. Taggart,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 83-19580 Filed 7-19-83; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management Programs; Intent to Evaluate

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Maryland Coastal

Management Program (CMP), Coastal Energy Impact Program (CEIP) and National Estuarine Sanctuary (Chesapeake Bay); Oregon CMP, CEIP and National Estuarine Sanctuary (South Slough); Florida CMP; and Alaska CMP, and CEIP through September 1983. These reviews will be conducted pursuant to Section 312 of the Coastal Zone Management Act (CZMA) which requires a continuing review of the performance of the states with respect to coastal management, and their adherence to the terms of financial assistance awards funded under the CZMA. Coastal zone management is funded under Section 306, CEIP is funded under Section 308, and the Estuarine Sanctuary Program under Section 315 of the CZMA. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request to the state, are available upon request from the OCRM. A subsequent notice will be placed in the *Federal Register* announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: D. H. (Bill) Stearns, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven, St., NW., Washington, D.C. 20235 (telephone: 202/634-4245).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 13, 1983.

K. E. Taggart,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 83-19759 Filed 7-19-83 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Controlling Imports of Certain Man-Made Fiber Apparel Products From Malaysia

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Controlling at a level of 181,476 dozen imports of man-made fiber knit

shirts and blouses in Category 638/639, produced or manufactured in Malaysia and exported during the ageement year which began on January 1, 1983.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

SUMMARY: Under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 5, 1980 and February 27, 1981, between the Governments of the United States and Malaysia, the United States has decided to control imports of man-made fiber textile products in Category 638/639 in the same manner as other categories are currently being controlled.

EFFECTIVE DATE: July 21, 1983.

FOR FURTHER INFORMATION CONTACT: Gordana Siljepevic, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On December 17, 1982, there was published in the *Federal Register* (47 FR 56535) a letter dated December 14, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool, and man-made fiber textile products, produced or manufactured in Malaysia, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1983 and extends through December 31, 1983. The letter published below further amends the directive of December 19, 1982 to include an import control level of 181,476 dozen for man-made fiber textile products in Category 638/639. The control level has not been adjusted to reflect any imports during the period which began on January 1, 1983. During the January-May 1983 period, 25,673 dozen were imported in Category 638 and 25,473 dozen in Category 639. As the data becomes available, further charges will be made to account for the period which began on June 1, 1983 and extends to the effective date of this action, as well as thereafter.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

July 15, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs

Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 14, 1982 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1983.

Effective July 21, 1983, paragraph 1 of the directive of December 14, 1982 is further amended to include a level of restraint for man-made fiber textile products in Category 638/639 of 181,476 dozen.¹

The action taken with respect to the Government of Malaysia and with respect to imports of man-made fiber textile products from Malaysia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the *Federal Register*.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-19882 Filed 7-19-83; 8:45 am]

BILLING CODE 3510-25-M

Import Controls on Certain Cotton and Man-Made Fiber Apparel Products From the People's Republic of China

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing levels of restraint for cotton playsuits in Category 337, woven shirts of man-made fibers in Category 640, woven blouses of man-made fibers in Category 641, and women's, girls', and infants' trousers of man-made fibers in Category 648, produced or manufactured in the People's Republic of China and exported during the twelve-month period beginning on July 30, 1983 and extending through July 29, 1984.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

SUMMARY: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the

¹ The level of restraint has not been adjusted to reflect any imports after December 31, 1982. Imports during the January-May 1983 period have amounted to 25,673 dozen of which 200 dozen should be charged to Category 638 and 25,473 dozen should be charged to Category 639.

Government of the United States has decided to restrain imports in Categories 337, 640, 641, and 648 for the year beginning on July 30, 1983. Effective on July 30, 1983, charges to the level of restraint for Category 648 will be adjusted to account for 736 dozen in overshipments during the previous restraint period. Should agreement be reached in negotiations with the Government of the People's Republic of China on different levels of restraint for these categories, further notice will be published in the **Federal Register**.

EFFECTIVE DATE: July 30, 1983.

FOR FURTHER INFORMATION CONTACT: Diana Bass, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On January 18, 1983 there was published in the **Federal Register** (48 FR 2164) a letter dated January 14, 1983 to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements which established levels of restraint for certain categories of cotton, wool, and man-made fiber textile products, including Categories 337, 640, 641, and 648, produced or manufactured in the People's Republic of China. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton and man-made fiber textile products in Categories 337, 640, 641, and 648, produced or manufactured in the People's Republic of China and exported during the twelve-month period beginning on July 30, 1983, in excess of the designated levels of restraint.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

July 15, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs
Department of the Treasury Washington,
D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on July 30, 1983 and for the twelve-month period extending through July 29, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 337, 640, 641, and 648, produced or

manufactured in the People's Republic of China and exported on and after July 30, 1983 in excess of the following levels of restraint:

Category	12-mo level of restraint
337	717,382 dozen.
640	944,132 dozen.
641	759,996 dozen.
648	833,162 dozen.

In carrying out this directive, entries of textile products in Categories 337, 640, 641, and 648, produced or manufactured in the People's Republic of China, which have been exported to the United States during the period July 30, 1982 through July 29, 1983, shall, to the extent of any unfilled balances be charged against the levels of restraint established for such goods during that period. Goods in excess of the levels of restraint established for that period shall be subject to the levels set forth in this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 ((47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924)).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the People's Republic of China and with respect to imports of cotton and man-made fiber textile products from China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-19583 Filed 7-19-83; 8:45 am]

BILLING CODE 3510-25-M

COMMODITY FUTURES TRADING COMMISSION

MidAmerica Commodity Exchange Government National Mortgage Association (GNMA) Mortgage Backed Certificates Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The MidAmerica Commodity Exchange ("MCE") has applied for designation as a contract market in

Government National Mortgage Association (GNMA) mortgage backed certificates. The Commission has determined that the terms and conditions of the proposed futures contract are of major economic significance and that, accordingly, making available the proposed contract for public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before September 19, 1983.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581.

Reference should be made to the MCE GNMA mortgage backed certificates futures contract.

FOR FURTHER INFORMATION CONTACT: Ronald Hobson, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C., (202) 254-7303.

A copy of the terms and conditions of the MCE's proposed GNMA mortgage backed certificates futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the MCE in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (15 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1982)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the MCE in support of its application, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by September 19, 1983. Such comment letters will be publicly available except to the extent that they are entitled to confidential

treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on July 13, 1983.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-19966 Filed 7-19-83; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Systems Management College, Board of Visitors Meeting

A meeting of the Defense Systems Management College (DSMC) Board of Visitors will be held in Building 202, Fort Belvoir, Virginia, on Thursday, 15 September 1983, from 7:30 a.m. until 4:30 p.m. The agenda will include a review of accomplishment related to the system acquisition education, system acquisition research, and information collection and dissemination missions. It will also include a review of the DSMC plans, resources and operations. The meeting is open to the public; however, because of limitations on the space available, allocation of seating will be made on a first-come, first-served basis. Persons desiring to attend the meeting should call Ms. Radean M. Kerns on (703) 664-6480.

Dated: July 15, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 83-19902 Filed 7-19-83; 8:45 am]

BILLING CODE 3810-01-M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.
ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 119. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 119 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: July 8, 1983.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per

diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the Federal Register now constitute the only notification of changes in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:
Civilian Personnel Per Diem Bulletin
Number 119

To the Heads of the Executive
Departments and Establishments

Subject: Table of maximum per diem rates in lieu of subsistence for United States Government civilian officers and employees for official travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and Possessions of the United States

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense dated 17 August 1966, subject: Executive Order 11294, August 4, 1966, "Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status" in which this Committee is directed to exercise the authority of the President (5 U.S.C. 5702(a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 118 except for the cases identified by asterisks which rates are effective on the date of this Bulletin.

3. Each Department or Establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak ¹	\$12.00
Anaktuvuk Pass	140.00

Locality	Maximum rate
Anchorage	92.00
Barrow	153.00
Bethel	131.00
Chitina	122.00
College	97.00
Cordova	113.00
Deadhorse	131.00
Dillingham	103.00
Dutch Harbor	92.00
Elmendorf AFB	97.00
Elmendorf	92.00
Fairbanks	97.00
Ft. Richardson	92.00
Ft. Wainwright	97.00
Juneau	106.00
*Ketchikan	104.00
Kodiak	110.00
Kotzebue	109.00
Murphy Dome	97.00
Noatak	109.00
*Nome	112.00
Noorvik	109.00
*Petersburg	104.00
Point Hope	100.00
Prudhoe Bay	131.00
Shemya AFB ¹	12.75
Shungnak	109.00
*Sikla-Mt. Edgecombe	104.00
*Skagway	104.00
Spruce Cape	110.00
*Tanana	112.00
*Valdez	101.00
Wainwright	165.00
*Wrangell	104.00
All other localities	83.00
American Samoa	75.00
Guam M. I.	74.00
Hawaii:	
*Oahu	94.00
All other localities	67.00
Johnston Atoll ²	19.10
Midway Islands ¹	12.50
Puerto Rico:	
Bayamon:	
12-16-5-15	119.00
5-16-12-15	88.00
Carolina:	
12-16-5-15	119.00
5-16-12-15	88.00
Fajardo (including Luquillo):	
12-16-5-15	119.00
5-16-12-15	88.00
Ft. Buchanan (including GSA Service Center, Guaynabo):	
12-16-5-15	119.00
5-16-12-15	88.00
Ponce (including Ft. Allen NCS)	72.00
Roosevelt Roads:	
12-16-5-15	119.00
5-16-12-15	88.00
Sabana Seca:	
12-16-5-15	119.00
5-16-12-15	88.00
San Juan (including San Juan Coast Guard Units):	
12-16-5-15	119.00
5-16-12-15	88.00
All other localities	80.00
Virgin Islands of U.S.:	
12-1-4-30	113.00
5-1-11-30	88.00
Wake Island ²	15.00
All other localities	20.00

¹ Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of \$71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility.

² Commercial facilities are not available. Only Government-owned and contractor-operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

Dated: July 14, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer,
Washington Headquarters Services,
Department of Defense.

[FR Doc. 83-19601 Filed 7-19-83; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 83-CERT-182]

Public Service Electric & Gas Co.; Application for Recertification of the Use of Natural Gas To Displace Fuel Oil

On July 15, 1982, Public Service Electric and Gas Co., Newark, N.J., was granted a recertification of an eligible use of natural gas to displace fuel oil by the Administrator of the Economic Regulatory Administration (ERA) [Docket No. 82-CERT-012]. The recertification was made effective on July 25, 1982, for a period of one year and involved the purchase of natural gas from Equitable Gas Company for use by Public Service at its eight electric generating facilities in New Jersey. The ERA certificate expires on July 24, 1983.

On June 9, 1983, Public Service filed an application for recertification for one year of an eligible use of natural gas to displace fuel oil at its eight electric generating stations located in New Jersey: Bergen in Ridgefield, Essex in Newark, Hudson in Jersey City, Kearny in Kearny, Linden in Linden, Sewaren in Sewaren, Edison in Edison, and Mercer in Trenton, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file and available for public inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Public Service states that the volume of natural gas for which it requests recertification is up to 7.0 billion cubic feet per year. This volume is estimated to displace the use of approximately 1,057,000 barrels of No. 6 fuel oil (0.3 percent sulfur) and approximately 28,000 barrels of No. 2 fuel oil (0.2 percent sulfur) or kerosene (0.1 percent sulfur) per year.

The quantities at each location are subject to considerable variation with changes in demand and availability of the various generating units, but estimated gas usage and resulting oil displacement volumes are listed below:

Location	Estimated volume (BCF)	Estimated oil displacement (000 bbl)	
		0.3% Sulfur No. 6 oil	0.2% Sulfur No. 2 oil or 0.1% sulfur kerosene
1. Bergen Generating Station, Ridgefield, N.J.	3.0	472	
2. Essex Generating Station, Newark, N.J.	0.1		14
3. Hudson Generating Station, Jersey City, N.J.	2.7	417	
4. Kearney Generating Station, Kearny, N.J.			
5. Linden Generating Station, Linden, N.J.			
6. Sewaren Generating Station, Sewaren, N.J.	1.1	168	
7. Edison Generating Station, Edison, N.J.	0.1		14
8. Mercer Generating Station, Trenton, N.J.			
Totals	7.0	1,057	28

The eligible seller is National Gas and Oil Corp., Newark, Ohio. The gas will be transported by Texas Eastern Transmission Corp., Houston, Tex., Tennessee Gas Pipeline Co., Houston, Tex., and Transcontinental Gas Pipeline Corp., Houston, Tex., all of which are interstate natural gas pipelines.

Public Service has in effect one certification by the ERA (ERA Docket No. 83-CERT-004) which authorizes purchases of 2.0 Bcf of natural gas for one year from New York State Electric and Gas Co. for use at the electric generating stations named in this certification. That certificate will expire on March 6, 1984.

To provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Fuels Conversion Division, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Attention: Richard A. Ransom, within ten calendar days of the date of publication of this notice in the *Federal Register*. The docket number of the case should be printed on the outside of the envelope.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of the above application may be requested by any interested person, in writing, within the ten-day comment period. The request should state the person's interest and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral

presentation and a statement as to why an oral presentation is necessary.

If ERA determines that an oral presentation is necessary, further notice will be given to the applicant and any person filing comments and will be published in the *Federal Register*.

Issued in Washington, D.C., on July 13, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-19527 Filed 7-19-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-223 et al.]

Appleton Papers Inc. et al; Applications for Certification of Eligible Use of Natural Gas To Displace Fuel Oil

The Economic Regulatory Administration (ERA) of the Department of Energy has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). End-users who have the capability to use natural gas in place of fuel oil at any of their facilities can arrange for direct purchases and transportation of the gas to those facilities under the Federal Energy Regulatory Commission's (FERC) fuel oil displacement program. The ERA certification is required by the FERC as a precondition to interstate transportation of fuel oil displacement gas in accordance with the procedures in 18 CFR Part 284, Subpart F.

Pertinent information regarding these applications is listed below, while more detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

1. 83-CERT-223.
Applicant: Appleton Papers Inc., Camp Hill, Pa.
Dated Filed: June 23, 1983.
Facility Location: Camp Hill, Pa.
Gas Volume: 482,000 Mcf per year.
Oil Displaced: 3,400,000 gallons of No. 2 fuel oil (0.3% sulfur).
Eligible Seller: Cabot Corp., Houston, Tex.
Transporter: Columbia Gas Transmission Corp., Charleston, W. Va., UGI Corp.—Gas Utility Div., Reading, Pa.
2. 83-CERT-224.
Applicant: United States Steel Corp., Pittsburgh, Pa.

Date Filed: June 23, 1983.
 Facility Location: Pittsburgh, Pa.
 Gas Volume: 662,475 Mcf per year.
 Oil Displaced: 112,647 barrels of No. 2 fuel oil (0.3% sulfur).
 Eligible Seller: Industrial Energy Services Co., Pittsburgh, Pa., Phillips Prodco, Butler, Pa.
 Transporter: Columbia Gas Transmission Corp., Charleston, W. Va., Columbia Gas of Pennsylvania, Columbus, Ohio.
 3. 83-CERT-225
 Applicant: Metropolitan Edison Co., Reading, Pa.
 Date Filed: June 23, 1983.
 Facility Location: Northampton County, Pa.
 Gas Volume: 54,000 Mcf per year.
 Oil Displaced: 9,450 barrels of No. 2 fuel oil (0.3% sulfur).
 Facility Location: Adams County, Pa.
 Gas Volume: 84,000 Mcf per year.
 Oil Displaced: 14,700 barrels of No. 2 fuel oil (0.3% sulfur).
 Facility Location: Cumberland County, Pa.
 Gas Volume: 60,000 Mcf per year.
 Oil Displaced: 10,500 barrels of No. 2 fuel oil (0.3% sulfur).
 Facility Location: Berks County, Pa.
 Gas Volume: 46,000 Mcf per year.
 Oil Displaced: 8,050 barrels of No. 2 fuel oil (0.3% sulfur).
 Totals: Gas volume, 244,000 Mcf of natural gas per year; Oil displaced, 42,700 barrels per year.
 Eligible Seller: Exxon U.S.A., Houston, Tex.
 Transporter: Columbia Gas Transmission Corp., Charleston, W. Va., Penn Fuels Gas, Inc., Oxford, Pa., Columbia Gas of Pennsylvania, Inc., Columbus, Ohio, UGI Corp., Reading, Pa.
 4. 83-CERT-226.
 Applicant: Cincinnati Milacron Industries, Inc., Cincinnati, Ohio.
 Date Filed: June 23, 1983.
 Facility Location: Cincinnati, Ohio.
 Gas Volume: 7,200 Mcf per year.
 Oil Displaced: 1,242 barrels of No. 2 fuel oil (0.5% sulfur).
 Eligible Seller: Exxon U.S.A., Houston, Tex., Texas Gas Corp., Owensboro, Ky., Ohio Gas Marketing Corp., Newark, Ohio.
 Transporter: Columbia Gas Transmission Corp., Charleston, W. Va., Texas Gas Transmission Corp., Owensboro, Ky., The Cincinnati Gas & Electric Co., Cincinnati, Ohio, The Union Light, Heat & Power Co., Covington, Ky.
 5. 83-CERT-227.
 Applicant: Stauffer Chemical Co., Westport, Conn.
 Date Filed: June 24, 1983.
 Facility Location: San Jose, Calif.
 Gas Volume: 874,175 Mcf per year.

Oil Displaced: 5,840,000 gallons of No. 6 fuel oil (0.5% sulfur).
 Eligible Seller: Stauffer-Wyoming Pipeline Co., San Francisco, Calif.
 Transporter: El Paso Natural Gas Co., El Paso, Tex., Northwest Pipeline Corp., Salt Lake City, Utah, Pacific Gas & Electric Co., San Jose, Calif.
 6. 83-CERT-229.
 Applicant: Shillito Rikes, Cincinnati, Ohio.
 Date Filed: June 24, 1983.
 Facility Location: Cincinnati, Ohio.
 Gas Volume: 21,600 Mcf per year.
 Oil Displaced: 156,000 gallons of No. 2 fuel oil (0.2% sulfur).
 Eligible Seller: Exxon U.S.A., Houston, Tex., Texas Gas Corp., Owensboro, Ky., Ohio Gas Marketing Corp., Newark, Ohio.
 Transporter: Columbia Gas Transmission Corp., Charleston, W. Va., Texas Gas Transmission Corp., Owensboro, Ky., The Cincinnati Gas & Electric Co., Cincinnati, Ohio, The Union Light, Heat & Power Co., Covington, Ky.
 7. 83-CERT-230.
 Applicant: General Electric Corp., Coshocton, Ohio.
 Date Filed: June 24, 1983.
 Facility Location: Coshocton, Ohio.
 Gas Volume: 587,650 Mcf per year.
 Oil Displaced: 92,345 barrels of No. 6 fuel oil (1.0% sulfur).
 Eligible Seller: Ohio Gas Marketing Corp., Newark, Ohio, Ohio Shale Pipeline Corp., Newark, Ohio.
 Transporter: Columbia Gas Transmission Corp., Charleston, W. Va., Columbia Gas of Ohio, Inc., Columbus, Ohio.
 8. 83-CERT-231.
 Applicant: Allegheny Ludlum Steel Corp., Pittsburgh, Pa.
 Date Filed: June 27, 1983.
 Facility Location: New Castle, Ind.
 Gas Volume: 255,500 Mcf per year.
 Oil Displaced: 1,825,000 gallons of No. 2 fuel oil (.05% sulfur).
 Eligible Seller: Michigan Consolidated Gas Co., Detroit, Mich.
 Transporter: Michigan-Wisconsin Pipeline Co., Detroit, Mich., Indiana Gas Co., Inc., Indianapolis, Ind.
 9. 83-CERT-232.
 Applicant: CareUnit Hospital of Cincinnati, Cincinnati, Ohio.
 Date Filed: June 27, 1983.
 Facility Location: Cincinnati, Ohio.
 Gas Volume: 20,000 Mcf per year.
 Oil Displaced: 156,000 gallons of No. 2 fuel oil (0.38% sulfur).
 Eligible Seller: Exxon U.S.A., Houston, Tex., Texas Gas Corp., Owensboro, Ky., Ohio Gas Marketing Corp., Newark, Ohio.
 Transporter: Columbia Gas Transmission Corp., Charleston, W. Va., Texas Gas Transmission Corp.,

Owensboro, Ky., The Cincinnati Gas & Electric Co., Cincinnati, Ohio, The Union Light, Heat & Power Co., Covington, Ky.
 10. 83-CERT-233.
 Applicant: Pet Inc., Coldwater, Ohio.
 Date Filed: June 27, 1983.
 Facility Location: Coldwater, Ohio.
 Gas Volume: 36,000 Mcf per year.
 Oil Displaced: 270,000 gallons of No. 6 fuel oil (1.2% sulfur).
 Eligible Seller: Controlled Resources, Duffield, Va., Cabot Corp., Houston, Tex.

Transporter: Columbia Gas Transmission Corp., Charleston, W. Va., West Ohio Gas Co., Lima, Ohio.

To provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning any of these applications to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Fuels Conversion Division, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585. Attention: Richard A. Ransom, within ten calendar days of the date of publication of this notice in the **Federal Register**. The docket number of case should be printed on the outside of the envelope.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of any of the above applications may be requested by any interested person is writing within the ten-day comment period. The request should state the person's interest and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary.

If ERA determines that an oral presentation is necessary in a particular case, further notice will be given to the applicant and any person filing comments in that case and will be published in the **Federal Register**.

Issued in Washington, D.C., on July 14, 1983.

James W. Workman,
 Director Office of Fuels Programs, Economic Regulatory Administration.

[FR. Doc. 83-19585 Filed 7-19-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-150]**Morgan Services, Inc., et al.;
Certifications of Eligible Use of Natural
Gas To Displace Fuel Oil**

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received the following applications for certification

Applicant and facility	Date filed	Docket No.	FEDERAL REGISTER notice of application
Morgan Services, Inc., Buffalo Plant, Buffalo, N.Y.	May 27, 1983 as amended June 2, 1983	83-CERT-150	48 FR 29043, June 24, 1983
Children's Hospital Medical Center, Cincinnati, Ohio	June 1, 1983	83-CERT-155	48 FR 28315, June 21, 1983
Anheuser-Busch, Inc., Columbus Brewery, Columbus, Ohio	do	83-CERT-156	48 FR 28314, June 21, 1983
Buffalo Color Corp., Buffalo Facility, Buffalo, N.Y.	June 7, 1983	83-CERT-188	48 FR 29575, June 27, 1983
Green's Dairy, Inc., York, Pa.	June 1, 1983	83-CERT-189	48 FR 28534, June 22, 1983

The ERA has carefully reviewed the above applications for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that the applications satisfy the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certifications and transmitted those certifications to the Federal Energy Regulatory Commission.

Issued in Washington, D.C., on July 14, 1983.

James W. Workman,

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

[FR Doc. 83-19584 Filed 7-19-83; 8:45 am]

BILLING CODE 6450-01-M

**Federal Energy Regulatory
Commission****[Project No. 6021-001]****Grisdale Hill Company; Surrender of
Preliminary Permit**

July 14, 1983.

Take notice that the Grisdale Hill Company, Permittee for the proposed Copeland Creek Project No. 6021, has requested that its preliminary permit be terminated. The preliminary permit was issued on July 19, 1982, and would have expired on January 31, 1984. The project would have been located on the Copeland Creek near Canyonville, in Douglas County, Oregon.

The Permittee filed its request on June 10, 1983, and the surrender of its permit for Project No. 6021 is deemed accepted

of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). Notice of these applications, along with pertinent information contained in the applications, was published in the **Federal Register** and an opportunity for public comment was provided for a period of ten calendar days from the

as of June 10, 1983, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-19586 Filed 7-19-83; 8:45 am]

BILLING CODE 6717-01-M

**[Docket Nos. ER81-70-002 and ER81-71-
002]****New England Power Service;
Compliance**

July 14, 1983.

Take notice that on June 9, 1983, New England Power Service ("NPS"), submitted for filing the documentation supporting the refund payments made to its customers. The refund payments were made pursuant to April 29, 1983, Commission acceptance of a compliance rate filing to a Commission opinion.

New England Power states that a copy of the supporting documentation of the refund reports is being sent to each affected customer, each state commission, and to all the parties on the service list.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before July 29, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-19589 Filed 7-19-83; 8:45 am]

BILLING CODE 6717-01-M

date of publication. No comments were received. More detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-24, Room GA-093, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

**[Docket Nos. ER82-702-000, ER82-702-001,
ER82-703-001 and ER82-706-304, et al.]****New England Power Service;
Compliance**

July 14, 1983.

Take notice that on June 13, 1983, New England Power Service ("NPS") submitted for filing the documentation supporting the refund payments to each of its affected customers. The documents were filed pursuant to the May 17, 1983, Commission acceptance of an Offer of Settlement.

New England Power states that a copy of the documentation of the refund payments is being sent to each affected customer, each state Commission, and to all parties on the service list.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before July 29, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-19590 Filed 7-19-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-102-000]**Robert Abrams, as Attorney General
of the State of New York, Complainant
v. Texas Eastern Transmission
Corporation, Defendant; Complaint**

July 14, 1983.

Take notice that on June 29, 1983, Robert Abrams, as Attorney General of the State of New York (Complainant) filed a complaint against Texas Eastern Transmission Corporation (Defendant)

pursuant to Section 5 of the Natural Gas Act (NGA), 15 U.S.C. 717d, and Rule 206 of the Federal Energy Regulatory Commission (Commission).

Complainant alleges that defendant has imprudently purchased large amounts of expensive gas while less expensive gas was available to it. Complainant alleges that Defendant has imprudently entered into contractual commitments which call for it to purchase more expensive gas than it reasonably would in the absence of such commitments. Complainant seeks to have the Commission reform Defendant's purchasing practices and its contracts, and in particular to set aside "take-or-pay" clauses as described in paragraph 10 in the filing. Complainant states that these practices and contracts are unjust, unreasonable, and preferential to the defendant, as compared with other producers, and they result in the imposition by Defendant of unlawful, unjust, unreasonable, and preferential rates and charges on ratepayers, in violation of Sections 4 and 5 of the NGA, 15 U.S.C. 717c and d, and in violation of the lowest reasonable rate requirement of Section 5 of the Act. Complainant states that the Commission has jurisdiction over this complaint under Sections 1(b) and 5 of the NGA, 15 U.S.C. 717(b) and d. Complainant also states that jurisdiction is not invoked solely by reason of a first sale and therefore Section 601(a)(1) of the Natural Gas Policy Act, 15 U.S.C. 3301 *et seq.*, does not apply.

Complainant requests that the Commission (a) set aside the take-or-pay clauses in Defendant's contracts with producers, (b) investigate Defendant's purchases of high cost gas, and (c) require Defendant to comply with the lowest reasonable rate standard of Section 5 of the NGA, specifically, by forbidding Defendant to purchase any gas that is more expensive than any other gas available to it at the time.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before August 12, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19591 Filed 7-19-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-103-000]

Utilities Board of the City of Bay Minette, Alabama v. United Gas Pipe Line Company; Complaint and Petition for Declaratory Order

July 14, 1983

Take notice that on June 28, 1983, pursuant to sections 5 and 13 of the Natural Gas Act (NGA), 15 U.S.C. 717f, and Rules 206 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 and 385.207, the Utilities Board of the City of Minette, Alabama (Bay Minette) filed a Complaint and Petition for Declaratory Order against United Gas Pipe Line Company (United).

At present, Bay Minette's sole supplier of natural gas is United. Bay Minette currently has a service agreement with United dated March 20, 1981 (March 20, 1981, Service Agreement), under which United is obligated to serve Bay Minette with up to 5,623 Mcf/d of natural gas under United's G (Small Volume Distributor) rate schedule. By this Complaint and Petition for Declaratory Order, Bay Minette formally complains that the March 20, 1981 Service Agreement, as presently written, violates Section 5 and 13 of the NGA. Bay Minette does not concede that Article I of the March 20, 1981 Service Agreement requires Bay Minette to purchase all of its requirements from United.

Bay Minette states that, assuming, arguendo, that the March 20, 1981 Service Agreement does require Bay Minette to purchase its full requirements of natural gas from United, this provision of the contract is unjust, unreasonable, unduly discriminatory, and preferential within the meaning of Section 5 of the NGA, and is thus in violation of Sections 5 and 13 of the NGA. Bay Minette states that it does not seek to terminate its supply arrangement with United; it seeks only the right to purchase natural gas from other suppliers as necessary to obtain the lowest-cost mix of natural gas for its retail customers.

Bay Minette requests the Commission, *inter alia*, to: (a) order United to satisfy

or answer in writing this complaint within a reasonable time, and (b) commence an immediate investigation into the matters set forth in this filing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before August 12, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19592 Filed 7-19-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-564-000]

Washington Water Power Company; Amended Notice of Filing

July 14, 1983.

Take notice that on June 10, 1983, Washington Water Power Company, ("WWP"), submitted for filing a BPA review of WWP's Average System Cost.

The results of the analysis are the following:

Jurisdiction	Filed rate mills/ KWh	Adjusted rate mills/ KWh
Idaho	15.579	15.47

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211, 385.214). All such motions or protests should be filed on or before July 29, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-19593 Filed 7-19-83; 8:45 am]
BILLING CODE 6717-01-M

Oil Pipeline Tentative Valuation; Osage Pipe Line Co.

July 15, 1983.

Notice

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to Section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative annual valuation is under consideration for the common carrier by pipeline listed below:

1979 Report

Valuation Docket No. PV-1453-000.	Osage Pipe Line Company, 1670 Broadway, Denver, Colorado 80217.
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On or before August 19, 1983, persons other than those specifically designated in Section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under Section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the individual company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in Section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,
Administrative Officer, Oil Pipeline Board.

[FR Doc. 83-19594 Filed 7-19-83; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 9G2240/T414, PH-FRL 2399-2]

Health-Chem Corp.; Renewal of an Exemption From Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed a temporary exemption from the requirement of a tolerance for residues of the biological pesticide (Z,Z)-3,13-octadecadien-1-01 acetate in or on the raw agricultural commodity peaches.

DATE: This temporary exemption from the requirement of a tolerance expires April 11, 1984.

FOR FURTHER INFORMATION CONTACT: Timothy Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the Federal Register of August 15, 1980 (45 FR 54436) that a temporary exemption from the requirement of a tolerance has been established for residues of the biological pesticide (Z,Z)-3,13-octadecadien-1-01 acetate in or on the raw agricultural commodity peaches when used as a pheromone to evaluate the control of the peachtree borer and lesser peachtree borer. This exemption from the requirement of a tolerance was renewed in response to pesticide petition PP 9G2240, submitted by Hercon Division, Health-Chem Corporation, 1107 Broadway, New York, NY 10010.

The company has requested a one-year renewal of the temporary tolerance to permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 8730-EUP-12, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of a tolerance has been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Health-Chem Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires April 11, 1984. Residues not in excess of this amount remaining in or on the above raw agriculture commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemption from the requirement of a tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: July 6, 1983.

Douglas D. Camp,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-19286 Filed 7-19-83; 8:45 am]

BILLING CODE 6580-50-M

[OPP-180623; PH-FRL 2400-8]

Pesticides; Emergency Exemptions Granted

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests in the States listed below, and also listed are crisis exemptions initiated by the U.S. Department of the Interior, four States and Puerto Rico.

DATES: See each specific and crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT:

See each specific and crisis exemption for the name of the contact person. The following information applies to all contact people: Registration Division, (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 716, CM#2, 1221 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of paraquat on nursery strawberry plant beds to control broadleaf and grassy weeds; April 7, 1983 to May 31, 1983. California initiated a crisis exemption for this use. (Gene Asbury)

2. California Department of Food and Agriculture for the use of cyhexatin on cotton in Fresno, Kern, and Kings counties only to control spider mites; May 13, 1983 to July 30, 1983. (Jack E. Housenger)

3. California Department of Food and Agriculture for the use of metalaxyl on strawberries to control red stele disease; May 24, 1983 to May 20, 1984. (Libby Welch)

4. California Department of Food and Agriculture for the use of imazalil on post-harvest citrus to control *Penicillium* supp. mold; June 10, 1983 to June 1, 1984. (Gene Asbury)

5. Delaware Department of Agriculture for the use of permethrin on tomatoes to control Colorado potato beetles; May 23, 1983 to August 15, 1983. (Libby Welch)

6. Delaware Department of Agriculture for the use of cyromazine in poultry houses to control flies; May 30, 1983 to December 21, 1983. (Jim Tompkins)

7. Delaware Department of Agriculture for the use of acephate on non-bell peppers to control European corn borers; June 7, 1983 to October 1, 1983. (Gene Asbury)

8. Idaho Department of Agriculture for the use of isofenphos on dry bulb onions to control thrips; May 23, 1983 to June 15, 1983. (Libby Welch)

9. Idaho Department of Agriculture for the use of metribuzin on chickpeas to control broadleaf weeds; April 27, 1983 to July 15, 1983. (Jack E. Housenger)

10. Idaho Department of Agriculture for the use of triallate on chickpeas to

control wild oats; April 27, 1983 to July 15, 1983. (Jack E. Housenger)

11. Iowa Department of Agriculture for the use of cyromazine in poultry houses to control flies; May 30, 1983 to December 31, 1983. (Jim Tompkins)

12. Maryland Department of Agriculture for the use of cyromazine in layer poultry houses to control flies; May 6, 1983 to December 31, 1983. Maryland initiated a crisis exemption for this use. (Jim Tompkins)

13. Maryland Department of Agriculture for the use of anilazine on watercress to control leaf spot; May 10, 1983 to November 30, 1983. (Gene Asbury)

14. Maryland Department of Agriculture for the use of ethephon on barley and wheat to control lodging; May 20, 1983 to June 30, 1983. Maryland initiated a crisis exemption for this use. (Libby Welch)

15. Maryland Department of Agriculture for the use of permethrin on tomatoes to control Colorado potato beetles; May 13, 1983 to September 30, 1983. (Libby Welch)

16. Minnesota Department of Agriculture for the use of sodium salt of asulam on flax to control weeds; May 27, 1983 to October 31, 1983. (Gene Asbury)

17. Minnesota Department of Agriculture for the use of oxyfluorfen on dry bulb onions to control broadleaf weeds; June 2, 1983 to March 1, 1984. (Jim Tompkins)

18. New Jersey Department of Environmental Protection for the use of captan on eggplants to control fruit rot and *Phytophthora* blight; May 16, 1983 to October 31, 1983. (Gene Asbury)

19. New Jersey Department of Environmental Protection for the use of captan on summer squash to control fruit rot and *Phytophthora* blight; May 16, 1983 to October 31, 1983. (Gene Asbury)

20. New Jersey Department of Environmental Protection for the use of captan on peppers to control pepper blight; May 16, 1983 to October 31, 1983. (Gene Asbury)

21. New Jersey Department of Environmental Protection for the use of permethrin on tomatoes to control Colorado potato beetles; May 13, 1983 to September 30, 1983. (Libby Welch)

22. New Mexico Department of Agriculture for the use of monocrotophos on field corn to control Banks grass mites; June 7, 1983 to October 31, 1983. (Gene Asbury)

23. New York Department of Environmental Conservation for the use of oxyfluorfen on dry bulb onions to control broadleaf weeds; May 5, 1983 to December 31, 1983. (Jim Tompkins)

24. New York Department of Environmental Conservation for the use of captan on peppers to control pepper blight; May 16, 1983 to November 30, 1983. (Gene Asbury)

25. Ohio Department of Agriculture for the use of cyromazine in layer poultry houses to control flies; May 6, 1983 to December 31, 1983. (Jim Tompkins)

26. Ohio Department of Agriculture for the use of acephate on non-bell peppers to control European corn borers; June 7, 1983 to October 1, 1983. (Gene Asbury)

27. Ohio Department of Agriculture for the use of vinclozolin on leaf lettuce to control lettuce drop; June 8, 1983 to September 30, 1983. (Libby Welch)

28. Oregon Department of Agriculture for the use of glyphosate on wheat to control annual volunteer rye; May 4, 1983 to July 31, 1983. (Gene Asbury)

29. Oregon Department of Agriculture for the use of isofenphos on dry bulb onions to control thrips and maggots; May 23, 1983 to June 15, 1983. (Libby Welch)

30. Oregon Department of Agriculture for the use of vinclozolin on caneberrries to control *Botrytis* fruit rot; May 13, 1983 to September 30, 1983. (Libby Welch)

31. Oregon Department of Agriculture for the use of vinclozolin on snap beans to control gray mold; June 7, 1983 to December 31, 1983. (Libby Welch)

32. Oregon Department of Agriculture for the use of oxamyl on peppermint to control mint and root lesion nematodes; June 6, 1983 to December 1, 1983. Oregon initiated a crisis exemption for this use. (Gene Asbury)

33. Pennsylvania Department of Agriculture for the use of fenamiphos on peaches, cherries, and apples to control nematodes; May 5, 1983 to June 30, 1983. (Libby Welch)

34. Pennsylvania Department of Agriculture for the use of anilazine on watercress to control leaf spot; May 10, 1983 to October 31, 1983. (Gene Asbury)

35. Pennsylvania Department of Agriculture for the use of cyromazine in layer poultry houses to control flies; May 6, 1983 to December 31, 1983. Pennsylvania initiated a crisis exemption for this use. (Jim Tompkins)

36. Pennsylvania Department of Agriculture for the use of ethephon on barley and wheat to control lodging; May 20, 1983 to June 30, 1983. Pennsylvania initiated a crisis exemption for this use. (Libby Welch)

37. Puerto Rico Department of Agriculture for the use of amitraz on cattle (beef and dairy) and goats to eradicate ticks; May 27, 1983 to May 27, 1984. (Jack E. Housenger)

38. Texas Department of Agriculture for the use of oxyfluorfen on dry bulb

onions to control broadleaf weeds; May 5, 1983 to December 31, 1983. (Jim Tompkins)

39. Utah Department of Agriculture for the use of cyromazine in layer poultry houses to control flies; May 6, 1983 to December 31, 1983. (Jim Tompkins)

40. Virginia Department of Agriculture and Consumer Services for the use of cyromazine in layer poultry houses to control flies; May 6 1983 to December 31, 1983. (Jim Tompkins)

41. Virginia Department of Agriculture and Consumer Services for the use of permethrin on tomatoes to control Colorado potato beetles; May 13, 1983 to September 30, 1983. (Libby Welch)

42. Washington Department of Agriculture for the use of vinclozolin on caneberries to control *Botrytis* fruit rot; May 13, 1983 to July 31, 1983. (Libby Welch)

43. Washington Department of Agriculture for the use of triallate on chickpeas to control wild oats; April 27, 1983 to July 15, 1983. (Jack E. Housenger)

44. Washington Department of Agriculture for the use of metribuzin on chickpeas to control broadleaf weeds; April 27, 1983 to July 15, 1983. (Jack E. Housenger)

45. Washington Department of Agriculture for the use of oxamyl on peppermint and spearmint to control root lesion nematodes; May 10, 1983 to December 1, 1983. (Gene Asbury)

46. Washington Department of Agriculture for the use of glyphosate on wheat to control annual volunteer rye; May 4, 1983 to July 31, 1983. (Gene Asbury)

47. Washington Department of Agriculture for the use of metalaxyl on broccoli to control downy mildew; May 20, 1983 to October 31, 1983. (Libby Welch)

48. Washington Department of Agriculture for the use of vinclozolin on snap beans to control gray mold; June 7, 1983 to December 31, 1983. (Libby Welch)

49. West Virginia Department of Agriculture for the use of anilazine on watercress to control leaf spot; May 10, 1983 to October 31, 1983. (Gene Asbury)

50. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of oxyfluorfen on dry bulb onions to control broadleaf weeds; May 5, 1983 to December 31, 1983. (Jim Tompkins)

51. United States Department of the Interior, for the use of diphacinone on the Aleutian Island of Amukta and Kiska in Alaska to control the Arctic fox; May 10, 1983 to April 30, 1984. (Jim Tompkins)

Crisis exemptions were initiated by the:

1. California Department of Food and Agriculture on April 22, 1983, for the use of metalaxyl on non-bearing cherries to control *Phytophthora* crown and root rot. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until April 22, 1984. (Libby Welch)

2. California Department of Food and Agriculture on April 22, 1983, for the use of imazalil on blackeye beans to control *Thielaviopsis*. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until August 1, 1983. (Libby Welch)

3. California Department of Food and Agriculture on April 26, 1983, for the use of methiocarb on grapes to control snails. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until April 25, 1984. (Libby Welch)

4. California Department of Food and Agriculture on April 26, 1983, for the use of glyphosate on kiwi to control Johnson grass, Bermuda grass and field bindweed. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until April 25, 1984. (Libby Welch)

5. California Department of Food and Agriculture on May 5, 1983, for the use of 2-[1-(ethoxymino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one on ladino clover grown for seed to control watergrass and rye grass. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until July 15, 1983. (Jack E. Housenger)

6. California Department of Food and Agriculture on May 13, 1983, for the use of triadimefon on processing tomatoes to control powdery mildew. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until October 21, 1983. (Libby Welch)

7. New Mexico Department of Agriculture on May 13, 1983, for the use of metolachlor on peppers to control the yellow nutsedge. Since it was anticipated that this program would be needed for more than 15 days, New Mexico requested a specific exemption to continue it. The need for this program

is expected to end on July 15, 1983. (Libby Welch)

8. Oklahoma, Office of the Governor, on May 23, 1983, for the use of pentachloronitrobenzene and 5-ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole on peanuts to control *Rhizoctonia*, *Fusarium*, *Pythium*, and *Sclerotium rolfsii*. (Libby Welch)

9. Oklahoma, Office of the Governor, on May 23, 1983, for the use of permethrin on turnip greens, collards, mustard, and kale to control cabbage loopers. The need for this program has ended. (Libby Welch)

10. Oklahoma, Office of the Governor, on May 24, 1983, for the use of dicamba on wheat to control weeds, wild buckwheat, pigweed, annual sunflowers, and kochia. The need for this program has ended. (Libby Welch)

11. Pennsylvania Department of Agriculture on April 28, 1983, for the use of ethephon on wheat and barley to control lodging. Since it was anticipated that this program would be needed for more than 15 days, Pennsylvania requested a specific exemption to continue it. The program will end on June 30, 1983. (Libby Welch)

12. Pennsylvania Department of Agriculture on May 5, 1983, for the use of cyromazine in layer poultry houses to control flies. Since it was anticipated that this program would be needed for more than 15 days, Pennsylvania requested a specific exemption to continue it. The program will end on December 31, 1983. (Jim Tompkins)

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: July 7, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 83-19563 Filed 7-19-83; 8:45 am]

BILLING CODE 5560-50-M

[PP OG2290/T425; PH-FRL #2401-2]

Pesticides; Extension of an Exemption From Requirement of a Tolerance; Isobutyric Acid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended the temporary exemption from the requirement of a tolerance for residues of the growth regulator isobutyric acid in or on the raw agricultural commodity grapes.

DATE: This temporary exemption from the requirement of a tolerance expires December 6, 1983.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the *Federal Register* of October 2, 1981 (46 FR 48157) that a temporary exemption from the requirement of a tolerance had been established for residues of the growth regulator isobutyric acid in or on the raw agricultural commodity grapes. This exemption from the requirement of a tolerance was established in response to pesticide petition (PP OG2290), submitted by DMB Packing Corporation, 4672 W. Jennifer St., 103, Fresno, CA 93711. Notice of an extension of this exemption from the requirement of a tolerance was published in the *Federal Register* of March 31, 1982 (47 FR 13574).

The company has requested another one-year extension of the temporary tolerance to permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 44544-EUP-1 which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of a tolerance has been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. DMB Packing Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires December 6, 1983. Residues remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in

accordance with, the provisions of the experimental use permit and temporary exemption from the requirement of a tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: July 11, 1983.

Douglas D. Camp, Jr.

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-19565 Filed 7-19-83; 8:45 am]

BILLING CODE 5560-50-M

[OPP-240033; PH-FRL 2401-1]

Pesticides; Receipts of State Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from 34 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the *Federal Register*.

DATE: The last entry for each item is the date the State registration of the product became effective.

FOR FURTHER INFORMATION CONTACT: Sandra English, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 718, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-3045).

SUPPLEMENTARY INFORMATION: Most of the registrations listed below were received by EPA in March 1982. Receipts by EPA of state registrations will be published periodically. Except as indicated by (CUP) in six of the registrations listed below, there is no change in use pattern in any of these registrations.

Alabama

EPA SLN No. AL 83 0005. Mobay Chemical Corp. Registration is for Sencor 4 Flowable, to be used on soybeans to control sicklepeods. March 2, 1983.

EPA SLN No. AL 83 0006. Mobay Chemical Corp. Registration is for Sencor 50% WP, to be used on soybeans to control sicklepeods. March 2, 1983.

EPA SLN No. AL 83 0007. Mobay Chemical Corp. Registration is for Sencor DF 75% Dry Flowable Herbicide, to be used on soybeans to control sicklepeods. March 2, 1983.

EPA SLN No. AL 83 0008. Proserve, Inc. Registration is for Pronone 10 G, to be used on conifer site preparation areas to control brush. March 9, 1983.

Arizona

EPA SLN No. AZ 83 0003. Chemical Distributors. Registration is for Treflan Pro-5, to be used on established alfalfa, established Bermuda grass for seed, and citrus to control weeds. March 7, 1983.

Arkansas

EPA SLN No. AR 83 0006. Penick Corp. Registration is for Scourge Insecticide SBP-1382/Piperonyl Butoxide Insecticide, to be used as an air or ground spray to control mosquitoes. March 15, 1983.

EPA SLN No. AR 83 0007. Philips Roxane, Inc. Registration is for Anchor Permethrin II 25% Long-Lasting Premise Fly Spray and Livestock Insecticide, to be used on livestock and poultry and their premises to control flies, lice, and ticks. March 15, 1983.

EPA SLN No. AR 83 0008. Philips Roxane, Inc. Registration is for Bio-entic Overtime P/L 25% Long-Lasting Premise Fly Spray and Livestock Insecticide, to be used on livestock and poultry and their premises to control flies, lice, and ticks. March 15, 1983.

EPA SLN No. AR 83 0009. Eli Lilly and Co. Registration is for Treflan EC, to be used on forage legumes used as cover crops to control weeds. March 24, 1983.

EPA SLN No. AR 83 0010. Eli Lilly and Co. Registration is for Treflan M.T.F., to be used on forage legumes used as cover crops to control weeds. March 24, 1983.

EPA SLN No. AR 83 0011. Eli Lilly and Co. Registration is for Treflan Pro-5, to

be used on forage legumes used as cover crops to control weeds. March 24, 1983.

California

EPA SLN No. CA 83 0015. California Dept. of Health Services. Registration is for Dursban 4E, to be used on almonds, citrus, nectarines, peaches, pears, plums, prunes, and grapes to control mosquitoes. March 28, 1983.

EPA SLN No. CA 83 0017. California Dept. of Food and Agriculture. Registration is for Diazinol 4 EC, Diazinol AG 4 Insecticide, Dithos 4 EC, Clean Crop Diazinon AG Insecticide, and Namco Diazinon 4E to be used on almonds, citrus, nectarines, peaches, pears, squash, tomatoes, and walnuts to control mediterranean fruit flies. March 18, 1983.

EPA SLN No. CA 83 0018. Agricultural Commissioner, Orange County. Registration is for Rodent Bait Dephacinone Treated Grain, to be used on active burrows or runways to control rodents. March 21, 1983.

EPA SLN No. CA 83 0019. J. R. Simplot. Registration is for Snail Meta Meal 4, to be used on clover (seed crop only) to control slugs and snails. March 22, 1983.

Delaware

EPA SLN No. DE 83 0002. Elanco Products Co. Registration is for Treflan M.T.F., to be used on forage legumes used as cover crops to control annual grasses and broadleaf weeds. March 28, 1983.

EPA SLN No. DE 83 0003. Penick Crop. Registration is for Scourge Insecticide SBP-1382/Piperonyl Butoxide Insecticide Concentrate 18% + 54% MF Formula II, to be used as an air spray to control mosquitoes. March 10, 1983.

District of Columbia

EPA SLN No. DC 83 0001. Vulcan Materials Co. Registration is for Vulcan Formula 72, to be used on museum biological specimens not on public display to control dermestid beetles and similar pests. March 11, 1983.

Florida

EPA SLN No. FL 83 0005. Burroughs Wellcome Co. Registration is for Atroban 11% EC, to be used on livestock and their premises to control flies, lice, ticks, and psoroptic mites. March 10, 1983.

EPA SLN No. FL 83 0006. ICI Americas Inc. Registration is for Ectiban EC, to be used on horses, beef and dairy cattle, and their premises to control flies, lice, northern fowl mites, and mange. March 10, 1983.

EPA SLN No. FL 83 0007. Shell Chemical Co. Registration is for Pydrin

Insecticide 2.4 Emulsible Concentrate, to be used on turf grass to control sod webworms and chinch bugs. March 10, 1983.

EPA SLN No. FL 83 0008. Chevron Chemical Co. Registration is for Bolero 8 EC, to be used on dry-seeded rice to control barnyardgrass and goosegrass. March 11, 1983.

Hawaii

EPA SLN No. HI 83 0003. FMC Corp. Registration is for Thiodan 3 FC, to be used on pineapples to control pineapple fruit mites. March 29, 1983.

Idaho

EPA SLN No. ID 83 0006. PPG Industries, Inc. Registration is for Chem Hoe FL 4, to be used on alfalfa to control weeds. March 18, 1983.

EPA SLN No. ID 83 0007. Ciba Geigy Corp. Registration is for AATrex 80W Herbicide, to be used on summer fallow to control annual weeds. March 28, 1983.

EPA SLN No. ID 83 0008. Ciba Geigy Corp. Registration is for AATrex 4L Herbicide, to be used on summer fallow to control annual weeds. March 28, 1983.

EPA SLN No. ID 83 0009. Ciba Geigy Corp. Registration is for AATrex Nine-O Herbicide, to be used on summer fallow to control annual weeds. March 28, 1983.

Illinois

EPA SLN No. IL 83 0001. FMC Corp. Registration is for Furadan 15 G Insecticide-Nematocide, to be used on cucurbits (cucumbers, melons, squash, pumpkins) to control nematodes and striped and spotted cucumber beetles. March 2, 1983.

EPA SLN No. IL 83 0002. FMC Corp. Registration is for Furadan 15 G Insecticide-Nematocide, to be used on sweet corn to control corn rootworms, flea beetles, and nematodes (lesion). March 2, 1983.

EPA SLN No. IL 83 0003. FMC Corp. Registration is for Furadan 4F Insecticide, to be used on field corn during cultivation to control corn rootworm larvae. March 2, 1983.

EPA SLN No. IL 83 0004. Philips Roxane, Inc. Registration is for Anchor Permethrin 25% WP Long Lasting Barn and Premise Fly Spray, to be used on livestock and poultry premises to control flies. March 2, 1983.

EPA SLN No. IL 83 0005. Philips Roxane, Inc. Registration is for Bio-ceutic Overtime 25% WP Long Acting Livestock Premise Insecticide, to be used on livestock and poultry premises to control flies. March 2, 1983.

EPA SLN No. IL 83 0006. Diamond Shamrock Corp. Registration is for Ectrin Insecticide 10 Water Dispersible Liquid, to be used on livestock and their

premises to control flies, lice, and ticks. March 7, 1983.

EPA SLN No. IL 83 0007. Shell Chemical Co. Registration is for Bladex 4L Herbicide, to be used on field corn to control annual grasses and broadleaved weeds. March 22, 1983.

EPA SLN No. IL 83 0008. Shell Chemical Co. Registration is for Bladex 80W Herbicide, to be used on field corn to control annual grasses and broadleaved weeds. March 22, 1983.

EPA SLN No. IL 83 0009. Elanco Products Co. Registration is for Treflan Pro-5, to be used on forage legumes used as cover crops to control weeds. March 29, 1983.

EPA SLN No. IL 83 0010. Elanco Products Co. Registration is for Treflan EC, to be used on forage legumes used as cover crops to control weeds. March 29, 1983.

EPA SLN No. IL 83 0011. Elanco Products Co. Registration is for Treflan M.T.F., to be used on forage legumes used as cover crops to control weeds. March 29, 1983.

Kansas

EPA SLN No. KS 83 0002. Dow Chemical U.S.A. Registration is for Dursban TC Termiticide Concentrate, to be used on plenum crawl spaces under houses to control subterranean termites. March 11, 1983.

Louisiana

EPA SLN No. LA 83 0005. Penick Corp. Registration is for Scourge Insecticide SBP-1382/Piperonyl Butoxide Insecticide, to be used as a ground spray to control adult mosquitoes. March 2, 1983.

EPA SLN No. LA 83 0006. USS Agri-Chemicals. Registration is for USS Vertagreen for Professional Use with Ronstar, to be used on lawns to control crabgrass and goosegrass. March 8, 1983.

EPA SLN No. LA 83 0007. Cane Air, Inc. Registration is for Formula 40 Herbicide, to be used on ponds, lakes, reservoirs, drainage ditches, and rivers to control water hyacinths. March 8, 1983.

EPA SLN No. LA 83 0008. Cane Air, Inc. Registration is for DMA 4 Herbicide, to be used on ponds, lakes, reservoirs, drainage ditches, canals, and rivers to control water hyacinths. March 8, 1983.

EPA SLN No. LA 83 0009. Philips Roxane, Inc. Registration is for Anchor Permethrin II 25% WP, to be used on livestock and poultry and their premises to control flies. March 22, 1983.

EPA SLN No. LA 83 0010. Philips Roxane, Inc. Registration is for Bio-ceutic Overtime P/L 25% WP Long-

Lasting, to be used on livestock and poultry and their premises to control flies. March 22, 1983.

EPA SLN No. LA 83 0011. Ciba-Geigy Corp. Registration is for AAtrex 4L Herbicide, to be used on established rangeland to control weeds. March 15, 1983.

EPA SLN No. LA 83 0012. Ciba-Geigy Corp. Registration is for AAtrex Nine-o Herbicide, to be used on established rangeland to control weeds. March 15, 1983.

EPA SLN No. LA 83 0013. Geigy Corp. Registration is for AAtrex 80W Herbicide, to be used on established rangeland to control weeds. March 15, 1983.

EPA SLN No. LA 83 0014. Micro Chemical Co., Inc. Registration is for Micro Blend Triple-Kill BC, to be used on cotton to control thrips, spider mites, cotton fleahoppers, boll weevils, and cotton leafworms. March 15, 1983.

EPA SLN No. LA 83 0015. Dow Chemical U.S.A. Registration is for Dursban TC Termiticide, to be used on soil and structural elements in homes and other structures to control beetles of the *Lyctidae*, *Anobiidae* and *Cerambycidae* families. March 29, 1983.

Maine

EPA SLN No. ME 83 0001. Sandoz, Inc. Registration is for Thuricide 32 LV, to be used on ornamental and forest shade trees to control spring and fall cankerworms, gypsy moths, and bagworms. March 14, 1983.

EPA SLN No. ME 83 0002. E.I. du Pont de Nemours and Co. Registration is for Du Pont Velpar Weed Killer, to be used on lowbush blueberries to control grasses and flowering herbaceous weeds. March 22, 1983.

EPA SLN No. ME 83 0003. E.I. du Pont de Nemours and Co. Registration is for Du Pont Velpar Weed Killer, to be used on lowbush blueberries to control grasses and flowering herbaceous weeds. March 22, 1983.

Maryland

EPA SLN No. MD 83 0001. Lakeshore Equipment and Supply Co. Registration is for Lesco 24-4-12 Fertilizer with 1.5% Oftanol, to be used on turf grass areas to control white grub larvae and other species. March 17, 1983.

EPA SLN No. MD 83 0002. Philips Roxane, Inc. Registration is for Anchor Permethrin II 25% WP Long Lasting, to be used on livestock and poultry and their premises to control flies, mites, mosquitoes, and mange mites. March 31, 1983.

EPA SLN No. MD 83 0003. FMC Corp. Registration is for Furadan 15 G, to be used on cucurbits (cucumbers, melons

squash, pumpkins) to control striped cucumber beetles. March 31, 1983.

EPA SLN No. MD 83 0004. Penick Corp. Registration is for Scourge Insecticide SBP-1382/Piperonyl Butoxide Insecticide Concentrate 18% + 54% MF Formula II, to be used as an aerial ULV spray to control adult mosquitoes. March 31, 1983.

Minnesota

EPA SLN No. MN 83 0007. Agsco, Inc. Registration is for Agsco DB-Green + (554-109) Vitavax, to be used on wheat, oats, barley, and corn to control smuts, seed decay, and seedling blight wireworms. March 24, 1983.

Mississippi

EPA SLN No. MS 83 0008. Mobay Chemical Corp. Registration is for Bayleton 50% WP, to be used on pine seed nurseries to control fusiform rust (*Cromartium quercuum*). (CUP) March 7, 1983.

Montana

EPA SLN No. MT 83 0001. Agsco, Inc. Registration is for Agsco DB Green + Vitavax Seed Treatment and Vitavax DB Green, to be used on wheat, oat, barley, and corn seeds to control soil borne diseases, smuts, and soil insects. March 10, 1983.

Nevada

EPA SLN No. NV 83 0002. PBI Gordon Corp. Registration is for Acme Ultra-Sulv Amine, to be used on wheat, barley, and rye to control weeds, field bindweed, perennial morningglories, Canada thistles, and musk thistles. March 31, 1983.

New Jersey

EPA SLN No. NJ 83 0001. Rutgers University. Registration is for Temik 15% G, to be used on white potatoes to control Colorado potato beetles. March 25, 1983.

New Mexico

EPA SLN No. NM 83 0003. Diamond Shamrock Corp. Registration is for Ectrin Insecticide Water Dispersible, to be used on livestock and their premises to control flies, lice, and ticks. March 3, 1983.

EPA SLN No. NM 83 0004. FMC Corp. Registration is for Diazinon 3 Dust, to be used on sheep to control sheep "ticks" (keds). March 2, 1983.

North Dakota

EPA SLN No. ND 83 0002. Elanco Products, Co. Registration is for Treflan M.T.F., to be used on forage legumes used as cover crops to control weeds. March 18, 1983.

Ohio

EPA SLN No. OH 83 0004. Lakeshore Equipment and Supply Co. Registration is for Lesco 24-4-12 Fertilizer with 1.5% Oftanol, to be used on turf grasses to control white grub larvae. March 21, 1983.

Oklahoma

EPA SLN No. OK 83 0008. Proserve, Inc. Registration is for Pronone 10 G, to be used on non-cropland areas to control undersirable woody and herbaceous plants. March 14, 1983.

EPA SLN No. OK 83 0009. Shell Chemical Co. Registration is for Pydrin Insecticide 4 ULV Concentrate, to be used on cotton to control pink bollworms and cotton leaf perforators. March 14, 1983.

EPA SLN No. OK 83 0010. Chemical and Turf Specialty Co., Inc. Registration is for Golden Green Turf and Ornamental Fertilizer Ronstar, to be used on turf and woody ornamental shrubs, vines, and trees to control annual grasses and broadleaf weeds. March 25, 1983.

EPA SLN No. OK 83 0011. USS Agri-Chemicals. Registration is for USS Vertagreen for Professional Use with Ronstar, to be used on turf and woody ornamental shrubs, vines, and trees to control annual grasses and broadleaf weeds. March 28, 1983.

EPA SLN No. OK 83 0012. Mobay Chemical Corp. Registration is for Bayleton 50% WP, to be used on pine seed nurseries to control fusiform rust (*Cronartium quercuum*). March 25, 1983.

EPA SLN No. OK 83 0013. Philips Roxane, Inc. Registration is for Anchor Permethrin II 25% WP Long-lasting Premise Fly Spray and Livestock Insecticide, to be used on livestock and poultry and their premises to control flies, fleas, cockroaches, fowl mites, and mosquitoes. March 25, 1983.

EPA SLN No. OK 83 0014. Philips Roxane, Inc. Registration is for Bio-ceutic Overtime P/L 25% WP Long-lasting Premise Fly Spray and Livestock Insecticide, to be used on livestock and poultry and their premises to control flies, fleas, cockroaches, fowl mites, and mosquitoes. March 25, 1983.

Oregon

EPA SLN No. OR 83 0008. The Upjohn Co. Registration is for Acti-dione TGF, to be used on blue grass, red fescue grass and rye grass grown for seed to control rusts. (CUP) March 7, 1983.

EPA SLN No. OR 83 0010. Union Carbide Agricultural Products Co., Inc. Registration is for ME 4 Brominal Bromoxynil Broadleaf, to be used on

winter wheat to control broadleaf weeds. March 4, 1983.

EPA SLN No. OR 83 0011. Pennwalt Corp. Registration is for Decco Salt No. 20, to be used on stone fruits to control brown rot and *Rhizopus* rot. (CUP) March 8, 1983.

EPA SLN No. OR 83 0012. Stauffer Chemical Co. Registration is for Vapam Soil Fumigant, to be used on Irish potatoes to control nematodes and *Verticillium dahliae* (early maturity disease). March 15, 1983.

EPA SLN No. OR 83 0013. Rohm and Haas Co. Registration is for Kerb 50W Herbicide, to be used as an air spray on Christmas tree plantations to control annual and perennial grasses and broadleaf weeds. March 25, 1983.

EPA SLN No. OR 83 0014. Chevron Chemical Co. Registration is for Ortho Monitor 4 Spray, to be used on carrots grown for seed to control Lygus bugs. March 30, 1983.

EPA SLN No. OR 83 0015. Platte Chemical Co. Registration is for Clean Crop Low Vol B-4 2,4-D Herbicide, to be used on conifer release to control alders. March 30, 1983.

Pennsylvania

EPA SLN No. PA 83 0006. Rohm and Haas Co. Registration is for Dithane FZ, to be used on corn (field, hybrid seed, popcorn) to control *Helminthosporium* leaf blight. (CUP). March 4, 1983.

EPA SLN No. PA 83 0007. Philips Roxane, Inc. Registration is for Bioceutic Overtime I/P 25% WP, to be used on livestock and poultry and their premises to control flies, fleas, fowl mites, lice, and mange mites. March 11, 1983.

EPA SLN No. PA 0008. Philips Roxane, Inc. Registration is for Anchor Permethrin II 25% WP, to be used on livestock and poultry and their premises to control flies, fleas, fowl mites, lice and mange mites. March 11, 1983.

EPA SLN No. PA 83 0009. FMC Corp. Registration is for Furadan 15 G, to be used on cucurbits to control nematodes and striped cucumber beetles. March 28, 1983.

South Carolina

EPA SLN No. SC 83 0002. Elanco Products Co. Registration is for Treflan EC, to be used on forage legumes used as cover crops to control weeds. March 16, 1983.

EPA SLN No. SC 83 0003. Elanco Products Co. Registration is for Treflan M.T.F., to be used on forage legumes used as cover crops to control weeds. March 16, 1983.

EPA SLN No. SC 83 0004. Elanco Products Co. Registration is for Treflan Pro-5, to be used on forage legumes used

as cover crops to control weeds. March 16, 1983.

EPA SLN No. SC 83 0005. O.M. Scott and Sons Co. Registration is for proturf Insecticide 4, to be used on turfgrass to control white grubs, Japanese beetles, chinch bugs, webworms, and weevils. March 29, 1983.

South Dakota

EPA SLN No. SD 83 0001. O.M. Scott and Sons Co. Registration is for Proturf Insecticide 4, to be used on turfgrass to control white grubs, Japanese beetles, chinch bugs, webworms, and weevils. March 31, 1983.

Tennessee

EPA SLN No. TN 83 0002. The Upjohn Co. Registration is for Proxol 80SP Insecticide, to be used on tobacco to control cutworms. March 11, 1983.

EPA SLN No. TN 83 0003. proserve, Inc. Registration is for Pronone 10G, to be used on conifer release to control woody plants, American elders, birches, dewberries, and cottonwoods. March 21, 1983.

Texas

EPA SLN No. TX 83 0004. Ciba Geigy Corp. Registration is for Ridomil 2E Fungicide, to be used on cucumbers, melons, onions, tomatoes, and potatoes to control downy mildew. (CUP). March 3, 1983.

EPA SLN No. TX 83 0005. Dow Chemical U.S.A. Registration is for Lorsban 4E Insecticide, to be used on grain sorghum to control cutworms. March 23, 1983.

Utah

EPA SLN No. UT 83 0002. PBI-Gordon Corp. Registration is for Acme Ultra-Solv Amine, to be used on wheat (fall or spring sown), barley, and rye to control field bindweed, Canada thistles, and musk thistles. March 1, 1983.

EPA SLN No. UT 83 0003. Philips Roxane, Inc. Registration is for Bioceutic Overtime to be used on livestock and poultry and their premises to control flies. March 9, 1983.

EPA SLN No. UT 83 0004. Philips Roxane, Inc. Registration is for Anchor Permethrin II 25% WP, to be used on livestock and poultry and their premises to control flies. March 9, 1983.

EPA SLN No. UT 83 0005. Elanco Products Co. Registration is for Treflan Pro-5, to be used on forage legumes to control annual grasses and broadleaf weeds. March 9, 1983.

EPA SLN No. UT 83 0006. Elanco Products Co. Registration is for Treflan EC, to be used on forage legumes to control annual grasses and broadleaf weeds. March 9, 1983.

EPA SLN No. UT 83 0007. Elanco Products Co. Registration is for Treflan M.T.F., to be used on forage legumes to control annual grasses and broadleaf weeds. March 9, 1983.

EPA SLN No. UT 83 0008. Mobay Chemical Corp. Registration is for Oftanol 2 Insecticide, to be used on turf grasses to control white grub larvae, black turf grass *Ataenius*, Asiatic garden beetles, *Hyperode* weevils, mole crickets, chinch bugs, and flea beetles. March 31, 1983.

Vermont

EPA SLN No. VT 83 0001. Hopkins Agricultural Chemical Co. Registration is for Quintar 540F, to be used on apples to control scabs. (CUP) March 29, 1983.

EPA SLN No. VT 83 0002. FMC Corp. Registration is for Furadan 15 G, to be used at seeding time on pure alfalfa to control nematodes, potato leafhoppers, alfalfa blotch leafminers, and clover root curculios. March 29, 1983.

Virginia

EPA SLN No. VA 83 0006. Philips Roxane, Inc. Registration is for Anchor Permethrin II 25% WP Long Lasting, to be used on livestock and poultry and their premises to control flies. March 4, 1983.

EPA SLN No. VA 83 0007. Philips Roxane, Inc. Registration is for Bioceutic Overtime P/L 25% WP Long-lasting, to be used on livestock and poultry and their premises to control flies. March 4, 1983.

Washington

EPA SLN No. WA 83 0001. Chas. H. Lilly Co. Registration is for Lilly/Miller Chlorban Insect G, to be used on broccoli, Brussels sprouts, cabbages, cauliflower, rutabagas, Chinese cabbages, and turnips to control root maggots. March 10, 1983.

EPA SLN No. WA 83 0002. PPG Industries, Inc. Registration is for Chem Hoe FL 4, to be used on alfalfa to control weeds. March 11, 1983.

EPA SLN No. WA 83 0003. Union Carbide Agricultural Products Co., Inc. Registration is for ME 4 Brominal Bromoxynil Broadleaf Herbicide, to be used on winter wheat to control weeds. March 11, 1983.

EPA SLN No. WA 83 0004. BFC Chemicals, Inc. Registration is for Antor 4 ES, to be used on spinach grown for seed to control weeds. March 14, 1983.

EPA SLN No. WA 83 0005. BFC Chemicals, Inc. Registration is for Antor 4 ES, to be used on red beets grown for seed to control weeds. March 14, 1983.

EPA SLN No. WA 83 0006. Diamond Shamrock Corp. Registration is for

Ectrin Insecticide Water Dispersible Liquid, to be used on livestock and their premises to control flies, lice, and ticks. March 17, 1983.

EPA SLN No. WA 85 0008. E. I. du Pont Nemours and Co. Registration is for Du Pont Vydate L Insecticide/Nematicide, to be used on onions to control thrips. March 17, 1983.

EPA SLN No. WA 83 0009. Dow Chemical U.S.A. Registration is for Lorsban 4E Insecticide, to be used on perennial grass seed crops to control cutworms and aphids. March 24, 1983.

EPA SLN No. WA 83 0010. Dow Chemical U.S.A. Registration is for Telone C-17 Soil Fungicide, to be used on white potatoes to control Columbia root-knot nematodes. March 21, 1983.

EPA SLN No. WA 83 0011. Dow Chemical U.S.A. Registration is for Telone II Soil Fumigant, to be used on white potatoes to control Columbia root-knot nematodes. March 21, 1983.

West Virginia

EPA SLN No. WV 83 0001. O.M. Scott and Sons Co. Registration is for Proturf Insecticide 4, to be used on golf course fairways, tees, greens, and roughs to control white grubs and sod webworms. March 28, 1983.

EPA SLN No. WV 83 0002. Elanco Products Co. Registration is for Treflan EC, to be used on forage legumes used as cover crops to control weeds. March 28, 1983.

EPA SLN No. WV 83 0003. Elanco Products Co. Registration is for Treflan M.T.F., to be used on forage legumes used as cover crops to control weeds. March 28, 1983.

EPA SLN No. WV 83 0004. Elanco Products Co. Registration is for Treflan Pro-5, to be used on forage legumes used as cover crops to control weeds. March 28, 1983.

Wyoming

EPA SLN No. 83 0001. Elanco Products Co. Registration is for Treflan Pro-5, to be used on forage legumes used as cover crops to control weeds. March 15, 1983.

EPA SLN No. 83 0002. Elanco Products Co. Registration is for Treflan EC, to be used on forage legumes used as cover crops to control weeds. March 15, 1983.

EPA SLN No. 83 0003. Elanco Products Co. Registration is for Treflan M.T.F., to be used on forage legumes used as cover crops to control weeds. March 15, 1983.

Dated: July 11, 1983.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 83-19504 Filed 7-19-83; 8:46 am]

BILLING CODE 5560-50-M

[OPTS-5471; TSH-FRL 2384-3]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 83-16535, beginning on page 29048 in the issue of Friday, June 24, 1983, make the following corrections.

1. On page 29049, first column, fourth line, the symbol "<" should have read ">".

2. In the same column, fifth line from the bottom, the first word in the line should have read "functional".

3. In the second column, under "PMN-820," seventh line, the symbol "<" should have read ">".

4. In the second column, under "PMN-821," seventh line, the symbol "<" should have read ">"; and in the eighth line the first word should have read "Irritation".

5. In the same column, under "PMN 83-822", in the fifth and sixth lines, the symbols "<" should have read ">".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 83-650, File No. 26009-CL-P-(14)-82, et al.]

Advanced Mobile Phone Service, Inc., et al.; Hearing Designation Order; Erratum

In the matter of applications of Advanced Mobile Phone Service, Inc., GTE Mobilnet of Houston, Inc., File No. 26009-CL-P-(14)-82, File No. 26046-CL-P-(9)-82; for a construction permit to establish a cellular system operating on frequency Block B in the Domestic Public Cellular Radio Telecommunications Service to serve the Houston, Texas, Standard Metropolitan Statistical Area; and in the matter of applications of Metro Mobile Cts., CC Docket No. 83-650; File No. 26155-CL-P-(21)-82; Cellular Mobile Systems of Texas, Inc., File No. 26187-CL-P-(20)-82; MCI Cellular Telephone Co., File No. 26095-CL-P-(17)-82; American Mobile Communications of Houston and the Gulf, File No. 26093-CL-P-(14)-82; Cellular Systems Inc., File No. 26073-CL-P-(18)-82; Lin Cellular Communications Corp., File No. 26149-CL-P-(27)-82; Houston Cellular Corp., File No. 26062-CL-P-(24)-82; Charisma Communications Corp. of the Southwest, File No. 26142-CL-P-(17)-82; for a construction permit to establish a cellular system operating on frequency Block A in the Domestic Public Cellular Radio Telecommunications Service to service the Houston, Texas Standard Metropolitan Statistical Area.

Released: July 13, 1983.

1. The Memorandum Opinion and Order Granting Application and Designating Applications for Hearing in

the above entitled matter, CC Mimeo No. 5028, adopted June 24, 1983, released July 1, 1983, is corrected to add "of the Southwest" after Charisma Communications Corp. Paragraph 106 should read as follows: "It is further ordered, pursuant to Section 309 of the Communications Act of 1934, as amended, that the applications, of * * * Charisma Communications Corp. of the Southwest * * *; are designated for hearing * * *".

2. In addition the last line of paragraph 47 is amended to replace the word "place" with "phase". This line should therefore read as follows: * * * "antennas are fed in phase through a power divider."

William F. Adler,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 83-19342 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

[PR Docket No. 83-658, File No. 121-A-ML-13]

Flightcraft, Inc. and Spokane Airways, Inc.; Hearing Designation Order

Adopted: June 17, 1983.

Released: July 12, 1983.

In the matter of applications of Flightcraft, Inc., Portland, Oregon, PR Docket No. 83-658, File Number 121-A-ML-13; Spokane Airways, Inc., Spokane, Washington, PR Docket No. 83-659, File Number 405-A-L-112; for an Aeronautical Advisory Station to serve Spokane International Airport, Spokane, Washington.

1. Flightcraft, Inc. (hereafter Flightcraft) and Spokane Airways Inc., (hereafter Spokane) have each filed an application for authority to operate an aeronautical advisory station at Spokane International Airport. Flightcraft seeks renewal of its current station license while Spokane has filed for a new station authorization. Since § 87.251 (a) of our rules provides that only one aeronautical advisory station may be authorized at an airport, the above-captioned applications are mutually exclusive. Accordingly, it is necessary to designate these applications for comparative hearing in order to determine which, if any, should be granted.

2. In view of the foregoing, it is ordered, That pursuant to the provisions of Section 309(e) of the Communications Act of 1934, as amended, and § 8.331 of the Commission's rules, the above-captioned applications are hereby designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent Order to the following comparative issues:

(a) To determine which applicant would provide the public with better aeronautical advisory service based on the following considerations.

(1) Location of the aviation service organization and proposed radio station in relation to the landing area and traffic patterns;

(2) Hours of operation;

(3) Personnel available to provide advisory service;

(4) Experience of applicant and employees in aviation and communications, including but not limited to operation of stations in the Aviation Services (Part 87) that may be or have been authorized to the applicant;

(5) Ability to provide information pertaining to primary and secondary communications as specified in § 87.257 of the Commission's rules;

(6) Proposed radio system including control and dispatch points; and

(7) Availability of radio facilities to other aviation service organization.

(b) To determine the manner in which Flightcraft has operated Aeronautical Advisory Station K6L2 and whether such operations were in accordance with the rules governing the operation of this class of station;

(c) To determine in light of the evidence adduced on the foregoing issues which of the applications should be granted.

3. It is ordered, That the burden of proof and the burden of proceeding with the introduction of evidence is on each applicant with respect to its application except issue (b) where the burdens are on Flightcraft and issue (c) which is conclusory.

4. It is further ordered, That to avail themselves of an opportunity to be heard Flightcraft and Spokane, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney's, shall within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date set for hearing and present evidence on the issues specified in this Order. Failure to file a written appearance within the time specified may result in dismissal of the application with prejudice.

Federal Communications Commission.

Roger Madden,

Acting Chief, Special Services Division.

[FR Doc. 83-19543 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 83-708, File No. BPCT-821210KF]

Golden East Broadcasters, Inc. et al.; Hearing Designation Order

Adopted: June 29, 1983.

Released: July 14, 1983.

In re applications of Golden East Broadcasters, Inc., Brunswick, Georgia, MM Docket No. 83-708, File No. BPCT-821210KF; COR Communications, Ltd., Brunswick, Georgia, MM Docket No. 83-709, File No. BPCT-830217KE; CMM, Inc., Brunswick, Georgia, MM Docket No. 83-710, File No. BPCT-830217KP; for construction permit.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Golden East Broadcasters, Inc. (Golden), Cor Communications, Ltd. (Cor), and CMM, Inc. (CMM) for authority to construct a new commercial television station on Channel 21, Brunswick, Georgia.

2. The effective radiated power, antenna heights above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would be served by each of the proposals. Consequently, for the purpose of comparison, the areas and populations which would be within the predicted 64 dBu (Grade B) contours, together with the availability of other television service of 64 dBu (Grade B) or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. Golden's proposed tower is to be located 1.45 miles from the directional tower of AM station WYNR, Brunswick, Georgia. Because of the proximity of the proposed tower to WYNR, grant of a construction permit to Golden will be conditioned to ensure that WYNR's radiation pattern is not adversely affected by the construction of the proposed station.

4. CMM's proposed antenna is to be mounted on the existing tower of AM station WMOG, Brunswick, Georgia. Therefore, in order to ensure that the AM pattern will not be adversely affected, a grant of the application will be appropriately conditioned.

5. Section II, Page 2, FCC Form 301, requires that if the applicant is a corporation, the names, addresses and offices held by each officer must be listed. CMM's application shows that Mike Miller is the sole stockholder, but the office or offices which he holds, if any, have not been disclosed. No other

names are listed as officers. The laws of the State of Tennessee, however, appear to require that a corporation have at least two officers (Tenn. Code Ann. § 48-811). Furthermore, § 73.3514(a) requires applicants to provide all information called for by FCC Form, unless the required information is inapplicable. Accordingly, appropriate issues will be specified to determine the identity and qualifications of the corporate officers and to examine CMM's compliance with § 73.3514(a).

6. Except as incited by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to CMM, Inc.

(a) The number, identity and legal qualifications of the officers of CMM, Inc.

(b) Whether, in light of the evidence adduced pursuant to the foregoing issue, the applicant complied with Section 73.3514(a) of the Commission's Rules; and

(c) In light of the evidence adduced pursuant to the foregoing issues, the effect of any omissions on the applicant's basic or comparative qualifications.

2. To determine the areas and populations that would receive Grade B or better service from the proposals and the availability of other Grade B services to such areas and populations.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That grant of a construction permit to Golden will be subject to the following condition:

Prior to construction of the tower authorized herein, permittee shall notify AM station WYNR so that, if necessary, the AM station may determine operating

power by the indirect method and request temporary authority from the Commission in Washington, D.C. to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results shall be submitted to the Commission.

9. It is further ordered, That grant of a construction permit to CMM will be subject to the following condition:

During installation of the TV antenna, AM station WMOG shall determine operating power by the indirect method. Upon completion of the installation, antenna impedance measurements of the AM antenna shall be made. The results shall be submitted to the Commission, along with a tower sketch of the installation, in an application for the AM station to return to the direct method of power determination. Thereafter, the TV station may commence *Limited Program Tests*.

10. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

11. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the public of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 83-19545 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 83-693, et al.; File No. BP-820304AC, et al.]

AM-MEX Broadcasting Corp., et al.; Hearing Designation Order

In the matter of applications of AM-MEX Broadcasting Corp., Sahuarito, Arizona, Req: 1210 kHz, 250w, 10 kW-LS, U, MM Docket No. 83-693, File No. BP-820304AC; El Sahuarito Broadcasting Co., Inc., Sahuarito, Arizona, Req: 1210 kHz, 0.5 kW 10 kW-LS, DA-N, U, MM Docket No. 83-694, File No. BP-821223AC; Arizona Bravo, Ltd. Sahuarito, Arizona, Req: 1210 KHz, 1 kW, 10 kW-LS, DA-N U, MM Docket No. 83-695, File No. BP-821223AD; For Construction Permit.

Adopted: June 28, 1983.

Released: July 12, 1983.

By the Chief, Mass Media Bureau.

Hearing Designation Order

1. The Commission by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it for consideration the above-captioned mutually exclusive applications for a new AM broadcast station at Sahuarito, Arizona. In addition it has before it a petition to deny or dismiss the El Sahuarito Broadcasting Co., Inc., proposal filed by AM-MEX Broadcasting Corporation, and pleadings related to this submission.

2. In seeking a construction permit for a new broadcast station, applicants are asked, among other things, to identify any interest held by their principals in or in connection with another broadcast station (FCC Form 301, Section II, Question 6(a)). AM-MEX's assertion to the contrary notwithstanding, we are persuaded that El Sahuarito's negative response to this inquiry was justified. By amendment to its application, El Sahuarito has established the position of its principal Philip D. Richardson as "director of editorials" for KVOA-TV, Tucson, to involve no direct control or operational authority over that station.¹ Rather, according to the submission, Richardson is employed on a contract basis as a writer, producer and on-air talent, an arrangement which he will terminate upon grant of the instant proposal.

3. That El Sahuarito, in preparing its application, could have considered this relationship too slight to be of interest to the Commission seems to us an entirely reasonable proposition. Hence, we cannot attach adverse consequences to the omission.² Nor can we, as AM-MEX

¹ As AM-MEX correctly notes, the statement attached to El Sahuarito's opposition pleading was not in proper affidavit form. See § 73.3584(b) of our rules.

² This is not to say, however, that omission was the preferable course here.

urges, find grounds for inquiry here into possible violations of our multiple ownership rules and policies, it being our view in this regard that an association as loose and limited as this one could not possibly raise issues of that nature. For the same reason, we can perceive of no basis on which Richardson's intention to sever his ties with KVOA-TV could improve El Sahuarito's comparative position, and will deny AM-MEX's partial challenge to acceptance of its amendment on these grounds.

4. As indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, however, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

6. It is further ordered, That the petition to deny or dismiss filed by AM-MEX Broadcasting Company, Inc., is denied.

7. It is further ordered, That the petition for leave to amend filed by El Sahuarito Broadcasting Company, Inc., is granted.

8. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.*

*Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1961, and to bilateral and other multilateral agreements between the United States and other countries.

9. If is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-19550 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; Applications for Consolidated Hearing; Baker Communications Corp., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Baker Communications Corp.	Walsenburg, Colo.	BPH-811228AK	83-673
B. Redwing Broadcasting Co.	do	BPH-820823AQ	83-674
C. Quintana Broadcasting, Inc.	do	BPH-820825AL	83-675

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 Fed. Reg. 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix)—A
2. Comparative—A, B, C
3. Ultimate—A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's

Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

Appendix—Issue(s)

1. To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8,* the applicant(s) is financially qualified: A (Baker)

[FR Doc. 83-19548 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

[File No. 26049-CL-P-(9)-82]

GTE Mobilnet of Cleveland, Inc., et al.; Hearing Designation Order

In the matter of applications of GTE Mobilnet of Cleveland, Inc., File No. 26049-CL-P-(9)-82; Advanced Mobile Phone Service, Inc., File No. 26021-CL-P-(12)-82; for a construction permit to establish a new cellular system operating on frequency Block B in the Domestic Public Cellular Radio Telecommunications Service (DPCRTS) to serve the Cleveland, Ohio, Standard Metropolitan Statistical Area (SMSA), CC Docket No. 83-863.

In the matter of applications of Cellular Communications of Cleveland, Inc., File No. 26088-CL-P-(9)-82; Cellular Mobile Systems of Ohio, Inc. File No. 26168-CL-P-(11)-82; Cleveland Mobile Telephone, Inc. File No. 26119-CL-P-(15)-82; MCI Cellular Telephone Co. File No. 26098-CL-P-(9)-82; for a construction permit to establish a new cellular system operating on frequency Block A in the Domestic Public Cellular Radio Telecommunications Service (DPCRTS) to serve the Cleveland, Ohio, Standard Metropolitan Statistical Area.

Adopted June 27, 1983.

Released July 12, 1983.

By the Common Carrier Bureau.

MEMORANDUM OPINION AND ORDER GRANTING APPLICATION, DISMISSING APPLICATION AND DESIGNATING APPLICATIONS FOR HEARING

1. Presently before the Chief, Common Carrier Bureau, acting under delegated authority are: (a) the captioned applications of Cellular Communications of Cleveland, Inc. (CCCCI), Cellular Mobile Systems of Ohio, Inc. (CMS), MCI Cellular Telephone Co. (MCI), and Cleveland

*Paragraph 8 reads as follows: The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency:

Applicant(s) and Deficiency

(A) Baker—Insufficient bank letter, i.e., no firm commitment, no security specified, and rate of interest not specified.

Mobile Telephone, Inc. (CMT) to construct cellular radio systems to serve the Cleveland, Ohio, Standard Metropolitan Statistical Area (SMSA) on frequency Block A. Also before the Commission are the applications of GTE Mobilnet of Cleveland, Inc. (GTE) and Advanced Mobile Phone Service, Inc. (AMPS) to serve the same market on frequency Block B. GTE and AMPS, have filed a Limited Partnership Agreement, together with a Joint Motion for Approval, which would result in the grant of GTE's amended application and the dismissal of AMPS; application. Petitions to Dismiss or Deny have been filed against each of the applications; responsive pleadings have been filed.

2. Upon careful review and consideration of the applications and related pleadings for frequency Block B, we find that the public interest will be served by approving the AMPS/GTE settlement agreement, with certain conditions imposed, whereby the GTE application will be granted and the AMPS application will be dismissed. With respect to the nonwireline applications for frequency Block A, except for the issues raised against CMT concerning its financial qualifications, we conclude that the petitions fail to raise any substantial and material issues requiring designation for hearing. These applications are electrically mutually exclusive and, accordingly, we are designating them for a comparative hearing in accordance with the Commission's special hearing procedures for cellular radio applications announced in the Commission's *Report and Order* in CC Docket No. 79-318, 86 FCC 2d 469 (1981), modified, 89 FCC 2d 58 (1982), further modified, 90 FCC 2d 571 (1982) appeal dismissed sub nom. *U.S. v. FCC*, Civ. No. 82-1526 (D.C. Cir. March 3, 1983). We are also requiring the applications to be amended, as set forth below.

MCI Application

3. *Financial Qualifications.* The principal argument raised is that MCI has not demonstrated its financial qualifications to construct and operate its proposed system.¹ We find this

¹ CCCI has also filed a consolidated opposition to amendment and motion to strike with respect to all of the applicants, including MCI, dealing with financial qualifications. CCCI Requests that we not consider arguments contained in the replies which refer to documents, such as additional bank letters, which were attached to these pleadings. We reject this argument, except as it relates to CMT which is discussed *infra* at n. 3. These documents merely provide additional details concerning the financial arrangements of the applicants and do not provide any new sources of funds or modify the financial plans as contained in the application. CCCI also criticizes all of the applicants including MCI, for

argument to be without merit. MCI Communications Corporation, MCI's parent company, has committed itself to finance the estimated construction costs and first year operating expenses for the Cleveland system of \$10,405,000. (Ex. 14). In *Advanced Mobile Phone Service, Inc., (Pittsburgh Order)*, CC Memo 1169, released December 6, 1982, we found that MCI had demonstrated reasonable assurance that it will have sufficient funds available to construct its twelve proposed cellular systems in the top-30 markets. We further concluded that no financial issues should be designated for hearing against any MCI Communications Corporation subsidiary based on its ability to finance commitments for twelve cellular applications. Those findings are fully dispositive of the arguments here. None of the parties raises any unique argument relating to the Cleveland market.

4. *System Design and Congestion.* MCI's application contained exhibits describing its system expansion plans which meet our requirements. See Application Vol. 2, Exhibit 16; Exhibit 5 and Exhibit 6. MCI has further submitted exhibits describing its system design which meet our requirements. In addition, system expansion and design are issues to be examined in the comparative portion of this proceeding. *Report and Order, supra*, at 502-03. Accordingly, we will not designate basic qualifying issues with respect to these matters.

5. *Site Availability.* We find that MCI has adequately demonstrated site availability. An applicant need not have a binding agreement or absolute assurance of the availability of a proposed site, but rather must show that it has obtained reasonable assurance that its proposed site will be available. See *Alabama Citizens for Responsive Public Television, Inc. (Alabama Citizens)*, 59 FCC 2d 1 (1976). In the application MCI indicates that it has received a commitment to lease or to negotiate a lease for each of its cell sites. CCCI has not demonstrated that any of MCI's sites are not available. based on these circumstances, we find no reason to designate a site availability issue.

6. *Extension of CGSA.* MCI's proposed Cellular Geographic Service Area (CGSA) extends into the central Youngstown-Warren Ohio, SMSA.

failure to file a separate Form 401 application for each cell site. These applications contain all of the essential information for their cell sites. To avoid unnecessary duplication, applicants may consolidate information common to all locations and submit one Form 401 that contains the specific information for each site.

Pursuant to Section 22.903(a) of the rules, a CGSA may not extend into another central SMSA. Therefore, we will require that MCI file a conforming amendment to bring the CGSA and 39 dBu contour for the Huntsburg site into compliance with the rules. The amended 39 dBu contour shall not cover any area in the SMSA not previously covered by the original 39 dBu contour. This amendment should consider the effects, if any, that this change may have on other parts of the application. The new map should be submitted for the entire SMSA.²

7. Upon our own review, we observe that MCI's Hinkley and Medina cells extend into the Akron SMSA. This type of extension if it is *de minimis*, is permitted because Akron is a "secondary" SMSA. See Section 22.903(a) of the rules and *Report and Order*, 89 FCC 2d at 87. We find however, that this overlap proposed by MCI is more than *de minimis*. Under the MCI proposal, approximately 18% of the Hinkley site and 3% of the Medina site extend into the adjacent SMSA. The service contours of both sites extend into an area which includes Interstate Highways 77, 80 and 271, potential sources of substantial roamer subscribers. Although the Medina transmitting site does not seem to have a significant amount of extension, the close proximity of the Akron market to the SMSA boundary west of Akron precludes any allowance of an extension in this area. Under these circumstances, we cannot conclude that this is the type of *de minimis* extension contemplated by the Commission. We will therefore require MCI to submit a conforming amendment to the Administrative Law Judge (ALJ) within 15 days of the release date of this Order, modifying the proposed 39 dBu contour of both cell sites and the CGSA so that they both comply with the cellular rules. The amended Medina cell site shall have no extension into the Akron SMSA. Both the Hinkley and Medina amended cell sites shall not cover any area not previously covered by the original 39 dBu contours. The amendment should consider the effects, if any, that this change may have on other parts of the applications. Due to this circumstance, a brief extension of

² CCCI also contends that the MCI application is defective for not submitting the required USGS 1:250,000 map and that its claim of covering 100% of the SMSA is in error. We have found that MCI did submit the correct USGS 1:250,000 map, although the map is missing the south western portion of the Cleveland SMSA. The above required amendment will correct this problem. Although MCI's claim to cover 100% of the SMSA is not correct, we believe this is not a substantial issue.

time may be granted at the discretion of the ALJ if a number of other exhibits must be conformed.

CMT

8. *Financial Issue.* CMT's first year construction costs are projected to be \$4,914,299. To meet this figure, CMT relies upon a \$5 million loan from CMT's president and 37.5% shareholder Mr. Del Mintz (Mintz); a further \$5 million loan from its Secretary-Treasurer and 37.5% shareholder Mr. Irving Spitz (Spitz), and an additional \$5 million loan from D & B Leasing, a partnership formed by Spitz and Mintz.

9. To support the adequacy of the Spitz and Mintz loans, CMT has submitted unaudited financial statements for each individual. A review of Mintz's financial statement establishes that his liquid assets consist of cash and identifiable stock totalling \$1,827,846 with liabilities of \$2,498,470.86. Additional assets encompassing ownership interests in various businesses and real estate are listed, however there has been no showing of whether such assets are readily marketable and liquid. See *Advanced Mobile Services, Inc. (New York Order)* CC Memo 2418, released February 18, 1983, at para. 32. See also *Julie P. Miner*, 52 FCC 2d 684, 685 (1975) and *Chicago Land TV Co.*, 11 FCC 2d 96, 104 (1967). Because Mintz's liquid assets are substantially less than his liabilities, we cannot credit CMT for net liquid assets for this individual.

10. Spitz's financial statement includes liquid assets of cash and certificates of deposits totalling \$675,000 with liabilities of \$162,599.87. CMT has likewise failed to demonstrate that Spitz's other business and stock assets are readily marketable and liquid. *Id.* Based on this showing we can only credit CMT with \$512,400.13 for net liquid assets. With respect to the \$5,000,000 loan from D & B Leasing, we are unable to make any favorable determination that such funding is available based upon CMT's failure to elaborate on the details of the partnership or its financial makeup.

11. Based upon our examination of CMT's skeletal financial showing, we are unable to find it financially qualified. We can only credit the previously discussed net liquid assets totalling \$512,400.13. Although we cannot credit CMT with any specific amounts for its other assets, we recognize that CMT may be able to clarify and certify the liquidity and marketability of the remaining assets that exceed the liabilities of Spitz and

Mintz to substantiate the availability of its proposed loans.³

12. *Cost Estimates.* CCCI and CMS object to CMT's cost projections as understated. The Commission in *Advanced Mobile Services, Inc.*, (Chicago Order), 91 FCC 2d 512 (1982) at para. 13, found that differences in costs will not support the designation of an issue for hearing unless the cost estimates are shown to be unreasonable on their face. The petitioners here have not met that burden, and the projected costs do not appear unreasonable. Accordingly, CMT's cost estimates will not be placed in issue.

13. *Extension of SMSA and CGSA.* Although not an issue in a pleading filed against CMT, we have determined that the SMSA and possibly the CGSA boundaries have been plotted erroneously. The SMSA, as drawn in the application, incorrectly includes a portion of Summit County which is in the Akron SMSA. Therefore, we will require that CMT file an amendment which corrects the SMSA boundary and if necessary, a correction decreasing size of the CGSA.

14. *Other Matters.* CCCI contends that CMT is not proposing a truly cellular design concept and that its cellular system will not properly reuse frequencies. We find these allegations without merit. CMT's application, at Vol. Ex. 2, contains a detailed description of its proposed cellular and frequency plan. We find that this submission adequately complies with our rules. We note that technical issues of this nature are to be examined at the comparative portion of the hearing. In addition, CCCI asserts CMT has failed to submit proper antenna sketches. Likewise, we find that this allegation is wholly unsupported and conclude that the submission by CMT in this regard complies with our rules.

CCCI Application

15. *Financial Qualifications.* CMS filed a petition to deny CCCI's application alleging that CCCI is not financially qualified. In the application, CCCI estimates its construction costs to be \$5,696,000, and its first year operating expenses, excluding interest, to be an

additional \$1,616,000, totalling \$7,312,000. To meet these costs, CCCI relies upon one or more of the following (a) private equity funds from Western Union Telegraph Co. (WJ) and four other investors for \$6.5 million; (b) a letter of credit from Citicorp for \$10 million; (c) equipment financing option from General Electric Credit Corporation (GECC); and (d) an offer by Blyth, Eastman, Paine, Webber (Blyth) to secure \$10 Million.

16. CMS argues that CCCI's equity investments do not provide adequate assurance that the funds will be available; that Citicorp's letter of credit and GECC's equipment financing option do not provide sufficient detail; and that the Blyth letter is a mere offer to raise capital. CMS also argues that CCCI failed to provide sufficient detail concerning its preoperating and first year operating expenses.

17. *Cellular Communications of Cincinnati, Inc. (Cincinnati Order).* CC Mimeo 3268, released April 1, 1983, at paras. 7-12 we extensively reviewed many of the same challenges by CMS against CCCI's financial qualifications, and will not recite again our analysis of those identical issues raised here. Based upon our conclusions in the *Cincinnati Order*, we now conclude that CCCI is financially qualified. CCCI has adequately demonstrated that it has available the reasonable assurance of financing of approximately \$6,500,000 from its shareholders and approximately \$3,999,615 from GECC for its estimated costs of \$7,332,000 and first year operating expenses. As in the *Cincinnati Order*, at para. 10, n. 4, we are including 24 months of equipment lease expenses to cover both the period of construction (assumed to be one year) and CCCI's first year of operation. We have not considered the equipment lease expenses after the first year of operation based on our prior decision in the *Buffalo Order*, at paras. 16-18, in which the Bureau concluded that it would not be necessary to inquire whether a cellular applicant will be able to operate beyond one year.

18. Concerning the \$10 million offering by Blyth, we conclude that the Blyth letter does not provide any terms or details of the offering, nor does it indicate if the financing is a public or a private offering, or whether it will debt or equity and therefore it does not meet the Commission's standards. *Chicago Order, supra*, at paras. 10-12. Also we conclude that the \$10 million letter of credit from Citibank fails to state the necessary terms to provide reasonable assurance of the funds. See *Multistate Communications, Inc. v. FCC*

(*Multistate*), 590 F.2d 1117 (D.C. Cir. 1970), cert. denied, 440 U.S. 954 (1979) and *Advanced Mobile Phone Service Inc.*, (Philadelphia Order), CC Mimeo 1882, released January 21, 1983 at para. 6.⁴

19. *Extension of CGSA.* In reviewing the application, we find that CCCI's Seville cell site extends into the Akron SMSA, which is a secondary SMSA. After reviewing the maps submitted with the application, we have concluded that the overlap proposed by CCCI is more than *de minimis*. Under the CCCI proposal, approximately 7% of the Seville cell site extends into the adjacent SMSA. The service contour extends into an area which includes Interstate Highway 76, a potential source of substantial roamer subscribers. The close proximity of the Akron market to the SMSA boundary west of Akron precludes any allowance of an extension in this area. Under these circumstances, we cannot conclude that this is the type of *de minimis* extension contemplated by the Commission. We will therefore require CCCI to submit a conforming amendment to the ALJ under the same terms applied above to MCI.

CMS Application

20. *Financial Qualifications.* In the application, CMS estimates that it will need \$6,147,000 in capital construction, other pre-operating and first year operating expenses for its cellular systems. To cover these costs, CMS relies upon a commitment from its parent, Graphic Scanning Corp. (Graphic), for \$6,900,000. In the *Chicago Order, supra*, the Commission found Graphic and its subsidiaries to be financially qualified to construct and operate the 30 cellular systems it proposed, including the Cleveland system. CCCI has not raised any substantial and material questions with respect to CMS' Cleveland application that were not thoroughly considered in the *Chicago Order*. Accordingly, we conclude that no further consideration of this issue is necessary.

21. *Extension of CGSA.* CMS' CGSA extends into the Akron SMSA from the Medina, Brecksville and Beachwood cell sites. After reviewing the maps submitted with the application, we have concluded that the overlap proposed by CMS is more than *de minimis*. Under the

³On October 21, 1982, CMT filed a petition for reconsideration concerning the return of an amendment that sought to modify its site availability and to modify its financing qualifications with a new source of financing. As petitions for reconsideration are not permitted under our rules, the petition is dismissed. See Sections 1.102, 1.106 of the rules. Acting upon our own motion, we have reviewed the CMT submission and the oppositions thereto, and shall accept as a *de minimis* change only that portion of the amendment that relates to the amplification of its site availability.

⁴The terms of the proposed bank letter from Citicorp and the stock offering proposed by Blyth are almost identical to the bank letter and stock offering that we found to be deficient in the *Cincinnati Order, supra*, at paras. 8-9. We note that for Cincinnati CCCI had obtained commitments from a different bank (Citibank) and a different stock underwriter (Shearson/American Express).

CMS proposal, approximately 13% of the Beachwood cell, 22% of the Brecksville cell and 13% of the Medina cell extend into the adjacent SMSA. Moreover, the service contours of all three cells extend into areas which include Interstate Highways 76, 77, 80, and 271, potential sources of substantial roamer subscribers. Also, the close proximity of the Akron market to the SMSA boundary west of Akron precludes any allowance of an extension in this area. Under these circumstances, we cannot conclude that this is the type of *de minimis* extension contemplated by the Commission. We will therefore require CMS to submit a conforming amendment to the ALJ within 15 days of the release date of this Order, modifying the proposed 39 dBu contour of all three cell sites and the CGSA so that they both comply with the cellular rules. The amended Medina site shall have no extension into the Akron SMSA. The three amended cell sites shall not cover any area not previously covered by the original 39 dBu contours.⁵

22. *Site availability.* CCCI contends that CMS has not demonstrated the availability of the sites proposed in its application. Between the letters of intent originally submitted and information contained in its reply pleading, CMS has adequately demonstrated site availability for all sites except the N. Olmstead, Ohio site. The letter of intent of that site was submitted in an amendment dated August 2, 1982, which was returned for having proposed changes which were considered major. Therefore, we will require CMS to file an amendment with the ALJ which confirms the availability of the N. Olmstead, Ohio site.

23. *Other technical matters.* CCCI argues that CMS failed to provide adequate antenna site sketches and failed to specify a control point. We are not persuaded by these arguments. CMS' application is in accord with standard Commission practice with regard to antenna site sketches. Finally, we have reviewed CMS' application with regard to control point information. This information was not contained in the Engineering Attachment to Item 10 on FCC Form 401, as specified in the application, but rather was contained in Exhibit IV. Accordingly, we find that

⁵ In its petition to deny, CCCI points out that the CMS application has conflicting descriptions of its CGSA. (See application, Exhibit III—Page 1, Exhibit IV—figure IV-1 and the map in Exhibit 10). CMS did not respond to this issue. Our review of CMS's application indicates three different versions of the CGSA. Since CMS is required to submit an amendment changing their CGSA and 39 dBu contours pursuant to the above paragraph, we will require CMS to include in the amendment a new map which depicts its proposed CGSA.

CMS adequately specified its control point.

GTE Application

24. GTE is the remaining applicant for Block B (wireline) in the Cleveland market under the terms of a Limited Partnership Agreement (Agreement) submitted on June 8, 1982.⁶ This Agreement is one of a series of similar agreements by AMPS, which filed applications on June 7, 1982 in 29 of the top-30 markets, and GTE, which filed in 15 of these markets, together with 18 other wireline companies proposed to settle their electrically mutually exclusive applications in 18 of the top 30 markets. Pursuant to the terms of the agreements, AMPS will operate cellular systems in fifteen markets and GTE will operate cellular systems in six markets, including Cleveland. Each partner will continue to prosecute its cellular applications in its specified markets, while the other partners to the agreements will withdraw any applications in those markets. A Limited Partnership Agreement almost identical to the Cleveland Agreement was approved by the Commission in *Advanced Mobile Phone Service, Inc., (Los Angeles Wireline Order)*, FCC 83-124, released April 26, 1983. We find that decision to be dispositive of all objections to the Agreement itself. Accordingly, we will address only those objections to GTE's application not previously considered and resolved.

25. For the most part, MCI challenges the policies adopted and reaffirmed by the Commission in the *Report and Order, supra*. These arguments constitute an untimely request for reconsideration and must be rejected. *Pittsburgh Order, supra* at para. 12; *Advanced Mobile Phone Service (Atlantic Order)*, CC Memo 4567, released June 6, 1983, para. 8. To the extent MCI raises the issue of a head start, we find that it is premature to rule on that issue now, for the reasons stated by the Commission in deferring action on similar petitions in the Chicago market. See *Chicago Order*, at para. 16.; *Atlantic Wireline Order, supra* para. 8. In addition, MCI alleges a history of anticompetitive behavior of wireline carriers generally. This argument has already been rejected as a basis for adverse action on a cellular application in the *Los Angeles Wireline Order, supra*. MCI has raised no specific allegations against any of the wireline applicants here, and we find no reason

⁶ The participants in the agreement are: GTE Mobilnet of Cleveland, Inc., general and limited partner, 85%; Advanced Mobile Phone Service, Inc., limited partner, 5.0%; and Mid-Continent Mobile Phone Corporation, limited partner, 10%.

to designate an issue regarding anticompetitive behavior.

26. *Resale.* MCI objects to the GTE application's lack of detailed information regarding resale policies and charges. GTE replies that the policy has been presented, if not detailed, and that no rules have been promulgated which require more. We agree. In the *Report and Order*, 86 FCC 2d at 510-511, the Commission prohibited carriers from filing tariffs forbidding resale. While the Commission recited the potentially favorable impact on the market of widespread resale, it did not impose any basic or comparative qualification requirement related to resale. Accordingly, GTE is in compliance with all rules and policies regarding resale. See *GTE Mobilnet of Portland, Inc. (Portland Order)*, CC Memo 4027, released May 9, 1983 para. 30.

27. *Interconnection.* MCI's petition to deny cites Section 22.913(a)(9) in arguing that GTE has failed to explain its interconnection policies. GTE's application, Exhibit 23 provides a full discussion of its interconnection proposal. For technical details the exhibit references both AT&T and GTE publications. Further, in *Advanced Mobile Phone Services, Inc. (Buffalo Order)*, CC Memo 1320, released December 14, 1982, para. 5, we stated that the Commission has not adopted a firm interconnection policy and that arrangements in the first instance should be made by intercarrier agreement subject to the wireline carrier's duty to provide reasonable and technically suitable interconnection. We note also that interconnection issues are a common concern to all prospective cellular applicants and licensees, and that these issues are currently under discussion in working groups, which include FCC staff as well as wireline and non-wireline representatives. See *Los Angeles Wireline Order* at para. 40; *Portland Order* at para. 32.

28. We therefore conclude here, as in the *Portland Order*, *Buffalo Order*, and *Los Angeles Wireline Order*, that the wireline carriers have met our requirements regarding interconnection policy, and that the petition to deny on this basis is without merit. As an additional assurance, we have taken the position that "if reasonable interconnection agreements have not been formulated by the time [the wireline carrier] files an application for a license to operate its cellular system, any grant to [the WCC] will be conditioned upon its providing reasonable interconnection." *Pittsburgh*

Order, *supra*, at n. 8, citing 89 FCC 2d at 81-82.⁷

Conclusions

29. Based on our analysis of the applications and our resolution of the contested issues in this Order, we find that the applicants are legally, technically, financially and otherwise qualified to construct and operate their proposed cellular systems, except to the extent discussed here. We are further designating an issue to determine whether Cleveland Mobile Telephone is financially qualified. Also we are requiring of all four non-wireline applicants to bring their applications into conformance with the rules as specified in this Order. We emphasize that the amendments ordered here may not be used to give the parties comparative advantage in the hearing proceeding.

30. Accordingly, It is ordered, pursuant to § 22.29 of the Commission's rules, that the Joint Request for Approval of Limited Partnership Agreement filed by GTE Mobilnet of Cleveland, Inc., and Advanced Mobile Phone Service, Inc. is granted and the accompanying Limited Partnership Agreement is APPROVED.

31. It is further ordered that the amendment to the GTE Mobilnet of Cleveland, Inc. application is accepted, that the amendment is exempted from the cut-off provisions under Section 22.31(e)(3) and (4); and that the amended GTE Application, File No. 26049-CL-P-(9)-82, is granted.

32. It is further ordered that the request for withdrawal of the application filed by Advanced Mobile Phone Service, Inc., File 26025-CL-P(3)-82, is granted and the application is dismissed.

33. It is further ordered that the authorization is conditioned upon GTE's filing an amendment to the Limited Partnership Agreement which eliminates the language contained in Section 11.1 of the Agreement, imposing restraints on the alienation of partnership interests.⁸

⁷ This authorization will be conditioned upon GTE Mobilnet's obtaining the appropriate antenna structure clearances and upon its deletion of Section 11.1 of the Limited Partnership Agreement which restricts alienation of partnership interests. See Los Angeles Wireline Order, at paras. 27-30. GTE Mobilnet will not be authorized to render service to the public during service tests even after it files FCC Form 403 for a license. Service to the public cannot commence until the covering license becomes effective. Equipment tests, however, may be conducted. GTE Mobilnet's authorization (FCC Form 403) will reflect these conditions.

⁸ The Commission will hold issuance of GTE's authorization until the amendment is received by the Mobile Services Division, Common Carrier Bureau. We also remind the partners that, pursuant to Section 212 of the Communications Act, officers

34. It is further ordered, pursuant to Section 309 of the Communications Act of 1934, as amended, that the above-captioned applications are designated for hearing in a consolidated proceeding, upon the following issues:⁹

(a) To determine whether Cleveland Mobile Telephone, Inc. (CMT) is financially qualified to construct and operate for one year its proposed cellular system;

(b) To determine on a comparative basis the geographic areas and population that each applicant proposes to serve;¹⁰ to determine and compare the relative demand for the services proposed in said areas; and to determine and compare the ability of each applicant's cellular system to accommodate the anticipated demand for both local and roamer service;

(c) To determine on a comparative basis each applicant's proposal for expanding its system capacity in a coordinated manner within its proposed CGSA in order to meet anticipated increasing demand for local and roamer service;¹¹ and

or directors of more than one carrier are required to have authorizations to hold interlocking directorships.

⁹ There are two issues that are not to be considered in the comparative hearing. The first is the financial qualifications of the applicants. Financial ability is a basic rather than a comparative qualification for cellular licensing. Report and Order, 86 FCC 2d 469, 501-02 (1981). Except for CMT, we have found all of the applicants to be financially qualified. The second issue not to be considered is the qualifications of Cellular Mobile Systems of Ohio, Inc., or its parent Graphic, to the extent that such qualifications may be affected by the issues included in the Commission's order designating certain 35 and 43 MHz paging applications for hearing. A.S.D. Answer Service, Inc., *et al.* (ASD), FCC 82-391, released August 24, 1982. Those issues will be thoroughly reviewed in that separate proceeding and should not be reargued in the context of a cellular hearing. As set forth in para. 23, *infra*, the Commission reserves the right to reexamine and reconsider the qualifications of Cellular Mobile Systems of Ohio, Inc. to hold a cellular license should ASD be resolved adversely to any of CMS' affiliate or parent companies or to any of their principals.

¹⁰ For purposes of comparison, the geographic area that an applicant proposes to serve includes that area within the proposed 39 dBu contours which, in turn, falls within the proposed Cellular Geographic Service Area and the relevant Standard Metropolitan Statistical Area. Consideration should be given to the presence of densely populated regions as well as highways and areas likely to have high mobile usage characteristics, indications of a substantial public need for the services proposed. See 86 FCC 2d at 502.

¹¹ In making this comparison, preference should be given to designs entailing efficient frequency use, including not only the applicant's plans with regard to cell-splitting and additional channels, but also the degree of frequency reuse the system will be capable of, and the applicant's ability to coordinate the use of channels with adjacent or nearby cellular systems. See 86 FCC 2d at 502-03.

(d) To determine on a comparative basis the nature and extent to the service proposed by each applicant, including each applicant's proposed rates, charges, maintenance, personnel, practices, classifications, regulations and facilities (including switching capabilities);¹²

(e) To determine, in light of the evidence adduced under the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience and necessity.

35. It is further ordered that the burden of proceeding with the introduction of evidence upon the financial qualification issue, and the burden of proof, shall be upon Cleveland Mobile Telephone, Inc.

36. It is further ordered that Cellular Communications of Cleveland, Inc., Cellular Mobile Systems of Ohio, Inc., Cleveland Mobile Telephone Inc., and MCI Cellular Telephone Co., are directed to file the conforming amendments specified in this Order within 15 days after publication of this Order in the *Federal Register* and that the date for filing rebuttal cases under Section 22.916(b)(4) of the rules is deferred pending establishment of procedural date by the Administrative Law Judge. Procedures for deciding the issues designated against Cleveland Mobile Telephone, Inc. shall be determined by the judge in the judge's discretion.

37. It is further ordered that the Separated Trial Staff (the individuals specifically designated) of the Common Carrier Bureau is made a party to the proceeding.¹³

38. It is further ordered that the applicants shall file written notices of appearances under § 22.916(b)(3) of the Commission's rules within 10 days after publication of this Order in the *Federal Register*.

¹² See 86 FCC 2d at 503 for a discussion of the relative importance of the evidence submitted under this issue.

¹³ Members of the Separated Trial Staff are non-decision making personnel and they will not participate in decision making or agency review on an *ex parte* basis in this case, either directly or through contact with other Common Carrier Bureau personnel. Any investigative or prosecuting functions will be performed by the Separated Trial Staff in connection with its role as a party to the adjudication of these cellular radio applications. All other personnel of the Common Carrier Bureau, unless identified in a subsequent order as required to be separated, are designated as decision making and they may advise the Commission as to the ultimate disposition of any appeal of an initial decision in this proceeding. See Communications Act of 1934 as amended § 409(c) (47 U.S.C. § 409(c)); Administrative Procedure Act § 554(d) (5 U.S.C. § 554(d)); Section 1.221 of the Commission's rules.

39. It is further ordered that the hearing shall be held according to the procedures specified in § 22.916 of the rules, except as otherwise noted herein, at a time and place and before an Administrative Law Judge to be specified in a later order.

40. It is further ordered that exceptions to the initial decision of the Administrative Law Judge under § 1.276 of the Commission's rules shall be taken directly to the Commission.

41. It is further ordered that, except to the extent granted here, the Petitions to Deny filed by the various parties Are Denied, and the Cellular Communications of Cleveland Motion to Strike Is Denied.

42. It is further ordered, that the Cleveland Mobile Telephone, Inc. Petition For Reconsideration Is Dismissed.

43. It is further ordered that any authorization granted to CMS as a result of the comparative hearing shall be conditioned on, and without prejudice to reexamination and reconsideration of that company's basic qualifications to hold a cellular license following a final decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.*, FCC 82-391 released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

44. It is further ordered that the GTE authorization and any other authorization granted as a result of this proceeding shall be conditioned upon obtaining of the appropriate antenna structure clearances.

45. It is further ordered that this authorization is subject to the condition that, in the event that cellular systems using the same frequency block as granted herein are authorized in adjacent territory in Canada, coordination of any of the licensee's transmitter installations which are within 45 miles of the United States-Canada border shall be required to eliminate any harmful interference that might otherwise exist and to insure continuance of equal access to the frequency block by both countries.

46. This Order is issued under Section 0.291 of the Commission's rules and *Order Delegating Authority*, FCC 82-435, released October 6, 1982, and is effective on its release date. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within the time limits specified in those Sections.

See also Rule 1.4(b)(2).

47. The Secretary shall cause a copy of this Order to be published in the **Federal Register**.

Gary M. Epstein

Chief, Common Carrier Bureau.

[FR Doc. 83-11648 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; Application for Consolidated Hearing; WFSP, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM docket No.
A. WFSP, Inc.	Kingwood, WV.	BPH-820414AH.	83-689
B. S. Dean Benson	Kingwood, WV.	BPH-820726AV.	83-690
C. Preston Communications, Inc.	Kingwood, WV.	BPH-820903AH.	83-691
D. Sandy S. Garlitz and Glenna R. Calvert, d.b.a. Buckwheat Broadcasting Company.	Kingwood, WV.	BPH-820908AJ.	83-692

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative—A, B, C, & D

2. Ultimate—A, B, C, & D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919

M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

Larry D. Eads,

Chief, Audio Services Division; Mass Media Bureau.

[FR Doc. 83-19547 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 83-722; File No. BPCT-821122KG, et al]

Intercounty Communications Corp., et al.; Hearing Designation Order

In re applications of INTERCOUNTY COMMUNICATIONS CORP., Watertown, New York; MM Docket No. 83-722, File No. BPCT-821122KG; WOMEN'S BROADCASTING OF WATERTOWN, Watertown, New York; MM Docket No. 83-723, File No. BPCT-8302117KH; For Construction Permit; Designating Applications for Consolidated Hearing on Stated Issues.

Adopted: June 30, 1983.

Released: July 15, 1983.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Intercounty Communications Corp. (Intercounty) and Women's Broadcasting of Watertown (Women's) for authority to construct a new commercial television broadcast station on Channel 50, Watertown, New York.

2. On April 29, 1983, Intercounty Communications Corp. filed a petition to dismiss and/or deny Women's application on the grounds that the site specified by Women's is not available.¹ The petitioner alleges that on December 20, 1982, it acquired an option to lease a site which is also specified by Women's. Intercounty has filed a letter for the site owner, dated April 20, 1983, stating that he would not offer an option to anyone other than Intercounty. Women's response states that the petition was not timely filed.

3. We shall treat Intercounty's pleadings as a petition to dismiss. Because it was filed on the cut-off date for filing petitions, it is clearly timely. However, we do not believe that the material before us as to the alleged unavailability of the transmitter site makes Women's application so deficient as to be unacceptable for filing. Thus, we shall deny the petition to dismiss.

¹ On June 6, 1983 Woman's filed a Response to Petition to "Deny and/or Dismiss." On June 7, 1983 Intercounty filed a Reply.

The Commission requires a reasonable assurance that a site will be available to an applicant. See, e.g., *Lorenzo M. Milam*, 4 F.C.C. 2d 610 (1966). That standard has been modified in the intervening years in some contexts. See, *George H. Cameron Communications*, 71 F.C.C. 2d 460 (1979) (a renewal applicant's site presumed available to a competing applicant for a construction permit, despite the renewal applicant's statements that it would not sell to the new applicant); *The New Continental Broadcasting*, 45 R.R. 2d 1632 (1979) (site presumed available to competitors for a deleted facility where one of the applicant purchased the deleted facilities and stated that they would not be available to other applicants). In this case, there are no existing facilities and the policy considerations underlying cases such as *Cameron* and *New Continental* do not apply with full force here. Thus, the "reasonable assurance" standard applies. We do not believe that Women's has provided a reasonable assurance that its proposed site will be available, in view of the absolute option that the landowner has given to Intercounty. Further, there is no evidence that Woman's ever had any contact with the land owner or attempted in any way to negotiate an agreement in case Intercounty is not the successful applicant. Accordingly, an appropriate issue will be specified. *El Camino Broadcasting Corp.*, 12 F.C.C. 2d 25 (rev. Bd. 1968) to the extent that the petition to dismiss seeks the addition of issues, it will be considered as a predesignation motion to specify issues and will be dismissed. *Processing of Contested Broadcasting Applications*, 72 F.C.C. 2d 202 (1970).

4. Section 73.636(a)(1) of the Commission's Rules states that no license for a television broadcast station shall be granted to any party if such party directly or indirectly controls one or more AM and/or FM broadcast stations and the grant of such license will result in the Grade A contour of the proposed television station encompassing the entire community of license of the AM and/or FM broadcast station or will result in the predicted 1mV/m contour of the FM broadcast station encompassing the entire community of the proposed television station. Note 8 to this rule provides, *inter alia*, that applications for UHF television facilities " * * * will be handled on a case-by-case basis in order to determine whether common ownership operation or control of the stations in question would be in the public interest." Grover H. Hubbell, President, Treasurer and the sole

stockholder of Intercounty is 73 percent owner of Station WATN(AM), Watertown, New York and 73 percent owner of the permittee of FM Station WTOG(FM), Carthage, New York. The 1mV/m contour of Station WTOG(FM) encompasses the entire community of Watertown. However, Mr. Hubbell has represented to the Commission that he will divest his interest in Station WATN(AM), Watertown, New York and Station WTOG(FM), Carthage, New York, prior to the commencement of operation on Channel 50, Watertown, New York, if he is the successful applicant. Accordingly, any grant of a construction permit to Intercounty will be conditioned upon Mr. Hubbell's divestiture of all his interest in and connection with, the two radio stations.

5. An applicant seeking authority to construct a commercial television station is required to afford equal employment opportunity to all qualified persons. See § 73.2080 of the Commission's Rules and Section VI, FCC Form 301. Pursuant to this requirement, an applicant who proposes to employ five or more full-time station employees must establish a program of practices to assure equal employment opportunities. Although Intercounty intends to employ at least five full-time employees, it has failed to submit a complete equal employment opportunity proposal. Intercounty did not submit a response to elements I-IV of the guidelines to the model EEO program required by FCC Form 301. Therefore, we cannot conclude that applicant has complied with Section 73.2080 and that its EEO program adequately meets the guidelines delineated in that rule. Accordingly, Intercounty will be required to submit its complete EEO proposal to the presiding Administrative Law Judge within 20 days after this Order is released.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding before an Administrative Law Judge at a time and place to be

specified in a subsequent Order, upon the following issues:

(1) To determine, with respect to Women's Broadcasting of Watertown, whether there is a reasonable assurance that its proposed transmitter site will be available.

(2) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That, in the event of a grant of Intercounty Communications Corp.'s application, it will be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Grover Hubbell has divested himself of all interest in, and connection with Stations WATN(AM), Watertown, New York, and WTOG(FM), Carthage, New York.

9. It is further ordered, That the Petition to Dismiss filed by Intercounty is denied to the extent indicated in paragraph three and is dismissed in all other respects.

10. It is further ordered, That Intercounty Communications Corp., shall submit a complete EEO proposal to the presiding Administrative Law Judge within 20 days after this Order is released.

11. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

12. It is further ordered, That the applicants herein shall pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 83-19546 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 83-682; File No. BPTC-820706KE et al.]

Media South Broadcasting Corp. et al.; Hearing Designation Order

In re applications of Media South Broadcasting Corp., Shreveport, Louisiana; MM Docket No. 83-682; File No. BPTC-820706KE; Great Central Communications Company, Shreveport, Louisiana; MM Docket No. 83-683; File No. BPTC-820712KH; Ware Communications, Inc.,¹ Shreveport, Louisiana; MM Docket No. 83-684; File No. BPTC-820909KE; Shreveport Metro Communications 33, Ltd., Shreveport, Louisiana; MM Docket No. 83-685; File No. BPTC-820909KP; Great Southern TV Broadcasting,² Bossier City, Louisiana; MM Docket No. 83-686; File No. BPTC-820909KQ; Kirk Godfrey, et al d/b/a Godfrey and Associates, Shreveport, Louisiana; MM Docket No. 83-687; File No. BPTC-820909KR; James Thornton and Ramon Diaz d/b/a Shreveport Television Company, Shreveport, Louisiana; MM Docket No. 83-688; File No. BPTC-820909KS; For Construction Permit: Designating applications for consolidated hearing on stated issues.

Adopted: June 27, 1983.

Released: July 18, 1983.

By the Chief, Mass Media Bureau.

Hearing Designation Order

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 33, Shreveport, Louisiana; a petition to dismiss, filed by Media South Broadcasting Corp.,³ against Great Central Communications Company, Ware Communications, Inc., Great Southern TV Broadcasting, and Godfrey and Associates; an informal objection filed by the Association of Maximum Service Telecasters, Inc., against Great Southern TV Broadcasting; petitions for leave to amend, filed by Media South Broadcasting Corp., and related pleadings.

2. Great Southern TV Broadcasting specifies Bossier City as its community of license.⁴ All of the other applicants

specify Shreveport as their community of license. Consequently, it will be necessary to determine, pursuant to Section 307(b) of the Communications Act of 1934, as amended, whether a new station in Bossier City or Shreveport would better provide a fair, efficient and equitable distribution of television service. If the Section 307(b) issue is not determinative (the applicants would serve substantial areas in common), all applicants can be considered under the comparative issue.

3. Great Central Communications Company's (Great Central) proposed site is 1 mile short of the required 175 mile separation to Station KNBN-TV, Channel 33, Dallas, Texas; Great Southern TV Broadcasting's (Great Southern) proposed site is 8 miles short of the required 55 mile separation to vacant Channel 18, El Dorado, Arkansas; and Godfrey and Associates' (Godfrey) proposed site is 3 miles short of the required 55 mile separation to vacant Channel 34, Texarkana, Texas. The other four applicants have specified sites that meet the minimum separation requirements.⁵ Accordingly, an issue will be specified with respect to the short-spacing of the proposed sites of Great Central, Great Southern and Godfrey.

4. It has not been determined that the tower heights and locations proposed by Media South Broadcasting Corp., Great Central Communications Company, Ware Communications, Inc., Shreveport Metro Communications 33, Ltd., and Shreveport Television Company⁶ would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

Media South Broadcasting Corp. (Media South)⁷

5. On January 7, 1983, Media South petitioned for leave to amend to report

on file prior to the effective date of the change. Consequently, the "15 mile rule" is still in effect for this applicant and Channel 33 is available for use in Bossier City, *Suburban Community Policy*, 55 R.R. 2d 661, 698 (1983).

¹ On November 5, 1982, the Association of Maximum Service Telecasters, Inc. (AMST) filed a "statement" with respect to Great Southern's application pointing out that Great Southern's proposed transmitter site is about 7.4 miles short of the required 75 mile separation to the reference point for Channel 18, El Dorado, Arkansas. In its statement, AMST takes no position as to the merits of Great Southern's application; however, it urges the Commission to take no action which would result in such short-spacing.

² The Commission has not received a copy of the Federal Aviation Administration's determination for Shreveport Metro's proposal.

³ Media South filed two amendments to its application on November 9, 1982. One amendment corrected information submitted by a previous amendment. The other reported information required by § 1.85 of the Commission's Rules.

that Vincent Messina, 12.5 percent shareholder of Multi Media Communications Corporation (MMCC), which has a 55 percent interest in Media South, has resigned as a director and relinquished all of his stock interests in MMCC. On January 21, 1983, Great Southern TV Broadcasting (Great Southern) filed an opposition to the petition, alleging that Media South's amendment should be rejected as untimely filed pursuant to § 1.85 of the Commission's Rules. Media South states that Mr. Messina was subject to an order of confidentiality not to disclose his pleading guilty to a criminal information and that the order was not lifted until one week before Media South filed its amendment. Although Mr. Messina could have resigned earlier without explanation, such action by an active principal may have breached the confidentiality order. Since Media South's amendment was filed within 30 days after the order of confidentiality was lifted it will be considered as timely filed pursuant to Section 1.85 of the Rules.

6. Great Southern also states that it is unclear from Media South's amendment whether or not MMCC's 55 percent interest in Media South abates pro rata with Mr. Messina's departure. If so, the removal of Messina's 12.5 percent of MMCC's interest in Media South would leave MMCC with only a 48.13 percent interest in Media South, thus effectuating a transfer of control. We must reject this contention. Mr. Messina's interest was in MMCC, not Media South. MMCC's interest in Media South was not modified by Mr. Messina's resignation. *Houma Broadcasters, Inc.*, 47 RR 2d 333 (1980).

7. Great Southern further questions the arrangement that was being made for the purchase of Mr. Messina's stock by another shareholder of MMCC because the end result may give Media South a comparative advantage. On February 8, 1983, Media South petitioned for leave to amend to show that the stock was acquired by Martin Firestone, which increases his holding in MMCC from 25 percent to 37.5 percent. Media South has stated that Mr. Firestone is not proposed for integration in the day-to-day management and operation of the proposed station. Accordingly, no comparative advantage accrues to Media South as a result of the amendment. Great Southern's petition will be denied. Media South's petitions

Although the amendments were not timely filed ("B" cut-off date was November 5, 1982), they will be accepted for § 1.85 purposes only.

¹ Applicant amended its application on May 20, 1983, to change its name from Seattle Community Television Network and to reflect the election of additional officers. The amendment is accepted for § 1.85 purposes only.

² Applicant amended its application on November 5, 1982, to change its name from Drew and Kemmerly, a partnership.

³ Media South Broadcasting Corp.'s petition to dismiss, is in essence, a pre-designation petition to specify issues. Such petitions are no longer permitted; therefore, it will be dismissed. *Processing of Contested Broadcasting Applications*, 72 F.C.C. 2d 202 (1979).

⁴ Channel 33 is assigned to Shreveport, Louisiana. Bossier City is located within 15 miles of Shreveport. Although the Commission has abolished its "15 mile rule", Great Southern's application was

will be granted and its amendments will be accepted.

8. Section II, Item 10, FCC Form 301, inquires whether documents, instruments, agreements or understandings for the pledge of stock of a corporate applicant, as security for loans or contractual performance, provide that (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of stockholder rights by the purchaser at such sale, the prior consent of the Commission (pursuant to 47 U.S.C. 310 (d)) will be obtained. A negative response to this question requires a full explanation. Media South answered "no" to item 10; however, it did not submit the required explanation. Media South will be required to submit its explanation to the presiding Administrative Law Judge within 20 days after this Order is released.

Ware Communications, Inc. (Ware)

9. Section II, item 3(a), FCC Form 301 inquires whether the applicant is in compliance with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interest of aliens and foreign governments. Ware's response indicates that it may not be in compliance with Section 310 of the Act. Ware will be required to submit clarification of its response to the presiding Administrative Law Judge within 20 days after this Order is released.

10. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Ware states that it is presently negotiating for finances. Accordingly, the applicant will be given 20 days from the release date of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the presiding Administrative Law Judge in the manner called for in revised Section III Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be

designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether the proposals of Great Central Communications Company, Great Southern TV Broadcasting and Godfrey and Associates are consistent with the minimum mileage separation requirements of § 73.610 of the Commission's Rules, and if not, whether circumstances exist which would warrant a waiver of the rule.

2. To determine with respect to Media South Broadcasting Corp., Great Central Communications Company, Ware Communications, Inc., Shreveport Metro Communications 33, Ltd. and Shreveport Television Company, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

3. To determine the areas and populations that would receive Grade B or better service from the proposals and the availability of other Grade B services to such areas and populations.

4. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of television service.

5. In the event it is concluded from Issue 4, above, that a choice among applicants should not be based solely on considerations relating to Section 307(b), to determine which proposal would, on a comparative basis, best serve the public interest.

6. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, That the petition to dismiss filed against Great Central Communications Company, Ware Communications Inc., Great Southern TV Broadcasting and Godfrey and Associates by Media South Broadcasting Corp. IS DISMISSED.

14. It is further ordered, That the Association of maximum Service Telecasters IS MADE A PARTY RESPONDENT with respect to issue 1.

15. It is further ordered, That Great Southern TV Broadcasting's Opposition to Petition for Leave to Amend filed

against Media South Broadcasting Corp. IS DENIED.

16. It is further ordered, That Media South Broadcasting Corp.'s Petitions for Leave to Amend of January 7, 1983, and February 8, 1983, ARE GRANTED and the amendments ARE ACCEPTED.

17. It is further ordered, That Media South Broadcasting Corp. shall submit its explanation for answering "no" to Section II, item 10, FCC Form 301, January, 1982, to the presiding Administrative Law Judge within 20 days after this Order is released.

18. It is further ordered, That Ware Communications, Inc., shall submit a statement clarifying its response to Section II, item 3(a), FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

19. It is further ordered, That Ware Communications, Inc., shall submit a financial certification in the form required by Section III, FCC Form 301, within 20 days after this Order is released or advise the Administrative Law Judge that certification cannot be made, as may be appropriate.

20. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 2.

21. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

22. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 83-19544 Filed 7-19-83; 8:45 am]

BILLING CODE 8712-01-M

[Docket 83-525]**Meeting of Working Group in Caribbean Region**

July 13, 1983.

Members of the Common Carrier Bureau Staff will convene a meeting of the working group in the Caribbean Planning Process (CC Docket 83-525) in Room 856, FCC, 1919 M Street, NW., Washington, D.C. at 10:00 a.m. on Thursday, July 21, 1983. The meeting will be open to the public and all interested persons are invited to participate.

The agenda will include responses to Appendix I including traffic forecasts.

For additional information, please contact Margot Bester, (202) 632-4047.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 83-19541 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

Meeting To Be Held To Discuss Deferred North Atlantic Facilities Planning Issues

July 13, 1983.

Members of the Common Carrier Bureau Staff will convene a meeting of all interested persons to discuss a timetable and procedures for updating traffic forecasting and other planning information and for addressing the North Atlantic facilities planning issues deferred by the Commission's Report and Order in CC Docket No. 79-184, released January 16, 1981. Policies for Overseas Common Carriers, 84 F.C.C. 2d 760 (1981). The issues deferred by the Report and Order include the specific configuration of the North Atlantic facilities to be placed in service during the 1985-1992 portion of the planning period, routing, restoration of service following failure of a major North Atlantic transmission system and North Atlantic facilities requirements for the 1992-1995 portion of the planning period.

This meeting will be held in Room 856, 1919 M Street, NW., Washington, D.C. on Friday, July 22, 1983 at 10:00 a.m. The meeting will be open to the public and all interested persons are invited to participate.

For additional information, contact Robert Gosse, (202) 632-4047.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 83-19539 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

[Report No. I-2075]**Consolidated Capitalization Plan for 1983-1985 of the Communications Satellite Corporation (Comsat); Memorandum Opinion and Order; Petition for Reconsideration**

July 12, 1983.

I-S-P-83-002 Communications Satellite Corporation (Comsat) Petition for partial reconsideration of Memorandum Opinion and Order authorizing Comsat to implement its consolidated Capitalization Plan for 1983-1985. FCC 83-273 (adopted June 2, 1983; released June 13, 1983); 48 FR 28716 (1983). Petition filed July 8, 1983. Pursuant to Section 1.429 of the Commission's Rules and Regulations, 47 CFR 1.429 (1982), public notice of this petition shall be published in the **Federal Register**. Oppositions may be filed within 15 days after the date of such publication. Replies may be filed 10 days thereafter.

For further information contact: Glen E. deChabert (202) 632-4047.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 83-19540 Filed 7-19-83; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM**Applications; Formation of Bank Holding Companies; Capital City Bank Group, Inc., et al.**

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

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

1. **Capital City Bank Group, Inc.**, Tallahassee, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Capital City First National Bank of Tallahassee, Capital City Second National Bank, Industrial National Bank and City National Bank, all of Tallahassee, Florida; Havana State Bank, Havana, Florida; and First National Bank of Jefferson County, Monticello, Florida. Comments on this application must be received not later than August 15, 1983.

2. **First Forest Corporation**, Forest, Mississippi; to become a bank holding company by acquiring at least 80 percent of the voting shares of Bank of Forest, Forest, Mississippi. Comments on this application must be received not later than August 15, 1983.

B. Federal Reserve Bank of Chicago
(Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. **ISB Financial Corp.**, Iowa City, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to Iowa State Bank and Trust Company, Iowa City, Iowa. Comments on this application must be received not later than August 15, 1983.

2. **Wauwatosa Bancorp, Inc.**, Wauwatosa, Wisconsin; to become a bank holding company by acquiring 80 percent or more of the voting shares of Wauwatosa State Bank, Wauwatosa, Wisconsin. Comments on this application must be received not later than August 15, 1983.

C. Federal Reserve Bank of St. Louis
(Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. **Libsab Bancorp, Inc.**, Mayfield, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Liberty Savings Bank, Mayfield, Kentucky. Comments on this application must be received not later than August 3, 1983.

Board of Governors of the Federal Reserve System, July 14, 1983.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 83-19500 Filed 7-19-83; 8:45 am]

BILLING CODE 6210-01-M

Applications; Acquisition of Bank Shares by Bank Holding Companies; North Fork Bancorporation, Inc. et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are

considered in acting on the applications are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of New York
(A. Marshall Puckett, Vice President) 33
Liberty Street, New York, New York
10045:

1. *North Fork Bancorporation, Inc.*, Mattituck, New York; to acquire not more than 13.97 percent of the voting shares or assets of the Bridgehampton National Bank, Bridgehampton, New York. Comments on this application must be received not later than August 15, 1983.

B. Federal Reserve Bank of Dallas
(Anthony J. Montelaro, Vice President)
400 South Akard Street, Dallas, Texas
75222:

1. *Baylor Bancshares, Inc.*, Seymour, Texas; to acquire 81 percent of the voting shares or assets of Matador Bancshares, Inc., Matador, Texas a bank holding company with respect to The First State Bank, Matador, Texas. Comments on this application must be received not later than August 15, 1983.

Board of Governors of the Federal Reserve System, July 14, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-19561 Filed 7-19-83; 8:45 am]

BILLING CODE 6210-01-M

Applications—Bank Holding Companies: Proposed De Novo Nonbank Activities; Chemical New York Corp. et al.

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their

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

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. Federal Reserve Bank of New York
(A. Marshall Puckett, Vice President) 33
Liberty Street, New York, New York
10045:

1. *Chemical New York Corporation*, New York, New York (investment advisory activities; New York): To engage through its subsidiary, Favia, Hill & Associates, Inc., in activities which may be carried on by an investment adviser, including offering portfolio investment advice to individuals, corporation, governmental entities and other institutions on both a discretionary and a non-discretionary basis. These activities would be conducted from an office in New York City serving the States of New York, New Jersey and Connecticut. Comments on this application must be received not later than August 15, 1983.

2. *Chemical New York Corporation*, New York, New York (investment advisory activities; New York): To engage through its subsidiary, The Investment Group, Inc., in activities which may be carried on by an investment advisor, including offering portfolio investment advice to individuals, corporation, governmental entities and other institutions on both a discretionary and a non-discretionary basis. These activities would be conducted from an office in New York City serving the States of New York, New Jersey and Connecticut. Comments on this application must be received not later than August 15, 1983.

Board of Governors of the Federal Reserve System, July 14, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-19562 Filed 7-19-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicare Program; Economic Index for Physicians' Services for the Period July 1, 1983, Through June 30, 1984

Correction

In FR Doc. 83-17532 beginning on page 30459 in the issue of Friday, July 1, 1983, make the following corrections:

1. On page 30459, column three, **SUMMARY**, line one, insert "notice" between "This" and "sets".
2. On page 30459, column three, **FOR FURTHER INFORMATION CONTACT** should read "Paul Riesel (301) 597-1843, or Joseph Romano (301) 594-1023."
3. On page 30460, column one, paragraph one, "42 CFR 404.504" should read "42 CFR 405.504".

BILLING CODE 1505-01-M

Health Resources and Services Administration

Application Announcement for Grants for Graduate Training in Family Medicine

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for grants for Graduate Training in Family Medicine are being accepted under the authority of Section 786(a) of the Public Health Service Act, as amended.

Section 786(a) authorizes the Secretary to make grants to public or nonprofit private hospitals, accredited schools of medicine or osteopathy, and other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating or participating in approved graduate training programs in the field of family medicine.

To receive support, programs must meet the requirements of regulations published in the *Federal Register* on October 16, 1980, Vol. 45, No. 202.

In the funding of approved applications, preference will be given to projects in which:

1. Substantial training experience is in settings which exemplify interdependent utilization of physicians and physician

assistants and/or nurse practitioners; and/or

2. Substantial portions of the training program are conducted in a primary medical manpower shortage area which is part of a health manpower shortage area(s) designated under Section 332 of the Public Health Service Act or in an Area Health Education Center, funded at least in part, under Section 781 of the Act.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-15), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Rm. 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Should additional programmatic information be requested, please contact: Primary Care Graduate, Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Rm. 4C-04, Rockville, Maryland 20857, Telephone: (301) 443-6820.

The deadline date for receipt of applications is August 29, 1983. Applications sent by mail will be considered if postmarked on or before August 29 and received on or before September 6, 1983. The term "postmark" means a printed, stamped, or otherwise placed impression, exclusive of a postage meter impression, that is readily identifiable as having been affixed on the date of mailing by an employee of the U.S. Postal Service. All hand delivered applications must be received on or before August 29.

Approximately \$2.5 million is expected to be available for competing awards for Fiscal Year 1984. Application materials are being made available without final action on the related Fiscal Year 1984 budget, therefore, adjustments and other changes may be necessary at a later date.

This program is listed at 13.379 in the *Catalog of Federal Domestic Assistance*. Applications submitted in response to this announcement are not subject to review by State and areawide clearinghouses under the procedures in Office of Management and Budget Circular No. A-95.

Dated: July 13, 1983.

Robert Graham, M.D.,
Administrator, Assistant Surgeon General.

[FR Doc. 83-19567 Filed 7-19-83; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

California; Amendment of Wilderness Inventory Decisions

AGENCY: Office of the Secretary, Interior.

ACTION: Amendment of Wilderness Inventory Decisions.

SUMMARY: This notice designates 10 areas totaling 146,204 acres for wilderness consideration pursuant to Section 202 of the Federal Land Policy and Management Act of 1976 or for consideration for other forms of protective management. This notice also amends previous wilderness inventory decisions for lands administered by the California State Office of the Bureau of Land Management, deleting all or part of 12 wilderness study areas. The total area deleted from wilderness study area status under Section 603 of the Act is 144,573 acres.

EFFECTIVE DATE: July 20, 1983.

FOR FURTHER INFORMATION CONTACT: California State Director, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, telephone (916) 484-4636.

Amendment of Wilderness Inventory Decisions

This notice completes the action necessary with respect to wilderness study areas administered by the California State Office of the Bureau of Land Management to bring the Bureau's wilderness review into compliance with recent decisions of the Interior Board of Land Appeals. Previous action on this subject was published in the *Federal Register* on December 30, 1982 [47 FR 58372].

Section 1. Consideration for Protective Management

The 10 areas listed in Table 1, totaling 146,204 acres, have been designated for wilderness consideration pursuant to Section 202 of the Federal Land Policy and Management Act of 1976 or for consideration for other forms of protective management. These areas were formerly identified as wilderness study areas under Section 603 of the Act. They were deleted from that category on December 30, 1982, or they are deleted by this decision.

Section 2. Split-Estate Lands

A. "Split-estate" lands are lands where the Federal Government owns the surface but where the subsurface mineral estate is nonfederally owned. Split-estate lands were improperly

identified for wilderness study under Section 603 of the Federal Land Policy and Management Act of 1976; that error is corrected by this decision.

B. With the deletion of split-estate lands from the following wilderness study area, there is no roadless area having 5,000 acres or more of contiguous public lands. Therefore, this area is deleted in its entirety from wilderness study area status, effective upon publication of this decision in the *Federal Register*.

Wilderness Study Area Name: Santa Rosa Mountains

Number: CDCA-341

Acreage: 68,051

Counties: Riverside and San Diego

C. The wilderness study areas listed in Table 2 are modified, effective upon publication of this decision in the *Federal Register*, to delete scattered tracts of split-estate lands within the wilderness study area boundaries. In these wilderness study areas, only the indicated acreage of split estate is eliminated from wilderness study. The remainder of the WSA remains under wilderness study, and the boundary of the wilderness study area has not been changed. The deletions do not affect the Bureau of Land Management's previously adopted conclusions as to the presence of wilderness characteristics in the remaining wilderness study area.

D. The boundaries and acreages of the wilderness study areas listed in Table 3 are modified, effective upon publication of this decision in the *Federal Register*, to delete split estate lands and certain other public lands. The deleted lands consist of: (1) Scattered tracts of split estate located within wilderness study areas, (2) tracts of split estate located on the periphery of wilderness study areas, and (3) tracts that are not split estate but are isolated from the main body of the wilderness study area by deletion of the split estate and no longer qualify for wilderness study under Section 603 of the Federal Land Policy and Management Act of 1976 because they are smaller than 5,000 acres. In these wilderness study areas, only the indicated acreage is eliminated from wilderness study. The remainder of the wilderness study area remains under wilderness study, and the deletions do not affect the Bureau of Land Management's previously adopted conclusions as to the presence of wilderness characteristics in the remaining wilderness study area.

E. In the following wilderness study area, deletion of split-estate lands affects the Bureau of Land Management's previously adopted

conclusions as to the presence of wilderness characteristics in the remaining lands. The results of the re-inventory of this area are presented below. The deletions described here take effect upon publication of this decision in the **Federal Register**.

Wilderness Study Area Name: Orocopia Mountains

Number: CDCA-344

County: Riverside

Old Wilderness Study Area Acreage: 44,195

This wilderness study area is deleted in its entirety.

Within the Orocopia Mountains wilderness study area are 19,000 acres of split estate. Deletion of the split estate creates a number of small, isolated parcels of non-split estate, each containing less than 5,000 acres and therefore not qualifying for wilderness study under Section 603 of the Federal Land Policy and Management Act of 1976; the total acreage of these isolated parcels is 19,625.

The remaining 5,570 acres were re-inventoried. The re-inventoried tract offers outstanding opportunities for solitude and for primitive and unconfined recreation. However, the tract is not in an essentially natural condition; the imprint of man's work is substantially noticeable.

Accordingly, the following lands are deleted from wilderness study area status:

	Acres
Split estate	19,000
Isolated parcels smaller than 5,000 acres	19,625

	Acres
Re-inventoried tract	5,570
Total	44,195

Section 3. Contiguous Areas

The following area is deleted from wilderness study area status, effective upon publication of this decision in the **Federal Register**. This area was improperly identified for wilderness study under Section 603 of the Federal Land Policy and Management Act of 1976. It was found not to have wilderness characteristics by itself. (Two separate parcels totaling 2,480 acres, formerly considered part of this wilderness study area, were deleted by the decision of December 30, 1982, 47 FR 58372. This decision deletes the remainder of the wilderness study area.)

Wilderness Study Area Name: Paiute

Number: CA-010-060

Wilderness Study Area Acreage: 5,120

County: Inyo

Section 4. Corrections

The decision of December 30, 1982 (47 FR 58372) cited an incorrect acreage figure of 1,590 acres for Carson Iceberg wilderness study area (CA-010-105B), which was deleted by that decision. The figure should have been 1,040 acres. Similarly, the acreage figure of 604 acres for Yolla Bolly wilderness study area (CA-030-501) should have been 640 acres.

Section 5. Management of Deleted Lands

All lands administered by the Bureau of Land Management's California State Office deleted from wilderness study status by this decision in Sections 2 and

3 and by the decision issued on December 30, 1982 (47 FR 58372) and not designated for further wilderness consideration in Table 1 of this notice are hereby released from management restrictions to protect their wilderness suitability. Of these lands, 131,331 acres are being considered for designation as areas of critical environmental concern, "Class L (Limited Use)" or various categories and will be managed to protect the identified natural values. In addition, 1,920 acres of split-estate lands in the Castle Peaks (CDCA-266) and Nopah Range (CDCA-150) wilderness study areas will be managed in accordance with the California Desert Conservation Area Plan as "Class L (Limited Use)" areas.

The remaining 119,535 acres will be managed for the full range of multiple uses other than wilderness and in conformance with existing land use plans and regulations for those areas. Among these lands are 5,152 acres formerly part of the King Range wilderness study area (CA-050-112), which will be managed in accordance with the King Range National Conservation Area Act (Public Law 91-476) and Sections 302 and 602 of the Federal Land Policy and Management Act of 1976, and 27,645 acres in the California Desert Conservation Area, which will be managed in accordance with Sections 302 and 601 of the Federal Land Policy and Management Act of 1976.

This is a final decision of the Department of the Interior and is not subject to appeal under 43 CFR Part 4.

Garrey E. Carruthers,

Assistant Secretary.

July 14, 1983.

TABLE 1.—AREAS BEING CONSIDERED FOR PROTECTIVE MANAGEMENT

Area name	Number	Acreage	County	Category ¹
Benton Range	CA-010-077	4,052	Mono	Wilderness
High Rock Canyon	CA-020-913B	695	Washoe	ACEC, various
East Fork High Rock Canyon	CA-020-914/NV-020-006A	1,920	Washoe/Humboldt	Do.
Tunnel Ridge	CA-030-402	4,623	Trinity	Wilderness
Pinnacles Wilderness Contiguous	CA-040-303	5,838	Monterey/San Benito	Do.
Agua Tibia	CA-060-002	360	Riverside	Do.
Bristol/Granite Mountains	CDCA-256	11,200	San Bernardino	ACEC, various
Santa Rosa Mountains	CDCA-341	68,051	Riverside/San Diego	Do.
Mecca Hills	CDCA-343	5,280	Riverside	Various
Orocopia Mountains	CDCA-344	44,195	do.	Class L, various
Total (10 areas)		146,204		

¹ In this table "wilderness" denotes wilderness consideration under Section 202 of FLPMA; ACEC denotes consideration for Areas of Critical Environmental Concern; Class L denotes consideration for management under "Class L (Limited Use)" status in accordance with the California Desert Conservation Area Plan; and "various" denotes consideration for various forms of protective management other than wilderness designation.

TABLE 2.—MODIFIED WILDERNESS STUDY AREAS—SPLIT ESTATE DELETED

Wilderness study area name	Number	Old wilderness study area acreage	Acres split estate	Revised wilderness study area acreage	County
East Fork High Rock Canyon	CA-020-914/NV-020-006A	53,920	1,920	52,000	Washoe/Humboldt
Frog Creek	CDCA-163	9,225	640	8,585	Kern
Bristol/Granite Mountains	CDCA-256	83,406	11,200	72,206	San Bernardino

TABLE 2.—MODIFIED WILDERNESS STUDY AREAS—SPLIT ESTATE DELETED—Continued

Wilderness study area name	Number	Old wilderness study area acreage	Acres split estate	Revised wilderness study area acreage	County
Castle Peaks	CDCA-266	36,239	1,280	34,959	Do
Total (4 areas)			15,040		

TABLE 3.—MODIFIED WILDERNESS STUDY AREAS—BOUNDARY CHANGED TO DELETE SPLIT ESTATE

Wilderness study area name	Number	Old wilderness study area acreage	Acres split estate	Acres non-split estate deleted	Revised wilderness study area acreage	County
Sinkard	CA-010-105/NV-030-531	6,760	410	0	6,350	Mono/Alpine
High Rock Canyon	CA-020-913B	33,965	665	0	33,300	Washoe
King Range	CA-050-112	36,861	4,536	616	31,709	Humboldt
Nopah Range	CDCA-150	109,701	640	0	109,061	Inyo
Mecca Hills	CDCA-343	15,865	3,840	1,440	10,385	Riverside
Total (5 areas)			10,111	2,056		

[FR Doc. 83-19525 Filed 7-19-83; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service**Endangered Species Permit; Receipt of Applications; Arizona Cactus and Succulent Research, Inc., et al.**

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 2-10697

Arizona Cactus and Succulent Research, Inc., Bisbee, AZ

The applicant requests a permit to take (collect) up to 6 specimens of any endangered species of cactus found on the Navajo Reservations for the purpose of scientific research.

PRT 2-10740

Dr. Howard Shellhammer—San Jose St. Univ., San Jose, CA

The applicant requests a permit to take salt marsh harvest mice (*Reithrodontomys raviventris*) for scientific research. Requested activities include capture, mark, release and recapture.

PRT 2-10761

Frank M. Thompson, Inc., Bradenton, FL

The applicant requests a permit to purchase in foreign commerce and import one pair of captive-born mandrills (*Pipo sphinx*) from the Wassenaar Zoo, the Netherlands, for enhancement of propagation.

PRT 2-10710

Paul H. Bass and M. Ronald Krongold, Miami, FL

The applicant requests a permit to

purchase in foreign commerce and import one male and three female orangutans (*Pongo pygmaeus abelii*) from Wassenaar Zoo, the Netherlands, for placement at the Metro Zoo, Miami, FL, for enhancement of propagation or survival of the species.

PRT 2-10749

Erik Heikkila, Minneapolis, MN

The applicant requests a permit to purchase in interstate commerce one male captive-born margay (*Felis wiedi*) from Marge Sparrow, San Lorenzo, CA, for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) in Room 601, 1000 North Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish and Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: July 15, 1983.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 83-19612 Filed 7-19-83; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permits Issued for the Months of May and June 1983

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to

Section 10 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539. Each permit issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Additional information on these permit actions may be requested by contacting the Federal Wildlife Permit Office, P.O. Box 3654, Arlington, VA 22203, telephone (703/235-1903) or by appearing in person at the Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 601, Arlington, VA, between the hours of 9:00 a.m. and 3:00 p.m. weekdays.

MAY 1983

California State University	2-10291	05-26
Henry Doorly Zoo	2-10219	05-09
Indianapolis Zoo Society	2-10221	05-09
International Crane Foundation	2-6303	05-09
Knoxville Zoo Park	2-10209	05-11
Lafayette Zoo Park	2-10013	05-05
New York Zoological Society	2-10175	05-11
New York Zoological Society	2-10220	05-09
New York Zoological Society	2-10224	05-11
Oklahoma City Zoo	2-10222	05-12
Parsons, William J.	2-10072	05-23
Peterson, John	2-9959	05-11
Thompson, Dale R.	2-10052	05-23
Zoological Society of San Diego	2-9955	05-09
Zoological Society of San Diego	2-9956	05-09
Zoological Society of San Diego	2-10162	05-03

JUNE 1983

Bio. Educational Films	2-10353	06-07
Cook, James C.	2-10465	06-24
DuCote, S. Daniel	2-10446	06-23
Environmental Quality Standards	2-10196	06-08
Foreman, Dr. Kerry	2-10362	06-14
International Animal Exchange	2-10341	06-02
International Animal Exchange	2-10343	06-14
Lincoln Park Zoo	2-10351	06-02

Lincoln Park Zoo	2-10230	06-09
Oregon Department of Fish and Game	2-10163	06-09
San Francisco Bay National Wildlife Refuge	2-10255	06-14
Seelay, Paul Nelson	2-10276	06-08
Turquoise Avianis	2-9973	06-13
Woodland Park Zoo	2-10311	06-02
Woodland Park Zoo	2-10314	06-07
Woodland Park Zoo	2-10315	06-07
Zoological Society of San Diego	2-10316	06-02

Dated: July 14, 1983.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 83-19613 Filed 7-19-83; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Availability of Managment Framework Plan Amendment

AGENCY: Bureau of Land Management, Las Cruces District, New Mexico, Interior.

ACTION: Notice of availability of Management Framework Plan Amendment/Environment Assessment.

SUMMARY: The U.S. Department of the Interior, Bureau of Land Management has prepared a Management Framework Plan Amendment including an Environment Assessment (MFPA/EA) concerning the proposed withdrawal of the public land and Federal subsurface mineral estate in the New Mexico Department of Game and Fish Red Rock Wildlife Experimental Area from all forms of appropriation under the public land laws including the mining law, but not including the mineral leasing laws. The purpose of the proposed action is to protect the breeding habitat of the desert bighorn sheep, a state listed endangered species.

Copies of the MFPA/EA are available at the Las Cruces District Office, 317 North Main, P.O. Box 1420, Las Cruces, New Mexico 88004, telephone 505-524-8551, FTS 571-8312.

DATE: Written comments on the MFPA/EA must be received in the Las Cruces District Office no later than 30 days after publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ed Webb, Environmental Coordinator, at the above address.

Daniel C. B. Rathbun,
District Manager.

[FR Doc. 83-19636 Filed 7-19-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

[W-85376]

Wyoming; Revocation of Power Project No. 165

Correction

In FR Doc. 83-16916 beginning on page 28738 in the issue of Thursday, June 23, 1983, make the following corrections:

1. On page 28738, third column, under T. 12 N., R. 108 W., in the entry for Sec. 14, "N½SE¼" should have read "N½SW¼".

2. Same column, under T. 13 N., R. 108 W., in the entry for Sec. 12, "NE½NW¼"

should have read "N½NW¼".

3. On page 28739, first column, first line, "N½NW¼" should have read "N½NW¼".

4. Same column, thirteen lines from the top of the page, "N½N¼" should have read "N½N½", and in the fourteenth line "SE¼NE½" should have read "SE¼NE¼".

5. Same column, under T. 14 N., R. 108 W., in the entry for Sec. 11, "lots 1, to 7 inclusive" should have read "lots 1 to 5 inclusive".

6. Same page, middle column, T. 12 N., R. 109 W., Sec. 25, "lots 1¼ and 2" should have read "lots 1, and 2".

BILLING CODE 1505-01-M

Reorganization of the Field Structure of the Eastern States Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

This will amend the notice appearing in the July 11, 1983 Federal Register, announcing the closure of the Bureau of Land Management's Tuscaloosa Office and the opening of its Jackson District Office.

The Tuscaloosa Office will close officially on August 12, 1983. The Jackson District Office will open officially on August 15, 1983. All information in the July 11, 1983 notice remains unchanged.

Inquiries prior to August 12, 1983 should be directed to the Bureau of Land Management, Tuscaloosa Office, 518 19th Avenue, Tuscaloosa, Alabama 35401.

Pieter J. VanZanden,

Acting Eastern States Director.

[FR Doc. 83-19672 Filed 7-19-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

[INT-FES 83-35]

Garrison Diversion Unit, Pick-Sloan Missouri Basin Program—North Dakota; Availability of Final Supplemental Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a supplemental final environmental statement on initial development of 85,000 acres of the Garrison Diversion Unit.

This supplemental final environmental statement covers: (1) Fish and Wildlife mitigation and enhancement; (2) operation of Lonetree Reservoir; (3) not constructing a fish screen on the McClusky Canal; (4) a 2000 cubic feet per second (ft³/s) emergency spillway from Lonetree Reservoir; (5) increasing the capacity of the proposed James River Feeder Canal from 450 ft³/s to 1600 ft³/s; (6) redirecting return and surplus flows from the New Rockford Service Area to the James River; and (7) changes in the flows of the James River resulting from the above actions.

Copies are available for inspection at the following offices:

Director, Office of Environmental Affairs, Department of the Interior, Bureau of Reclamation, 19th & C Street, NW., Room 7622, Washington, D.C. 20240. Telephone: (202) 343-4991.

Division of Management Support, General Services, Library Section, Code 950, Engineering and Research Center, Denver Federal Center, Denver, CO 80225, Telephone: (303) 234-3019.

Regional Director, Bureau of Reclamation, Federal Building, 316 North 26th, Billings, MT 59103, Telephone: (406) 657-6605.

Project Manager, Missouri-Souris Projects Office, Bureau of Reclamation, E. Broadway Avenue and North 3rd Street, Bismarck, ND 58502, Telephone: (701) 255-4011, ext. 541.

Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs, Bureau of Reclamation, the Project Manager, Missouri-Souris Projects Office, or the Regional Director at the above

addresses. Copies will be also be available for inspection in libraries within the project area.

Dated: July 15, 1983.

Bruce Blanchard,
Director, Office of Environmental Project
Review.

[FR Doc. 83-19586 Filed 7-19-83; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-139]

Certain Caulking Guns; Decision Not To Review Initial Determination Terminating Respondent

AGENCY: U.S. International Trade
Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding officer's initial determination (Order No. 17) terminating Sav-on-Drugs, Inc. (SOD), as a respondent in the above-captioned investigation. Accordingly, the initial determination has become the Commission's determination with respect to this matter.

Authority: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53(c) and 210.53(h) of the Commission's Rules of Practice and Procedure (47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983; to be codified at 19 CFR 210.53 (c) and (h)).

SUPPLEMENTARY INFORMATION: On May 12, 1983, complainant Peter J. Chang and respondent SOD jointly moved (Motion No. 139-12) to terminate the Commission's investigation with respect to SOD on the basis of a settlement agreement. On June 22, 1983, the presiding officer issued an initial determination granting Motion No. 139-12 and terminating SOD as a respondent in the investigation. The initial determination was served on the parties and on the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service on June 23, 1983. No petitions for review, or agency or public comments were received.

Pursuant to § 210.53(h)(2), an initial determination of the presiding officer under § 210.53(c) becomes the determination of the Commission no later than 30 days from the date of service, unless the Commission orders review of the initial determination.

Having examined the record in this investigation, including Motion No. 139-12, the papers filed in connection

therewith, and the initial determination of the presiding officer, the Commission found no grounds for review of the initial determination.

Copies of the initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT:
William E. Perry, Esq., Office of the
General Counsel, U.S. International
Trade Commission, telephone 202-523-
0499.

By order of the Commission.

Issued: July 15, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-19633 Filed 7-19-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-141]

Certain Copper-Clad Stainless Steel Cookware; Commission Decision Not To Review Initial Determination Terminating Respondent

AGENCY: U.S. International Trade
Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding officer's initial determination (Order No. 25) granting a joint motion by the complainant, respondent Montgomery Ward & Co., and the Commission investigative attorney to terminate the above-captioned investigation as to Montgomery Ward & Co.

Authority: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.53(c) and 210.53(h) of the Commission's Rules of Practice and Procedure (47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983; to be codified at 19 CFR 210.53 (c) and (h)).

SUPPLEMENTARY INFORMATION: On June 16, 1983, the presiding officer issued an initial determination granting the joint motion to terminate the above-captioned investigation as to Montgomery Ward & Co. The motion is based on a settlement agreement entered into between the complainant and Montgomery Ward & Co.

Petitions for review were due on June 27, 1983, and none were received. Comments were due from Government agencies on June 30, 1983, and none were received. Notice of the initial determination was published in the *Federal Register* of June 22, 1983 (48 FR 28561), and no comments were received

from the public within ten days thereafter. Absent review by the Commission, the initial determination will become final on July 18, 1983.

Copies of the presiding officer's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT:
Jack Simmons, Esq., Office of the
General Counsel, U.S. International
Trade Commission, telephone 202-523-
0350.

By order of the Commission.

Issued: July 13, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-19607 Filed 7-19-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-141]

Certain Copper-Clad Stainless Steel Cookware; Commission Decision Not To Review Initial Determination Terminating Respondent

AGENCY: United States International
Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding officer's initial determination (Order No. 24) granting a joint motion by the complainant, respondent Ann and Hope, Inc., and the Commission investigative attorney to terminate the above-captioned investigation as to Ann and Hope, Inc.

Authority: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.53(c) and 210.53(h) of the Commission's Rules of Practice and Procedure (47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983; to be codified at 19 CFR 210.53 (c) and (h)).

SUPPLEMENTARY INFORMATION: On June 16, 1983, the presiding officer issued an initial determination granting the joint motion to terminate the above-captioned investigation as to Ann and Hope, Inc. The motion is based on a settlement agreement entered into between the complainant and Ann and Hope, Inc.

Petitions for review were due on June 27, 1983, and none were received. Comments were due from Government agencies on June 30, 1983, and none were received. Notice of the initial determination was published in the *Federal Register* of June 22, 1983 (48 FR 28561), and no comments were received from the public within ten days

thereafter. Absent review by the Commission, the initial determination will become final on July 18, 1983.

Copies of the presiding officer's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

By order of the Commission.

Issued: July 13, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-19806 Filed 7-19-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-141]

Certain Copper-Clad Stainless Steel Cookware; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Alexander's, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on July 14, 1983.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments: Interested persons may file written comments with the Commission concerning termination of

the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: July 14, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-19836 Filed 7-19-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-141]

Certain Copper-Clad Stainless Steel Cookware; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Charter Catalogs, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on July 14, 1983.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E

Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: July 14, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-19839 Filed 7-19-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-135]

Certain Direction-Reversing Musical Crib Toys; Commission Decision Not To Review Initial Determination Granting Joint Motion to Terminate Investigation on the Basis of Consent Order Settlement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding officer's initial determination (Order No. 3) to grant the joint motion of complainant Mattel, Inc., respondents Durham Industries, Inc., and Durham Industries of Hong Kong, Ltd., and the Commission investigative attorney to terminate the above-captioned investigation on the basis of a consent order agreement between the complainant and respondents. Accordingly, as of June 29, 1983, the initial determination became the Commission's determination with respect to this matter.

Authority: The authority for the Commission's disposition of this matter is contained in the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.53 (c) and (h) of the Commission's Rules of Practice and Procedure (47 FR 25134, June 10, 1982, and 48

FR 9242, Mar. 4, 1983; to be codified at 19 CFR 210.53 (c) and (h)).

SUPPLEMENTARY INFORMATION: On May 11, 1983, a joint motion for termination of the investigation was filed by complainant, respondents, and the Commission investigative attorney. (Motion No. 135-1.)

No party petitioned for review of the initial determination, and no agency comments were received.

Pursuant to § 210.53(h)(2) of the Commission's rules, an initial determination of the presiding officer under § 210.53(c) becomes the determination of the Commission 30 days from the date of service, unless the Commission orders review of the initial determination.

Having examined the record in this investigation, including Motion No. 135-1 and the initial determination of the presiding officer, the Commission found no grounds for review of the initial determination.

Copies of Motion No. 135-1, the consent order, the presiding officer's initial determination, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Clarease E. Mitchell, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-3395.

By order of the Commission.

Issued: July 13, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-19006 Filed 7-20-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-125]

Certain Grooved Wooden Handle Kitchen Utensils and Gadgets; Institution of Formal Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Institution of formal enforcement proceeding to determine whether respondents in the above-captioned investigation are violating or have violated the consent order issued by the Commission on March 23, 1983, and, if so, what remedy, if any, should be provided. This action is being taken in response to a request received from

the complainant in this investigation, Bonny Products, Inc.

Authority: This proceeding is instituted pursuant to § 211.56(c) of the Commission's Rules of Practice and Procedure (19 CFR 211.56(c)). Authority for this rule is found in 19 U.S.C. 1337 (d) and (f) and 19 U.S.C. 1335.

SUPPLEMENTARY INFORMATION: On March 23, 1983, the Commission issued a consent order and terminated the above-captioned investigation based on a consent order agreement which incorporated a settlement agreement. The agreement and the order require respondents to cease manufacturing and selling any kitchen utensils and gadgets with wooden handles reasonably resembling the grooved and tapered handle sold by complainant.

Subsequent to the issuance of the consent order, complainant received information that respondent Four Star International Trading Co. (Four Star) was soliciting sales and selling in the United States grooved wooden handle kitchen utensils and gadgets that might be violating the consent order. Certain procedures set forth in the consent order were followed to determine that the handles "reasonably resemble" those of complainant, thus making their sale improper under the consent order.

Upon discovering evidence of further solicitations of sales for these products, complainant filed, on May 31, 1983, a request for temporary emergency enforcement of the consent order and for institution of a formal enforcement proceeding to determine what, if any, permanent relief should be granted.

On July 12, 1983, the Commission voted to revoke its March 23, 1983, consent order with regard to respondent Four Star, to issue a temporary exclusion order, and to institute this proceeding. The temporary exclusion order prohibits importation into the United States, except under bond, of wooden handle kitchen utensils and gadgets with grooved wooden handles which reasonably resemble those of complainant and which are manufactured, exported to, imported into, sold, or distributed in the United States by Four Star, either directly or through others.

In deciding whether to issue the exclusion order the Commission determined, pursuant to section 211.58 of the Commission's Rules of Practice and Procedure (19 CFR 211.58), that without immediate action a violation of the consent order will occur and that subsequent action by the Commission would not adequately repair substantial harm caused by such violation. The Commission also determined that public

interest considerations do not preclude issuance of an exclusion order.

Presiding Officer and Recommended Determination. Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, has been authorized to designate a presiding officer who is directed to issue a recommended determination as soon as feasible. The recommended determination is to include a decision regarding whether the grooved wooden handle kitchen utensils and gadgets allegedly sold or for which sales have been solicited by respondent Four Star after the issuance of the Commission's consent order reasonably resemble the utensils and gadgets of complainant. The presiding officer is also to determine whether violations of the consent order have occurred and, if so, what remedy should be issued by the Commission. The public interest factors listed in 19 U.S.C. 1337(d) are to be considered by the presiding officer in recommending to the Commission the remedy it should issue. The presiding officer is authorized to permit discovery and hold an evidentiary hearing in reaching his or her determinations in this matter.

Public Information. Published with this notice, pursuant to § 211.56(c) of the Commission's Rules of Practice and Procedure (19 CFR 211.56(c)), is the complaint portion of the "Request by Bonny Products, Inc. for Temporary Emergency Action Pursuant to 19 CFR 211.58 and Memorandum in Support thereof." Copies of the Commission's action and order, the temporary exclusion order, and all other public documents on the record of this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0079.

By order of the Commission.

Issued July 14, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-19035 Filed 7-19-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-125]**Certain Grooved Wooden Handle Kitchen Utensils and Gadgets; Partial Revocation of Consent Order and Issuance of Temporary Exclusion Order**

AGENCY: U.S. International Trade Commission.

ACTION: Revocation of the Commission's consent order issued on March 23, 1983, with respect to respondent Four Star International Trading Co., and issuance of an order excluding from importation into the United States, except under bond, any wooden handle kitchen utensils or gadgets with handles which reasonably resemble the handle design depicted in Exhibit A of the exclusion order and which are manufactured, exported to, imported into, sold, or distributed in the United States by Four Star International Trading Co., either directly or through others. This order shall remain in effect pending the outcome of formal enforcement proceedings instituted by the Commission pursuant to § 211.56(c) of the Commission's Rules of Practice and Procedure (19 CFR 211.56(c)).

Authority: The Commission's temporary exclusion order was issued pursuant to section 211.58 of the Commission's Rules of Practice and Procedure (19 CFR 211.58). Authority for that rule is found in 19 U.S.C. 1337 (e) and (f) and 19 U.S.C. 1335.

SUPPLEMENTARY INFORMATION: On March 23, 1983, the Commission issued a consent order and terminated Investigation No. 337-TA-125 based on a consent order agreement which incorporated a settlement agreement. The agreement and the order require respondents Four Star International Trading Co. and G & S Metals Products Co., Inc., to cease manufacturing and selling any kitchen utensils and gadgets with wooden handles reasonably resembling the grooved and tapered handle sold by complainant Bonny Products, Inc.

Subsequent to the issuance of the consent order, complainant Bonny Products received information that respondent Four Star International Trading Co. was soliciting sales and selling in the United States grooved wooden handle kitchen utensils and gadgets that might be violating the consent order. Certain procedures set forth in the consent order were followed to determine that the handles of the imported utensils and gadgets reasonably resembled those of complainant, thus making their sale improper under the consent order.

Upon discovering evidence of further solicitation for sale of these products,

complainant filed, on May 31, 1983, a request for temporary emergency enforcement of the consent order and for institution of a formal enforcement proceeding to determine what, if any, permanent relief should be granted.

In deciding whether to issue the exclusion order the Commission determined, pursuant to section 211.58 of the Commission's Rules of Practice and Procedure (19 CFR 211.58), that without immediate action a violation of the Commission order will occur and that subsequent action by the Commission would not adequately repair substantial harm caused by such violation. Also, the Commission determined that public interest considerations do not preclude issuance of a temporary exclusion order.

Public Inspection: Copies of the Commission's action and order, the exclusion order, and all other public documents on the record of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0079.

By order of the Commission.

Issued: July 14, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-19036 Filed 7-19-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-152]**Certain Plastic Food Storage Containers; Order No. 1**

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register**.

Issued: July 8, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83-19610 Filed 7-19-83; 8:45 am]

BILLING CODE 7020-02-M

[332-161]**Possible Effects of Changing World Crude Petroleum Prices; Date and Site of Public Hearing**

Notice is hereby given that the public hearing in this matter will be held beginning on Tuesday, November 1, 1983, in Houston, Texas, at the Sheraton Houston Hotel, 777 Polk Avenue, at 9:00 a.m.

Notice of the investigation and hearing was published in the **Federal Register** of April 27, 1983 (48 FR 19087).

By order of the Commission.

Issued: July 13, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-19637 Filed 7-19-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-138 (Preliminary)]**Certain Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea**

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

EFFECTIVE DATE: July 14, 1983.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of a preliminary antidumping investigation under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea of welded carbon steel pipes and tubes of rectangular (including square) cross section, provided for in items 610.3955 and 610.4975 of the Tariff Schedules of the United States Annotated (1983) (TSUSA), which are alleged to be sold in the United States at less than fair value.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Carpenter, Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0399.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on July 14,

1983, on behalf of the Committee on Pipe and Tube Imports, an association of domestic manufacturers of welded carbon steel pipes and tubes. The Commission must make its determination in the investigation within 45 days after the date of the filing of the petition, or by August 29, 1983 (19 CFR 207.17).

Participation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided for in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than seven (7) days after the publication of this notice the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman who shall determine whether to accept the late entry for good cause shown by the person desiring to file the notice.

Service of Documents

The Secretary will compile a service list from the entries of appearance filed in the investigation. Any party submitting a document in connection with the investigation shall, in addition to complying with § 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of the nonconfidential version of each such document on all other parties to the investigation. Such shall conform with the requirements set forth in § 201.16(b) of the rules (19 CFR 201.16(b)), as amended by 47 FR 33682, Aug. 4, 1982).

In addition to the foregoing, each document filed with the Commission in the course of this investigation must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written Submission

Any person may submit to the Commission on or before August 8, 1983, a written statement of information pertinent to the subject matter of this investigation (19 CFR 207.15). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR 201.8).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the

Commission's rules (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m., on August 4, 1983, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the staff investigator, Mr. Robert Carpenter (202-523-0399), not later than August 2, 1983, to arrange for their appearance. Parties in support of the imposition of antidumping duties in the investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Public Inspection

A copy of the petition and all written submissions, except for confidential business data, will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR 207, as amended by 47 FR 33682, Aug. 4, 1982), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 47 FR 33682, Aug. 4, 1982). Further information concerning the conduct of the conference will be provided by Mr. Carpenter.

This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: July 15, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-18634 Filed 7-17-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 104-TAA-19]

Certain Scissors and Shears From Brazil

AGENCY: International Trade Commission.

ACTION: Institution of a countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation.

EFFECTIVE DATE: July 11, 1983.

SUMMARY: Pursuant to section 104(b)(2) of the Trade Agreements Act of 1979 (19 U.S.C. 1671 note), the U.S. International Trade Commission is instituting this countervailing duty investigation to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of certain scissors and shears from Brazil which are covered by an outstanding countervailing duty order if that order were to be revoked. The investigation covers imports of scissors and shears valued over \$1.75 per dozen, as provided for in items 650.90 and 650.92 of the Tariff Schedules of the United States.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Vastagh, Investigator, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-0283.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1977, the Department of the Treasury issued a countervailing duty order under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) on the subject scissors and shears imported from Brazil (T.D. 77-64, 42 FR 8634). On January 1, 1980, the Trade Agreements Act of 1979 (Pub. L. 96-39) became effective. That act provided, in section 104(b), that "In the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930 * * * which applies to merchandise which is the product of a country under the Agreement, and which is in effect on January 1, 1980 * * *, the Commission, upon the request of the government of such a country * * *, submitted within 3 years after the effective date of title VII of the Tariff Act of 1930 (January 1, 1980) shall * * * commence an investigation to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked." On July 17, 1981, the Commission received such a request from the Government of Brazil.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's Rules of Practice and Procedure (19 CFR

201.11), not later than 21 days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c), as amended by 47 FR 33682, Aug. 4, 1982).

Staff Report

A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on September 20, 1983, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m., on October 6, 1983, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on September 14, 1983. All persons desiring to appear at the hearing and make oral presentation should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on September 21, 1983, in room 117 of the U.S. International Trade Commission Building.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23, as amended by 47 FR 33682, Aug. 4, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing

briefs in accordance with § 207.22 (19 CFR 207.22, as amended by 47 FR 33682, Aug. 4, 1982), and must be submitted not later than the close of business on September 30, 1983. Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on October 13, 1983.

Written Submissions

As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 13, 1983. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A, C, and D (19 CFR part 207, as amended by 47 FR 33682, Aug. 4, 1982) and part 201, Subparts A through E (19 CFR part 201, as amended by 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to § 207.30 of the Commission's rules (19 CFR 207.30).

By order of the Commission.

Issued: July 12, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-19624 Filed 7-19-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-187 and 731-TA-100 (Final)]

Certain Tool Steels From Brazil and the Federal Republic of Germany Determinations

On the basis of the record¹ developed in the subject investigations, the Commission determines, pursuant to sections 705(b)(1) and 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1) and 1673d(b)(1)), that—

An industry in the United States is materially injured by reason of imports of certain tool steels² from Brazil (investigation No. 701-TA-187 (Final)) which have been found by the Department of Commerce to be subsidized by that Government, and

An industry in the United States is materially injured by reason of imports of certain tool steels from the Federal Republic of Germany (investigation No. 731-TA-100 (Final)) which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted investigation No. 701-TA-187 (Final) effective January 3, 1983, following a preliminary determination by the Department of Commerce that imports of certain tool steels from Brazil were being subsidized by the Government of that country. Investigation No. 731-TA-100 (Final) was instituted effective January 12, 1983, following a preliminary determination by Commerce that imports of certain tool steels from the Federal Republic of Germany were being, or were likely to be, sold in the United States at LTFV.

On March 21, 1983, Commerce suspended its countervailing duty investigation involving certain tool steel bar and rod from Brazil. The basis for the suspension was an agreement by the Government of Brazil to offset all export subsidies for the subject products with an equivalent export tax (48 FR 11731). Consequently, the Commission announced the suspension of its countervailing duty investigation on these products from Brazil on March 30, 1983 (48 FR 13278).

On March 22, 1983, counsel for the petitioners notified the Department of Commerce and the Commission that pursuant to section 704(g) of the Tariff

¹ The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

² For purposes of these investigations, certain tool steels are bars and wire rods provided for in items 606.93, 606.94, 606.95, 607.28, 607.34, 607.46, and 607.54 of the Tariff Schedules of the United States.

Act of 1930, as amended, they were requesting a continuation of the countervailing duty investigation concerning these products from Brazil. The Commission continued its final countervailing duty investigation as of March 22, 1983. Notice of the Commission's continuation of the final investigation and of the rescheduling of the public hearing to be held in connection with this investigation along with the LTFV investigation involving the Federal Republic of Germany was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the *Federal Register* on April 13, 1983 (48 FR 15966).

On June 6, 1983, Commerce made an affirmative final subsidy determination concerning Brazil (48 FR 25250) and an affirmative final LTFV determination concerning the Federal Republic of Germany (48 FR 25247) on the products subject to these investigations. The Commission's hearing in these investigations was held in Washington, D.C., on June 7, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission voted on the investigations on July 1, 1983.

If the final determination by the Commission in this continued investigation had been negative, then the agreement between Commerce and the Government of Brazil would have had no force or effect and the investigation would have been terminated. However, because the final determination is affirmative, the agreement will remain in effect and no countervailing duty order will be issued unless the agreement is terminated or violated or otherwise fails to meet the requirements of section 704 (19 U.S.C. 1671c(f)(3)).

The Commission transmitted its report on these investigations to the Secretary of Commerce on July 11, 1983. A public version of the Commission's report, *Certain Tool Steels from Brazil and the Federal Republic of Germany*, (investigations Nos. 701-TA-187 and 731-TA-100 (Final), USITC Publication 1403, July 1983) contains the views of the Commission and information developed during the investigations.

By order of the Commission.

Issued: July 11, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-19609 Filed 7-19-83; 8:45 am]

BILLING CODE 7020-02-M

**[Investigations No. 731-TA-137
(Preliminary)]**

Tubes for Tires, Other Than for Bicycle Tires, From the Republic of Korea

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

EFFECTIVE DATE: July 11, 1983.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of a preliminary antidumping investigation under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea of tubes for tires, other than for bicycle tires, provided for in items 772.59 and 772.60 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Reavis, Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0296.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on July 11, 1983, by counsel on behalf of the Carlisle Tire and Rubber Co.; the Cooper Tire and Rubber Co.; Cupples Co., Manufacturers; the Firestone Tire and Rubber Co.; the B. F. Goodrich Co.; the Indianapolis Rubber Co.; and Robbins Tire and Rubber Co. The Commission must make its determination in this investigation within 45 days after the date of the filing of the petition, or by August 25, 1983 (19 CFR 207.17).

Participation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided for in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than seven (7) days after the publication of the notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairman who shall determine whether to accept the late entry for good cause

shown by the person desiring to file the notice.

Service of Documents

The Secretary will compile a service list from the entries of appearance filed in this investigation. Any party submitting a document in connection with the investigation shall, in addition to complying with section 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of each such document on all other parties to the investigation. Such service shall conform with the requirements set forth in section 201.16(b) of the rules (19 CFR 201.16(b)), as amended by 47 FR 33682, Aug. 4, 1982).

In addition to the foregoing, each document filed with the Commission in the course of this investigation must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written Submissions

Any person may submit to the Commission on or before August 5, 1983, a written statement of information pertinent to the subject matter of this investigation (19 CFR 207.15). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR 201.8).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on August 2, 1983, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Parties wishing to participate in the conference should contact Mr. John MacHatton (202-523-0439), not later than August 1, 1983, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour

within which to make an oral presentation at the conference.

Public Inspection

A copy of the petition and all written submissions except for confidential business data, will be available for public inspection during regular hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street N.W., Washington, D.C.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207, as amended by 47 FR 33682, Aug. 4, 1982), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: July 12, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-19623 Filed 7-19-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-133]

Certain Vertical Milling Machines and Parts, Attachments and Accessories Thereto; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Delta Machine & Tool Company, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination, in this matter was served upon the parties on July 11, 1983.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in

the Office of the Secretary, U.S. International Trade Commission, 701 E Street N.W., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street N.W., Washington, D.C. 20436, no later than 10 days after publication of this notice in the *Federal Register*. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT:

Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: July 11, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-19625 Filed 7-19-83; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission.

Agatha L. Mergenovich,
Secretary.

Please direct status inquiries to Team 1, (202) 275-7992.

Volume No. OP1-FC-286

No. MC-FC-81565. By decision of July 12, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Krock, Carleton and Dowell approved the transfer to SUMMIT CITY TRANSFER, INCORPORATED, Fort Wayne, IN, of Certificate No. MC-25290, issued November 30, 1949, to ELWAY EXPRESS, INC., Fort Wayne, IN, authorizing the transportation of general commodities with various exceptions, between Fort Wayne, IN, on the one hand, and, on the other, points within 25 miles of Fort Wayne. Representative: David P. Egly, 1122 Sherman Blvd., P.O. Box 10696, Fort Wayne, IN 46853 for transferee, and Howard Ellicott, P.O. Box 10328, Fort Wayne, IN 46851 for transferor.

MC-FC-81575. By decision of July 11, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Parker, Dowell and Carleton approved the transfer to Shore Line Transport, Inc., Passaic Park, NJ, of Permit No. MC-145010 Sub 1, issued January 4, 1980, and Certificate No. MC-145010 Sub 2, issued October 7, 1981, to Wayne Express, Inc., Clifton, NJ, authorizing the transportation of groceries and materials and supplies (with exceptions), between Secaucus, NJ, Rochester, NY and Virginia Beach, VA, on the one hand, and, on the other, points in CT, DE, IL, IN, MD, MA, NJ, NY, OH, PA, RI, VA and DC, under

continuing contract(s) with Greenwich Mills Co., of Secaucus, NJ, and food and related products, between Rochester and New York, NY, Boston, MA, Pittsburgh and Philadelphia, PA, Cincinnati, OH and Virginia Beach, VA, on the one hand, and, on the other, points in CT, DE, IL, IN, MD, MA, NJ, NY, OH, PA, RI, VA and DC. An application for temporary authority has been filed. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, (201) 572-5551.

MC-FC-81576. By decision entered July 11, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members, Joyce, Carleton and Parker approved the transfer to Francis J. Noll, Jr., d.b.a. Somerset Tour Co., of Mountainside, NJ, of Certificate No. MC-2880, issued March 30, 1955, to Somerset Bus Co., Inc., of Westfield, NJ, authorizing the transportation of passengers and their baggage, restricted to traffic originating in the territory indicated, in charter operations, from points in Middlesex, Somerset, Union, Morris and Essex Counties, NJ, to points in NY, PA, MD and DC, and return. Representative: Wilmer B. Hill, Suite 366, 1030 Fifteenth St., NW., Washington, DC 20005, (202) 296-5188.

MC-FC-81579. By decision of July 12, 1983 issued under 49 U.S.C. 10926 and the transfer rules at CFR 1181, the Review Board, Members Parker, Joyce and Fortier approved the transfer to DESERT DELIVERY SYSTEMS, INC., Indio, CA, of Certificates Nos. MC-145380 Sub 2X (and the underlying authority No. MC-145380 Sub 1), MC-145380 Sub 3, and MC-145380 Sub 4, issued August 28, 1981, August 26, 1981 and October 29, 1981, respectively, to CALIFORNIA-PACIFIC FREIGHT, INC., Los Angeles, CA, authorizing the transportation of (1) general commodities (with various exceptions), between points in Los Angeles County, CA, on the one hand, and, on the other, points in Kern and Tulare County, CA, and (2) between points in Imperial, Los Angeles, Orange, Riverside and San Bernardino, CA; and (3) general commodities for or on behalf of the United States Government and shipments weighing 100 pounds or less between points in the U.S. Representative: John C. Russell, 1545 Wilshire Blvd., Suite 606, Los Angeles, CA 90017.

For status inquiries for the following, please call Team 2 (202) 275-7030.

Volume No. OP2-FC-313.

MC-FC-81305. By the decision of July 12, 1983 issued under 49 U.S.C. 10926

and the transfer rules at 49 CFR 1181, the Review Board, Members Joyce, Krock, and Fortier, approved the transfer to OVERLAND TRANSPORT, INC., Baltimore, MD, of Certificates MC-125023 Sub-Nos. 26, 35, 78F, 82F, and 88, issued June 3, 1975, April 29, 1977, November 5, 1980, December 1, 1980, and September 25, 1981, respectively, to SIGMA-4 EXPRESS, INC., (JAMES K. McNAMARA, ESQ., TRUSTEE IN BANKRUPTCY), Erie, PA, authorizing (1)(a) malt beverages, in containers, from Baltimore, MD, to certain points in IL, IN, IA, KS, MI, MN, MO, NE, OH, and WI; and (b) empty malt beverage containers, in the reverse direction of (1)(a) above; (2) malt beverages, in containers, (a) from Baltimore, MD, to Milwaukee, WI, and (b) in the reverse direction of (2)(a) above; (3)(a) pickles, in containers, from Millsboro, DE, to points in CT, MA, RI, MD, PA, NY, NJ, WV, VA, NC, and SC; (b) foodstuffs, in containers, in vehicles equipped with mechanical refrigeration, from the facilities of Vlastic Foods, Inc., Seaford, DE, to points in the States named in (3)(a) above; and (c) foodstuffs, in containers, between the facilities of Vlastic Foods, Inc., at Imlay City, Bridgeport, and Memphis, MI, on the one hand, and, on the other, Millsboro, DE; and (d) equipment, materials, and supplies (except commodities in bulk), in the reverse direction of (3)(a) and (3)(b) above; (4)(a) glass containers, (b) materials, equipment, and supplies used in the manufacture and distribution of the commodities in (4)(a) above, between the facilities of Midland Glass Co., Inc., at points in Monmouth County, NJ, and other specified Counties at points in IN, GA, MN, and OK, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, OK, AR, and LA; and (5) clay, concrete, glass or stone products, between specified points in TN, WV, OH, MS, TX, and MD, on the one hand, and, on the other, points in the U.S. Transferee is a carrier operating under MC-156374. Representative: James W. Patterson, 1800 Penn Mutual Tower, 510 Walnut St., Philadelphia, PA 19106.

Note.—Transferor is retaining authority under (1) Certificates MC-125023 Sub 87, which reads: transporting malt beverages, radially between Baltimore and those points in the U.S. in and east of MN, IA, NE, KS, MO, KY, VA, NC, and SC, and (2) Certificates MC-125023 Subs 38 and 83F, which authorize it to haul glass containers from the facility of Midland Glass and origin of Cliffwood (Monmouth County), NJ to named points in NC, VA, and NY.

MC-FC-81343. By the decision of July 11, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181,

the Review Board, Members Fortier, Krock, and Dowell approved the transfer to DECOR, INC., Fairfield, AL, of Permit MC-149563 Sub 5 and Permits MC-148822 Subs 4F and 6F, issued July 23, 1981, February 27, 1981, and February 9, 1981, respectively, to SUPER TRUCKERS, INC., Fairfield, AL, authorizing the transportation of (1) general commodities (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Edmont Division, Becton Dickinson & Company, of Haynesville, LA; (2) metal products, and materials, equipment, and supplies used in the manufacture and distribution of metal products, between points in the U.S., under continuing contract(s) with Alabama Metal Industries Corp., of Birmingham, AL; and (3) forest products, lumber products, wood products, gypsum board, pressed board and wallboard, between points in the U.S., under continuing contract(s) with Russell Stadleman Co., of Memphis, TN. Transferor will retain authority. Representative: Gerald D. Colvin, Jr., 601-09 Frank Nelson Bldg., Birmingham, AL 35203.

MC-FC-81578. By decision of July 12, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Carleton, Parker, and Dowell, approved the transfer to CAPITAL CITY TRACTOR LIMITED, of Ottawa, Ontario, Canada, of Certificate No. MC-127622 Sub-No. 1, issued August 21, 1981, to ACADIAN CROWN, INC., of Greely, Ontario, Canada, authorizing the transportation, as a common carrier, of (1) brick, from ports of entry on the U.S.-Canada boundary line located on the St. Lawrence River, to points in NY (except points in Sullivan, Ulster, Greene, Columbia, Dutchess, Orange, Putnam, Westchester, Rockland, Suffolk, and Nassau Counties and New York, NY); and (2) returned shipments of brick, in the reverse direction of (1) above. Representative: William J. Hirsch, 64 Niagara St., Buffalo, NY 14202, (716) 853-0200.

For the following, please direct status calls to Team 3 at 202-275-5223.

Volume No. OP3-FC-327

MC-FC-81569. By decision of July 11, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Carleton, Krock, and Dowell, approved the transfer to ARNIE M. ARNIO, Rapid City, SD, of Certificate No. MC-161915, issued November 2, 1982, to DAVID C. ARNIO, d.b.a. DAVID C. ARNIO TRUCKING, Casper, WY, authorizing

the transportation of (1) *Mercer commodities, and such commodities as are used in the construction and operation of water and coal slurry pipelines*, between points in the U.S. in and west of ND, SD, NE, KS, OK, AR, and LA (except AK and HI), and (2) *petroleum and petroleum products*, between points in Natrona County, WY, on the one hand, and, on the other, points in CO, ID, MT, NE, ND, SD, UT, and WY. Representative: J. Maurice Andren, 1734 Sheridan Lake Road, Rapid City, SD 57701.

Note.—(1) Applicant intends to tack this authority with its existing authority, and (2) An application for temporary authority has been filed.

Volume No. OP3-FC-331

MC-FC-81478. By decision of July 8, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Fortier, Carleton and Parker approved the transfer to CITY XPRESS, INC., of Hammond, IN, of Certificate No. MC-83745 (Sub-No. 12)X, issued February 23, 1983, and the underlying authority in Certificate No. MC-83745 (Sub-No. 9), issued April 19, 1978, to UNIVERSAL TRUCKING, INC., of Hammond, IN, authorizing the transportation of *general commodities*, with usual exceptions, (a) between points, in Lake, Kane, Du Page, Cook and Will Counties, IL, and Lake and Porter Counties, IN, and (b) between points in Chicago, IL, respectively. Representative: Joel H. Steiner, 135 South LaSalle Street, Suite 2106, Chicago, IL 60603, (312) 236-9375.

For the following, please direct status calls to Team 4 at 202-275-7669.

Volume No. OP4-FC-445

MC-FC-81588. By decision of July 12, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Carleton, Parker and Joyce, approved the transfer to S.D.S., INC., of El Dorado, KS, of Permit No. MC-116127 issued November 9, 1956, MC-116127 Sub-Nos. 4, issued February 12, 1960, Sub-No. 6, issued October 14, 1960, Sub-No. 11, issued April 5, 1982, and Sub-No. 10X, issued September 17, 1981, and underlying authorities (Sub-Nos. 7 and 9), issued February 14, 1978 and August 20, 1980, respectively, to GEORGE D. CYRUS, INC., of Iola, KS, authorizing the transportation of (A) (1) *petroleum products* in packages or containers, from refining and producing points in KS, to points in that part of MO south of U.S. Hwy 36, west of U.S. Hwy 63, and north of U.S. Hwy 60, including points of the indicated portions of the highways

specified, (2) *empty containers* from the above-named destination points to the above-described origin points, (3) *petroleum and petroleum products*, (a) from refining and producing points in KS and points in the Kansas City, MO-Kansas City, KS, Commercial Zone, to points in that part of MO south of U.S. 60 and on and west of U.S. Hwy 65, (b) from refining and producing points in the Kansas City, MO-Kansas City, KS Commercial Zone, to points in that part of MO north of U.S. Hwy 36 and west of U.S. Hwy 63, (c) from refining and producing points in KS and points in the Kansas City, MO-Kansas City, KS, Commercial Zone to Ava, MO, and (4) *empty containers*, from the destination points, to the respective origin points, specified above for the movement of petroleum and products, (B) (1) *fiberglass boats* from the plant of Iola Molded Plastics, Inc., at Iola, KS, to points in IA, MN, MO, NE, ND, OK, and SD, under continuing contract(s) with Iola Molded Plastics, of Iola, KS, (2) *fiberglass boats*, from the plantsite of Iola Molded Plastics, Inc., at Iola, KS, to points in AZ, AR, CO, ID, IL, IN, KY, MI, MT, NV, OH, OR, TN, UT, WA, WI, and WY, and (3) *damaged fiberglass boats*, from the above-specified destination points in (2) to the above-specified plantsite, at Iola, KS, under continuing contract(s) with Iola Molded Plastics, Inc., of Iola, KS, (C) *petroleum products*, between points in the U.S., under continuing contract(s) with Phillips Petroleum Company, of Bartlesville, OK, and (D) Sub-No. 10X which superseded (Sub-Nos. 7 and 9) *petroleum and petroleum products*, in containers, between points in the U.S., under continuing contract(s) with Getty Refining & Marketing Company. Representative: John E. Jandera, 641 Harrison St., P.O. Box 1979, Topeka, KS, 66601.

Volume No. OP4-FC-449

MC-FC-81548. By decision of July 13, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Carleton, Joyce, and Dowell approved the transfer to INTER-WORLD FORWARDERS, INC., of San Diego, CA, of Permit No. FF-607, issued December 6, 1982, to ALLSTATE VAN & STORAGE, INC., of San Diego, CA, authorizing operations in connection with the transportation of (1) *household goods*, (2) *unaccompanied baggage*, (3) *used automobiles*, and (4) *new furniture and fixtures*, between points in the U.S. Representative: Robert J. Brooks, 1828 L St., NW, Suite 1111, Washington, DC 20036, (202) 466-3892.

MC-FC-81554. By decision of July 13, 1983, issued under 49 U.S.C. 10926 and

the transfer rules at 49 CFR 1181, the Review Board, Members Joyce, Fortier, and Krock, approved the transfer to TRANSWORLD VAN LINES, INC., of Elk Grove Village, IL, of Certificate Nos. MC-111367, issued October 4, 1954, MC-113676 Sub 1, issued February 5, 1982, and E-letter notices in MC-113676 Sub-Nos. E51 through E82, published May 19, 1976, E1 through E50, and E83 through E99, published June 3, 1976, to ROTHERY STORAGE & VAN CO., of Elk Grove Village, IL, authorizing the transportation of *household goods*, (1) between points in MO and IL, on the one hand, and, on the other, points in AR, CO, CT, FL, IL, IN, IA, KS, KY, LA, MA, MI, MN, MO, NE, NJ, NY, OH, OK, PA, SC, TN, TX, VA, and WI, (2) between points in NY, on the one hand, and, on the other, points in CT, DE, IL, IN, MA, MD, MI, MO, NJ, NY, OH, PA, WI, and DC, (3) between points in AL, AZ, AR, CA, CO, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WV, WI, and DC, and (4) between points in nine eastern States radially and points in CO and various midwestern and eastern States. An application for temporary authority has been filed. Representative: C. Jack Pearce, 1000 Connecticut Ave., NW, Suite 1200, Washington, DC 20036, (202) 785-0048.

Volume No. OP4-FC-450

MC-FC-81573. By decision of July 13, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1181, the Review Board, Members Krock, Williams, and Dowell, approved the transfer to TITAN TRANSPORT, INC., of South St. Paul, MN, of Certificate No. MC-138896, Sub 14, issued November 19, 1980, to AJAX TRANSFER COMPANY, of South St. Paul, MN, authorizing the transportation of *such commodities as are dealt in, or used by retail stores and building supply centers, and chemicals (except commodities in bulk)*, from Minneapolis, MN, to points in IA, the Upper Peninsula of MI, MT, ND, SD, WI, and MN. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542-1121.

For the following, please direct status calls to team 5 at 202-275-7289

Volume No. OP5-FC-352

MC-FC-81574. By decision of July 12, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1181. The Review Board, Members Carleton, Parker, and Joyce, approved the transfer to BILL JORDAN TRUCKING INCORPORATED, of Houston, TX, of

Permit No. MC-155838 issued April 12, 1982, authorizing the transportation of (1) sporting goods, between points in the United States, under continuing contract(s) with Bell Foundry, of South Gate, CA; (2) sealant, between points in the United States, under continuing contract(s) with Essex Chemical Corp., of Compton, CA; (3) foodstuffs, between points in the United States, under continuing contract(s) with Star-kist Foods, Inc., of Terminal Island, CA; (4) wheels, between points in the United States, under continuing contract(s) with W.C. Metal Polishing and Chrome Shop, of Los Angeles, CA; and (5) light poles, between points in the United States, under continuing contract(s) with Western Lighting Standards, of Fountain Valley, CA, and Certificate No. MC-155838, Sub 1 issued May 27, 1983, authorizing the transportation of (1) lumber and wood products, between points in AL, MS, AR, OK, MT, ID, and MO, on the one hand, and, on the other, points in TX, KS, AR, FL, MO, IL, and IA, and (2) building materials, Mercer commodities, and pipe casing couplings, and thread protectors, between points in CA, OR, CO, GA, and TX, on the one hand, and, on the other points in CA, OR, WA, AZ, UT, CO, NM, KS, MO, LA, MS, AR, OK, AL, GA, FL, NC, SC, VA, WV, MD, PA, MI, OH, IN, IL, IA, NE, MA, MN, NY, ND, to BETTY I. PATRICK & BOB J. TEMPLETON, d.b.a. IRISH & CHEROKEE TRANSPORTATION of Bakersfield, CA. Representative: Marsha N. Honda, 1545 Wilshire Blvd. #606, Los Angeles, CA 90017.

MC-FC-81376. By decision of July 12, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1181, the Review Board, Members Parker, Joyce, and Fortier, approved the transfer to OCEAN TRANSFER, INC., Boston, MA, of Permits Nos. MC-114745 and MC-144745 Sub 1, issued to W & D EXPRESS, INC., Boston, MA, November 29, 1978, and July 24, 1980, respectively, and acquired by AIR TRANSPORT, INC., Boston, MA, in No. MC-FC-78296 by decisions of March 5, 1980, and April 28, 1983, and consummated on June 17, 1983; and Permits Nos. MC-141008 and MC-141008 Sub 1, issued May 27, 1976, and November 29, 1979, respectively, to AIR TRANSPORT, INC., Boston, MA, authorizing the transportation of (1) such commodities as are dealt in by manufacturers of cans, from Peabody, MA, to those points in the U.S. in and east of WI, IL, MO, AR, and TX, and supplies, materials and equipment with exceptions, in connection with the manufacture of cans, in the reverse direction, under continuing contract(s) with Eagle Can Co., Inc., and Stern Can

Co., Inc.; (2) frozen crushed bones, frozen beef trimmings, and frozen defatted chopped beef, with exceptions, from Marlboro, MA, to Omaha, NE, Paris, TX, and points in AL, CT, DE, FL, GA, ME, MD, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, and DC, under continuing contract(s) with Meat Division of Stop & Shop, Inc., of Marlboro, MA; and (3) frozen bakery products and frozen onion rings, and commodities otherwise exempt from economic regulation under Section 203(b)(6) of the Interstate Commerce Act, when moving in mixed loads with frozen bakery products and frozen onion rings, (a) from Boston, Gloucester, Lawrence, Wilmington, and Worcester, MA, to points in AR, AZ, CA, CO, FL, GA, IL, IN, KS, KY, MI, TX, WV, and WI, and (b) from Boston, Gloucester, Lawrence, Wilmington, and Worcester, MA, to points in AL, IA, LA, MS, TN, VA, and DC, under continuing contract(s) with Boston Bonnie, Inc., and Boston Bonnie Bakers, Inc., both of Boston, MA. Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960.

[FR Doc. 83-19857 Filed 7-19-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers: Notice of Proposed Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notices of proposed exemptions.

SUMMARY: The motor carriers shown below seek exemptions pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATES: Comments must be received within 30 days after the date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275-7977.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

Agatha L. Mergenovich,
Secretary.

Volume No. OP3-332

Decided: July 14, 1983.

[No. MC-F-15342]

Coles Enterprises—Control Exemption—Maines Line Cartage, Inc.

Coles Enterprises, Inc., and in turn, Galen L. Cole, seek an exemption from the requirement under 49 U.S.C. 11343 of prior regulatory approval for its acquisition of control of Maine Line Cartage, Inc. (MC-161154). Coles Enterprises also own all the stock of Coles Express (MC-13920) and A. J. Cole & Sons, Inc., a noncarrier which is the sole stockholder of Walter H. Dolan Co. d.b.a. Dolan Transportation (MC-156806). This control was approved by the Commission in MC-F-14661F.

Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423 and

Petitioners' representative: James F. Flint, 406 World Center Building, 918 16th Street, NW., Washington, D.C. 20006

Comments should refer to No. MC-F-15342.

Volume No. OP5-MC-F-351

Decided: July 13, 1983.

[No. MC-F-15322]

McLean Carriers Corporation—Acquisition of Control Exemption—McLean Trucking Company, et al.

McLean Carriers Corporation seeks an exemption from the requirement under section 11343 of prior regulatory approval for its acquisition of control of McLean Trucking Company (No. MC-31389) and two of the latter's motor carrier subsidiaries, Salem Contract Carrier, Inc. (No. MC-147888) and McLean Southern Company (No. MC-151873F), formerly Pride Cargo Carriers, Inc. Meridian Express Company, McLean Trucking's corporate parent and a holding company and "carrier" for certain reporting purposes, also seeks an exemption for the change in its control of McLean Trucking and certain of its subsidiaries resulting from the proposed transaction. In addition to Salem and McLean Southern, McLean Trucking also controls non-carriers Malja Redevelopment Corporation, Houston Trailer & Truck Body, Inc., and 116528 Canada, Ltd. Through an internal corporate reorganization, (a) Meridian

will acquire control of McLean Carriers, (b) McLean Trucking, Salem, McLean Southern, and Houston Trailer & Truck will become same tier subsidiaries of McLean Carriers, and (c) Malja and 116528 Canada will remain subsidiaries of McLean Trucking.

Meridian's existing control of McLean Trucking and its carrier subsidiaries was approved by the Commission in MC-F-14803. Meridian also indirectly controls the following carriers not involved in the proposed restructuring of McLean Trucking: Merchants Fast Motor Lines, Inc. (No. MC-2228), Oil Transport Co. (No. MC-111740), Gypsum Transport, Inc. (No. MC-126421), Delta Lines, Inc. (No. MC-56640), Thunderbird Freight Lines, Inc. (No. MC-69512), Distribution Concepts, Inc. (No. MC-153418), Wycoff Company, Inc. (No. MC-89684), Alamo Express, Inc. (No. MC-107727), and Travis Transportation, Inc. (No. MC-150958). Such common control was approved by the Commission in Docket Nos. MC-F-14496 and MC-F-14880.

Send comments to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423
 - (2) Petitioner's representatives: Harry J. Jordan, Esq., Vern W. Hill, Esq., 1090 Vermont Avenue, NW., Suite 200, Washington, D.C. 20005
- Pleadings should refer to No. MC-F-15322.

[FR Doc. 83-19553 Filed 7-19-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods). The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the *Federal Register* on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the *Federal Register* on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November

19, 1982, are governed by Subpart D. of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the *Federal Register* on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested only on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of \$10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement

in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,
Secretary.

Note: All applications are for authority to operate as a motor common carrier in interstate or foreign commerce, over irregular routes unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries about the following to Team Three (3) at (202) 275-5223

Volume No. OP3-321

Decided: July 13, 1983.

By the Commission, Review Board Members Parker, Krock, and Williams.

MC 74 (Sub-17), filed June 24, 1983. Applicant: VALLEY TRANSIT COMPANY, INC., P.O. Box 1870, Harlingen, TX 78551. Representative: Paul D. Angenend, P.O. Box 2207, Austin, TX 78768, (512) 476-6391. Over regular routes, transporting passengers, between Victoria and Refugio, TX: from Victoria over U.S. Hwy 59 to Goliad, then over U.S. Hwy 77A and 183 to Refugio, and return over the same route, serving all intermediate points.

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 1092(c)(2)(B) over the same route.

Note.—Applicant intends to tack this authority with its existing authorities.

MC 156494 (Sub-1), filed June 23, 1983. Applicant: KEVIN S. KRUMWIEDE, d.b.a. KRUMWIEDE TRUCKING, 410 S. Walnut, P.O. Box 324, Bancroft, IA 50517. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, (513) 244-2329. Transporting food and other edible products and byproducts intended for human consumption (except alcoholic beverages and drugs), agricultural limestone and fertilizer and other soil conditioners, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 158654 (Sub-1), filed June 23, 1983. Applicant: DUPLAINVILLE TRANSPORT, INC., W224 N3322 Duplainville Rd., Pewaukee, WI 53072. Representative: Joseph Winter, 29 S. LaSalle St., Chicago, IL 60603, (312) 263-2306. As a broker of general commodities (except household goods), between points in the U.S. (except AK and HI).

MC 167545, filed June 30, 1983.
Applicant: MICHAEL G. GOLDEN, d.b.a. BRIAN HEAD RESORTS, One Chalet Village Drive, Brian Head, UT 84719, (801) 677-2025. Representative: Gregg I. Alvord, 800 Walker Bldg., Salt Lake City, UT 84111, (801) 521-3200. Transporting *passengers*, in charter and special operations, between points in AZ, CA, NV, and UT.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 168865, filed June 23, 1983.
Applicant: FRANCISCO AND JOSEFA GONZALEZ, d.b.a. CALIFORNIA EXPRESS, 16386 Caro St., Hacienda Heights, CA 91745. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702, (714) 667-8107. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 168875, filed June 24, 1983.
Applicant: EAGLE TOURS, INC., 9 E. Park Ave., Merchantville, NJ 08109. Representative: Kathleen S. Creary, 135 Waterford-Blue Anchor Rd., Hammononton, NJ 08037, (609) 665-0706. Transporting *passengers*, in special and charter operations, beginning and ending at points in NY, PA, DE, MD, and NJ, and extending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded special and charter transportation.

MC 168934, filed June 27, 1983.
Applicant: ZWEIGART BUS SERVICE, INC., P.O. Box 258, Evansville, IL 62242. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722-2848. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Please direct status inquiries about the following to Team Four at (202) 275-7669.

Volume No. OP4-448

Decided: July 13, 1983.

By the Commission, Review Board, Members: Carleton, Krock, and Dowell.

MC 121016 (sub-5), filed July 5, 1983.
Applicant: ENGLANDER COACH LINES, INC., 148 American Legion Drive, North Adams, MA 01247. Representative: Robert B. Walker, 915 Pennsylvania Bldg., 425-13th St., NW., Washington, DC 20004, (202) 737-1030. Transporting *passengers*, between

Bennington, VI and Williamstown, MA, over U.S. Hwy 7.

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B), and (2) applicant states it intends to tack the authority herein with its presently authorized operations.

For the following, please direct status calls to Team 5 at 202-275-7289.

Volume No. OP5-353

Decided: July 12, 1983.

By the Commission, Review Board, Members: Dowell, Krock, and Parker.

MC 168969, filed June 29, 1983.
Applicant: T.G.T., INC., 1680 Post St., Suite A, San Francisco, CA 94115. Representative: Kody Kodama (same address as applicant), (408) 931-8880. To operate as a *broker* of general commodities (except household goods), between points in the U.S. (except AK and HI).

MC 168978, filed June 28, 1983.
Applicant: NICHOLAS A. CINQUEPALMI, d.b.a. LANDMARK TRANSPORTATION SERVICES, INC., 5401 W. 37th St., Cicero, IL 60650. Representative: Nicholas A. Cinquepalmi, 4234 W. 116th St., Alsip, IL 60658, (312) 597-3047. To operate as a *broker* of general commodities (except household goods), between points in the U.S.

For the following, please direct status inquiries to Team 1, (202) 275-7030.

Volume No. OP-1-284(F)

Decided: July 13, 1983.

By the Commission, Review Board, Members: Krock, Williams, and Dowell.

MC 120910 (Sub-59), filed July 6, 1983.
Applicant: SERVICE EXPRESS, INC., P.O. Box 1009, Tuscaloosa, AL 35403. Representative: Calvin R. Turner, Jr., P.O. Box 517, Evergreen, AL 36401, (205) 578-3212. As a *broker* of general commodities (except household goods), between points in the U.S. (except AK and HI).

MC 169091, filed July 7, 1983.
Applicant: RALPH FIORE BUS SERVICE, INC., 3 Plank Street, Billerica, MA 01821. Representative: James M. Burns, 1365 Main Street, Suite 403, Springfield, MA 01103, (413) 781-8205. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

[FR Doc. 83-19558 Filed 7-19-83; 9:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the *Federal Register* on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the *Federal Register* December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the *Federal Register* on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of \$10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract." applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

Please direct status inquiries about the following to Team Three (3) at (202) 275-5223.

Volume No. OP3-323

Decided: July 13, 1983.

By the Commission, Review Board Members Parker, Krock, and Williams.

MC 1585 (Sub-14), filed June 29, 1983. Applicant: BARNES TRUCK LINE, 1320 Hwy 13 North, Columbia, MS 39429. Representative: Harold D. Miller, Jr., 17th Floor, Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205, (601) 948-5711. Transporting *general commodities* (except household goods, commodities in bulk and classes A and B explosives), between points in the U.S. (except AK and HI).

MC 154614, filed June 29, 1983. Applicant: HORST MILK TRANSFER, INC., 1050 Florida Ave., Hagerstown, MD 21740. Representative: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740, (301) 739-4860. Transporting *food and related products*, between points in OH, PA, VA and MD, on the one hand, and, on the other, points in the U.S. in and east of WI, IL, KY, TN and MS.

MC 162095 (Sub-2), filed June 23, 1983. Applicant: TRI-LINE TRANSPORTATION, INC., 2108 South University Dr., Unit #1, Fargo, ND 58103. Representative: Richard P. Anderson, Federal Square, 112 Roberts St., P.O. Box 2581, Fargo, ND 58108, (701) 235-3300. Transporting (1) *lumber and wood products*, (2) *metal and metal products*, and (3) *building materials*, between points in the U.S. (except AK and HI).

Please direct status inquiries about the following to Team Four at (202) 275-7669.

Volume No. OP4-446

Decided: July 13, 1983.

By the Commission, Review Board, Members: Carleton, Krock, and Dowell.

MC 110746 (Sub-7), filed July 5, 1983. Applicant: PARKS MOVING & STORAGE, INC., 740 Commonwealth Drive, Thorn Hill Industrial Park, Warrendale, PA 15086. Representative: Mark T. Vuono, 2310 Grant Bldg., Pittsburgh, PA 15219, (412) 471-1800. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with B & B Systems, Inc., of Warrendale, PA.

MC 116626 (Sub-16), filed July 1, 1983. Applicant: C. W. EANES, INC., P.O. Box 1006, Gretna, VA 24557. Representative: Jon F. Hollengreen, 1020 Pennsylvania Bldg., Pennsylvania Ave. & 13th St., NW

Washington, DC 20004, (202) 628-4600. Transporting *building materials*, between points in NC and VA, on the one hand, and, the other, points in DE, MD, NJ, NC, PA, VA, and WV.

MC 157657 (Sub-4), filed July 5, 1983. Applicant: RIVERSIDE TRANSPORTATION, INC., P.O. Box 2218, Richmond, VA 23217. Representative: J. Aiden Connors, 325 East 201st St., New York, NY 10458, (212) 644-9419. Transporting *pulp, paper and related products*, between points in the U.S., under continuing contract(s) with Groveton Paperboard, Inc., division of Diamond International, of Groveton, NH.

MC 161846, filed July 1, 1983. Applicant: FURTADO'S FREIGHT LINES INC., 200 Frontage Rd., Boston, MA 02118. Representative: Albert P. Sagansky, 53 Commercial Wharf, Boston, MA 02110, (617) 367-1967. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, ME, MA, NH, NJ, NY, RI, and VT.

MC 163917 (Sub-1), filed June 5, 1983. Applicant: RUSSELL OTTOMEIER, North 6821 Regal, Spokane, WA 99207. Representative: Russell Ottomeier (same address as applicant) (509) 487-4024. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Gary J. Padrta, d.b.a. Western Truck Brokers, of Spokane, WA, and Martin F. Lawrence, d.b.a. Northwest Dispatch, of Spokane, WA.

MC 169037, filed July 6, 1983. Applicant: SEVEN WHEELS, INC., U.S. 25E So., P.O. Box 237, Morristown, TN 37814. Representative: Carl W. Eilers, 111 E. Market St., Kingsport, TN 37660, (615) 246-7041. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AL, AR, FL, GA, KY, LA, MS, MO, NC, SC, TN, TX, VA, and WY, on the one hand, and, on the other, those points in the U.S. in the east of MT, WY, CO, and NM.

Volume No. OP4-447

Decided: July 13, 1983.

By the Commission, Review Board, Members: Carleton, Dowell, and Williams.

MC 168607, filed June 10, 1983, previously noticed in the *Federal Register* issue of June 29, 1983, and republished this issue. Applicant: JAMES M. CHAPMAN, d.b.a. SOUTHEAST MOTOR LINE, 712 E. Dixie Ave., Dade City, FL 33525.

Representative: Clayton R. Byrd, 2870 Briarglen Dr., Doraville, GA 30340, (404) 491-1896. Transporting (1) *petroleum, natural gas and their products*, and (2) *automotive parts, accessories, equipment and chemicals*, between points in FL, on the one hand, and, on the other, points in AL, AR, GA, IN, KS, LA, MS, NC, SC, TN, TX, and WV. Note: The purpose of this republication is to correctly state the territorial description.

For the following, please direct status calls to Team 5 at 202-275-7289.

Volume No. OP5-354

Decided: July 12, 1983.

By the Commission, Review Board Members Dowell, Krock, and Parker.

MC 79658 (Sub-91), filed July 1, 1983. Applicant: ATLAS VAN LINES, INC., 1212 St. George Rd., P.O. Box 509, Evansville, IN 47703. Representative: Michael L. Harvey (same address as applicant), 812-424-2222. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Pitney Bowes, Inc., of Stamford, CT, and its subsidiaries.

MC 79658 (Sub-92), filed July 1, 1983. Applicant: ATLAS VAN LINES, INC., 1212 St. George Rd., P.O. Box 509, Evansville, IN 47703. Representative: Michael L. Harvey (same address as applicant), 812-424-2222. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Manville Service Corporation of Denver, CO, and its subsidiaries.

MC 107348 (Sub-8), filed June 28, 1983. Applicant: DON A. SIMMONS, d.b.a. A&F MOTOR LINE, 700 Des Moines, Texarkana, AR 75502. Representative: James M. Duckett, 221 W. 2nd St., Suite 411, Little Rock, AR 72201, (501) 375-3022. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Bowie County, TX, and Miller, Little River, Nevada, Sevier, Howard, Polk and Hempstead Counties, AR.

MC 114028 (Sub-55), filed June 30, 1983. Applicant: ROWLEY INTERSTATE TRANSPORTATION COMPANY, INC., 2010 Kerper Boulevard, Dubuque, IA 52001. Representative: Joel H. Steiner, 135 So. LaSalle St., Suite 2106, Chicago, IL 60603, (312) 236-9375. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Detroit, MI, Denver, CO, Minneapolis, MN, Oklahoma City, OK, Memphis, TN, Portland, OR, Charleston, SC, Columbus,

Cincinnati, and Sandusky, OH, Kansas City, KS, St. Louis, MO, Des Moines, IA, Ft. Wayne and Indianapolis, IN, Birmingham and Mobile, AL, and Atlanta and Conyers, GA, and points in Kent County, DE, Snohomish and King Counties, WA, Jackson and Benton Counties, AR, Kennebec, Somerset, and Cumberland Counties, ME, Southampton County, VA, and Muskegon County, MI, and points in PA, NY, NJ, WI, FL, CA, and TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 165758 (Sub-2), filed June 8, 1983. Applicant: ROY J. McCLELLAN, d.b.a. UNIQUE HAULING COMPANY, 230 Canal St., P.O. Box 254, Newton Falls, OH 44444. Representative: Roy J. McClellan (same address as applicant) (216) 872-7528. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in OH, on the one hand, and, on the other, points in the U.S.

MC 166359 (Sub-1), filed June 29, 1983. Applicant: ROBERT M. MENNING d.b.a., BOB MENNING TRUCKING, Route 1, Box 298, Edgerton, MN 56128. Representative: A. J. Swanson, P.O. Box 1103, Sioux Falls, SD 57101, 605-335-1777. Transporting *petroleum, natural gas and their products*, between St. Louis, MO, and points in Kay and Osage Counties, OK, Lyon and O'Brien Counties, IA and Minnehaha County, SD, on the one hand, and, on the other, points in Pipestone and Nobles Counties, MN.

MC 166548, filed May 31, 1983. Applicant: SPRINGFIELD TRUCKING, INC., P.O. Box 818, Livingston, AL 35470. Representative: Archie B. Culbreth, Suite 570, 2200 Century Pkwy., Atlanta, GA 30345, 404-321-1765. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 168999, filed June 29, 1983. Applicant: KING TRANSPORT, INC., P.O. Box 1540, South Gomez Rd., Hobe Sound, FL 33455. Representative: Michael F. Morrone, 1150 17th St., NW., Washington, DC 20036, 202-457-1124. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 1, (202) 275-7030.

Volume No. OP-1-285(N)

Decided: July 13, 1983.

By the Commission, Review Board Members Krock, Williams, and Dowell.

MC 148160 (Sub-3), filed July 1, 1983. Applicant: L. S. GEIST, INC., East Mountain Road, P.O. Box 116, Hegins, PA 17938. Representative: John W. Frame, P.O. Box 626, Camp Hill, PA 17011, (717) 761-0520. Transporting *general commodities* (except classes A and B explosive and household goods), between those points in the U.S. in and east of MN, IA, MO, AR and LA, and those in ND and TX.

MC 149070 (Sub-7), filed June 24, 1983. Applicant: LESCO TRUCKING COMPANY, INC., 10731 Rockwall Road, Dallas, TX 75238. Representative: Richard H. Streeter, 1729 H Street, NW., Washington, DC 20006, (202) 337-8500. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except HI).

MC 154240 (Sub-2), filed June 22, 1983. Applicant: HEIL WINDERMERE STORAGE & MOVING CO., 8649 Freeway Dr., Macedonia, OH 44056. Representative: R. H. Heil (same address as applicant) (216) 467-1111. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with American Brokerage Co., of Macedonia, OH and National Transportation Consultants, of Brecksville, OH.

MC 169051, filed July 7, 1983. Applicant: JERRY'S ARCO, INC., 5600 Ager Road, Hyattsville, MD 20782. Representative: William D. Truslow, 9529 Riggs Road, Adelphi, MD 20783, (301) 434-1667. Transporting *motor vehicles*, between points in MD, VA and DC.

[FR Doc. 83-19556 Filed 7-19-83; 8:45 am]

BILLING CODE 7035-01-M

[Decision Volume No. OP4-443]

Motor Carriers; Republications of Grants of Operating Rights; Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the *Federal Register*.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this *Federal Register* notice. Such pleading shall address specifically the issue(s) indicated as the purpose for

republication. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

Agatha L. Mergenovich,
Secretary.

Please direct status inquiries to Team 4 at (202) 275-7669.

MC 3847 (Sub-470) (republication), filed February 1, 1983; published in the *Federal Register* issue of February 15, 1983, July 8, 1983, and republished in this issue. Applicant: NJ TRANSIT BUS OPERATIONS, INC., 180 Boyden Ave., Maplewood, NJ 07040. Representative: Irwin I. Kimmelman, McArthur Hwy and Market St., P.O. Box 10009, Newark, NJ 07101. In a decision by the Commission, Review Board, Carleton, Fortier, and Dowell, decided June 14, 1983; and finds that performance by applicant: To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting passengers, in charter and special operations, between points in the United States, will serve a useful public purpose responsive to a public demand or need. Applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements.

The purpose of this republication is to give notice of the proper Standards of Protest.

Note.—Applicant receives governmental financial assistance for the purchase or operation of buses, or is an operator for such a recipient.

MC 106207 (Sub-20) (republication), filed February 7, 1983; published in the *Federal Register* issue of February 28, 1983, July 8, 1983, and republished in this issue. Applicant: NEW YORK-KEANSBURG-LONG BRANCH BUS CO., INC., 50 Hwy 36, Leonardo, New Jersey 07737. Representative: Sidney J. Leshin, 3 East 54th Street, New York, NY 10022. In a decision, by the Commission, Review Board, Joyce, Fortier, and Krock, decided June 8, 1983; and finds that performance by applicant: To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting passengers, between Freehold, NJ and the World Trade Center, New York, NY: from Freehold over New Jersey Hwy 33 to Freehold Circle at junction U.S. Hwy 9; then over U.S. Hwy 9 to junction Garden State Parkway; then over the Garden State Parkway to junction New Jersey Turnpike; then over the New Jersey Turnpike to junction Pulaski Skyway; then over the Pulaski Skyway to the Holland Tunnel; then through the Holland Tunnel to the Borough of

Manhattan, New York, NY; then over city streets to the World Trade Center; and return over the same route, serving all intermediate points.

Note.—The purpose of this republication is to show the correct territorial description, and to indicate the proper manner and time for filing protests in this proceeding.

[FR Doc. 83-19556 Filed 7-19-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the *Federal Register* publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the *Federal Register*. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property Notice No. F-277

The following applications were filed in region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, 211 Main St., Suite 501, San Francisco, CA 94105.

MC 159041 (Sub-6-1TA), filed July 6, 1983. Applicant: CONDOR

ENTERPRISES, INC., P.O. Box 293, Clackamas, OR 97015. Representative: Steven Goodin (same as applicant). *Pulp, paper and related products* from Clackamas County, OR to points in CA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Cupples Paper Bags, 10151 SE Jennifer St., Clackamas, OR 97015.

MC 166942 (Sub-6-3TA), filed July 7, 1983. Applicant: LEILANI SPELL d.b.a. ELITE TRUCKING, 100 Harter Ave., Woodland, CA 95695. Representative: Leilani Spell (same as applicant). *General commodities* (except class A & B explosive, bulk commodities in tank vehicle) between points in CA, NV, OR, AZ, NM, TX and WA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Ames Co., Inc., P.O. Box 1387, Woodland, CA 95695.

MC 169035 (Sub-6-1TA), filed July 6, 1983. Applicant: GEORGIA PACIFIC AIRFREIGHT CONSOLIDATORS, LTD., 4320 Cowley Crescent, Vancouver Airport (South), Richmond, B.C. V7B 1B6, CD. Representative: Ronald Poulter (same as applicant). *General commodities* (except classes A and B explosives), restricted to shipments of 100 pounds or less in which no one package exceeds 100 pounds. Between points in the International Boundary Line, between the U.S. and CD, in Whatcom County and points in Snohomish, King and Pierce Counties, WA, for 270 days. Supporting shipper: There are ten shippers. Their statements may be examined at the Regional Office listed.

MC 168415 (Sub-6-1TA), filed July 6, 1983. Applicant: L & L TRUCKING, INC., 10269 Roan Meadows Dr., Boise, ID 83709. Representative: Timothy R. Stivers, P.O.B. 1576, Boise, ID 83701. *General commodities (except classes A & B explosives, commodities in bulk and household goods)*, between points in Boise, ID; Denver, CO; Portland, OR; Salt Lake City, UT; and points in their respective commercial zones for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Action Express, Inc., P.O.B. 722, Boise, ID, 83701; D'Alessandro's 4983 Glenwood, Boise, ID, 83704.

MC 168769 (Sub-6-1TA), filed July 6, 1983. Applicant: RED BARON TRUCKING, 22201 N. E. 2nd, Redmond, WA 98052. Representative: Jim Pitzer, P.O.B. 895, Renton, WA 98057. *Boxed Meat* from Ellensburg and Yakima, WA to points in CA, for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Washington Beef, Inc., P.O.B. 9344, Yakima, WA 98909.

MC 121366 (Sub-6-2TA), filed July 6, 1983. Applicant: DALLAS SMITH TRANSPORT, 1102 E. Tonto St., Phoenix, AZ 85034. Representative: Andrew V. Baylor, 337 E. Elm St., Phoenix, AZ 85012. *Motor vehicles* between points in IL, IN, MI, OH, OR, and WI for 270 days. Interline privileges requested. An underlying ETA seeks 120 days authority. Supporting shipper: Toyota Motor Sales U.S.A., Inc., 19001 S. Western Ave., Torrance, CA 90509.

MC 159971 (Sub-6-2TA), filed July 5, 1983. Applicant: JOHN W. TRIPLETT, 1311 Birch St., Lewiston, ID 83501. Representative: Barney L. Hardin, 1471 Shoreline Dr., Suite 106, Boise, ID 83702. *Petroleum Products*, from Spokane County, WA to Lewis and Nez Perce Counties, ID, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Smith Oil Co., Box 171, Craigmont, ID 83523.

MC 169034 (Sub-6-1TA), filed July 6, 1983. Applicant: WESTERN ROADS, INC., P.O.B. 191, Highway 395 South, Lakeview, OR 97630. Representative: [same as applicant]. *Contract carrier*, irregular route, *perlite ore*, from Lakeview, OR and Paisley, OR and including directly from the mine site, to Florence, CO, for 270 days. Supporting shipper(s): Houston Oil and Minerals Exploration Company, P.O.B. 27F, Lakewood, CO.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 83-19554 Filed 7-19-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-No. 149)]

Rail Carriers; Burlington Northern Railroad Co.; Abandonment in Grand Forks County, ND; Notice of Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 16.65 mile rail line between Grand Forks (milepost 101.00) and Honeyford (milepost 117.65) in Grand Forks County, ND. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of the notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail

Section, AB-OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 83-19555 Filed 7-19-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

National Institute of Justice

Solicitations; Crime Control Theory and Policy etc.

The National Institute of Justice intends to support research in three program areas vital to policy relevant research:

- Crime Control Theory and Policy;
- Performance and Productivity Measurement; and
- Classification, Prediction and Methodology Development.

Each program area will seek to support 6 to 10 grants for research within the scopes outlined in the respective solicitations. The National Institute of Justice offers two independent competitive opportunities for submission of proposals to each program. The first submission deadlines have been tentatively set for late August 1983. Second-round submissions are tentatively scheduled for late November 1983. Copies of solicitations can be obtained from the National Criminal Justice Reference Service: National Criminal Justice Reference Service, Box 6000, Rockville, MD 20850; (301) 251-5500.

James K. Stewart,
Director.

[FR Doc. 83-19614 Filed 7-19-83; 8:45 am]

BILLING CODE 4410-18-M

NUCLEAR REGULATORY COMMISSION

Applications and Amendments to Operating Licenses Involving no Significant Hazards Considerations; Monthly Notice

I. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing its regular monthly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or

proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This monthly notice includes all amendment issued, or proposed to be issued, since the date of publication of the last monthly notice which was published on June 22, 1983 (48 FR 28578-28583) through July 12, 1983.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By August 22, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance

with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington,

D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the local public document room for the particular facility involved.

**Arkansas Power and Light Company,
Docket No. 50-368, Arkansas Nuclear
One, Unit No. 2, Pope County, Arkansas**

Date of amendment request: January 5, 1982.

Description of amendment request: The amendment would revise the Technical Specifications to incorporate Limiting Conditions for Operation and Surveillance Requirements for additional fire detectors and fire suppression equipment. These additional detectors and suppression equipment were installed to reduce even further the likelihood of disabling fires and to improve assurance of rapid detection and suppression of fires that could occur. The proposed amendment was submitted in accordance with the staff's Fire Protection Safety Evaluation Report which required Technical Specifications covering these additional detectors and suppression equipment.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards include actions which involve a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications.

The changes included in the proposed amendment add limitations and controls by placing these additional detectors and suppression equipment in the lists of the fire detection instrumentation and the fire suppression systems to which the appropriate Limiting Conditions for

Operation and Surveillance Requirement apply. The implementation of the proposed changes will provide additional protection above that now established. Since the proposed amendment adds additional limitations and controls not presently included in the Technical Specifications, the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room
location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esq., c/o DeBevoise & Liberman, 1200 Seventeenth Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: Robert A. Clark.
Baltimore Gas and Electric Company,
Docket Nos. 50-317 and 50-318, Calvert Cliffs Units 1 and 2, Lusby, (Calvert County) Maryland

Date of amendment request: May 27, 1983.

Description of amendment request:
The proposed amendment would change the Unit 1 and Unit 2 Technical Specifications (TS) to reflect the change in valve 1(2)-SV-6529 from an automatic isolation valve with a required response time (closure) of less than or equal to 7 seconds, to a locked closed isolation valve with no required response time.

Basis for proposed no significant hazards consideration determination:
The Commission has provided guidance concerning the application of standards for conclusions regarding "no significant hazards considerations" by providing examples (48 FR 14870). These examples are not applicable to the issues addressed in the May 27 application. Our basis for the "no significant hazards considerations" conclusion is presented below.

The valves listed in TS Table 3.6-1 are containment isolation valves which must close upon detection of accident conditions in order to maintain containment integrity. Valves 1(2)-SV-6529 has been automatic isolation valves which had been routinely tested to assure a response time of less than or equal to 7 seconds. These valves were modified by removal of the automatic isolation signal and replacement of the actuating hand switches in the control room with key-locked hand switches. In addition, the valves were further controlled by removal of control power with the valves in the closed position.

This proposed change does not increase the probability of occurrence of an accident or malfunction of equipment important to safety previously evaluated in the Updated Final Safety Analysis

Report (FSAR). This is because of dual protection for ensuring the valve is maintained in the closed position, during reactor operation, i.e., the fuses being removed and the key which must be inserted and operated to open the valve under administrative control.

This proposed change does not result in any reduction in the margin of safety. Section 3/4 6.4 of the Technical Specification Bases states that, "The Operability of the containment isolation valves ensures that the containment atmosphere will be isolated from the outside environment in the event of a release of radioactive material to the containment atmosphere or pressurization of the containment." By administratively controlling the valve as previously described, the valve is maintained closed when containment integrity is required with the exception of brief periods in the event it is required to be opened to perform its function which is associated with post-accident sampling. The surveillance requirements for containment isolation valves will adequately ensure the valve remains operable. In addition, since these valves would be closed at the initiation of any accident, this change will not result in an accident not previously considered in the FSAR.

With above considerations, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room
location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: George F. Trowbridge, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M. Street NW., Washington, D.C. 20036.

NRC Branch Chief: Robert A. Clark.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station,
Plymouth, Massachusetts

Date of amendment request: February 25, 1983.

Description of amendment request:
Technical Specification changes to incorporate an action statement in the event a limiting condition for operation regarding jet pump flow mismatch is exceeded. This action statement would require an orderly shutdown to be initiated in the event a limiting condition for operation concerning Jet Pump Flow Mismatch is exceeded and not corrected within 30 minutes.

Basis for proposed no significant hazards consideration determination:
The Commission has provided guidance for the application of the standards for determining whether a significant hazards consideration exists by providing examples of amendments that

are considered not likely to involve significant hazards considerations (48 FR 14870). One such amendment is a change that involves an additional limitation, restriction or control not presently included in the Technical Specifications.

The change proposed by the licensee constitutes an additional control which would incorporate an action statement requiring an orderly shutdown to be initiated in the event a limiting condition for operation (LCO) concerning Jet Pump Flow Mismatch is exceeded and not corrected within 30 minutes.

The incorporation of such an action statement would add a control which will minimize potential confusion as to required actions to be taken when a LCO is exceeded. Therefore, since the application for amendment involves proposed changes similar to the examples for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room
location: Plymouth Public Library, North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Branch Chief: Domenic B. Vassallo.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County,
Connecticut

Date of amendment request: January 18, 1979 as revised December 11, 1981.

Description of amendment request:
The proposed amendment would approve technical specifications (TS) for radiological effluent monitoring (RETS), to meet the requirements of Appendix I to 10 CFR Part 50.

Basis for proposed no significant hazards consideration determination:
The amendment would add Radiological Effluent Technical Specifications to meet the requirements of Appendix I of 10 CFR Part 50. The amendment would approve new Technical Specification sections defining limiting conditions for operation and surveillance requirements for radioactive liquid and gaseous effluent monitoring, for effluent concentrations, and for treatment of liquid, gaseous and solid wastes. This action would also incorporate into the Technical Specifications the bases that support the operation and surveillance requirements.

The Commission, in a revision to Appendix I, 10 CFR Part 50 required

licensees to improve and modify their radiological effluent systems in a manner that would keep releases of radioactive material to unrestricted areas during normal operation as low as is reasonable achievable. In complying with this requirement it became necessary to add additional restrictions and controls to the Technical Specifications to assure compliance. This caused the proposed addition of Technical Specifications described above. The staff proposes to determine that the application does not involve a significant hazards consideration since the change constitutes additional restrictions and controls that are not currently included in the Technical Specifications in order to meet the Commission mandated release of "as low as is reasonable achievable." Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing certain examples [48 FR 14870]. One of the examples (ii) of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the technical specifications.

Local Public Document Room location: Russell Library, 119 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chief: Dennis M. Crutchfield.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: January 12, 1982.

Description of amendment request: Proposed changes to the Technical Specifications (TS) would include all mechanical snubbers in use at the plant and the related requirements for operability, testing and inspections of the snubbers.

Basis for proposed no significant hazards consideration determination: The amendment would add new requirements for operability, visual

inspections and periodic testing to mechanical snubbers to ensure that these devices are operable. Snubbers are attached to piping and equipment to provide restraint during a seismic or other event which initiates dynamic loads, yet allow slow motion such as that produced by thermal expansion. The Commission has provided guidance concerning the application of standards for determining whether license amendments involve no significant hazards considerations by providing certain examples which were published in the *Federal Register* on April 6, 1983 (48 FR 14870). One of the examples of actions involving no significant hazards consideration is a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, such as a more stringent surveillance requirement.

The amendment request, discussed above, fits this example. On this basis, the Commission proposes to determine that the amendment involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 119 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chief: Dennis M. Crutchfield.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: February 18, 1983.

Description of amendment request: The amendments would allow spent fuel from McGuire Unit 1 to be stored in the spent fuel pool (SFP) for Unit 2 and spent fuel from Unit 2 to be stored in the SFP for Unit 1. Under the current licenses, the Licensee may have Unit 1 spent fuel only in the Unit 1 SFP and Unit 2 spent fuel only in the Unit 2 SFP.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the above standards by providing certain examples (48 FR 14870). One of the examples of actions likely to involve no significant hazards consideration relates to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the

Standard Review Plan. A review of Licensee's submittal, dated February 14, 1983, in accordance with the Standards of 10 CFR 50.92, indicates that the transfer of spent fuel between the two McGuire Nuclear Station Units does not involve a significant hazards consideration. This conclusion is based upon the following.

Because the fuel to be used in Units 1 and 2 is of the same design, the proposed transfer of spent fuel between Units 1 and 2 does not involve any significant changes in the procedures for spent fuel handling, types of fuel handling accidents, and radiation hazards of fuel pool operations, provided that the anticipated heat load of the pools does not result in pool temperature in excess of 150°F. The proposed amendments have not changed these conclusions, which were found acceptable in the McGuire Units 1 and 2 Safety Evaluation Report, dated March 1978, and March 1979 Supplement to the Safety Evaluation Report. The above conclusions regarding the proposed amendments therefore, are similar to the example cited above, and do not involve any significant increase in the probability or consequences of a previously analyzed accident, do not create a possibility of a new or different kind of accident, do not significantly reduce the safety margin, and their consequences are clearly within all acceptable criteria with respect to systems or components specified in the Standard Review Plan.

Local Public Document Room location: Atkins Library, University of North Carolina-Charlotte, UNCC Station, North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Branch Chief: Elinor G. Adensam.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: April 4, 1983.

Description of amendment request: The proposed Technical Specification change reduces the boron concentration requirements in the Boron Injection Tank from a range of 20,000 ppm to 22,500 ppm to a range of 2000 ppm to 7700 ppm. The minimum temperature requirement will be reduced to correspond to the solubility limit for 7700 ppm. The proposed limiting condition for operation allows one hour for corrective action of a deviation and four hours for recirculation prior to

boron concentration verification by sampling. A surveillance requirement will be added to verify recirculation flow and that minimum temperature in maintained when the ambient temperature is low. The requirements for heat tracing will be deleted. The bases will be revised to reflect changes in the analyses and the limiting conditions for operation.

Basis for proposed no significant hazards consideration determination: The criterion for the boron concentration in the boron injection tank is that there will be no consequential failure for a Condition II event when the design-basis accidents, "Depressurization of the Main Steam System" and "Major Secondary System Pipe Rupture," are evaluated. The original calculations to meet this criterion were based on conservative assumptions resulting in a concentration of 20,000 to 22,500 ppm boron. Subsequently, an evaluation performed on reducing the boron concentration in the tank to a range of 2000 to 7700 ppm has been reviewed and approved by the staff for a number of plants as meeting the acceptance criterion of no consequential fuel failures for a Condition II event when the design-basis accidents are evaluated. Therefore, the results of this change, while decreasing safety margins, are clearly within the acceptable criteria. Thus, this proposed change matches an example of "no significant hazard" in the guidance provided by the Commission (48 FR 14871), namely, a change which "may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system as specified in the Standard Review Plan." In addition, the reliability of the boron injection tank will be enhanced by reduction of the boron concentration due to the reduced potential of boron solidification.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: April 12, 1983

Description of amendment request: The proposed amendment clarifies a

previous amendment, Amendment #49. Specifically:

1. The applicability statement for Section 3.7.12, to identify snubbers required to be operable in Modes 5 and 6 was revised to incorporate a clarification note "These systems are defined as those portions or sub-systems required to prevent releases in excess of 10 CFR 100 limits."

2. Surveillance Requirement 4.7.12.f was revised to include a note to clarify the snubber service life baseline "For purposes of establishing a baseline for the determination of service life monitoring, this program will be implemented over three successive refueling periods."

Basis for proposed no significant hazards consideration determination: A purely administrative change (Example (i) under "No Significant Hazards"). While it does not correct an error, it does attempt to clarify points the staff intended to make when Amendment #49 was issued.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant, Unit Nos. 3 and 4, Dade County, Florida.

Date of amendment request: June 3, 1983.

Description of amendment request: This amendment involves Technical Specification changes to support planned fuel design modification during Cycle 9 refueling for Unit 3, Cycle 10 refueling for Unit 4 and subsequent cycles. It is planned to replace the Westinghouse 15 x 15 low-parasitic (LOPR) fueled cores with Westinghouse 15 x 15 optimized fuel assembly (OFA) core with Wet Annular Burnable Absorber (WABA) Rods. Changes are requested to: (1) permit increases in shutdown and control rod drop time which will be based on safety analysis for the transition cores; (2) use of burnable poison rods of an approved design for reactivity and/or power distribution factors; and (3) changes in hot channel factors and other power distribution factors affecting departure from nucleate boiling (DNB). The change in core physics parameters and thermal characteristics are required due to the improved neutronic characteristics of

fuel assemblies and fuel management considerations.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether license amendments involve no significant hazards considerations by providing certain example (48 FR 14870). Example (iii) of amendments not likely to involve significant hazards considerations is a change resulting from nuclear reactor reloading involving no fuel assemblies significantly different from those previously found acceptable at the facility in question, where no significant changes are made to the acceptance criteria for the Technical Specifications, the analytical methods used are not significantly changed and the NRC has previously found the methods acceptable. The instant amendments are similar to the example in that the new fuel is exactly like previous Westinghouse 15 x 15 fuel assemblies except with grid spaces made with different material and improved neutronic characteristics. The core safety limits and associated setpoints in the current Technical Specifications are applicable. The effects of increased rod drop time are within all the safety limits and criteria analyzed in the FSAR and the plant will be operated within the previously approved margins and limits. Each reload core design will be evaluated to assure that design and safety limits are satisfied according to NRC approved methodology and analysis. On this basis, the staff proposes to determine that the amendments involve no significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Attorney for licensee: Harold F. Reis, Esquire, Lowenstein, Newman, Reis and Axelrad, 1025 Connecticut Avenue, N.W., Suite 1214, Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: December 10, 1982.

Description: The proposed amendment requests approval of Technical Specification change to revise the Snubber Surveillance requirements.

Basis for proposed no significant hazards consideration determination: The amendment would add new

requirements for operability, visual inspections and periodic testing of mechanical snubbers to ensure that these devices are operable. Snubbers are attached to piping and equipment to provide restraint during a seismic or other event which initiates dynamic loads, yet allow slow motion such as that produced by thermal expansion. The amendment would also make minor revisions to the requirements for testing and inspection of hydraulic snubbers, such as including large-capacity snubbers (which can not be tested) in the functional test program, and more clearly defining the acceptance criteria for visual inspection and functional testing. This change constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications that is, a more stringent surveillance requirement, and is, therefore, consistent with example (ii) of the Commission guidance (48 FR 14870, April 6, 1983) as a type of action which would not involve a significant hazards consideration.

Local Public Document Room
location: 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G. F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.
NRC Branch Chief: Dennis M. Crutchfield.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: January 21, 1983.

Description of amendment request: The request for technical specification (TS) changes relates to reallocation of personnel at Oyster Creek.

Basis for proposed no significant hazards consideration determination: The proposed TS revisions would reflect the approval of organizational changes at the plant. This realignment would more clearly identify areas of responsibility. This proposed TS change request would be an administrative change. All Oyster Creek modifications, repairs and construction activities will be the responsibility of the Maintenance and Construction division. Operational Maintenance and Preventive Maintenance will be the responsibility of the Plant Material department. In the Facility Staff Qualifications Section the positions of Manager Plant Maintenance would be retitled to Manager Plant Material, and the Instrument Maintenance Supervisor would be retitled to Area supervisor Instrument and Computer Maintenance. In each

case the qualifications for those positions would not be changed. In addition, the qualifications for the Maintenance and Construction Director would be added. The staff proposes to determine that these changes are administrative in nature and would not reduce the effectiveness of the facility organization nor would the changes decrease the required qualification of personnel. Therefore, the staff proposes to determine that the requested action involves no significant hazards consideration, because it does not involve a significant increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any previously evaluated and does not involve a significant reduction in a margin of safety.

Local Public Document Room
location: 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G. F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.
NRC Branch Chief: Dennis M. Crutchfield.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: August 31, 1982.

Description: Request for approval of Appendix A Technical Specification changes which would reflect the use of General Electric reload fuel and core design features (NEDO-24195) for Cycle 10 operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided examples of actions not likely to involve significant hazards considerations (48 FR 14870, April 6, 1983). The license amendment requested here is similar to example iii of actions not likely to involve significant hazards considerations. The proposal license amendment would not involve fuel assemblies significantly different from the Exxon fuel currently being used at the plant; the proposed action would not involve significant changes to the acceptance criteria for the relevant TS; the analytical methods used to demonstrate conformance with the TS and regulations would not be significantly changed. Moreover, the NRC staff has previously found such methods acceptable (NEDO-24011-P-A). The mechanical design, nuclear evaluation methods, steady-state hydraulic models, and reactor limits

determination information are identical to that which is described in NEDO-24011-P-A. GE Generic Reload Fuel Application Licensing Topical Report, except for those features unique to the Oyster Creek plant. The amendment request is supported by GE's reload core transient analysis and MAPLHGR limits consistent with GE's ECCS evaluation model. The change would also include deletion of obsolete and non-applicable bases in the technical specifications due to the changes in fuel design and the fuel vendor. The staff proposes to determine that the proposed action does not involve a significant increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any previously evaluated and does not involve a significant reduction in a margin of safety. Therefore, the staff proposes to determine that the requested action involves no significant hazards consideration.

Local Public Document Room
location: 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G. F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 22036.
NRC Branch Chief: Dennis M. Crutchfield.

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendment: May 10, 1983.

Description of amendment request: The current Technical Specification for Unit 1 presently includes duplicative inservice testing and inspection (IST and ISI) surveillance requirements. Amendments 71 and 53 issued on April 13, 1983, created the duplication by adding a Section 4.0.5 "Inservice Inspection and Inservice Testing." For Unit 1, that Section was footnoted to limit its application until the duplicative requirements in the individual Technical Specifications could be adequately reviewed and correctly removed. This proposed amendment follows the intent of Amendments 71 and 53 by removing the individual requirements and making Section 4.0.5 effective for all of Unit 1. The proposed amendment would also change the Unit 2 Technical Specification surveillance requirement for checking the charging pump operation during Modes 5 and 6. The change would reduce the required discharge pressure to account for the lower overall system pressures during

these modes. The Unit 1 Technical Specifications already contain this approved lower discharge pressure requirement; the Unit 2 Technical Specifications are proposed to be consistent with Unit 1 requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14871). One of the examples of actions involving no significant hazards considerations relates to purely administrative changes to Technical Specifications. The proposed change to Unit 1 Technical Specifications to remove duplicative inservice testing and inspection surveillance requirements is directly related to this example.

The Unit 2 change to correct the required discharge pressure of the charging pumps during Modes 5 and 6 is exactly like the previously approved Unit 1 requirement which was also previously found not to involve a significant hazards consideration. Therefore, the Unit 2 proposed change should not involve a significant hazards consideration.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for the licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: October 7, 1982.

Description of amendment request: The proposed change provides Technical Specifications which restrict plant operations when Reactor Protective System (RPS) channels and Engineered Safeguards Features Actuation System (ESFAS) sensors are bypassed. This change is in response to requests by the NRC to provide such Specifications to assure reliable operation of the RPS and ESFAS, when channels or sensors are being maintained during normal power operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (See 48 FR 14870). A change that constitutes an additional limitation, restriction, or control not presently

included in the Technical Specifications is explicitly considered not likely to involve significant hazards.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, ME 04578.

Attorney for licensee: J. A. Ritsher, Esq., Ropes & Gray, 225 Franklin Street, Boston, MA 02110.

NRC Branch Chief: Robert A. Clark.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Wiscasset, Maine

Date of amendment request: March 1, 1976.

Description of amendment request: The proposed change is requested in order to bring Maine Yankee's Technical Specification on Containment Testing into closer conformance with the requirements of 10 CFR 50 Appendix J. The current specification provided a detailed methodology for containment leak testing. However, it was determined not to be in conformance with the current Appendix J.

The new specification directly references Appendix J as the applicable standard. The necessary parameters are defined to be consistent with the Appendix J methodology.

Basis for proposed no significant hazards consideration determination: Appendix J was developed by the Commission to provide a uniform basis for containment leak testing. It provides a more restrictive set of testing conditions that are found currently in this license. Hence, the change represents an additional restriction, limitation, or condition being incorporated into the Technical Specifications. This matches example (ii) of 48 FR 14870 of the examples of amendments not likely to involve significant hazards considerations. In addition, the proposed change will make the license conform to changes in the regulations. This matches example (vii) of 48 FR 14870 of the examples of amendments not likely to involve significant hazards considerations. Thus, the Commission proposed to determine for this amendment that it involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: John A. Ritsher, Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Branch Chief: Robert A. Clark.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: May 3, 1983.

Description of amendment request: The amendment would make changes to Section 3.6.5, Radioactive Material Sources of the Technical Specifications to make the inventory provisions conform with the Regulations.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). The following were included in the examples as actions involving no significant hazard: A change to make a license conform to changes in the regulation, where the license change results in very minor changes to facility operation clearly in keeping with the regulation.

The change proposed in the application is encompassed by the above stated example as follows: The change to the inventory requirements is being made to clarify which radioactive materials is sealed sources are exempt from inventory and which require inventory under the provisions of 10 CFR 30.18 and 10 CFR 30.71, Schedule B.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Ave. NW., Washington, D.C. 20006.

NRC Branch Chief: Domenic B. Vassallo.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit 2, New London County, Connecticut

Date of amendment request: July 15, 1981.

Description of amendment request: This amendment would replace the Technical Specifications for hydraulic snubbers with NRC Model Technical Specifications for both hydraulic and mechanical snubbers, as modified by the licensees to accommodate plant specific conditions. The proposed visual inspection and testing requirements are specified for each snubber by identifying the applicable Modes of Operation and appropriate Action Statements.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance

(48 FR 14870) by examples of amendments that are not considered likely to involve significant hazards. The proposed amendment is similar to example (ii) in that additional limitations, particularly regarding mechanical snubbers, would be imposed. Limiting the applicability of the visual inspection and testing requirements for each snubber to specific Modes of Operation is necessary to accommodate plant specific conditions; however, the licensee has reviewed the proposed changes pursuant to 10 CFR 50.59 and does not find them to constitute an unreviewed safety question. Based on its review to date, the NRC staff finds that these replacement specifications are no less strict in terms of safety considerations than those previously considered for this facility and proposed to determine that no significant hazards considerations are involved with this amendment.

Local Public Document Room
location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut.

Attorney for licensee: William H. Cuddy, Esquire, Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chief: Robert A. Clark.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit 2, New London County, Connecticut

Date of amendment request: September 24, 1982.

Description of amendment request: This amendment would modify Technical Specification 3.1.2.2 for Reactivity Control Systems to make clear the requirement that both boric acid tanks and associated facility dependent flow paths must be operable in all Modes in which ECCS systems are required to be operable. The change in Specification 3.1.2.2 will assure its consistent application with Specification 3.5.2 concerning Emergency Core Cooling Systems and will require two out of three boron injection flow paths and one associated heat tracing circuit to be operable.

Basis for proposed no significant hazards consideration determination: The proposed change is intended to achieve consistency between two specifications which relate to the use of boric acid systems for different purposes and thus avoid possible misinterpretations by the plant operators. This type of change is included in example (i) of the examples provided by the Commission (48 FR 14870) of amendments that are

considered not likely to involve significant hazards considerations in that it is purely an administrative change to the technical specification to achieve consistency.

Local Public Document Room
location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut.

Attorney for licensee: William H. Cuddy, Esq; Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chief: Robert A. Clark.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit 2, New London County, Connecticut

Date of amendment request: April 13, 1983.

Description of amendment request: The proposed changes in the Technical Specifications result primarily from Cycle 6 refueling considerations and the probability that additional steam generator tubes will need to be plugged because of corrosion effects. These changes include: (1) reduction of the required primary coolant flow rate from 362,600 gpm to 350,000 gpm to correspond with a steam generator tube plugging level of 15.3% (2500 tubes); (2) reduction of total radial peaking factor (Fr) from 1.597 to 1.565 to offset the departure from nucleate boiling (DNB) analysis penalty which would result from reduction of the primary coolant flow rate to 350,000 gpm; (3) modification of the axial shape index (ASI) monitoring tent to ensure that rated power operation of the reactor core within the tent parameters will not exceed the 15.6 kw/ft linear heat rate following the Cycle 6 refueling; (4) revision of the total planar peaking factor (Fxy) curve to restore its monitoring limits to those at the original Beginning-of-Cycle 5 values; (5) restoration of the control element assembly (CEA) drop time from 3.1 seconds to 2.75 seconds; (6) revision of the auxiliary feedwater (AFW) system action specification 3.7.1.2 to allow 72 hours instead of the present 48 hours to restore the required pumps to operable status, and to impose additional requirements if more than one auxiliary feedwater pump is inoperable. The associate AFW surveillance requirement 4.7.1.2.a.2(b) would also be modified to eliminate demonstration prior to entry into Mode 3 (hot standby) that the steam turbine-driven auxiliary feedwater pump can develop a discharge pressure of greater than or equal to 1080 psig on recirculation flow. The latter change recognizes that insufficient secondary steam pressure may be available in

Mode 4 (hot shutdown) for the turbine driven pump to develop the specified pressure.

Basis for proposed no significant hazards consideration determination: Considering the plant design changes resulting from the reload and the additional steam generator tube plugging, the licensee's reanalysis of the Loss-of-Reactor-Coolant-Flow event indicates no increase in consequences from the previously docketed analyses. The reanalysis of the hypothetical Control Rod Withdrawal (CRW) event results in a slightly lower Departure from Nucleate Boiling Ratio and the reanalysis of the Steam Line Rupture (SLR) event results in a slightly greater return to power (reactivity). Although the consequences of CRW and SLR events represent an increase over the current licensing basis and therefore require detailed staff review, they are within the acceptable limits defined in the Millstone Unit 2 Technical Specification bases and the Final Safety Analysis Report (FSAR).

The licensee's reanalysis of the Steam Generator Tube Rupture (SGTR) event for Cycle 6 operation also results in a need for detailed staff review due to a small increase in dose consequences over those docketed in the February 12, 1979 submittal and the PSAR. However, these results are well within acceptable dose criteria and the current Technical Specification limits provided an adequate margin of safety.

The proposed reduction of CEA drop time from 3.1 to 2.75 seconds is more a stringent limitation than currently called for in the technical specifications.

The proposed revision of the AFW system specifications are in accordance with Standard Technical Specifications and are therefore acceptable to the staff.

Based on the foregoing conclusions and using the criteria contained in 10 CFR 50.92 the staff proposes to determine that this application does not involve a significant hazards consideration since the amendment would not involve a significant increase in the consequences of an accident previously evaluated for this facility.

Local Public Document Room
location: Waterford Public Library, Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: W. H. Cuddy, Esq., Day, Berry & Howard, One Constitution Avenue, Hartford, Connecticut 06103.

NRC Branch Chief: Robert A. Clark.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 22, 1981, June 15, 1982 and October 27, 1982.

Description of amendment request:

The amendment would revise the technical specifications to add requirements related to the reactor protection system and the engineered safety feature actuation system that would limit the length of time that a channel in these systems may be bypassed for test and maintenance purposes. If the length of time is exceeded, then the channel would have to be tripped.

Basis for proposed no significant hazards consideration determination:

The Commission has provided guidance concerning the application of the standards for determining whether license amendments involve no significant hazards considerations by providing certain examples which were published in the *Federal Register* on April 6, 1983 (48 FR 14870). One of the examples of actions involving no significant hazards consideration is a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications.

The licensee's reactor protection system and engineered safety features actuation system are two-out-of-four logic systems. This means that an actuation of the system occurs when two out of the four channel sense parameters beyond their setpoints. This arrangement enhances the systems reliability. Periodically, one channel must be bypassed to permit testing and maintenance. When a channel is bypassed, the system becomes a two-out-of-three logic which makes the system more vulnerable to single-failure related malfunctions thus reducing the system reliability. Thus, it is desirable to limit the amount of time that the channel may be bypassed for testing and maintenance. After the period of time has elapsed, the channel would be tripped which causes the system to revert back to a two-out-of-four logic system with its original reliability. A maximum amount of time permitted for bypassing a channel is not currently in the technical specifications. The licensee proposes 48 hours. The staff has previously found for other licensees that 48 hours is acceptable. Therefore, the proposed changes constitutes additional limitations, restrictions, or controls not presently included in the technical specifications. On this basis, the Commission proposes to determine that the amendment request does not involve a significant hazards consideration.

Local Public Document Room

location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New

Hampshire Avenue NW., Washington, D.C. 20036.

NRC Branch Chief: Robert A. Clark.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: May 24, 1983.

Description of amendment request:

The amendment would allow the facility to heat up to the hot standby operational mode (normal temperature) for purposes of conducting final (hot) tests of the pressurizer safety valves for up to 18 hours provided that a preliminary cold setting has been conducted before heatup. The amendment would also allow the facility to enter the hot standby mode or the startup mode (less than 5% full power) to conduct final operability checks of the main steam isolation valves for ability to close properly. Finally, the amendment would delete a reporting requirement regarding inservice inspection program reviews.

Basis for proposed no significant hazards consideration determination.

The Commission has provided guidance concerning the application of these standards by providing certain examples which were published in the *Federal Register* on April 6, 1983 (48 FR 14870). One of the examples of actions not likely to involve a significant hazards consideration is a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The proposed change to delete a reporting requirement regarding inservice inspection program reviews matches this example, since the requirement was deleted from the inservice inspection section of the technical specifications when Amendment No. 61 was issued on May 8, 1981, but was inadvertently not deleted from the reporting section of the technical specifications. Deletion of this report is purely administrative, and would be done to achieve consistency throughout the technical specifications. The other two proposed changes represent somewhat relaxed limiting conditions for operation in that they allow entry into an operational mode in which operability of the valves is required before such operability has been finally demonstrated. However, this is balanced by the more stringent surveillance requirement for final (hot) testing before power operation. On balance, the proposed change should result in improved valve reliability, and therefore an improvement in safety, since it would allow final valve settings to be made while hot, which is the

condition of the valves when performing their safety function. Since the valves would also be tested while cold, basic valve operability would have been demonstrated before heatup, although final adjustments may be required while hot. Based on the foregoing, the Commission proposes to determine that none of the requested changes involve a significant hazards consideration.

Local Public Document Room

location: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Branch Chief: Robert A. Clark.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: May 24, 1983.

Description of amendment request:

The amendment would clarify that the auxiliary hoist on the fuel manipulator crane in containment is used for latching and unlatching of control rod drive shafts, rather than for movement of control rods as presently written. The amendment would also clarify that the load test for manipulator crane and auxiliary hoist is to be performed within 100 hours prior to core unloading.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples which were published in the *Federal Register* on April 6, 1983 (48 FR 14870). One of the examples of actions not likely to involve a significant hazards consideration is a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The proposed amendment matches this example. Both changes, as described above, involve minor clarifications of the use of equipment or clarification of when load testing should be conducted. The changes do not result in any revision to the way facility operations are conducted. On this basis, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room

location: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General

Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Branch Chief: Robert A. Clark.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: January 28, 1983.

Description of amendment request: The amendment would make changes to the Radiological Effluent Technical Specifications that bring them into compliance with Appendix I of 10 CFR Part 50. It would provide new Technical Specification sections defining limiting conditions for operation and surveillance requirements for radioactive liquid and gaseous effluent monitoring; concentration, dose and treatment of liquid, gaseous and solid wastes; total dose; radiological environmental monitoring that consists of a monitoring program, land use census, and an interlaboratory comparison program. The change would also incorporate into the Technical Specifications the bases that support the operation and surveillance requirements. In addition, some changes would be made in administrative controls, specifically dealing with the process control program and the offsite dose calculation manual.

Basis for proposed no significant hazards consideration determination: The Commission had provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the technical specifications.

The Commission, in a revision to Appendix I to 10 CFR Part 50, required licensees to improve and modify their radiological effluent systems in a manner that would keep releases of radioactive material to unrestricted areas during normal operation as low as is reasonable achievable. In complying with this requirement it became necessary to add additional restrictions and controls to the Technical Specifications to assure compliance. This caused the proposed addition of Technical Specifications described above. The staff proposes to determine that the application does not involve a significant hazards consideration since the change constitutes additional restrictions and controls that are not currently included in the Technical Specifications in order to meet the Commission mandated "as low as is

reasonable achievable" effluent objectives.

Local Public Document Room location: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Branch Chief: Robert A. Clark.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: October 28, 1982.

Description of amendment request: An amendment to the Technical Specification surveillance requirements for the high pressure water fire protection system to clarify existing requirements. The change will delete misleading phrases and replace them with standard terminology regarding the type and sequence of surveillance tests performed on the firepumps.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include actions which are purely administrative changes to the Technical Specifications.

The changes proposed in the application for amendment are encompassed by this example in that the proposed changes seek only to clarify existing surveillance requirements without changing the intent. Therefore, since the application for amendment involves a proposed change that is similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York NY 10019.

NRC Branch Chief: Domenic B. Vassallo.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County New York

Date of amendment request: February 20, 1981.

Description of amendment request: An amendment to the Technical Specifications to modify the definition of the term "Operable" as it applies to the single-failure criterion for safety systems; certain editorial and format changes would also be necessary. The proposed change was initiated in response to an NRC request to revise the definition consistent with guidance issued by NRC. The proposed amendment conforms to the NRC request and provides for a revised definitions that is more restrictive in that it extends the definition to include systems that are associated with the system in question.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include actions which are purely administrative changes to the Technical Specifications, and changes that constitute an additional limitation, restriction, or control not presently included in the Technical Specifications.

The changes proposed in the application for amendment are encompassed by these examples in that: 1) the guidance provided by NRC and proposed in the amendment for the revised definition of the term "Operable" is more restrictive in that the operability of systems associated with the system must also now be considered; and 2) the resulting format and editorial changes are purely administrative changes. Therefore, since the application for amendment involves proposed changes that are similar to the example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, NY 10019.

NRC Branch Chief: Domenic B. Vassallo.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: January 6, 1981.

Description of amendment request: An amendment to modify the Technical Specifications pertaining to four miscellaneous matters: the first change proposes to delete, from the Bases, the pressure setpoint for permissible entry into the Run mode, and to correct that setpoint in the Definitions to be consistent with the same setpoint in the corresponding Limiting Conditions for Operation; the second change proposes to correct an apparent error in the list of valve isolation groups which isolate on a high drywell pressure signal; the third change proposes to correct an error in the list of inputs to the Rod Worth Minimizer; and the fourth change proposes to correct specifications pertaining to the low Pressure Coolant Injection (LPCI) system that should have been modified as a result of a previously approved amendment involving the LPCI system.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: " * * (i) A purely administrative change to the Technical Specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature.

The changes proposed in the application for amendment are encompassed by this example in that: the first proposed change regarding pressure setpoint for entering the Run mode is intended to achieve consistency throughout the specifications; the second change proposes to correct a typographical error; the third change proposes to correct an incorrectly specified input to the Rod Worth Minimizer; and the fourth change proposes to delete specifications no longer applicable and modify certain narrative descriptions as a result of a previously approved change. Thus, the proposed changes are similar to the example cited above in that they are intended to either achieve consistency in the specifications or correct errors.

Therefore, since the application for amendment involves proposed changes that that are purely administrative, the

staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, NY 10019.
NRC Branch Chief: Domenic B. Vassallo.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: May 25, 1983.

Description of amendment requests: An amendment to the license supporting the forthcoming Cycle 6 core reload. The reload involves removing depleted fuel assemblies in about one-third of the nuclear reactor core and replacing them with new fuel of the same type previously loaded in the core.

Basis for proposed no significant hazards consideration determination: In accordance with the rule, the licensee made a determination that no significant hazards consideration was involved in this application for amendment. The staff informed the licensee that, in addition to the determination, the supporting bases for such determination should be included in the submittal. The bases cited by the licensee during subsequent discussion was one of the examples in the guidance provided by NRC concerning application of the standards for determining whether a significant hazards consideration exists (48 FR 14870): " * * (iii) For a nuclear power reactor, a change resulting from a nuclear core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not increase the likelihood of foreign materials to collect in the drive mechanisms over a period of time. This material could potentially adversely affect the operation of the CRDs, and also cause accelerated wear. To compensate for this apparent reduced reliability of the CRDs, the licensee proposed to increase the surveillance requirements. This increase in surveillance would continue until the

the licensee to demonstrate conformance to the technical specifications have been previously approved by the staff. In addition, no changes have been made to the acceptance criteria for the technical specification changes involved. Thus, the proposed change is similar to the example cited above.

Therefore, since the application for amendment involves a proposed change that is similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, NY 10019.

NRC Branch Chief: Domenic B. Vassallo.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: November 18, 1981.

Description of amendment request: An amendment to the Technical Specifications pertaining to the surveillance frequency of the Control Rod Drives (CRDs). The proposed change would restore the CRD surveillance frequency from the current 15 percent of operable drives at 8 week intervals back to the original surveillance frequency of 10 percent of the operable drives at 16 week intervals.

Basis for proposed no significant hazards consideration determination: An operating restriction had previously been imposed by the staff (see Amendment No. 30 to License No. DPR-59) that increased the surveillance frequency of the CRDs as a result of staff concerns regarding the effects of increased reverse flow on scram reliability. In its Safety Evaluation dated September 16, 1977 the staff states that it believed that these conditions would increase the likelihood of foreign materials to collect in the drive mechanisms over a period of time. This material could potentially adversely affect the operation of the CRDs, and also cause accelerated wear. To compensate for this apparent reduced reliability of the CRDs, the licensee proposed to increase the surveillance requirements. This increase in surveillance would continue until the

licensee could verify that the increased reverse flow through the CRDs would not affect the reliability of the CRDs. In its request for amendment, the licensee has proposed to return to the original surveillance frequency and has supported its request by submitting information that it states satisfactorily addresses the staff's concerns regarding corrosion, wear, and reliability. The results of the licensee's evaluations indicate that the presence of corrosion particles does not affect the reliability of the scram function of the CRD system. In addition, scram testing is not effective for detecting potential operating problems postulated to result from corrosion particles. The increased frequency of scram testing may accelerate drive wear whether or not corrosion particles are present in the drives. Thus, the licensee concludes that the original scram testing frequency should be reinstated.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration includes: "... (iv) a relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met."

The change proposed in the application for amendment is encompassed by this example in that the operating restriction was imposed by the staff because of a concern for which the licensee has not yet demonstrated acceptable operation. The licensee has now submitted information in support of its amendment request which it states satisfactorily addresses the staff's concerns. The staff intends to evaluate the licensee's submittal and determine whether its concerns have been satisfactorily addressed prior to issuance of an amendment. The operating restriction imposed and the acceptance criteria to be used by the staff in its evaluation have both been previously approved. Thus, the application for amendment is similar to the example cited above. Therefore, since the application for amendment involves a proposed change that is similar to the example for which no significant hazards consideration exists, the staff has made a proposed

determination that the application involves no significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, NY 10019.

NRC Branch Chief: Domenic B. Vassallo.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: April 22, 1983.

Description of amendment request: An amendment to the Technical Specifications adding Limiting Conditions for Operation and surveillance requirements for the Reactor Protection System (RPS) electrical power supplies. The proposed change was submitted at NRC's request using guidance provided by NRC. The change is intended to assure that the power produced by the RPS motor-generator sets is of a quality acceptable to the RPS.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: "... (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications; for example, a more stringent surveillance requirement." The changes proposed in the application for amendment are encompassed by this example in that the proposed change would add Limiting Conditions for Operation and surveillance requirements on the Reactor Protection System motor-generator sets that previously had no specifications imposed, and is thus similar to the example designed above.

Therefore, since the application for amendment involves a proposed change that is similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Penfield Library, State

University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, NY 10019.

NRC Branch Chief: Domenic B. Vassallo.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: November 18, 1981.

Description of amendment request: An amendment to the Technical Specifications to modify the frequency of testing of the containment building air locks. The intent of the changes is to reflect the NRC's October 22, 1980 change to Appendix J of 10 CFR 50 regarding leak testing. The change would permit greater flexibility for leak testing of the airlocks during periods of frequent use, i.e. in the shutdown or refueling modes, the test could be conducted every three days rather than after each use.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: "... (vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The change proposed in the application for amendment is encompassed by this example in that the proposed change would modify the Technical Specifications concerning the frequency of containment airlock testing to be consistent with the change made by NRC to Appendix J of 10 CFR 50 regarding leak testing. The change to the regulations allows the required testing to be performed within a three day period during periods of frequent use, e.g., shutdown or refueling modes, rather than immediately after each use. The proposed change is minor in that it involves only the frequency of testing and is clearly in keeping with the regulation. Thus, the proposed change is similar to the example cited above.

The application for amendment involves a proposed change that is similar to an example for which no significant hazards consideration exists; the staff has made a proposed

determination that the application involves no significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, NY 10019.

NRC Branch Chief: Domenic B. Vassallo.

Public Service Company of Colorado,
Docket No. 50-267, Fort St. Vrain
Nuclear Generating Station, Platteville,
Colorado

Date of amendment request: May 20, 1983.

Description of amendment request: The amendment would revise the testing requirements for hydraulic shock suppressors (snubbers) and add requirements for mechanical snubber operability and testing. The proposed changes were made in response to an NRC request to upgrade the testing requirements for all safety-related snubbers to ensure a higher degree of operability. The changes involve: clarifying the frequency for visual inspections, stating the requirements for functional testing of snubbers which visually appear inoperable, the inclusion of a formula for the selection of representative sample sizes, the clarifying of the testing acceptance criteria, and revising the method of snubber listing to incorporate more information.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards include changes that are purely administrative or that constitute additional limitations or restrictions in the Technical Specifications. The proposed changes revise sections of the Technical Specifications related to hydraulic snubbers to clarify requirements and include additional testing, and incorporate both operability and testing requirements for mechanical snubbers. Since the requested changes upgrade the requirements for hydraulic snubbers and add requirements for mechanical snubbers, the staff proposes to determine that the application does not involve a significant hazard.

Local Public Document Room location: Greeley Public Library City Complex Building, Greeley, Colorado.

Attorney for licensee: Byrant O'Donnell, Public Service Co. of

Colorado, P.O. Box 840, Denver, Colorado 80201.

NRC Branch Chief: G. L. Madsen.

Rochester Gas and Electric Corporation,
Docket No. 50-244, R. E. Ginna Nuclear
Power Plant, Wayne County, New York

Date of amendment request: August 12, 1982, as supplemented January 10 and March 4, 1983, which supersedes requests dated February 14 and May 29, 1979.

Description of amendment request: The proposed license amendment would approve technical specifications (TS) for radiological effluent monitoring (RETS) to meet the requirements of Appendix I of 10 CFR Part 50.

Basis for proposed no significant hazards consideration determination: The proposed license amendment would provide new Technical Specification provisions which would define limiting conditions for operation and surveillance requirements for radioactive liquid and gaseous effluent monitoring; concentration, dose and treatment of liquid, gaseous and solid wastes; total dose; radiological environmental monitoring that consists of a monitoring program, land use census, and interlaboratory comparison program. These provisions would also incorporate into the Technical Specifications the bases that support the operation and surveillance requirements. Moreover, some of the Technical Specifications would involve administrative controls, specifically dealing with the process control program and the offsite dose calculation manual.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the Technical Specifications.

The Commission, in a revision to Appendix I, 10 CFR Part 50 required licensees to improve and modify their radiological effluent systems in a manner that would keep releases of radioactive material to unrestricted areas during normal operation as low as is reasonably achievable. In complying with this requirement it became necessary to add additional restrictions and controls to the Technical Specifications to assure compliance. This caused the need for the Technical Specifications described above to be proposed. The staff proposes to determine that the application does not involve a significant hazards

consideration since the change constitutes additional restrictions and controls that are not currently included in the Technical Specifications in order to meet the Commission's requirements related to "as low as is reasonably achievable." Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14604.

Attorney for licensee: Harry H. Voigt, Esquire, LeBoeuf, Lamb, Leiby and MacRae, 1333 New Hampshire Avenue, N.W., Suite 1100, Washington, D.C. 20036.

NRC Branch Chief: Dennis M. Crutchfield.

Southern California Edison Company,
Docket No. 50-206, San Onofre Nuclear
Generating Station, Unit No. 1, San
Diego County, California

Date of amendment request: August 29, 1977 and October 28, 1978.

Description of amendment request: The proposed Technical Specification additions pertain to the prevention and mitigation of an overpressurization event.

Basis for proposed no significant hazards consideration determination: The proposed Technical Specification additions would add (1) limiting conditions for operation and surveillance requirements for the licensee's overpressure mitigation system, and (2) limiting conditions for operation to provide for establishing two "positive barriers" between the safety injection system and the reactor coolant system when the reactor coolant system is water solid at a pressure less than 500 psig. These additions are designed to preclude the potential for the reactor coolant system to exceed the pressure limits specified in Appendix G to 10 CFR Part 50 of the Commission's regulations. The proposed amendment provides an additional surveillance requirement and operating limitations as described in example (ii) of the examples of amendments that are considered not likely to involve a significant hazards consideration.

Local Public Document Room location: San Clemente Branch Library,

242 Avenida Del Mar, San Clemente, California.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, Southern California Edison Company, Post Office Box 800, Rosemead, California 91770.

NRC Branch Chief: Dennis M. Crutchfield.

Southern California Edison Company, Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: June 24, 1977 as supplemented May 26, 1978 and September 11, 1979.

Description of amendment request: Request for Technical Specification (TS) additions for Inservice Testing Program (IST).

Basis for proposed no significant hazards consideration determination: The proposed TS additions would require that the inservice testing of pumps and valves be performed in accordance with the Edition and Addenda of the ASME Boiler and Pressure Vessel Code, as specified in 10 CFR 50.55a of the Commission's regulations. The Commission has provided guidance concerning the application of standards for no significant hazard determination by providing certain examples (48 FR 14870). One of the examples of actions likely to involve no significant hazards considerations relates to a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. The proposed amendment, therefore, falls within the category of the cited example because it involves an additional control not previously included in the Technical Specifications.

Local Public Document Room location: San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Branch Chief: Dennis M. Crutchfield.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: July 22, 1982.

Description of amendment request: The licensee has requested an increase in the limiting condition for operation for the maximum suppression chamber water temperature limit from 90°F to

100°F, in order to accommodate higher ambient temperatures during the summer. This change takes advantage of improved margin to steam quenching instability gained with the installation of new tee quenchers.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for conclusions regarding "significant hazards considerations" (48 FR 14870). An example for an action involving a significant hazard consideration is "a significant reduction in Limiting Conditions for Operation not accompanied by compensatory changes, conditions, or actions that maintain a commensurate level of safety." The proposed amendment changes the maximum suppression chamber water temperature from 90°F to 100°F which could be considered a significant reduction in the limiting condition for operation. However, this change is accompanied by a compensatory change in the suppression chamber discharge devices, replacing ramshead devices with tee quenchers. This compensatory change maintains a commensurate level of safety. The new discharge devices and the new limit have been calculated to provide the same margin to steam quenching instability as the old discharge devices and old limit. The change from ramshead discharge devices to tee quenchers is only a part of the Mark I Long Term Program which is intended to restore originally intended design safety margins to the suppression chamber. Plant unique analysis submitted by the licensee on November 30, 1982 presents analysis based on completion of all Mark I Program Long Term Modifications. This analysis concludes that the originally intended design safety margin has been fully restored, even assuring a 100°F suppression chamber water temperature limit. Because the margin to steam quenching instability is the basis for the maximum suppression chamber water temperature limit, the change would maintain a commensurate level of safety. Consequently the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esquire, Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Branch Chief: Domenic B. Vassallo.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: June 3, 1983 and June 9, 1983.

Description of amendment request: The amendment request would add Technical Specifications for the Accident Monitoring Instrumentation and the Reactor Vessel Head Vent in accordance with the requirements of NUREG-0737.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards by providing certain examples (See 48 FR 14870). A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, Example (ii), is explicitly considered not likely to involve significant hazards. This change imposes additional limiting conditions of operations and is therefore more restrictive. Accordingly, the Commission proposes to determine this change involves no significant hazards consideration.

Local Public Document Room locations: Board of Supervisor Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esquire, Hunton, Williams, Gay and Gibson P.O. Box 535, Richmond, Virginia 23212.

NRC Branch Chief: Robert A. Clark.

Virginia Electric and Power Company, Docket Nos. 50-338, and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: March 10, 1983.

Description of amendment request: The proposed amendment would include the name of the Old Dominion Electric Cooperative (ODEC) in the appropriate sections of Facility Operating Licenses NPF-4 and NPF-7 for the North Anna Power Stations, Units No. 1 and No. 2 (NA-1&2), respectively. Portions of the North Anna Power Station are to be sold to ODEC (12.5 percent ownership per unit). As part of the sale, ODEC must conform with the rules and regulations of the Commission and the stipulations of the NA-1&2 facility operating licenses. For this reason, the ODEC must be included in the appropriate stipulations of the facility operating licenses for NA-1&2. This amendment

request shall not be made effective until the partial sale of NA-1&2 by the Virginia Electric and Power Company (the present licensee) to Old Dominion Electric Cooperative has been finalized and which is currently scheduled in the last quarter of Calendar Year 1983.

As stated in the amendment request, ODEC will be a partial owner of NA-1&2 but will not operate the facility. Operation and maintenance of NA-1&2 will continue to be the sole responsibility of the present licensee.

Basis for proposed no significant hazards consideration determination: None of the Commission's examples (48 FR 14870) involving no significant hazards considerations is explicitly applicable to the above amendment request. However, as stated in the amendment request, the safe operation and maintenance of the facility and maintaining the facility in a safe shutdown condition would continue to be the sole responsibility of the present licensee. In addition, corporate and facility personnel of the present licensee would continue to have sole responsibility for all matters related to the safety of facility operations as specified in the Facility Operating Licenses for NA-1&2.

It is noted that the amendment request will be evaluated by the staff for the applicable Commission requirements specified in 10 CFR Part 140, "Financial Protection Requirements" and "Indemnity Agreements". It is further noted that ODEC does not need to provide antitrust information for NRC review since ODEC has a current generating capacity less than 200 Megawatts electrical (See 10 CFR Part 50.33a, 3).

Finally, as stated above, ODEC will be a part owner of NA-1&2 but will not be responsible for the operation of the facilities. On the above basis, therefore, the staff proposes to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esquire, Hunton, Williams, Gay and Gibson P.O. Box 535, Richmond, Virginia 23212.

NRC Branch Chief: Robert A. Clark.

Virginia Electric and Power Company, Docket Nos. 50-338, and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: October 1, 1982.

Description of amendment request: The amendments would incorporate provisions to comply with the Commission's requirements on guidelines for working hours (NRC Generic Letter No. 82-02) and also to comply with NRC Generic Letter 82-12 to assure that plant administrative procedures follow the revised working hour guidelines, including a provision for documentation of authorized deviations which should be available for NRC review.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards include actions which are purely administrative changes to the Technical Specifications, and are changes to make the licensee conform to changes in the regulations or additional limitations or restrictions. The changes proposed in the application are encompassed by these examples as follows: (1) Format and editorial changes are purely administrative changes, and (2) the incorporation of guidelines on working hours and plant administrative procedures provide conformance to staff positions. Since the application for amendment to the Administrative Controls Technical Specifications involves changes to incorporate present NRC regulations and staff positions, the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esquire, Hunton, Williams, Gay and Gibson, P.O. Box 535, Richmond, Virginia 23212.

NRC Branch Chief: Robert A. Clark, Virginia Electric and Power Company, Docket No. 50-339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of amendment request: June 8, 1982 and May 3, 1983.

Description of amendment request: The request would implement Phase I of a Plant Upgrade Program which would increase steam pressure to maximize the electrical output at the currently licensed thermal power level of 2785 Megawatts thermal (MWt). The request would revise the Technical Specifications to allow operation with a Reactor Coolant System (RCS) Average Temperature (T_{AV}) of 582.8 degrees Fahrenheit ($^{\circ}$ F) as opposed to the currently approved RCS T_{AV} of 580.3 $^{\circ}$ F. This 2.5 $^{\circ}$ F increase in T_{AV} would provide an increase in the secondary side steam pressure of 18 pounds per square inch (psi) resulting in a higher secondary cycle thermal efficiency and a 2 MW electrical increase in output.

Basis for proposed no significant hazards consideration determination: One of the Commission's examples (48 FR 14870) involving no significant hazards relates to a requested change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan; for example, a change resulting from the application of a small refinement of a previously used calculation model or design method. This amendment is directly related to that example in that the staff has already determined that the 2.5 $^{\circ}$ F increase in the RCS T_{AV} does not involve any unreviewed safety question in accordance with 10 CFR Part 50.59. The safety evaluation supporting the license amendment request included the scope of the Nuclear Steam System (NSS), the Balance of Plant (BOP), and the Turbine Generator System. Also, Section 15.1.2.2 of the Final Safety Analysis Report (FSAR) for the North Anna Power Station, Units No. 1 and No. 2 specifies that the original design bases for the accident analysis included a 2.5 $^{\circ}$ F additional allowance on RCS T_{AV} temperature. The additional allowance, without invalidating any accident analysis, calls for a steady state operation of nominal RCS T_{AV} temperature up to 2.5 $^{\circ}$ F greater than the currently approved temperature of 580.3 $^{\circ}$ F.

The staff has already approved the amendment request for the North Anna Power Station, Unit No. 1. This amendment for North Anna, Unit No. 1 was issued on October 4, 1982, wherein the staff stated in its Safety Evaluation supporting the amendment change that it had been determined that the 2.5 $^{\circ}$ F

increase in temperature was within the limits assumed in the docketed FSAR accident and transient analysis. Therefore, the staff concluded that full power operation at the currently licensed thermal power level 2785 (MWt) with an average RCS temperature of 582.8° F was acceptable. The issuance of the amendment for North Anna, Unit 2 was held in abeyance until secondary steam line support modifications could be implemented to support the 2.5° F uprating. These modifications were completed during the just completed second refueling outage at North Anna, Unit No. 2.

The amendment request, as discussed above, fits the Commission's example and also has been determined in a prior review to not involve a significant hazards. On this basis, the Commission proposes to determine that the amendment involves no significant hazards consideration.

Local Public Document Room
location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 535, Richmond, Virginia 23212.

NRC Branch Chief: Robert A. Clark.

Virginia Electric and Power Company,
Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendment:
October 28, 1980.

Description of amendment request: By letter dated October 28, 1980, and supplemented February 3, 1982, July 29, 1982 and November 10, 1982, changes were proposed to the Surry Power Station, Unit Nos. 1 and 2 Technical Specifications related to ventilation systems. These changes are in response to an NRC model Technical Specification dated December 12, 1974. A large part of the delay in implementing these changes was because of numerous modifications made to the Auxiliary Ventilation System. The proposed Technical Specifications reflect the modifications made to upgrade the design and performance of the Auxiliary Ventilation System. The proposed changes are also made to upgrade the requirements for ventilation equipment. A Technical Specification 3.22, "Auxiliary Ventilation Exhaust Filter Trains" and a Technical Specification 3.23, "Control Room Ventilation Supply

Filter Trains" are added. These two Technical Specifications provide limiting conditions for operation. Technical Specifications 4.12, "Auxiliary Ventilation Exhaust Filter Trains" and 4.20, "Control Room Air Filtration System" are added. These two Technical Specifications provide surveillance requirements and will replace the existing Technical Specification 4.20. This effort is part of the NRC program to upgrade ventilation systems at all operating plants.

Basis for proposed no significant hazards consideration determination: These changes constitute additional limitations, restrictions, or controls not presently included in the Technical Specifications as in the example of a no significant hazards consideration in 48 FR 14870 paragraph (ii). Therefore, the staff proposes to determine that the amendments involve no significant hazards consideration.

Local Public Document Room
location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23213.

NRC Branch Chief: Steven A. Varga.

Virginia Electric and Power Company,
Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendment:
March 31, 1983.

Description of amendment request: The licensee's letter dated March 31, 1983, requested changes to the Surry Power Station, Unit Nos. 1 and 2 Technical Specifications which would add limiting conditions for operation and surveillance requirements related to reactor coolant level monitors. A monitoring system has been installed as a result of NRC requirements set forth in NUREG-0737, "Post TMI-Requirements." The system measures water level and relative void content of the coolant and thus provides a direct reading of level for the operator during accident conditions. The specific changes to the Technical Specifications are to Table 3.7-6 "Accident Monitoring Instrumentation" which specifies the minimum number of channels required to be operable and Table 4.1-2, "Accident Monitoring Instrumentation Surveillance Requirements" which specifies check and calibration requirements. No other changes to the Technical Specifications are made.

Basis for proposed no significant hazards consideration determination: These changes constitute additional requirements not presently included in

the Technical Specifications as in the example of a no significant hazards consideration stated in 48 FR 14870, paragraph (ii). In addition, these monitors will neither replace any existing system nor couple with any safety system and will not affect safety systems for any postulated accidents. Therefore, the staff proposes to determine that the amendments involve no significant hazards consideration.

Local Public Document Room
location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23213.

NRC Branch Chief: Steven A. Varga.

Virginia Electric and Power Company,
Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendment:
January 12, 1983.

Description of amendment request: The licensee's letter dated January 12, 1983, proposed to change the Surry Power Station, Unit Nos. 1 and 2 Technical Specifications related to the cross-connect between Unit Nos. 1 and 2 charging pumps.

A charging pump cross-connect modification was implemented in response to commitments made to the Staff concerning Appendix A to Branch Technical Position 9.5-1 and the Fire Protection Safety Evaluation Report for Surry Power Station dated September 1979. The purpose of the charging pump cross-connect modification is to provide alternate shutdown capability. The charging pump cross-connect consists of two normally locked closed manual valves installed between the Unit 1 "C" charging pump discharge and the Unit 2 "C" charging pump discharge. Operation of the charging pump cross-connect will be strictly manual and will be located in the Auxiliary Building. The cross-connect modification does not affect the operation of existing systems or valve line-ups during normal operation or accident conditions when the cross-connect valves are closed.

The proposed change is to revise Specification 3.2 to require charging pump capability from the non-operating unit during one unit operation. In the event the operating unit's charging pumps become inoperable, the opposite unit's charging pumps become inoperable, the opposite unit's charging pump may be used to bring the disabled unit to cold shutdown conditions. Also included in this proposed change are administrative changes to Specification

3.2. These administrative changes are editorial in nature and do not affect the technical content.

Basis for proposed no significant hazards consideration determination: This change constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications similar to the example given 48 FR 14870 paragraph (ii) as related to the charging pumps. The administrative changes fall into category given in paragraph (i) which is a change to achieve consistency, correction of an error, or a change in nomenclature. Therefore, since the changes are very much like the examples given, the staff proposes to determine a no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hutton and Williams, P.O. Box 1535, Richmond, Virginia 23213.

NRC Branch Chief: Steven A. Varga.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendment: March 16, 1982, supplemented June 28, 1982, August 3, 1982, and August 9, 1982.

Description of amendment request: The proposed changes to the Technical Specifications reflect the reorganization and transfer of responsibilities within the Nuclear Operations Department from the Manager-Nuclear Operations and Maintenance to the Vice President-Nuclear Operations. The proposed changes are discussed below.

At present, the corporate organizational structure specified in the Technical Specifications indicates that the Nuclear Station Manager reports to the Manager-Nuclear Operations and Maintenance, who in turn reports to the Vice President-Nuclear Operations. As a result of the proposed revision, the Vice President-Nuclear Operations will have responsibility for the supervision of the Nuclear Station Managers in the operation and maintenance of the Company's operational nuclear units. The Vice President-Nuclear Operations will also be responsible for coordinating the technical services activities and the operational maintenance activities of the nuclear units.

The Manager-Nuclear Operations and Maintenance has responsibility for supervising the operational and maintenance activities of the Company's operational nuclear units. This responsibility includes coordinating and

directing all nuclear power plant operations and maintenance planning and scheduling, insuring qualified station staffing is in place at all times, providing the necessary information to and communications within the Company regarding nuclear unit operations, and providing input to and review of new nuclear unit design and existing plant modifications.

In order to implement the proposed corporate and station organizational revisions into the Surry Technical Specifications, several modifications to the Administrative Controls (Section 6.0) are required. Specifically the existing Technical Specification references to the Manager-Nuclear Operations and Maintenance should be revised to reference the Vice President-Nuclear Operations. In addition, the corporate and station organizations depicted in Figures 6.1-1 and 6.1-2 would be revised to reflect the proposed organizational relationship of the Station Manager, the Manager-Nuclear Operations and Maintenance, the Vice President-Nuclear Operations, the Manager-Quality Assurance and the Director-Emergency Planning.

Also proposed are changes in the Quality Assurance Department and the addition of Director-Emergency Planning to the Nuclear Operations Department.

Basis for proposed no significant hazards consideration determination: These changes involve a no significant hazards consideration because the changes will not result in the loss of high level management responsibility for nuclear safety but should enhance managerial attention of safety activities of the units since the plant managers now report directly to a Vice-President. Also the addition of a Director for Emergency Planning gives visible attention to this function.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hutton and Williams, P.O. Box 1535, Richmond, Virginia 23213.

NRC Branch Chief: Steven A. Varga.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendment: May 4, 1983.

Description of amendment request: The amendments would change the Radiological Effluent Technical Specifications to bring them into compliance with Appendix I of 10 CFR Part 50. It provides new Technical

Specification sections defining limiting conditions for operation and surveillance requirements for radioactive liquid and gaseous effluent monitoring; concentration, dose and treatment of liquid, gaseous and solid wastes; total dose; radiological environmental monitoring that consists of a monitoring program, land use census, and interlaboratory comparison program. This change also incorporates into the Technical Specifications the bases that support the operation and surveillance requirements. In addition, some changes would be made in administrative controls, specifically dealing with the process control program and the offsite dose calculation manual.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards considerations relates to changes that constitute additional restrictions or controls not presently included in the Technical Specifications.

The Commission, in a revision to Appendix I, 10 CFR Part 50 required licensees to improve and modify their radiological effluent systems in a manner that would keep releases of radioactive material to unrestricted areas during normal operation as low as is reasonably achievable. In complying with this requirement it became necessary to add additional restrictions and controls to the Technical Specifications to assure compliance. This caused the addition of Technical Specifications described above. The staff proposes to determine that the application does not involve a significant hazards consideration since the change constitutes additional restrictions and controls that are not currently included in the Technical Specifications in order to meet the Commission mandated release of "as low as is reasonably achievable."

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hutton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Branch Chief: Steven A. Varga.

Wisconsin Electric Power Company,
Docket Nos. 50-266 and 50-301, Point
Beach Nuclear Plant Units 1 and 2,
Town of Two Creeks, Manitowoc
County, Wisconsin

Date of amendment request:
December 15, 1982.

Description of amendment request:
Request for application for amendments
to Facility Operating Licenses DPR-24
and DPR-27 revising Technical
Specifications concerning reporting
requirements, i.e., additional
information to be included in the Annual
Results and Data Report. The additional
information includes a tabulation of all
challenges to the pressurizer power
operated relief valves and safety valves.
The licensee's submittal is in response
to Generic Letter 82-16 dated September
20, 1982.

*Basis for proposed no significant
hazards consideration determination:*
One of the examples of actions
involving no significant hazards
considerations relates to a change that
constitutes an additional limitation,
restriction or control not presently
included in the Technical Specifications.
The proposed amendments add an
additional reporting requirement in the
Annual Results and Data Report, and
match example (ii) provided by the
Commission on actions involving no
significant hazards (48 FR 14870). On
this basis, the Commission proposes to
determine that the amendments do not
involve a significant hazards
consideration.

*Local Public Document Room
location:* Joseph P. Mann Public Library,
1516 16th Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald
Charnoff, Esq., Shaw, Pittman, Potts and
Trowbridge, 1800 M Street N.W.,
Washington, D.C. 20036.

NRC Branch Chief: Robert A. Clark.

Wisconsin Electric Power Company,
Docket Nos. 50-266 and 50-301, Point
Beach Nuclear Plant Units 1 and 2,
Town of Two Creeks, Manitowoc
County, Wisconsin

Date of amendment request: April 27,
1982, modified March 23, 1983.

Description of amendment request:
The amendments would change the
voltage trip setpoint and associated time
delay of the loss of voltage relays in
accordance with the licensee's
application for amendment dated April
27, 1982 as modified March 23, 1983.
These changes were requested by the
NRC staff to resolve staff concerns over
the adequacy of station electric
distribution system voltages. These
changes would implement a more
restrictive loss of voltage relay setpoint

following installation of new loss of
voltage relays in order to provide a
greater range of protection to safety
related motors against a loss of voltage
in the electric distribution system.

*Basis for proposed no significant
hazards consideration determination:*
The Commission has provided guidance
concerning the application of these
standards by providing certain
examples (48 FR 14870). One of the
examples of actions involving no
significant hazards considerations
relates to a change that constitutes an
additional limitation, restriction or
control not presently included in the
technical specifications. The voltage
setpoints and time delay proposed by
the amendments are more restrictive
than currently exists in the technical
specifications and provides a greater
range of protection to safety related
motors than currently exists. Therefore,
the staff proposes to determine that the
amendments do not involve a significant
hazards consideration.

*Local Public Document Room
location:* Joseph P. Mann Public Library,
1516 16th Street, Two Rivers, Wisconsin
54241.

Attorney for licensee: Gerald
Charnoff, Esq., Shaw, Pittman, Potts and
Trowbridge, 1800 M Street N.W.,
Washington, D.C. 20036.

NRC Branch Chief: Robert A. Clark.

Wisconsin Electric Power Company,
Docket Nos. 50-266 and 50-301, Point
Beach Units 1 and 2, Town of Two
Creeks, Manitowoc County, Wisconsin

Date of amendment request: June 30,
1982.

Description of amendment request:
Amendment to Facility Operating
License DPR-24 and DPR-27 revising the
Technical Specifications to include
periodic testing of the auxiliary
feedwater system automatic actuation
logic circuitry. This is in response to a
requirement contained in the staff's
evaluation dated May 3, 1982.

*Basis for proposed no significant
hazards consideration determination:*
The Commission has provided guidance
concerning the application of these
standards by providing certain
examples (48 FR 14870). One of the
examples of actions involving no
significant hazards considerations
relates to additional limitations,
restrictions, or control not presently
included in the technical specifications
(ii). In the case of these proposed
amendments, an additional surveillance
requirement for testing the automatic
actuation logic circuitry of the auxiliary
feedwater system would be added to the
current technical specification
surveillance requirements in response to

a previously issued staff safety
evaluation. Therefore, the staff proposes
to determine that the amendments
involve no significant hazards
considerations.

*Local Public Document Room
location:* Joseph P. Mann Public Library,
1516 16th Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald
Charnoff, Esq., Shaw, Pittman, Potts and
Trowbridge, 1800 M Street N.W.,
Washington, D.C. 20036.

NRC Branch Chief: Robert A. Clark.

Wisconsin Electric Power Company,
Docket Nos. 50-266 and 50-301, Point
Beach Nuclear Plant, Units 1 and 2,
Town of Two Creeks, Manitowoc
County, Wisconsin

Date of amendment request:
September 30, 1982.

Description of amendment request:
Request for application for amendments
to Facility Operating License Nos. DPR-
24 and DPR-27 Technical Specifications
permitting location of the spent fuel pool
neutron absorber surveillance specimen
in a position adjacent to the spent fuel
pool divider wall and clarification of
limiting conditions for operation of the
power operated relief valves (PORV)
and PORV indication. The clarification
defines in more detail the conditions
during which PORVs and associated
indications may be inoperable.

*Basis for proposed no significant
hazards consideration determination:*
The Commission has provided
guidelines concerning the application of
these standards by providing certain
examples (48 FR 14870). One of the
examples of actions involving no
significant hazards considerations is a
change which either may result in some
increase to the probability or
consequence of a previously analyzed
accident or may reduce in some way a
safety margin, but where the results of
the change are clearly within all
acceptable criteria with respect to the
system or component specified in the
Standard Review Plan (vi). The
licensee's proposal to locate new spent
fuel assemblies near the divider wall of
the spent fuel pool in order to
accommodate the existing location of
the neutron absorber surveillance
specimen would cause a small portion of
the wall to be heated above ambient
temperature. The licensee has studied
the structural effects of this increase and
found them insignificant. The NRC has
reviewed the licensee's study and
determined that the structural effects
from the maximum expected
temperature increase fall well within the
allowable limits and are insignificant.

Another example of actions involving no significant hazards considerations relates to purely administrative changes to the technical specifications (i). In the case of the licensee's request clarifying the limiting conditions for operation of the PORVs and PORV indication, the licensee requests to modify the language of the Technical Specifications (TS) to clarify the intent of the TS as described in the TS basis.

Because the licensee's proposed amendment matches the examples (i) and (vi) provided by the Commission (48 FR 14870), the staff proposes to determine that they do not involve a significant hazards consideration.

Local Public Document Room

location: Joseph P. Mann Public Library, 1516 16th Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street N.W., Washington, D.C. 20036.

NRC Branch Chief: Robert A. Clark.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: February 17, 1977 (Unit 1), November 27, 1978 (Unit 2).

Description of amendment request: Request for amendments to Facility Operating Licenses DPR-24 and DPR-27 in accordance with 10 CFR 50.55a(g)(5) which requires amendments to Technical Specifications to conform to the updated inservice inspection and testing program for safety class components mandated by Section 50.55a.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the no significant hazards consideration standards by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations relates to a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications. The proposed amendments would incorporate an additional testing requirement in accordance with the Commission's regulations regarding inservice testing programs. Partial consideration of these applications was granted with the issuance of amendments 63 and 68 to Facility Operating Licenses DPR-24 and DPR-27 on August 31, 1982. These amendments related to inservice inspection requirements for Point Beach 1 and 2. In addition, the proposed

amendments match example (vii) in that the proposed change will make the licenses conform to the Commission's regulations. Therefore, the Commission proposes to determine that the amendments do not involve a significant hazards consideration.

Local Public Document Room

location: Joseph P. Mann Public Library, 1516 16th Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street N.W., Washington, D.C. 20036.

NRC Branch Chief: Robert A. Clark.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: May 4, 1983.

Description of amendment request: Request for application for amendments to Facility Operating Licenses DPR-24 and DPR-27 which would revise certain Technical Specification (TS) bases to be consistent with the TS, clarify the terminology used in a limiting condition for operation, and clarify the language relating to a periodic calibration interval requirement.

Specifically: (1) the TS basis has been modified to clarify the intent of maintaining redundant methods of decay heat removal during refueling operations; (2) a statement in the TS basis has been corrected regarding inoperability of containment fan coolers to correctly reflect the requirement that all four fan coolers be operable prior to taking the reactor critical and that only one may be inoperable for up to 48 hours during power operation; (3) a clarification has been added to the TS concerning control rod misalignment to eliminate confusion as to whether the misalignment refers to a deviation between rod position indication and bank demand position or between rod position indication and average rod position indication; (4) the frequency code "R" for channel calibration frequencies has been redefined to indicate that calibrations must be performed during refueling intervals rather than refueling shutdowns. Some radiation monitoring and survey instruments channel calibrations do not require plant shutdown as a performance condition and would thus allow for more efficient maintenance scheduling.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain

examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations relates to amendments comprising a purely administrative change to the Technical Specifications. The proposed amendments are purely administrative in nature and are meant to clarify existing requirements and achieve consistency between the Technical Specifications and the related basis. Therefore, the Commission proposes to determine that the amendments do not involve a significant hazards consideration.

Local Public Document Room

location: Joseph P. Mann Public Library, 1516 16th Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street N.W., Washington, D.C. 20036.

NRC Branch Chief: Robert A. Clark.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: December 10, 1981.

Description of amendment request: Amendments to Facility Operating Licenses DPR-24 and DPR-27 Technical Specifications which would provide limiting conditions for operation and surveillance requirements related to new inverters and station batteries. This new equipment is being installed to resolve NRC concerns related to the vital instrument power supplies and are designed to provide a definite improvement in plant safety.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations relates to additional limitations, restrictions or control not presently included in the technical specifications (ii). The proposed amendments would provide limiting conditions for operation and surveillance requirements for new equipment similar to that currently in effect for similar existing equipment but whose installation would lead to an overall improvement in plant safety. Therefore, the staff proposes to determine that the amendments do not involve a significant hazards consideration.

Local Public Document Room

location: Joseph P. Mann Public Library, 1516 16th Street, Two Rivers, Wisconsin

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street N.W., Washington, D.C. 20036.

NRC Branch Chief: Robert A. Clark.

Wisconsin Electric Power Company,
Docket Nos. 50-266 and 50-301, Point
Beach Nuclear Plant Unit Nos. 1 and 2,
Town of Two Creeks, Manitowoc
County, Wisconsin

Date of amendment request: June 30, 1982.

Description of amendment request:
The amendments would change the voltage trip setpoint and associated time delay of the degraded grid undervoltage relays in accordance with licensee's application for amendment dated June 30, 1982. These changes were requested by the NRC staff to resolve staff concerns related to the adequacy of station electric distribution system voltages. These changes would implement a more restrictive degraded grid undervoltage trip setpoint and provide a greater range of protection for safety related power supplies from a degraded voltage condition in the offsite power distribution system.

Basis for proposed no significant hazards consideration determination:
The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards consideration relates to a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications. The degraded grid undervoltage relay trip setpoints proposed by the amendments are more restrictive than currently allowed by the Technical Specifications. Therefore, the staff proposes to determine that the amendments do not involve a significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Public Library, 1516 16th Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street N.W., Washington, D.C. 20036.

NRC Branch Chief: Robert A. Clark.

Wisconsin Public Service Corporation,
Docket No. 50-305, Kewaunee Nuclear
Power Plant, Kewaunee County,
Wisconsin

Date of application for amendment:
June 15, 1979.

Description of amendment request:
The proposed amendment would change the Technical Specifications related to the overpressures protection system

relief valve installed at the Kewaunee facility in accordance with 10 CFR 50 Appendix G. Specifically the change would provide temperature limits for startup of reactor coolant pumps and overpressure relief valve settings for protection against overpressure at low temperature operation.

Basis for proposed no significant hazards consideration determination: A preliminary review of the proposed amendment indicates that the proposed changes constitute additional limitations, restrictions or control not previously included in the Technical Specifications. The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). This amendment is clearly within the scope of no significant hazards consideration example ii which is a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications; for example, a more stringent surveillance requirement.

Local Public Document Room location: Kewaunee Public Library, 822 Juneau Street, Kewaunee, Wisconsin 54216.

Attorney for licensee: Foley and Lardner, First Wisconsin Center, 777 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202.

NRC Branch Chief: Steven A. Varga.

Wisconsin Public Service Corporation,
Docket No. 50-305, Kewaunee Nuclear
Power Plant, Kewaunee County,
Wisconsin

Date of application for amendment:
August 7, 1981.

Description of amendment request:
This amendment consists of Technical Specifications changes in several areas. Many of these areas have been reviewed and issued as amendments 40, 41, 43, 45 and 46 dated April 21, April 29, May 4, June 2 and July 12, 1982, respectively. The remaining portion of the proposed amendment which is still under review is related to the rewording of the Technical Specifications for the surveillance testing of the primary coolant isolation valves. These Technical Specifications were issued by Order dated April 20, 1981. Some of our surveillance requirements were not clear and this amendment would reword them for clarity and adjust surveillance frequency. Specifically, the applicability and objectives have reworded and relocated. The changes also define the allowable leakage rate in the form of a formula which represents the criteria issued by the Order. The surveillance frequency is changed to allow for the annual operating cycle of twelve months

as contrasted to the nine month frequency currently in the Technical Specifications. This is a relaxation of a testing requirement of less than three months.

Basis for proposed no significant hazards consideration determination: A preliminary review of the proposed amendment indicates that it consists of word changes that are made to achieve consistency and to clarify the requirements issued by the Order dated April 20, 1981 and a minor change in surveillance frequency. The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). The word changes are clearly within the scope of no significant hazards example i, a purely administrative change for example, a change to achieve consistency throughout the Technical Specifications correction of an error, or a change in nomenclature. The surveillance change is clearly not within the scope of significant hazards example iii, a significant relaxation in limiting conditions for operations not accompanied by compensatory changes, conditions or actions that maintain a commensurate level of safety. This is based on the fact that the change in surveillance period is not significant and is substantiated by the exceptional test results after seven years of operation. Further, the time relaxation would be as much as three months only if there was a significant outage after nine months of operation. Testing the valves following a refueling period provides reasonable assurance that the valves will function throughout the cycle. The staff, therefore, proposes that the application does not involve a significant hazards consideration.

Local Public Document Room location: Kewaunee Public Library, 833 Juneau St., Kewaunee, Wisconsin 54216.

Attorney for licensee: Foley and Lardner, First Wisconsin Center, 777 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202.

NRC Branch Chief: Steven A. Varga.

Wisconsin Public Service Corporation,
Docket No. 50-305, Kewaunee Nuclear
Power Plant, Kewaunee County,
Wisconsin

Date of application for amendment:
January 12, 1983.

Description of amendment request:
The proposed amendment would add the requirement that the licensee have a secondary water chemistry program and would be required to implement it. The requirement would include guidance as to the content of the program. Previous

secondary water chemistry requirements would be deleted in favor of this requirement.

Basis for proposed no significant hazards consideration determination: A preliminary review of the proposed amendment indicates that the changes constitute additional limitations, restrictions or control not previously included in the Technical Specifications. The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). This proposed amendment is clearly within the scope of no significant hazards consideration example ii, which is a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications, for example a more stringent surveillance requirement.

Local Public Document Room location: Kewaunee Public Library, 822 Juneau Street, Kenwaunee, Wisconsin 54216.

Attorney for the licensee: Foley and Lardner, First Wisconsin Center, 777 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202.

NRC Branch Chief: Steven A. Varga.

Wisconsin Public Service Corporation, Docket No 50-305, Kenwaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: June 25, 1982.

Description of amendment request: The proposed amendment would add a requirement for an inservice inspection program to the Technical Specifications. This is a new requirement according to 10 CFR 50.55a(g) and would implement the program approved by the staff in the letter dated April 19, 1983.

Basis for proposed no significant hazards consideration determination: A preliminary review of the proposed amendment indicated that the change constitutes additional limitations, restrictions or controls not previously included in the Technical Specifications. The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). This proposed amendment is clearly within the scope of no significant hazards example ii, which is a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications, for example a more stringent surveillance requirement.

Local Public Document Room location: Kewaunee Public Library, 822 Juneau Street, Kewaunee, Wisconsin 54216.

Attorney for the licensee: Foley and Lardner, First Wisconsin Center, 777 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202.

NRC Branch Chief: Steven A. Varga.

Yankee Atomic Electric Company, Docket No. 50-29, Yankee Nuclear Generating Station, Franklin County, Massachusetts

Date of application for amendment: October 3, 1977, as supplemented October 2, 1981.

Description: The proposed Technical Specifications (TS) additions required for the inservice inspection (ISI) program.

Basis for proposed no significant hazards consideration determination. The proposed TS additions, which pertain to the ISI program, would reflect provisions consistent with the requirements of the Edition and Addenda of Section XI of the ASME Code, as specified in 10 CFR 50.55a. The Commission has provided guidance concerning the application of standards for a no significant hazards consideration determination by providing examples (48 FR 14870, April 6, 1983). One of the examples of actions likely to involve no significant hazards consideration relates to a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. The proposed amendment, therefore, falls within the category of the cited example because it involves additional control not previously included in the Technical Specifications.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: None.

NRC Branch Chief: Dennis M. Crutchfield.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this regular monthly notice. They are repeated here because the monthly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the *Federal Register* on the day and page cited. This notice does not extend the notice period of the original notice.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of amendment request: March 4, 1983.

Brief description of amendment: The amendment would clarify a Technical Specification action statement to allow operat flexibility and to define rod inoperability as being due to a rod control system problem. These revisions to the Technical Specification would be made in response to the licensee's application for amendments dated March 4, 1983.

Date of publication of individual notice in "Federal Register": July 6, 1983 (48 FR 31117).

Expiration date of individual notice: August 5, 1983.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Alabama Power Company, Docket No. 50-364, Joseph M. Farley Nuclear Plant, Unit No. 2, Houston County, Alabama

Date of amendment request: May 27, 1983.

Brief description of amendment: The amendment would waive turbine valve cycle tests on a one time basis for the remainder of Cycle 2 operation. Tests involve cycling system turbine valves weekly to show full stroke capability. A similar waiver was granted at the end of the last operating cycle pending completion of a long term evaluation not yet completed.

Date of publication of individual notice in "Federal Register": June 29, 1983 48 FR 29978.

Expiration date of individual notice: July 29, 1983.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: December 20, 1982.

Description: The proposed amendment would permit use of Minimum Critical Power Ratio Safety limit at normal operation conditions.

Date of publication of individual notice in "Federal Register": July 6, 1983 (48 FR 31122).

Expiration date of individual notice:
August 5, 1983.

Local Public Document Room
location: Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720.

NRC Branch Chief: Dennis M. Crutchfield.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, located in Charlevoix County, Michigan

Date of amendment request:
December 20, 1982.

Description of amendment request:
The requested amendment would authorize the licensee to replace the Minimum Critical Heat Flux Ratio Safely limit with a Minimum Critical Power Ratio Safety (MCPR) limit for normal operation conditions.

Date of Publication of Individual notice in "Federal Register": July 6, 1983 (48 FR 31122).

Expiration Date of Individual Notice:
August 5, 1983.

Local Public Document Room
location: Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, located in Charlevoix County, Michigan

Date of amendment request: May 27, 1983.

Description of amendment request:
The request for amendment proposes technical specifications which would institute a procedure for use during startup in the event that neutron source strength is too low to provide the minimum specified count rate on the out-of-core nuclear instrumentation.

Date of Publication of Individual Notice in "Federal Register": July 6, 1983 (48 FR 31124).

Expiration Date of Individual Notice:
August 5, 1983.

Local Public Document Room
location: Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: April 20, 1983.

Description: The proposed amendment would permit operations of the Big Rock Point Plant with new Exxon H-3 design fuel assemblies. The new design moves the gadolinia bearing rods closer to the periphery of the assembly and slightly increases the gadolinia (poison for neutron absorption) content of the gadolinia bearing rods.

Date of publication of individual notice in "Federal Register": June 22, 1983 (48 FR 28577).

Expiration date of individual notice:
July 22, 1983.

Local Public Document Room
Location: Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720.

NRC Branch Chief: Dennis M. Crutchfield.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: April 18, 1983, as revised May 4, 1983.

Brief description of amendment: The amendment would revise the setpoint and its tolerance for the Upper Head Injection (UHI) accumulator automatic isolation.

Date of publication of individual notice in "Federal Register": June 16, 1983 (48 FR 27621).

Expiration date of individual notice:
July 18, 1983.

Local Public Document Room
Location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina.

Florida Power & Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: April 13, 1978.

Brief description of amendment:
Changes to limits and surveillance requirements associated with the overpressure mitigation system.

Date of publication of individual notice in "Federal Register": June 16, 1983, (48 FR 27624).

Expiration date of individual notice:
July 18, 1983.

Local Public Document Room
Location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Florida Power & Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: March 29, 1983.

Brief description of amendment:
Changes to the radiological effluent technical specifications that bring them into compliance with Appendix I of 10 CFR Part 50.

Date of publication of individual notice in "Federal Register": June 16, 1983, (48 FR 27623).

Expiration date of individual notice:
July 18, 1983.

Local Public Document Room
Location: Indian River Junior College

Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Florida Power & Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request:
December 22, 1982.

Brief description of amendment:
Changes to the technical specifications resulting from the addition of fire protection equipment and reporting requirements.

Date of publication of individual notice in "Federal Register": June 28, 1983 (48 FR 29759).

Expiration date of individual notice:
July 28, 1983.

Local Public Document Room
Location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment:
April 15, 1983.

Brief Description of amendment request: The amendment would modify the trip setpoint and the allowable value for the High Pressure Coolant Injection (HPCI) Steam Line Flow—High (Trip Function 6a) presented in Technical Specification Table 3.3.2-2, in accordance with the licensee's application for amendment dated April 15, 1983.

Date of publication of individual notice: July 12, 1983.

Expiration date of individual notice:
August 11, 1983.

Local Public Document Room
Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment:
April 15, 1983.

Brief Description of amendment request: The amendment would change the completion date of the Safety Parameter Display System contained in License Condition 2.C.(28)(g)(1) from September 30, 1983 to December 30, 1983 in accordance with the licensee's application for amendment dated April 29, 1983.

Date of publication of individual notice: July 12, 1983.

Expiration date of individual notice:
August 11, 1983.

Local Public Document Room
Location: Osterhout Free Library,
 Reference Department, 71 South
 Franklin Street, Wilkes-Barre,
 Pennsylvania 18701.

**Pennsylvania Power and Light
 Company, Docket No. 50-387,
 Susquehanna Steam Electric Station,
 Unit 1, Luzerne County, Pennsylvania**

Date of application for amendment:
 February 3, 1983.

**Brief Description of amendment
 request:** The amendment would change
 Technical Specification 3.4.3.1 to specify
 that the particulate and gaseous
 radioactivity monitors be aligned to the
 drywell in order to detect and quantify
 unidentified leakage pursuant to
 Technical Specification 3.4.3.2, in
 accordance the licensee's application for
 amendment dated February 3, 1983.

**Date of publication of individual
 notice:** July 12, 1983.

Expiration date of individual notice:
 August 11, 1983.

Local Public Document Room
Location: Osterhout Free Library,
 Reference Department, 71 South
 Franklin Street, Wilkes-Barre,
 Pennsylvania 18701.

**Southern California Edison Company, et
 al., Docket No. 50-361, San Onofre
 Nuclear Generating Station, Unit 2, San
 Diego County, California**

Date of application for amendment:
 June 10, 1983.

**Brief Description of amendment
 request:** In accordance with the
 licensee's request of June 10, 1983, the
 amendment would grant a delay until
 October 1, 1983 for those 18 month
 interval surveillance requirements
 which cannot be completed without an
 extended outage in the intervening
 period.

**Date of publication of individual
 notice in "Federal Register":** June 22,
 1983.

Expiration date of individual notice:
 July 22, 1983.

Local Public Document Room
Location: San Clemente Library, 242
 Avenida Del Mar, San Clemente,
 California.

**Southern California Edison Company, et
 al., Docket No. 50-361, San Onofre
 Nuclear Generating Station, Unit 2, San
 Diego County, California**

Date of application for amendment:
 June 10, 1983.

**Brief Description of amendment
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 licensee's request of June 10, 1983, the
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 October 1, 1983 for those 18-month
 interval surveillance requirements

which cannot be completed without an
 extended outage in the intervening
 period.

**Date of publication of individual
 notice in "Federal Register":** June 22,
 1983.

Expiration date of individual notice:
 July 22, 1983.

Local Public Document Room
Location: San Clemente Library, 242
 Avenida Del Mar, San Clemente,
 California.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the 30-day period since
 publication of the last monthly notice,
 the Commission has issued the following
 amendments. The Commission has
 determined for each of these
 amendments that the application
 complies with the standards and
 requirements of the Atomic Energy Act
 of 1954, as amended (the Act), and the
 Commission's rules and regulations. The
 Commission has made appropriate
 findings as required by the Act and the
 Commission's rules and regulations in 10
 CFR Chapter I, which are set forth in the
 license amendment.

Notice of Consideration of Issuance of
 Amendment to Facility Operating
 License and Proposed No Significant
 Hazards Consideration Determination
 and Opportunity for Hearing in
 connection with these actions were
 published in the **Federal Register** as
 indicated. No request for a hearing or
 petition for leave to intervene was filed
 following this notice.

Unless indicated otherwise, the
 Commission has determined that the
 issuance of the amendments will not
 result in any significant environmental
 impact and that pursuant to 10 CFR
 § 15.5(d)(4) an environmental impact
 statement or negative declaration and
 environmental impact appraisal need
 not be prepared in connection with
 issuance of the amendments. If the
 Commission has prepared an
 Environmental Impact Appraisal related
 to these actions, it is so indicated. If
 indicated, this notice constitutes a
 negative declaration and indicates that
 the Commission has concluded that an
 environmental impact statement is not
 warranted because there will be no
 environmental impact attributable to the
 action beyond that which has been
 predicted and described in the
 Commission's Final Environmental
 Statement for the facility.

For further details with respect to the
 action see (1) the applications for
 amendments, (2) the amendments, and
 (3) the Commission's related letters,
 Safety Evaluations and/or Environmental

Impact Appraisal as indicated. All of
 these items are available for public
 inspection at the Commission's Public
 Document Room, 1717 H Street NW.,
 and at the local public document rooms
 for the particular facilities involved. A
 copy of items (2) and (3) may be
 obtained upon request addressed to the
 U.S. Nuclear Regulatory Commission,
 Washington, D.C. 20555, Attention:
 Director, Division of Licensing.

**Carolina Power & Light Company,
 Docket No. 5-325, Brunswick Steam
 Electric Plant, Unit 1, Brunswick County,
 North Carolina**

Date of application for amendment:
 May 2, 1983.

Brief description of amendment: The
 amendment revises the technical
 specifications of the operating license to
 incorporate appropriate limiting
 conditions for operation of the facility
 during the fourth fuel cycle. The revised
 technical specifications place
 appropriate restrictions on the rate of
 heat generation in the nuclear fuel by
 specifying limiting values of the Linear
 Heat Generation Rate, Average Planar
 Linear Heat Generation Rate, Minimum
 Critical Power Ratio and set points for
 the Average Power Range Monitoring
 System.

Date of issuance: June 28, 1983.

Effective date: June 28, 1983.

Amendment No. 56.

**Facility Operating License No. DPR-
 71.**

Amendment revised the **Technical
 Specifications.**

**Date of initial notice in "Federal
 Register":** May 19, 1983 (48 FR 22658).

The Commission's related evaluation
 of the amendment is contained in a
 Safety Evaluation dated June 28, 1983.

No significant hazards consideration
 comments received: **No.**

Local Public Document Room
Location: Southport, Brunswick County
 Library, 109 W. Moore Street, Southport,
 North Carolina 28461.

**Consumers Power Company Docket No.
 50-255, Palisades Plant, Van Buren
 County, Michigan**

Date of application for amendment:
 May 5, 1983.

Description: The amendment allows
 the licensee to defer the 18-month
 surveillance tests for Cycle 5 until prior
 to startup for Cycle 6.

Date of issuance: July 7, 1983.

Effective date: July 7, 1983.

Amendment No. 77.

**Provisional Operating License No.
 DPR-20.**

Amendment revised the **license.**

Date of initial notice in "Federal Register": June 3, 1983 (48 FR 25026).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation. No public or state comments were received with respect to the Commission determination that the amendment involves no significant hazards consideration.

Local Public Document Room:
Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006.

Florida Power Corporation, et al.,
Docket No. 50-302, Crystal River Unit no. 3, Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: March 31, 1983, as supplemented June 17, 1983, June 22, 1983, and July 6, 1982.

Brief description of amendment: The amendment relates to the Cycle 5 reload, which has an increased cycle lifetime of 460 effective full power days (EFPD) instead of 350 EFPD in the previous cycle, and involves numerical change to the regulating rod group insertion limit curves, and axial power shaping rod limit curves, the axial power imbalance envelope, and other related Technical Specifications changes.

Date of Issuance: July 12, 1983.

Effective Date: July 12, 1983.

Amendment No.: 64.

Facility Operating License No.: DPR-72.

Amendment revised the Technical Specifications.

Dates of initial notice in "Federal Register": June 6, 1983, 48 FR 25292.

This notice stated that we proposed a no significant hazards consideration determination for the licensee's March 31, 1983 amendment request concerning the Cycle 5 fuel reload for Crystal River Unit 3. Supplemental letters related to this amendment request dated June 17, June 22, and July 6, 1983, were received after issuance of Notice, and were, therefore, not considered in the Notice. However, none of these supplemental letters affect our proposed determination as stated in the Notice for the following reasons: (1) our proposed determination that the reload amendment does not involve a significant hazards consideration was made on the basis that (a) the fuel elements for Cycle 5 are not significantly different from elements previously approved for Crystal River Unit 3, (b) there are no significant changes in the nuclear design of Cycle 5, (c) the thermal-hydraulic analysis and analyses of thermal performance of the core during accidents and transients remain bounded by previously accepted

analyses; and (2) the information submitted in the supplemental letters simply provided clarifying information related to the Reactor Coolant Pump Power Monitor trip and to additional Technical Specifications supporting plant modifications and changes requested by the NRC staff.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 1983.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 NW., First Avenue, Crystal River, Florida.

Georgia Power Company, Olgethorpe Power Porporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-336, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia.

Date of applications for amendment: February 23, 1983, as supplemented April 19, 1983, as supplemented May 10, 1983, May 20, 1983 and May 26, 1983.

Brief description of amendment: The amendment modifies the Technical Specifications to provide additional and revised trip setpoints that reflect design modifications to reduce containment loads from plant transients. The Technical Specification changes (1) lower the opening and closing setpoints for actuation of four safety relief valves following initial actuation of any one of the four valves, and (2) lower the main steam isolation valve water level trip setpoint. It also modifies the Technical Specifications to reflect changes to the core design for the third fuel reload of Unit No. 2.

Date of Issuance: June 29, 1983.

Effective Date: June 29, 1983.

Amendment No.: 33.

Facility Operating License No.: NPF-5.

Amendment revised the Technical Spacification.

Date of initial notice in "Federal Register": May 18, 1983, 48 FR 22389.

This notice stated that we proposed a no significant hazards consideration determination for the licensee's March 30, 1983 amendment request concerning the cycle 4 fuel reload for Hatch Unit 2. Supplemental letters related to this amendment request dated May 10, May 20, and May 26, 1983, were received after issuance of Notice, and were, therefore, not considered in the Notice. However, none of these supplemental letters affect our proposed determination as stated in the Notice for the following reasons: (1) our proposed determination that the reload amendment does not involve a

significant hazards consideration was made on the basis that (a) the fuel elements for Cycle 4 that are different from elements previously approved for Hatch Unit 2 are of a design previously reviewed and approved for Hatch Unit 1, and (b) Hatch Unit 1 has operating characteristics that are not significantly different from Hatch Unit 2; and (2) the information submitted in the supplemental letters simply provided clarifying information related to fuel burnup and fuel corrosion failure considerations and additional Technical Specifications supporting the proposed Minimum Critical Power Ratio limits.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1983.

No Significant hazards consideration comments received: No.

Local public document room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington, County, Nebraska

Date of application for amendment: March 7, 1983.

Brief description of amendment: The amendment revises the Technical Specifications for the reactor coolant pressure-temperature limits for operation to 7.0 effective full power years.

Date of issuance: June 20, 1983.

Effective date: June 20, 1983.

Amendment No.: 74.

Facility Operating License No.: DPR-40.

Date of individual notice in "Federal Register": May 18, 1983, 48 FR 22390.

The Commission's related evaluation of the amendment is contained in Safety Evaluation.

No significant hazards consideration comments received: No.

Location of Local Public Document Room: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: May 2, 1983.

Brief description of amendment: The amendment authorizes operation with 22 fuel assemblies containing either three or five stainless steel rods in place of fuel rods for fuel cycle 6.

Date of issuance: July 11, 1983.

Amendment No.: 82.

Effective date: July 11, 1983.

Facility Operating License No.: NPF-1.

Date of notice in "Federal Register": June 1, 1983, 48 FR 24490.

The Commission's related evaluation of the amendment is contained in Safety Evaluation dated July 11, 1983.

No significant hazards consideration comments received: No.

Location of Local Public Document Room: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: May 2, 1983.

Brief description of amendment: The amendment changes the Technical Specifications to extend the surveillance test due date from May 17, 1983, to September 17, 1983, for the steam generator outlet steam pressure channels in the Remote Shutdown Instrumentation and Post Accident Monitoring Instrumentation.

Date of issuance: June 16, 1983.

Amendment No. 59.

Effective date: June 16, 1983.

Facility Operating License No.: NPF-3.

Amendment revised the Technical Specifications.

Date of initial notice in "Federal Register": May 16, 1983, 48 FR 22036.

The Commission's related evaluation of the amendment is contained in Safety Evaluation dated June 16, 1983.

No significant hazards consideration comments received: No.

Location of Local Public Document Room: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the 30-day period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issued and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless indicated otherwise, the Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment. If the Commission has prepared an Environmental Impact Appraisal related to the action, it is so indicated. If indicated, this notice constitutes a negative declaration and indicates that the Commission has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility.

For further details with respect to the action see (1) the application for amendment (2) the amendment to Facility Operating License, (3) the Commission's related letter, Safety Evaluation and/or Environmental

Impact Appraisal, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local public document room for the particular facilities involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By August 22, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding in the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunities to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Branch Chief): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board

designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendment: November 23, 1983.

Brief description of amendment: The amendments change the method of computation of reactor coolant flow rate from elbow tap measurements to one based on a periodic heat balance across the steam generators. The 1.7% measurement uncertainty associated with the proposed method is lower than the method based on elbow tap.

Date of issuance: June 28, 1983.

Effective date: June 28, 1983.

Amendment No. 22 for Units 1 and 3 for Unit 2.

Facility Operating License No. NPF-9 for Unit 1 and NPF-17 for Unit 2.

Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: 48 FR 27170.

Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated June 28, 1983.

Attorney for Licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242.

Local Public Document Room Location: Atkins Library, University of North Carolina-Charlotte, UNCC Station, North Carolina 28223.

Florida Power & Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: June 15, 1983.

Brief description of amendment: The amendment authorizes use of an alternate means of monitoring the Power Operated Relief Valve leakage.

Date of issuance: June 17, 1983.

Effective date: June 17, 1983.

Amendment No. 3.

Facility Operating License No. NPF-16.

Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

Comments received: None.

The Commission's related evaluation is contained in a letter dated July 15, 1983.

Attorney for Licensee: Harold F. Reis, Esq., Lowenstein, Newman, Reis, Axelrad & Toll, 1025 Connecticut Avenue, N.W., Washington, D.C. 20036

Local Public Document Room

Location: Indian River Community College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of application for amendment: June 20, 1983, as supplemented June 21, 1983.

Brief description of amendment: This amendment authorized a one-time change in Technical Specification Tables 3.3.2-1 and 3.3.2-2 to permit bypassing the Reactor Vessel Water Level-Low trip setpoint for isolation of the shutdown cooling system during feedwater sparger bracket repair.

Date of issuance: June 23, 1983.

Effective Date: June 21, 1983.

Amendment No.: 32.

Facility Operating License No.: NPF-5.

Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

State contacted: No comments.

The Commission's related evaluation is contained in a Safety Evaluation dated June 23, 1983.

Attorney for licensees: G. F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

Local Public Document Room

Location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Dated Application for amendment: June 3, 1983, as supplemented June 21, 1983.

Brief description of amendment: The amendment revised the method of balancing the flow for the reactor coolant system cold-leg injection lines from the centrifugal charging and safety injection pumps, revised the minimum injection flow to 339 and 462 gpm respectively, and deleted the flow balance test for the hot-leg injection lines from the safety injection pumps.

Date of issuance: July 8, 1983.

Effective date: July 8, 1983.

Amendment No.: 81.

Facility Operating License No. NPF-1.
Amendment revised the Technical Specifications. Prior notice requesting comments as to proposed no significant hazards consideration determination was published in the *Federal Register* on June 16, 1983 (48 FR 27626). No comments were received. The Commission's related evaluation is contained in a Safety Evaluation dated July 8, 1983.

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

Local public document room location: Multnomah Public Library, 801 S.W. 10th Avenue, Portland, Oregon.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (REPEAT OF AN INDIVIDUAL NOTICE)

During the 30-day period since publication of the last monthly notice, the Commission has issued the following amendment. The Commission has determined for this amendment that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. The State was consulted by telephone before issuance, however.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant

hazards consideration. The basis for this determination is contained in the documents related to this action.

Accordingly, the amendments have been issued and made effective as indicated.

The Commission has prepared an Environmental Impact Appraisal related to the action. This notice constitutes a negative declaration and indicates that the Commission has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Environmental Statement for the facility.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, (3) the Commission's related letter, Safety Evaluation and Environmental Impact Appraisal, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

The Commission has offered an opportunity for a hearing with respect to the issuance of the amendment as published in the *Federal Register* Notice 48 FR 25030 on June 3, 1983. By July 5, 1983, the licensee could have filed a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding could have filed a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene were to be filed on or before July 6, 1983. Neither a request for a hearing nor a petition for leave to intervene were filed.

Power Authority of the State of New York, Docket No. 50-286, Indian Point Nuclear Generating Plant, Unit No. 3, Westchester County, New York

Date of application for amendment: October 18, 1982.

Brief description of amendment: Revises the facility's operating license and Technical Specifications to allow plant operation after completion of steam generator tube and shell repairs.

Date of issuance: May 27, 1983.

Effective date: May 27, 1983.

Amendment No.: 47.

Facility Operating License No. DPR-64.

Amendment revised the *Technical Specifications and license*.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation is contained in a letter dated May 27, 1983 which forwarded a Safety Evaluation and Environmental Impact Appraisal. This notice is a repeat of prior notice 48 FR 25030 published on June 3, 1983 and as such does not extend the time to file a request for hearing or petition for leave to intervene beyond the July 6, 1983 deadline.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATION LICENSE (REPEAT OF INDIVIDUAL NOTICE)

Docket No. 50-247, Consolidated Edison Company of New York, Inc.

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 84 to Facility Operating License No. DPR-26, issued to the Consolidated Edison Company of New York, Inc. (the licensee), which revised Technical Specifications for operation of the Indian Point Nuclear Generating Unit No. 2 (the facility) located in Buchanan, Westchester County, New York. The amendment was effective April 28, 1983.

The amendment modifies the Technical Specifications to permit, on a one time basis, an extension of forty-eight (48) hours to the current twenty-four (24) hour limitation of operation with containment spray pump 21 out of service.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration, and the amendment was authorized prior to effective date of the Commission's Interim Final Rule relating to Notice and State Consultation (48 FR 14873). The Notice of Issuance of Amendment to Facility Operating License was published in the *Federal Register* on July 11, 1983 (48 FR 31761).

The Commission has determined that the issuance of this amendment will not result in any significant environmental

impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated April 28, 1983, (2) the Commission's letter to the licensee dated April 28, 1983, (3) Amendment No. 84 to License No. DPR-26, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

NRC Branch Chief: Steven A Varga.

Dated at Bethesda, Maryland, this 12th day of July 1983.

For the Nuclear Regulatory Commission,
Robert A. Clark,
Chief, Operating Reactors Branch No. 3,
Divisions of Licensing.

[FR Doc. 83-18331 Filed 7-19-83; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 19970; File No. 4-208]

American Stock Exchange, Inc.; Order Deferring Expansion of an Automated Interface and Instituting Procedures for Substituting Securities Traded Through the Interface

In the matter of American Stock Exchange, Inc.; Boston Stock Exchange, Inc.; Cincinnati Stock Exchange, Inc.; Midwest Stock Exchange, Inc.; National Association of Securities Dealers, Inc.; New York Stock Exchange, Inc.; Pacific Stock Exchange, Inc.; and Philadelphia Stock Exchange, Inc.

The Securities and Exchange Commission is extending the pilot phase of the interface between the Intermarket Trading System ("ITS") and the National Association of Securities Dealers, Inc.'s ("NASD") NASDAQ system ("interface" or "linkage") from July 15, 1983, until September 15, 1983.¹

¹ The ITS is governed by a plan ("ITS Plan") filed with, and approved by, the Commission pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 11Aa3-2 thereunder. The ITS Plan contains a number of provisions that govern the pilot phase of the ITS-NASDAQ linkage. See, e.g., Section 10(d) of the ITS Plan. The Commission interprets the ITS Plan to provide that

In addition, the Commission is codifying procedures now used for substituting securities traded through the interface ("ITS/CAES Securities").

The purpose of the extension of the pilot phase of the linkage is to allow the Commission to finish its review of the comments received in response to its release republishing an order exposure rule that might govern the ITS-CAES linkage.²

With respect to the substitution of ITS/CAES Securities, the Commission is making a technical change to its order mandating an interface between ITS and CAES³ to provide the NASD the ability to substitute securities in the linkage for securities that have or may cease to be ITS/CAES Securities.⁴ In this regard, the Commission is codifying the procedures that the ITS participants informally have agreed upon and utilized in the past. The Commission believes that these procedures should be formalized in view of the continuation of the pilot phase of the interface.

Accordingly, the Commission hereby issues an order, pursuant to its authority under the Act (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)) and particularly Sections 2, 3, 6, 10, 11, 11A, 15, 15A, 17 and 23 thereof (15 U.S.C. 78b, 78c, 78f, 78j, 78, 78k-1, 78o, 78o-1, 78q, 78w) as follows:

It is hereby ordered, That the Commission's order, dated April 21, 1981 (Securities Exchange Act Release No. 17744, 46 FR 23856) as amended by the Commission (most recently on May 31, 1983 (Securities Exchange Act Release No. 19825)) requiring among other things, the American Stock Exchange, Inc., the Boston Stock Exchange, Inc.; the Cincinnati Stock Exchange, Inc.; the Midwest Stock Exchange, Inc.; the NASD; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Inc.; the Philadelphia Stock Exchange, Inc. and any other self-regulatory organization which hereafter becomes a participant in the ITS to act jointly in planning, developing, and operating an automated intermarket communications linkage ("Automated Interface") between the ITS and the NASDAQ electronic inter-dealer quotation system, as modified by the NASD to permit computer assisted execution, is amended to: (i) Defer the date on which full operation of the

such provisions will continue to govern the linkage until the full implementation of the linkage becomes effective.

² Securities Exchange Act Release No. 19372 (December 21, 1982), 47 FR 58287.

³ See Securities Exchange Act Release No. 17744 (April 21, 1981), 46 FR 23856.

⁴ Section 1(17) of the ITS Plan provides that an ITS/CAES security must (i) be an ITS Security, (ii) be a 19c-3 security and (iii) have at least one ITS/CAES market maker.

Automated Interface, as described in the Section I, paragraph B of the April 1981 Order, must be implemented, from July 15, 1983, until September 15, 1983, and (ii) amending subparagraph I.B.(2) to provide as follows:

(2) 30 securities subject to Rule 19c-3 under the Act as designated by the NASD in which a CAES market maker is either presently registered or indicates an interest in becoming registered: *Provided, however*, That the NASD may change the list of such 30 securities to replace a security that no longer conforms to the criteria delineated in Section I, paragraph A of this order with a security which conforms to the criteria. The NASD must provide all other ITS participants at least five business days notice before such a change becomes effective.

By the Commission,

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-18328 Filed 7-19-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13381; 812-5551]

The Variable Annuity Life Insurance Co., et al.; Application for an Order Amending a Prior Order Pursuant to Section 11 of the Investment Company Act of 1940

Notice is hereby given, That The Variable Annuity Life Insurance Company, 2727 Allen Parkway, Houston, Texas 77019, a stock life insurance company organized under the laws of the state of Texas, The Variable Annuity Life Insurance Company Separate Account A ("Account"), a separate account registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, and The Variable Annuity Marketing Company, a registered broker-dealer and the principal underwriter of the Account (collectively "Applicants"), filed an application on May 13, 1983 for an order amending a prior order of the Commission pursuant to Section 11 of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act for a statement of the relevant statutory provision.

Applicants seek an order of the Commission pursuant to Sections 11(a) and 11(c) of the Act amending a prior order (Investment Company Act Rel. No. 12635) (Sept. 3, 1983) to allow the addition of a new fund, the VALIC Timed Opportunity Fund, Inc., to

underlay a new fifth sub-account of the Account. Any transfers between the new and existing sub-accounts will be made at the relative net asset values per share.

Notice is further given. That any interested person wishing to request a hearing on the application may do so not later than August 3, 1983, at 5:30 p.m., by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request.

Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 83-19626 Filed 7-19-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19964; SR-NASD-82-15]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc., 1735 K Street NW., Washington, D.C. 20006 ("NASD"), submitted on August 26, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend its Interpretation on Free-Riding and Withholding ("Interpretation") under Article III, Section 1 of its Rules of Fair Practice, involving the offering of Securities which immediately trade at a premium in the aftermarket ("Hot Issues"). The Interpretation at present prohibits or restricts as NASD member and its associated persons from selling Hot Issues to certain accounts ("Restricted Accounts"). Sales of Hot Issues to some Restricted Accounts may be made in accordance with the purchaser's "normal investment practice" if the aggregate amount of securities sold is "insubstantial" and not "disproportionate." The proposed rule

change would redefine the term "normal investment practice" and define the terms "disproportionate" and "insubstantial." The proposed rule change also would enable the NASD Board of Governors to permit sales of Hot Issues specifically directed by the issuer to Restricted Accounts that do not have an investment history with the member.

The Interpretation also requires that, if a member sells a Hot Issue to an investment partnership or corporation in which certain Restricted Accounts have a beneficial interest, such sales must be consistent with the provisions of the Interpretation. The proposed rule change would define beneficial interest to include not only a direct financial interest but also management fees based on the performance of the account.

The NASD has proposed the rule change because the increased number of Hot Issues during the past two years has resulted in an increasing number of inquiries regarding provisions of the Interpretation. The NASD states that the proposed amendments will explain provisions already contained in the Interpretation as well as in certain Board of Governors policies interpreting those provisions. Many of these policies were published in NASD Notice to Members 73-74 (November 5, 1973).

Notice of the proposed rule change together with the terms of the substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 19799, May 23, 1983) and by publication in the *Federal Register* (48 FR 24513, June 1, 1983). No comments were received with respect to the 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 the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 83-19626 Filed 7-19-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19965; SR-NASD-8312]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc., 1735 K Street, NW., Washington, D.C. 20006 ("NASD"), submitted on May 26, 1983, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend the Interpretation on Free-Riding and Withholding ("Interpretation") under Article III, Section 1 of the NASD's Rules of Fair Practice. The proposed rule change clarifies that the Interpretation applies to public offerings where the security involved trades at a premium in the secondary market whenever such secondary market begins. The proposed rule change is designed to address the situation where a delay in the completion of a distribution of an offering occurs and the security involved rises to a premium in the aftermarket. The NASD states that it always has applied the Interpretation to such delayed distributions, but that, in light of the Commission's opinion in *In the Matter of Lowell H. Listrom & Company, Inc.*,¹ the NASD is amending the Interpretation to reaffirm the applicability of the Interpretation to delayed distributions and to apprise members of this fact.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 19833, May 31, 1983) and by publication in the *Federal Register* (48 FR 26577, June 8, 1983). No comments were received with respect to the 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 the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

¹ Securities Exchange Act Release No. 19414 (January 10, 1983), 26 S.E.C. Doc. 1826.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 83-19627 Filed 7-19-83; 8:45 am]

BILLING CODE 8010-01-M

**Cincinnati Stock Exchange;
Applications for Unlisted Trading
Privileges and of Opportunity for
Hearing**

July 14, 1983.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

- Aeroflex Laboratories, Inc.
Common Stock, \$10 Par Value (File No. 7-6819)
- American Medical Buildings, Inc.
Common Stock, \$10 Par Value (File No. 7-6820)
- American Motor Inns, Inc.
Common Stock, \$20 Par Value (File No. 7-6821)
- Condec Corporation
Common Stock, \$10 Par Value (File No. 7-6822)
- Cubic Corporation
Common Stock, No Par Value (File No. 7-6823)
- Damson Oil Corporation
Common Stock, \$40 Par Value (File No. 7-6824)
- Digicon Inc.
Common Stock, \$10 Par Value (File No. 7-6825)
- Health-Chem Corporation
Common Stock, \$01 Par Value (File No. 7-6826)
- Houston Oil Trust
Units of Beneficial Interest (File No. 7-6827)
- MSI Data Corporation
Common Stock, \$1 Par Value (File No. 7-6828)
- Pope, Evans & Robbins Inc.
Common Stock, \$10 Par Value (File No. 7-6829)
- Ransburg Corp.
Common Stock, \$15 Par Value (File No. 7-6830)
- Solitron Devices, Inc.
Common Stock, \$1 Par Value (File No. 7-6831)
- Telephone & Data Systems, Inc.
Common Stock, \$1 Par Value (File No. 7-6832)
- TeleSciences, Inc.
Common Stock, \$10 Par Value (File No. 7-6833)
- Texscan Corporation
Common Stock, No Par Value (File No. 7-6834)
- Towner Petroleum Company
Common Stock, \$1 Par Value (File No. 7-6835)
- Vernitron Corporation
Common Stock, \$10 Par Value (File No. 7-6836)

American Natural Resources Company (DE)
Common Stock, \$1 Par Value (File No. 7-6837)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 4, 1983 written data views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis
Assistant Secretary.

[FR Doc. 83-19630 Filed 7-19-83; 8:45 am]

BILLING CODE 8010-01-M

**Midwest Stock Exchange, Inc.;
Applications for Unlisted Trading
Privileges and of Opportunity for
Hearing**

July 14, 1983.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

- Erbamont, N.V.
Common Stock, \$4 Par Value (File No. 7-6807)
- The Pep Boys—Manny, Moe & Jack
Common Stock, \$1 Par Value (File No. 7-6808)
- Quick & Reilly Group, Inc.
Common Stock, \$10 Par Value (File No. 7-6810)
- Safety-Kleen Corp.
Common Stock, \$10 Par Value (File No. 7-6811)
- Elsinore Corp.
Common Stock, No Par Value (File No. 7-6812)
- American Natural Resources Company (Delaware)
Common Stock, \$1 Par Value (File No. 7-6813)
- BankAmerica Corporation

Cumulative Adj. Preferred, Series B, No Par Value (File No. 7-6814)

Cincinnati Bell, Inc. (Holding Company)
Common Stock, \$25 Par Value (File No. 7-6815)

Hawaiian Electric Industries, Inc. (Holding Company)

Common Stock, \$6 2/3 Par Value (File No. 7-6816)

LL&E Royalty Trust

Units of Beneficial Interest (File No. 7-6818)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 4, 1983 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 83-19631 Filed 7-19-83; 8:45 am]

BILLING CODE 8010-01-M

**Pacific Stock Exchange, Inc.;
Application for Unlisted Trading
Privileges and of Opportunity for
Hearing**

July 14, 1983.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of:

- Triton Group Limited
Common Stock, \$1 Par Value¹

¹ This security is currently listed and registered on the Pacific Stock Exchange, Inc. ("PSE"). However, the PSE filed an application to remove the above security from listing and registration. The PSE has indicated to the Commission staff that it wishes to continue to trade the above security pursuant to unlisted trading privileges.

While this security will not be included in the consolidated transaction and quotation reporting system after the delisting becomes effective, the PSE has indicated in its application that last sale and quotation information for the security would be provided by the exchange to vendors of securities information and would be available on the PSE floor.

Interested persons are invited to submit on or before August 4, 1983 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-19632 Filed 7-19-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Debt Management Advisory Committee; Renewal Notice

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, enacted October 6, 1972, 5 U.S.C. App. I) the Secretary of the Treasury has approved continuation of the following industry committee as an advisory committee:

Title: (1) Government and Federal Agencies Securities Committee of the Public Securities Association

Purpose: The committee is utilized by the Secretary of the Treasury and his staff for

advice in carrying out Federal financing and public debt management. It considers commercial and financial information, advises the Secretary of the Treasury and his staff and makes reports and recommendations.

Statement of Public Interest: The membership of this committee represents a cross section of the financial community. The members are intimately acquainted with commercial and financial information and day-to-day market factors relevant to Treasury debt management operations. It is in the public interest to insure that the Secretary of the Treasury and his staff have this supplemental information in order to manage the public debt.

Authority for this committee will expire two years from the date new charter is signed by the designated Treasury official and filed with the appropriate Committee of the Senate and the House of Representatives.

Dated: July 14, 1983.

Cora P. Beebe,

Assistant Secretary (Administration).

[FR Doc. 83-19605 Filed 7-19-83; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register

Vol. 48, No. 140

Wednesday, July 20, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

Commission Meeting

TIME AND DATE: 10 a.m., Tuesday, July 19, 1983.

LOCATION: Third Floor Hearing Room, 1111 18th Street NW., Washington, D.C.

STATUS: Open to the public.

MATTER TO BE CONSIDERED: Fiscal year 1985 priorities. The Commission and staff will discuss priorities for fiscal year 1985. (The Commission decided that agency business required holding this meeting without the usual notice.)

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, Bethesda, Maryland 20207; (301) 492-6800.

[S-1045-83 Filed 7-15-83; 4:27 pm]

BILLING CODE 6355-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:25 a.m. on Friday, July 15, 1983, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider an application for capital assistance under section 13(i) of the Federal Deposit Insurance Act (name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5

U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matter 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 matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: July 15, 1983.

Federal Deposit Insurance Corporation,
Hoyle L. Robinson,
Executive Secretary.

[S-1050-83 Filed 7-18-83; 11:53 am]

BILLING CODE 6714-01-M

3

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: July 25, 1983, 1:30 p.m.

PLACE: Conference Room 4-G, 1776 G Street NW., Washington, D.C.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Alan B. Hausman.

MATTERS TO BE CONSIDERED: Closed meeting.

Minutes of June 17, 1983, Board of Directors' Meeting, Minute Entry
President's Report
Financial Report, Minute Entry

Dated: July 14, 1983.

James J. McGovern,

Acting Director, Legislation and Regulations Division.

[S-1049-83 Filed 7-18-83; 11:48 am]

BILLING CODE 6720-02-M

4

NUCLEAR REGULATORY COMMISSION

DATES: Friday, July 15, 1983 (revised) and Week of July 18, 1983.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED:

Friday, July 15:

2:00 p.m.

Meeting with Industry—BWR Owners' Group (Public Meeting) (New Item)

3:30 p.m.

Discussion of Possible Enforcement Action (Closed—Exemptions 5 and 10)

Wednesday, July 20:

10:00 a.m.

Discussion of Midland Adjudication (Closed—Exemption 10) (Postponed from July 15)

Thursday, July 21:

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting):

- Final Rule on Immediate Notification of Significant Events at Operating Reactors
- Review of Director's Denial
- Review of ALAB-724

ADDITIONAL INFORMATION:

On July 14 the Commission voted 4-0 to hold Briefing on Pipe Cracks in BWRs, held that day.

On July 14 the Commission voted 3-0 (Commissioner Gilinsky not present) to hold Classified Security Meeting, held that day.

Affirmation of TMIA Request for Hearing scheduled for July 14, withdrawn.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634-1410.

Dated: July 14, 1983.

Walter Magee,

Office of the Secretary.

[S-1051-83 Filed 7-18-83; 12:35 pm]

BILLING CODE 7590-01-M

5

PAROLE COMMISSION

[3P0401]

National Commissioners (the Commissioners presently maintaining offices at Chevy Chase, Maryland, Headquarters)

TIME AND DATE: 10 a.m., Wednesday, July 20, 1983.

PLACE: Room 420-F, One North Park Building, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTER TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 3 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission, (301) 492-5987.

[S-1052-83 Filed 7-18-83; 3:55 pm]

BILLING CODE 4410-01-M

6

POSTAL RATE COMMISSION

TIME AND DATE: 2 p.m., Tuesday, July 19, 1983.

PLACE: Conference Room, Room 500, 2000 L Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: (Closed pursuant to 5 U.S.C. 552b(c)(10)): E-COM (Docket No. R83-1)

CONTACT PERSON FOR MORE INFORMATION: Cyril J. Pittack, Acting Secretary, Postal Rate Commission, Room 500, 2000 L Street NW., Washington, D.C. 20268, Telephone (202) 254-3880.

[S-1052-83 Filed 7-18-83; 3:55 pm]

BILLING CODE 7715-01-M

7

POSTAL RATE COMMISSION

TIME AND DATE: 2 p.m., Thursday, July 28, 1983.

PLACE: Conference Room, Room 500, 2000 L Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Postal Rate Commission Budget

CONTACT PERSON FOR MORE INFORMATION: Cyril J. Pittack, Acting Secretary, Postal Rate Commission, Room 500, 2000 L Street, N.W., Washington, D.C. 20268, Telephone (202) 254-3880.

[S-1054-83 Filed 7-18-83; 3:57 pm]

BILLING CODE 7715-01-M

8

POSTAL RATE COMMISSION

TIME AND DATE: 10 a.m., Tuesday, July 26, 1983.

PLACE: Conference Room, Room 500, 2000 L Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: (Closed pursuant to 5 U.S.C. 552b(c)(10)):

Zip + 4—Docket No. MC83-2.

CONTACT PERSON FOR MORE INFORMATION: Cyril J. Pittack, Acting Secretary, Postal Rate Commission, Room 500, 2000 L Street, N.W., Washington, D.C. 20268, Telephone (202) 254-3880.

[S-1055-83 Filed 7-18-83; 3:57 pm]

BILLING CODE 7715-01-M

9

POSTAL RATE COMMISSION

TIME AND DATE: 2 p.m., Wednesday, July 20, 1983.

PLACE: Conference Room, Room 500, 2000 L Street, NW., Washington, D.C.

STATUS: Closed.

MATTER TO BE CONSIDERED: (Closed pursuant to 5 U.S.C. 552b(c)(10)):

ZIP + 4—Docket No. MC83-2

CONTACT PERSON FOR MORE INFORMATION: Cyril J. Pittack, Acting Secretary Postal Rate Commission, Room 500, 2000 L Street, NW., Washington, D.C. 20268, Telephone (202) 254-3880.

[S-1056-83 Filed 7-18-83; 3:57 pm]

BILLING CODE 7715-01-M

10

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of July 18, 1983, at 450 5th Street, N.W., Washington, D.C.

Closed meetings will be held on Tuesday, July 19, 1983, at 10 a.m., Tuesday, July 19, 1983 following the 2:30 p.m. open meeting and on Thursday, July 21, following the 10 a.m. open meeting. Open meetings will be held on Tuesday, July 19, 1983, at 2:30 p.m. and on Thursday, July 21, 1983, at 10 a.m. in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5

U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Longstreth and Treadway voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 19, 1983, at 10 a.m., will be:

Formal orders of investigation.
Institution of injunctive actions.
Institution of administrative proceeding of an enforcement nature.
Regulatory matter bearing enforcement implications.

The subject matter of the open meeting scheduled for Tuesday, July 19, 1983, at 2:30 p.m., will be:

Oral argument on an appeal by Jerry T. O'Brien, Inc., doing business as Pennaluna & Company, a registered broker-dealer, and Jerry T. O'Brien, the firm's president, from the initial decision of an administrative law judge. For further information, please contact Herbert Efron at (202) 272-7400.

The subject matter of the closed meeting scheduled for Tuesday, July 19, 1983, following the 2:30 p.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the open meeting scheduled for Wednesday, July 20, 1983 at 10 a.m., will be:

The Commission will meet with representatives of the Securities Industry Association to discuss matters of mutual concern. For further information, please contact Barbara Brandon at (202) 272-2407.

The subject matter of the open meeting scheduled for Thursday, July 21, 1983, at 10 a.m., will be:

1. Consideration of whether to adopt Rule 17f-5 under the Investment Company Act of 1940 which would permit U.S. and Canadian registered management investment companies under certain conditions to place and maintain their foreign securities, cash and cash equivalents with certain eligible foreign custodians. For further information, please contact Elizabeth K. Norsworthy at (202) 272-2048.

2. Consideration of whether to issue a release announcing: (1) Adoption of proposed amendments to Securities Exchange Act Rule 13e-4 to except certain transactions from the rule; and (2) adoption of a companion amendment to Securities Exchange Act Rule 13e-3. For further information, please contact Deren Manasevit at (202) 272-7376.

3. Consideration of whether to allow, or under what conditions to allow, the use of letters of credit as initial margin or as "cover" in lieu of margin when establishing short options positions on foreign currencies or stock indices. For further information, please contact Thomas V. Sjoblom at (202) 272-7379.

The subject matter of the closed meeting scheduled for Thursday, July 21, 1983, following the 10 a.m. open meeting will be:

Formal order of investigation.
Litigation matter.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Robert Lipsher at (202) 272-3195.

July 15, 1983.

[S-1046-83 Filed 7-18-83; 10:57 am]

BILLING CODE 8010-01-M

11

SECURITIES AND EXCHANGE COMMISSION
"FEDERAL REGISTER" CITATION OF
PREVIOUS ANNOUNCEMENT: 48 FR 31139,
July 6, 1983.

STATUS: Closed/open meetings.

PLACE: 450 5th Street NW., Washington,
D.C.

DATE PREVIOUSLY ANNOUNCED:
Thursday, June 30, 1983.

CHANGE IN THE MEETING: Additional
items/deletion. The following additional
item was considered at a closed meeting
held on Wednesday, July 6, 1983, at 9
a.m.:

Subpoena enforcement action.

The following additional item was
considered at a closed meeting held on
Thursday, July 7, 1983, following the 10
a.m. open meeting:

Institution of injunctive action.

The following item was not
considered at an open meeting held on
Thursday, July 7, 1983, at 10 a.m.:

Consideration of whether to allow, or under
what conditions to allow, the use of letters
of credit: (1) As "cover," in lieu of margin,
when establishing short options positions
in foreign currency or stock index options;
(2) as collateral for secured demand notes
made by subordinated lenders contributing
capital to broker-dealers; and (3) as margin
deposits required by the Options Clearing
Corporation for certain aggregate short of
exercised options positions of participants.
For further information, please contact
Thomas V. Stoblom at (202) 272-7379.

Chairman Shad and Commissioners
Longstreth and Treadway determined
that Commission business required the
above changes and that no earlier notice
thereof was possible.

At times changes in Commission
priorities require alterations in the
scheduling of meeting items. For further
information and to ascertain what, if
any, matters have been added, deleted
or postponed, please contact: Jerry
Marlatt at (202) 272-2092.

July 15, 1983.

[S-1047-83 Filed 7-18-83; 10:57 am]

BILLING CODE 8010-01-M

12

SECURITIES AND EXCHANGE COMMISSION
"FEDERAL REGISTER" CITATION OF
PREVIOUS ANNOUNCEMENT: 48 FR 31770,
July 11, 1983.

STATUS: Closed meetings.

PLACE: 450 5th Street NW., Washington,
D.C.

DATE PREVIOUSLY ANNOUNCED:
Wednesday, July 6, 1983.

CHANGE IN THE MEETING: Additional
item/meeting. The following additional
item was considered at a closed meeting
held on Tuesday, July 12, 1983, at 10
a.m.:

Settlement of injunctive action.

A closed meeting was held on
Thursday, July 14, 1983, at 9 a.m. to
consider the following item:

Institution of injunctive action.

Chairman Shad and Commissioners
Longstreth and Treadway determined
that Commission business required the
above changes and that no earlier notice
thereof was possible.

At times changes in Commission
priorities require alterations in the
scheduling of meeting items. For further
information and to ascertain what, if
any, matters have been added, deleted
or postponed, please contact: JoAnn
Zuercher at (202) 272-2014.

July 15, 1983.

[S-1048-83 Filed 7-18-83; 10:57 am]

BILLING CODE 8010-01-M

Federal Register

**Wednesday
July 20, 1983**

Part II

Environmental Protection Agency

**National Emission Standards for
Hazardous Air Pollutants; Proposed
Standards for Inorganic Arsenic**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AH-FRL 2378-2]

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Inorganic Arsenic

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and announcement of public hearing.

SUMMARY: On June 5, 1980, EPA listed inorganic arsenic as a hazardous air pollutant under Section 112 of the Clean Air Act. Pursuant to Section 112, EPA is proposing standards for the following categories of sources of emissions of inorganic arsenic: high-arsenic primary copper smelters, low-arsenic primary copper smelters, and glass manufacturing plants. EPA identified other categories of sources emitting inorganic arsenic; and, after careful study, determined that the proposal of standards for these categories of sources is not warranted at this time. These categories of sources are primary lead smelters, secondary lead smelters, primary zinc smelters, zinc oxide plants, cotton gins, and arsenic chemical manufacturing plants.

DATES: See "SUPPLEMENTARY INFORMATION" below.

ADDRESSES: See "SUPPLEMENTARY INFORMATION" below.

FOR FURTHER INFORMATION CONTACT: See "SUPPLEMENTARY INFORMATION" below.

SUPPLEMENTARY INFORMATION:

Public Hearings and Related Information Dates

Comments. Comments must be received on or before September 30, 1983.

Public Hearing. Two public hearings will be held. The first hearing will be held in Washington, D.C., on August 23, 24, and 25, 1983, beginning at 9:00 a.m. each day. This hearing will consist of two separate sessions. The first session will be for the purpose of receiving comments on the listing of arsenic as a hazardous pollutant. The second session will be for the purpose of receiving comments on the content of the proposed regulations. The order of items on the agenda of the second session will be: (1) high-arsenic copper smelters, (2) low-arsenic copper smelters, (3) glass manufacturing plants, and (4) others. Persons planning to attend the first hearing may call Mrs. Naomi Durkee (919) 541-5578 after August 16, 1983, to

obtain an estimated time and date at which each subject will be addressed.

The second hearing will be held in Tacoma, Washington, on August 30, 1983. This hearing will be for the purpose of receiving comments on the proposed standards for high-arsenic copper smelters. This hearing will be held from 12:00 noon to 10:00 p.m. and may be continued on August 31, 1983, if necessary to allow all persons wishing to speak an opportunity to do so.

Request to Speak at Hearing. Persons wishing to present oral testimony at the first hearing must notify Mrs. Naomi Durkee by August 15, 1983, at telephone number (919) 541-5578 or mailing address: Standards Development Branch, MD-13, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711.

Persons wishing to present oral testimony at the second hearing must notify Ms. Laurie Kral by August 23, 1983, at telephone number (206) 442-1089 or mailing address: Air Programs Branch, U.S. Environmental Protection Agency, Region X, 1200 6th Avenue, Seattle, Washington, 98101.

Addresses

Comments. Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Specify the following Docket Numbers:

- OAQPS-79-8 Listing of arsenic as a hazardous pollutant
- A-80-40 High-arsenic and low-arsenic copper smelters
- A-83-8 Glass manufacturing plants
- A-83-9 Secondary lead
- A-83-10 Cotton gins
- A-83-11 Zinc oxide plants
- A-83-23 Primary zinc, primary lead, arsenic chemical manufacturing

Public Hearing. The public hearing to be held on August 23, 24 and 25, 1983, will be held at the Department of Agriculture, Thomas Jefferson Auditorium, South Building, 14th and Independence Ave., S.W., Washington, D.C.

The public hearing to be held on August 30, 1983, will be held at the Tacoma Bicentennial Pavilion, Rotunda Room, 1313 Market Street, Tacoma, Washington.

Background Information Document. Background information documents (BID's) for the proposed standards may be obtained from the U.S. Environmental Protection Agency library (MD-35), Research Triangle Park, North Carolina 27711, telephone 919-541-2777. Please specify:

EPA 450/3-83-009a Inorganic Arsenic Emissions From High-Arsenic Primary

Copper Smelters—Background Information for Proposed Standards.

EPA 450/3-83-010a Inorganic Arsenic Emissions From Low-Arsenic Primary Copper Smelters—Background Information for Proposed Standards.

EPA 450/3-83-011a Inorganic Arsenic Emissions From Glass Manufacturing Plants—Background Information for Proposed Standards.

EPA 450/5-82-005 Preliminary Study of Sources of Inorganic Arsenic.

Dockets. Dockets containing supporting information used in developing the proposed standards are available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying. The following dockets are available:

- OAQPS-79-8 Listing of arsenic as a hazardous pollutant
- A-80-40 High-arsenic and low-arsenic copper smelters
- A-83-8 Glass manufacturing plants
- A-83-9 Secondary lead
- A-83-10 Cotton gins
- A-83-11 Zinc oxide plants
- A-83-23 Primary zinc, primary lead, arsenic chemical manufacturing

The docket A-80-40, which contains the supporting information for the proposed standards for high-arsenic and low-arsenic copper smelters, will also be available for inspection and copying at the EPA Region X office in Seattle, Washington. Persons wishing to view this docket should contact Ms. Laurie Kral at telephone number (206) 442-1089 or at mailing address: Air Programs Branch, U.S. Environmental Protection Agency, Region X, 1200 6th Avenue, Seattle, Washington, 98101.

For Further Information

For information concerning the listing of arsenic as a hazardous pollutant, contact Mr. John Fink, Pollutant Assessment Branch, MD-12, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone 919-541-5645. For information concerning the background information supporting the proposed standards, contact Mr. Jim Crowder, Industrial Studies Branch, MD-13, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone 919-541-5601. For information concerning the proposed standards, contact Mr. Robert L. Ajax, Standards Development Branch, MD-13, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina

27711, telephone 919-541-5578. For information concerning the "Alternative Regulatory Strategies" section of Part III of this preamble, contact Mr. Alex Cristofaro, Air Economics Branch, Office of Policy and Resource Management (PM-220), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, telephone 202-382-5490.

I. OVERVIEW OF THE PROPOSED STANDARDS

Background

In 1977, Congress amended the Clean Air Act (the Act) to address airborne emissions of arsenic. Section 122 of the Act required the Administrator of EPA to determine whether or not emissions of arsenic into the ambient air will cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health. On June 5, 1980, EPA published a *Federal Register* notice listing inorganic arsenic as a hazardous air pollutant under Section 112 of the Act (44 FR 37886, June 5, 1980). The listing was based upon EPA findings that there is a high probability that inorganic arsenic is carcinogenic to humans and that there is sufficient public exposure to inorganic arsenic. Epidemiological studies provide the primary evidence of inorganic arsenic's carcinogenicity. The results of these studies have led widely respected scientific groups, such as the National Cancer Institute(1), the National Academy of Sciences(2), and the International Agency for Research on Cancer(3), to conclude that there is strong evidence that inorganic arsenic is carcinogenic to humans. In 1979, EPA submitted to the Science Advisory Board (SAB), an advisory group of nationally prominent scientists from outside EPA, a report on the available health effects information on arsenic.(4) The SAB concluded that, "All the available data lead to a consensus that there is a real association between exposure to arsenic and the development of cancer, both lung and skin cancer."(5) The evidence of significant public exposure included the identification of multiple stationary sources of arsenic emissions, and data showing that large numbers of people living near emitting sources are exposed to ambient air concentrations of arsenic many times the national average.(6) The data and documents supporting the listing are available for public inspection and copying in the Central Docket Section at EPA headquarters in Washington, D.C.; the material is filed under Docket Number OAQPS-79-8. Pursuant to Section 112, the listing

signified that, in the judgment of the Administrator, inorganic arsenic is an air pollutant which causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness. The listing also signified the Administrator's intention to establish emissions standard for inorganic arsenic under Section 112.

Concurrent with the decision to list inorganic arsenic as a hazardous air pollutant, EPA began a series of studies of the sources of inorganic arsenic emissions. The purpose of the earliest studies in the series was to identify which types of sources merited more detailed study toward possible regulation, and the purpose of the final studies in the series was to develop the detailed information needed to support the proposal of standards. EPA is now under court order to publish proposed emission standards for inorganic arsenic by July 11, 1983. *New York v. Gorsuch*, 554 F. Supp. 1060, 1066 (S.D.N.Y. 1983).

Section 112 requires the Administrator to prescribe an emission standard for inorganic arsenic after proposal of a standard unless he finds, on the basis of information presented at the public hearings associated with the proposal of a standard, that inorganic arsenic clearly is not a hazardous air pollutant. As noted above, the information relevant to EPA's listing inorganic arsenic as a hazardous air pollutant is contained in Docket Number OAQPS 79-8. The health effects assessment information that supported the 1980 listing decision is included in the docket. The docket also contains a draft copy of an updated health assessment document that EPA's Office of Health and Environmental Assessment has just released for public and Science Advisory Board review (see 48 FR 27290, June 14, 1983). The reader may obtain a single copy of the draft document from EPA by writing to the following address: ORD Publications—CERI-FR, U.S. EPA, Cincinnati, Ohio 45268; or by calling the following telephone number: (513) 684-7562.

In today's notice, EPA is proposing standards for certain source categories of inorganic arsenic emissions to the ambient air and is proposing not to regulate others. To EPA's knowledge, these source categories comprise all the source categories of inorganic arsenic that could or may cause significant risks. The public is reminded that comments are solicited on the proposed standards, the proposals not to regulate, and the listing of inorganic arsenic as a hazardous air pollutant.

Public Health Risks

The health risk basis for listing inorganic arsenic as a hazardous air pollutant is summarized briefly in the Background section above. The results of studies linking worker exposure to inorganic arsenic with cancer, the number of sources emitting inorganic arsenic and the large numbers of people living near the sources, the measured concentrations of arsenic in the ambient air, and the reports of excess cancer not only among workers but among populations living near sources (7) led to the Administrator's judgment that inorganic arsenic causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness. EPA recognized at the time of listing that epidemiological studies had not clearly proven that exposure to inorganic arsenic at ambient levels causes cancers. Epidemiological studies that have successfully revealed associations between occupational exposure and cancer for substances such as asbestos, benzene, vinyl chloride, and ionizing radiation, as well as for inorganic arsenic, are not as easily applied to the public sector, with its increased number of confounding variables, much more diverse and mobile exposed population, lack of consolidated medical records, and almost total absence of historical exposure data. Given the above characteristics, EPA considers it improbable that any epidemiological association, short of very large increases in cancer can be detected among the public with any reasonable certainty. Furthermore, as noted by the National Academy of Sciences (NAS), "... when there is exposure to a material, we are not starting at an origin of zero cancers. Nor are we starting at an origin of zero carcinogenic agents in our environment. Thus, it is likely that any carcinogenic agent added to the environment will act by a particular mechanism on a particular cell population that is *already being acted on by the same mechanism to induce cancers*."(8) In discussing experimental dose-response curves, the NAS observed that most information on carcinogenesis is derived from studies on ionizing radiation with experimental animals and with humans, which indicate a linear no-threshold dose-response relationship at low doses. They added that although some evidence exists for thresholds in some animal tissues, by and large, thresholds have not been established for most tissues. NAS concluded that establishing

such low-dose thresholds "... would require massive, expensive, and impractical experiments ..." and recognized that the U.S. population "... is a large, diverse, and genetically heterogeneous group exposed to a large variety of toxic agents." This fact, coupled with the known genetic variability to carcinogenesis and the predisposition of some individuals to some form of cancer, makes it extremely difficult, if not impossible, to identify a threshold.

For these reasons, EPA has taken the position, shared by other Federal regulatory agencies, that in the absence of sound scientific evidence to the contrary, carcinogens should be considered to pose some cancer risk at any exposure level. This no-threshold presumption is based on the view that as little as one molecule of a carcinogenic substance may be sufficient to transform a normal cell into a cancer cell. Evidence is available from both the human and animal health literature that cancers may arise from a single transformed cell. Mutation research with ionizing radiation in cell cultures indicates that such a transformation can occur as the result of interaction with as little as a single cluster of ion pairs. In reviewing the available data regarding carcinogenicity, EPA found no compelling scientific reason to abandon the no-threshold presumption for inorganic arsenic.

Section 112 requires that standards be set at levels which, in the Administrator's judgment, provide an ample margin of safety to protect the public health. Thus one factor EPA considers is the nature and relative magnitude of health hazards. Unfortunately, agencies can never obtain perfect data but have to make regulatory decisions on the basis of the best information available. So, EPA evaluates the potential detrimental effects to human health caused by pollutant exposure based on the best scientific information currently available. EPA has produced quantitative expressions of public health risks associated with exposure to inorganic arsenic emitted from stationary sources. The Agency recognizes that significant uncertainties are associated with the data and the estimating procedure; however, the Agency believes that these quantitative expressions of public health risks serve a useful purpose by providing a measurement tool that facilitates relative comparisons of important factors, e.g., comparison of the relative effectiveness of two types of emission

control in reducing public health risk, and that when used appropriately, these quantitative expressions of risk are useful in decision-making. In developing the exposure-risk relationship for inorganic arsenic, EPA has assumed that a linear no-threshold relationship exists at or below the levels of exposure reported in the epidemiological studies of occupational exposure. This means that any exposure to inorganic arsenic is assumed to pose some risk of damage to health and that the linear relationship between cancer risks and levels of public exposure is the same as that between cancer risks and levels of occupational exposure. EPA believes that this assumption is reasonable for public health protection in light of presently available information. However, it should be recognized that the basis for using the linear no-threshold relationship model for inorganic arsenic is not quite as strong as that for carcinogens, which interact directly or in metabolic form with DNA. Nevertheless, there is no adequate basis for dismissing the linear no-threshold model for inorganic arsenic. The quantitative risk estimate based on the application of the linear no-threshold model represents a plausible upper-limit estimate in the sense that the risk is probably not higher than the calculated level and could be much lower.

The numerical constant that defines that exposure-risk relationship used by EPA in its analysis of carcinogens is called the unit risk estimate. The unit risk estimate for an air pollutant is defined as the lifetime cancer risk occurring in a hypothetical population in which all individuals are exposed continuously from birth throughout their lifetimes (about 70 years) to a concentration of $1 \mu\text{g}/\text{m}^3$ of the agent in the air which they breathe. Unit risk estimates are used for two purposes: (1) to compare the carcinogenic potency of several agents with each other, and (2) to give a crude indication of the public health risk which might be associated with estimated air exposure to these agents. A range of unit risk estimates for inorganic arsenic was derived from the dose-response relationships relevant to epidemiological studies involving workplace exposures. The derivation was based on a linear no-threshold model. The range in EPA's unit risk estimates reflects the uncertainty of combining the three different dose-response relationships relevant to the three occupational studies which EPA used as the basis for the development of unit risk estimates.⁽⁹⁾ As noted in the Background section of this notice, EPA is updating its health effects assessment

document for inorganic arsenic and has just released a draft document for public and Science Advisory Board (SAB) review (see 48 FR 27290, June 14, 1983). The draft document reflects a change in the unit risk estimate. The SAB review will include an examination of the applicability of the health effects models to the epidemiology data and the results of this review will be received and carefully considered by the Administrator before final standards are promulgated.

The unit risk estimate is only one of the factors needed to produce quantitative expressions of public health risks. Another factor needed is a numerical expression of public exposure, i.e., of the numbers of people exposed to the various concentrations of inorganic arsenic. The difficulty of defining public exposure was noted by the national Task Force on Environmental Cancer and Heart and Lung Disease in their 5th Annual Report to Congress, in 1982.⁽¹⁰⁾ They reported that "... a large proportion of the American population works some distance away from their homes and experiences different types of pollution in their homes, on the way to and from work, and in the workplace. Also, the American population is quite mobile, and many people move every few years." They also noted the necessity and difficulty of dealing with very-long-term exposures because of "... the long latent period required for the development and expression of neoplasia [cancer] ...". To develop quantitative expressions of public exposure to inorganic arsenic, it was necessary to use assumptions and a computerized model.

The models for estimating the unit risk for and the public exposure to inorganic arsenic are described briefly below. More information is available in references (9) and (11).

Model for Estimation of Unit Risk Based on Human Data⁽¹²⁾

Very little information exists that can be utilized to extrapolate from high-exposure occupational studies to low environmental levels. However, if a number of simplifying assumptions are made, it is possible to construct a crude dose-response model whose parameters can be estimated using vital statistics, epidemiologic studies, and estimates of worker exposures. In human studies, the response is measured in terms of the relative risk of the exposed cohort of individuals compared to the control group. The mathematical model employed assumes that for low exposures the lifetime probability of

death from lung cancer (or any cancer), P , may be represented by the linear equation

$$P = A + B_H x$$

where A is the lifetime probability of cancer in the absence of the agent, and x is the average lifetime exposure to environmental levels in some units, say micrograms per cubic meter of air breathed. The factor, B_H , is the increased probability of cancer associated with each unit increase of the agent in air.

If we make the assumption that R , the relative risk of lung cancer for exposed workers, compared to the general population, is independent of the length or age of exposure but depends only upon the average lifetime exposure, it follows that

$$R = \frac{P}{P_0} = \frac{A + B_H(x_0 + x_1)}{A + B_H(x_0)}$$

or

$$R P_0 = A + B_H(x_0 + x_1)$$

where x_0 = lifetime average daily exposure to the agent for the general population, x_1 = lifetime average daily exposure to the agent in the occupational setting, and P_0 = lifetime probability of respiratory cancer applicable to the general population. Substituting $P_0 = A + B_H x_0$ and rearranging gives

$$B_H = P_0 (R - 1) / x_1$$

To use this model, estimates of R and x_1 must be obtained from the epidemiologic studies. The value P_0 is derived from the age-cause-specific death rates for combined males found in 1976 U.S. Vital Statistics tables using the life table methodology. For lung cancer the estimate of P_0 is 0.036. (13)

The Exposure Model (11)

The basic assumption used in the exposure model is that exposed individuals reside at a single location for a 70-year period and are exposed at that location to a constant source of inorganic arsenic emissions. Updated 1970 census data were used to locate people with respect to the emitting sources, and the exposed population consisted of all the people estimated to be living within a radial distance of 20 kilometers from the sources. Twenty kilometers was selected because up to this distance the dispersion model used to estimate ambient air concentrations is reasonably accurate. Through several studies and other data-gathering efforts, EPA, insofar as it was reasonably

possible to do so, located sources by latitude and longitude, estimated both stack and fugitive emissions, and developed the plant factors needed to estimate long-term ambient air concentrations up to a radial distance of 20 kilometers by use of a dispersion model. By combining people and concentrations, the exposure model produced estimates of exposure at selected radial distances from each identified source and summed the exposure estimates for each category of sources. As used in this notice, the term "exposure" means the product of the estimated ambient air concentration of inorganic arsenic and the estimated number of people exposed to that concentration. The units of exposure are people- $\mu\text{g}/\text{m}^3$.

Quantitative Estimates of Public Health Risks

By combining the estimates of public exposure with the unit risk, two types of quantitative estimates are produced. The first, called maximum lifetime risk, relates to the individual or individuals estimated to live in the area of highest concentration as estimated by the dispersion model. As used here, the word "maximum" does not mean the greatest possible risk of cancer to the public. It is only the maximum estimated by the procedure used, and the procedure represents long-term average rather than worst-case situations. The second type of risk estimate, called aggregate risk, is a summation of all the risks to people living within 20 kilometers of a source and is customarily summed for all the sources in a particular category. The aggregate risk is expressed as incidences of cancer among all of the exposed population after 70 years of exposure; for statistical convenience, it is often divided by 70 and expressed as cancer incidences per year. Cancer incidences per year does not connote an event that will occur each year from now until something is done to alter the "exposure" on which the statistic is based. In reality, there is a long latent period between initiation of exposure and the onset of cancer.

There also are risks of nonfatal cancer and serious genetic effects, depending on which organs receive the exposure. The risks of nonfatal cancer and of genetic effects are not estimated; however, EPA considers all of these risks when it makes regulatory decisions on limiting emissions of inorganic arsenic.

EPA must make numerous assumptions when producing quantitative estimates of public health risks. Factors such as elevated terrain around sources, reentrainment of dust

containing inorganic arsenic, and the additive impact of emissions from sources near to one another are site specific. Individual characteristics such as age, physiology, physical activity level, amount of time spent indoors, and the effects of exposures to other substances influence the rate and amount of inorganic arsenic affecting the individual. Such factors could strongly influence the actual risks to any given individual, but are not usually treated in the analysis.

Basis for the Proposed Standards

Today's proposed standards are set "at the level which in [the Administrator's] judgment provides an ample margin of safety to protect the public health" from inorganic arsenic emissions, as required by Section 112(b)(1)(B).

As discussed in a previous section, inorganic arsenic, like most carcinogens, seems to present finite risks at any level of exposure, risks that increase as the level of exposure increases. Were this not the case—were there exposure levels below which there is no risk of cancer—the standards could be set so as to prevent those exposure levels. This cannot be done for inorganic arsenic unless the standards prevented any exposure, which would in turn require preventing any emissions. It does not appear that Congress intended Section 112 standards to cause widespread shutdown of arsenic emitting industries, and the other industries emitting nonthreshold pollutants (such as the carcinogens asbestos, vinyl chloride, benzene and radionuclides). Therefore, as an alternative to widespread shutdown of industries, EPA must establish emission standards for inorganic arsenic at levels that may present some human health risk. Some argue that an increase in cancer risk not exceeding one in one thousand due to a specific cause is acceptable, whereas others argue that an increase in risk of one in one million is unacceptable. Regardless, the use of these numbers is accompanied by great scientific uncertainty. For example, scientific uncertainties not resolved to date include the establishment of toxicity to humans based on extrapolation, using uncertain mathematical models from high-dose animal tests or occupational exposure to low-dose public exposure at ambient air concentrations, and identification of the appropriate level of emission controls for pollutants for which health effects thresholds have not been demonstrated.

There also is uncertainty with exposure estimates because of difficulty

in obtaining precise data on emission rates, atmospheric dispersion patterns and population concentrations around individual sources, and because of the lack of information on short-term and long-term movement (migration) of people and indoor versus outdoor toxic air pollutant concentration patterns. Further, ambient monitoring data are limited and both very costly and time consuming to obtain for use in exposure assessment. There also are uncertainties concerning possible additive effects of multiple sources or pollutants, synergistic or antagonistic health effects, and heightened susceptibilities to some cancers by some population groups. These factors make it difficult, if not impossible, to determine the absolute magnitude of the risk to human health based on the available data or to establish any epidemiological association between cancer and public exposure to ambient concentrations of a specific substance.

Another issue that has been encountered in using risk estimates is whether protection should focus on the risk to the most exposed individuals or to the exposed population as a whole (aggregate risk). Even when the many uncertainties in risk estimates are considered, resulted to date indicate that the total cancer incidence (expressed as cases per year) associated with exposure to inorganic arsenic, even on a nationwide basis, is likely to be small compared to the incidence associated with factors such as smoking and diet. However, individual risks for a limited number of people living close to uncontrolled or partially controlled emission sources may be relatively high.

Neither the language nor the legislative history of Section 112 reveals any specific Congressional intent on how to deal with these issues and how to apply the phrase "provides an ample margin of safety to protect the public health," to nonthreshold pollutants like inorganic arsenic that present cancer risks at any level of exposure.

In view of this, it is EPA's judgment that the best interpretation of Section 112 as applied to a nonthreshold pollutant is as follows. All source categories of the pollutant that are estimated to result in significant risks should be evaluated. Each such source category should be controlled at least to the level that reflects best available technology (BAT), and to a more stringent level if, in the judgment of the Administrator, it is necessary to prevent unreasonable risks. If a source category is not already controlled at this level, EPA will set the Section 112 standard at this level. If a category is already

controlled (for example, by other EPA standards, other Federal, State, or local requirements, or standard industry practice) to this level, and EPA expects that the level of control will continue to be required for these and new sources (EPA will continue to monitor this), a Section 112 standard will be redundant and need not be established. By BAT, EPA means the best controls available, considering economic, energy, and environmental impacts. The level of control that represents BAT may be different for new and existing sources within a source category because of higher costs associated with retrofitting controls on existing sources, or differences in control technology for new vs. existing sources. Whether a source category is estimated to cause a significant risk will be decided in light of the estimated risks to individuals, and the estimated cumulative risks to populations affected by that source category. Whether the estimated risks remaining after application of BAT are unreasonable will be decided in light of a judgmental evaluation of the estimated maximum lifetime risk and cancer incidences per year remaining after application of BAT, the impacts, including economic impacts, of further reducing those risks, the readily available benefits of the substance or activity producing the risk, and the availability of substitutes and possible health effects resulting from their use. In all cases where estimated risks are used, the significant uncertainties associated with those numbers will be weighed carefully in reaching the final decision.

In EPA's judgment, standards based on the interpretation of Section 112 just described provide an ample margin of safety to protect the public health. EPA solicits comments on this interpretation of Section 112.

This approach is believed to provide a rational, consistent and nationally appropriate mechanism for dealing with nonthreshold pollutants in the face of the many scientific uncertainties. The main issues have been dealt with in this proposal in the following ways:

1. Source categories are identified on the basis of estimates of their potential to result in significant risk because risk to public health is the dominant theme of Section 112. A significant risk is considered to be associated with a source category when the weight of the health evidence indicates a strong likelihood that the substance emitted by the source category is a human carcinogen and either individuals or larger population groups are significantly exposed to the substance

as emitted from the source category. A numerical target level of significance is not used because of the uncertainties discussed above.

2. All source categories that are estimated to result in significant risks are evaluated and the current level of control ascertained. That control may result voluntarily or from State, local or other Federal regulations. Whether the level of control meets the definition of BAT (considering cost and other impacts) then is determined. The BAT determination in this case can take into account such factors as the potential for improved control, the economic impacts of improved control on the source category, and the age and remaining useful life of the facilities.

3. The use of risk estimates generally has been confined to areas of broad comparisons, e.g., in selecting source categories to evaluate, and in assessing the incremental change in risk that results from application of various control options. The use of risk estimates in an absolute sense is avoided because of the many uncertainties of the estimates. These uncertainties are compounded as the focus is narrowed. In other words, in evaluating specific sources, as opposed to source categories, the uncertainties associated with the risk estimates increase dramatically.

4. Cost effectiveness is one of the major criteria used in selecting BAT. However, the use of cost effectiveness in the BAT selection may result in some apparent disparities in risk improvement at some sources. However, risk estimates are highly uncertain while technology and cost are generally well understood and provide an objective means of determining reasonableness of control.

Other alternative treatments of these issues were considered. A discussion of these alternative treatments as applied to the low-arsenic-throughput copper smelter source category is presented in the section entitled "Alternative Regulatory Strategies" in Part III of this preamble.

Source Categories for Which Standards are Not Proposed

EPA has identified several inorganic arsenic source categories for which standards are not being proposed. The emissions from some of these source categories (primary lead smelters, primary zinc smelters, zinc oxide plants) are comprised of inorganic arsenic that occurs naturally in the environment but is released to the air through industrial processes. In addition to these source categories, EPA is not proposing

standards for arsenic chemical plants, secondary lead smelters, and cotton gins that process cotton desiccated with orthoarsenic acid. The reasons for these decisions are discussed in the following paragraphs. Additional supporting information may be found in the dockets for the source categories and in the document entitled "Preliminary Study of Sources of Inorganic Arsenic."

Estimates of risk used in this analysis were developed using the methods and assumptions discussed in this notice and in the Appendix E of each background information document (BID). It is important to recognize that the actual risk to specific individuals may differ greatly from the estimates because (1) there is no solid scientific basis for any mathematical extrapolation model that numerically relates inorganic arsenic exposure to cancer risks at the low concentrations in the environment, and the actual dose-response relationship may differ greatly from that used in this analysis; and (2) the actual exposures of individual to inorganic arsenic over their lifetimes are not known and may differ greatly from the assumptions used to make the estimates in this analysis.

Primary Lead Smelters

Primary lead smelters produce metallic lead from lead ore concentrates. There are five primary lead smelters in the United States. In 1979, these smelters produced 578,000 Mg of lead, which accounted for 41 percent of the total domestic demand for lead that year.

Inorganic arsenic is a contaminant in lead-bearing ores. The arsenic content can range from 0.02 to 0.4 percent by weight. Fugitive emissions occur from lead ore handling and storage, and are controlled by ventilated enclosure systems and wet suppression methods. Ore transfer points are generally hooded and vented to fabric filter or venturi scrubber systems. Process emissions containing arsenic trioxide occur from sinter plants, blast furnaces, dross reverberatory furnaces, zinc fuming furnaces, and reverberatory softening furnaces. These sources are currently controlled by State implementation plans (SIPs) for SO₂ and particulate matter through the use of low-temperature fabric filters or contact sulfuric acid plants. Total nationwide inorganic arsenic emissions from primary lead smelters are about 43 Mg/year. Aggregate risks are estimated as ranging from 0.006 to 0.096 lung cancer incidences annually, and the estimated maximum lifetime risk calculated ranges from 0.07 in 10,000 to 1.1 in 10,000.

All primary lead smelters are covered by SIPs for SO₂ and particulate matter,

and by Occupational Safety and Health Administration (OSHA) lead and inorganic arsenic standards. As a result, low-temperature fabric filter systems or contact sulfuric acid plants are reducing emissions from process vents, and fugitive emissions are controlled by enclosing ore storage areas, ventilating and/or enclosing material transfer points, ventilating and/or enclosing furnace operations, and treating all of the ventilation gas streams with fabric filter systems. In addition, lead SIPs that have been submitted by the States but not yet approved by EPA would also cover all primary lead smelters.

EPA considers these controls to represent the best available technology (BAT). EPA knows of no demonstrated control techniques, short of closure, that would result in further inorganic arsenic emissions reduction.

EPA is not proposing standards under Section 112 for these sources because, in response to existing regulatory requirements, these sources already are required to control emissions by using technology that represents BAT; and the Agency does not believe that requiring plant closure is a reasonable control alternative in this case, finding that risks remaining after BAT are not unreasonable in light of the impacts of further reducing them.

Primary Zinc Smelters

Primary zinc smelters produce metallic zinc from zinc ore concentrates. There are five primary zinc smelters in the United States. These smelters produced 407,000 Mg of zinc in 1978, which accounted for about 49 percent of total domestic demand for zinc in that year.

Inorganic arsenic is a contaminant in zinc-bearing ores. The arsenic content can range from about 0.001 to 0.1 percent by weight. Zinc is smelted by two kinds of processes: electrothermal and electrolytic. Electrothermal process emissions arise from roasting, sintering, and reducing operations. Arsenic emissions from roasting are controlled as a result of routing process gases to a contact sulfuric acid plant for SO₂ removal. Arsenic emissions from sintering and reducing are controlled by low-temperature baghouses. Fugitive emissions from handling are contained and collected by low-temperature fabric filters.

The only potential source of significant arsenic emissions from electrolytic zinc smelting is the roasting operation. As in electrothermal smelting, these emissions are also routed to a contact sulfuric acid plant.

Primary zinc smelters are affected by new source performance standards

(NSPS) for SO₂ and particulate matter, SIPs for SO₂ and particulate matter, and OSHA inorganic arsenic workplace standards. Current nationwide inorganic emissions from this source category are about 0.3 Mg/year. The aggregate risks are estimated to range from 0.0005 to 0.008 lung cancer incidences annually, and the estimated maximum lifetime risk calculated ranges from 0.01 in 10,000 to 0.22 in 10,000.

The controls currently in place at primary zinc smelters to comply with existing regulations provide good control of arsenic emissions and are considered BAT. No technology has been demonstrated that can reduce emissions further. Additional reductions can be gained only by smelter closure.

EPA is not proposing standards under Section 112 for these sources because, in response to existing regulatory requirements, these sources are controlling emissions by using BAT; and the Agency does not believe that requiring plant closure is a reasonable control alternative in this case, finding that risks remaining after BAT are not unreasonable in light of the impacts of further reducing them.

Zinc Oxide Plants

There are 17 zinc oxide production facilities in the United States. Some of these facilities merely grind zinc oxide to specific product standards. The remainder produce zinc oxide directly from either zinc ore concentrates (termed the American process) or purified zinc metal (termed the French process). Arsenic emissions from zinc oxide production originate from the arsenic contained in the zinc feed. Because of the purity of the zinc feed used in the French process, arsenic emissions from this process are assumed to be small. The American process has the potential for producing arsenic emissions because of the arsenic contained in the zinc ore concentrates. There are only two domestic zinc oxide plants that use zinc ore concentrates as feed material: an ASARCO plant in Columbus, Ohio and a New Jersey Zinc plant in Palmerton, Pennsylvania.

The ASARCO-Columbus plant processes a zinc sulfide ore concentrate, and the operation consists of roasting in a fluid bed roaster followed by processing in a densifying kiln and a Wetherill zinc oxide furnace. A contact sulfuric acid plant is used to treat the roaster offgas, and low-temperature baghouse units are used to treat the other offgas streams. The acid plant and low-temperature baghouse units provide good control of arsenic emissions by

condensing of the vapor-phase arsenic and capturing it as particulate arsenic.

The New Jersey Zinc-Palmerton plant processes a low-sulfur zinc ore concentrate, and the major steps include Waelz kiln operations, sintering, and horizontal grate furnace operations. Because there is little SO_2 in the offgas from the kiln operation due to the low-sulfur feed, New Jersey Zinc does not employ an acid plant for SO_2 removal. Particulate removal is achieved using baghouse units on each of the process offgas streams and process fugitive streams. Because of the relatively small amount of arsenic present in these streams, further cooling of the gas streams would not result in additional arsenic collection.

The process emission points at these two zinc plants are subject to SIPs for SO_2 or particulate matter. In addition, zinc oxide plants are subject to the OSHA workplace standard for inorganic arsenic. Current inorganic arsenic emissions from these two plants are about 5.2 Mg/year. Aggregate risks are estimated as ranging from 0.0015 to 0.024 lung cancer incidences annually, and the estimated maximum lifetime risk calculated ranges from 1.7 in 10,000 to 28 in 10,000.

The federally enforceable controls currently in place at the two American process zinc oxide plants to comply with existing regulations provide good control of arsenic emissions. No technology has been demonstrated that can reduce emissions further. Additional reductions can only be gained by plant closure. Consequently, the existing controls are considered to be BAT.

EPA is not proposing standards under Section 112 for these sources because, in response to existing regulatory requirements, these sources are controlling emissions by using BAT; and the Agency does not believe that requiring plant closure is a reasonable control alternative in this case, finding that risks remaining after BAT are not unreasonable in light of the impacts of further reducing them.

Arsenic Chemical Manufacturing Plants

The manufacture of chemicals containing arsenic consumes about 90 percent of the total arsenic used in the United States. Eight plants handle dry powdered arsenic trioxide and have the potential to be significant inorganic arsenic emission sources.

The inorganic arsenic emissions are in the form of particulates. All eight plants are covered by SIPs for particulate matter and OSHA regulations for inorganic arsenic. Each plant has a particulate capture and collection system in place that meets all applicable

regulations. As a result, total current nationwide inorganic arsenic emissions are estimated to be about 0.04 Mg/year. The aggregate risks are estimated to range from 0.0008 to 0.012 incidences of lung cancer annually, and the estimated maximum lifetime risk calculated ranges from 0.4 in 10,000 to 6.4 in 10,000.

Of the eight plants with the potential to emit arsenic trioxide dust, three use fabric filters, four use wet scrubbers and one uses a fabric filter followed by a wet scrubber. The collected particulate matter is returned to the process. Fabric filters reduce arsenic trioxide particulate emission by about 99.5 percent, and while no test data are available on the arsenic removal efficiency of the wet scrubbers, it is believed, based on the emission rates, that it is comparable to the fabric filters.

These plants are currently well-controlled under federally enforceable OSHA regulations for inorganic arsenic and SIPs for particulate matter, with arsenic removal efficiencies of greater than 99 percent. There are no demonstrated control techniques, short of closure, that would result in further emissions reduction.

EPA is not proposing standards under Section 112 for these sources because, in response to existing regulatory requirements and due to the economic benefits of collecting and reusing arsenic trioxide, these sources are controlling emissions by using BAT; and the Agency does not believe that requiring plant closure is a reasonable control alternative in this case, finding that risks remaining after BAT are not unreasonable in light of the impacts of further reducing them.

Cotton Gins

There are about 320 cotton gins that handle and gin cotton that has been desiccated with orthoarsenic (arsenic) acid. Most of these gins are small businesses. Ginning is a seasonal operation, lasting only 3 to 4 months in late summer or fall.

Arsenic acid is applied to the cotton plants as a desiccant. The amount of desiccant applied varies from season to season and is affected by such factors as the condition of the cotton plants and the weather. A desiccant is applied to the cotton prior to mechanical-stripper harvesting to dry out green plant leaves in order to prevent fiber staining and unacceptable levels of fiber moisture content. Cotton desiccation is necessary to allow timely harvesting and preserve the quality of the cotton. Under the Federal Insecticide, Fungicide, and Rodenticide Act, EPA limits the application rate of arsenic acid to 3 pints per acre.

Most of the arsenic emissions from cotton gins is associated with gin trash, i.e., leaves, burrs, sticks, and hulls. The data base for estimating arsenic emissions is very limited, and the emissions estimates are very uncertain. Furthermore, it is not known what percent of the total arsenic emissions is inorganic arsenic. Total arsenic is believed to be emitted in about equal quantities as process and fugitive emissions. Process arsenic emissions occur primarily from the gin high-pressure section, which emits gin trash and large soil particles, and also from the low pressure section, which emits lint fly and cotton dust. Nationwide arsenic emissions are estimated to be about 0.8 Mg/year from the high-pressure section, and it is estimated that negligible quantities (0.005 Mg/yr) are emitted from the low-pressure section.

Fugitive particulate emissions, potentially containing inorganic arsenic, are also emitted from cotton gins. These fugitive emissions come from building and piping leaks, equipment leaks, burr hopper dumping, and wind blowing of open burr piles, and may be in the form of fine-leaf trash, burr material, lint fly, or cotton dust. It has been estimated that about 50 percent of the total particulate emissions resulting from a gin are from fugitive sources and that fugitive arsenic emissions would account for about 0.8 Mg/year nationwide.

Nationwide total arsenic emissions (organic and inorganic) from cotton gins are estimated to be about 1.6 Mg/year. The estimated maximum lifetime risk calculated, under the current level of control, ranges from 0.17 in 10,000 to 2.8 in 10,000. "Model" plants located in "model" cities were used to produce these estimates. Estimates of the aggregate risk to all those living within 20 kilometers of all the gins are not available because the locations of the gins are not available.

Cyclones are predominantly used to control gin high-pressure-section emissions. A high-efficiency cyclone can achieve greater than 99 percent removal of particles larger than 20 to 30 micrometers. Low-pressure-section emissions are typically controlled by coverings over condenser drums or by in-line filters. The use of a "long-cone" cyclone can reduce emissions further from both the high-pressure and low-pressure sections. Although very limited data are available, it is estimated that the long-cone cyclone can be used as a secondary control device for the high-pressure section to remove about 50 percent of the particulate matter that is less than 20 micrometers, and as a

primary control device for the low-pressure section to remove about 94 percent of the particulate matter that is less than 20 micrometers. Though inorganic arsenic reduction efficiency data are not available, it is reasonable to assume that arsenic in particulate form would be controlled with the same reduction efficiencies. As a result, nationwide arsenic emissions from the high-pressure section would be reduced by about 0.4 Mg/year and those from the low-pressure section by about 0.0047 Mg/year.

Based on control of only the high-pressure section, the total capital cost of installing a long-cone cyclone ranges from \$23,000 for a small gin to \$81,000 for a large gin, and total annualized costs would range from about \$5,000 to \$20,000. The cost per Mg of total arsenic reduced would range from about \$3.8 million to \$9.4 million per Mg. Nationwide capital and annualized costs are estimated to be \$10.8 million and \$2.4 million, respectively. The estimated maximum lifetime risk would be reduced by about 11 percent, to a range of 0.15 in 10,000 to 2.5 in 10,000.

Several control techniques are available for controlling fugitive emissions, but the operational differences among cotton gins inhibit an across-the-board technique. Although each technique has been used with varying degrees of success by a portion of the industry, most of the cotton gins either have not employed any of these techniques or have applied them improperly. Cotton gins are typically small operation, and it has not been demonstrated that most gin operators are capable of applying fugitive emission control techniques on a continuous basis. In addition, none of these techniques has ever been evaluated with regard to emissions reduction efficiency or cost of control. Consequently, little is known about the impacts of applying techniques to reduce fugitive emissions.

Although the estimated costs of long-cone cyclones (capital cost of \$20,000 to \$80,000 and annualized costs of \$5,000 to \$20,000) may not appear unreasonable for most industries, a preliminary economic analysis reveals that the cotton gin industry would be severely affected by such costs. Cotton gins typically operate less than one-third of the year. The profitability of the cotton gin industry varies considerably from year to year, so that in some years the gins may operate profitably, while in other years they do not. It appears that the cost of long-cone cyclones would put many gins in a position whereby they would not be able to continue operation.

The cost of this control would reduce cash flow at a typical size gin operating at a 100 percent utilization rate by 31 percent. For a gin operating at 70 percent utilization rate, the cash flow would be reduced by 98 percent.

Considering these economic impacts, EPA judges that the existing level of control for process emissions is BAT. In addition, because available information does not allow determination of the effectiveness of possible fugitive emission control techniques, and because such techniques have not been demonstrated to be amenable to all but operational variabilities of cotton gins, EPA has determined that the existing level of fugitive emission control is BAT.

In conclusion, EPA is not proposing standards under Section 112 for cotton gins because the existing level of control is considered to be BAT and the Agency cannot, from the data available, reasonably conclude that the risks remaining after BAT are unreasonable, in light of the impacts of requiring controls more stringent than BAT.

There are statutes other than the Clean Air Act that give the Agency the authority and the mechanism to reduce the inorganic arsenic emissions from cotton gins. For instance, under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA has the authority to further restrict or cancel the use of arsenic acid as a cotton plant desiccant. Such an action could reduce or eliminate the arsenic portion of the particulate matter emissions created during the ginning process. In addition to presently limiting the application rate of arsenic acid to 3 pints per acre of cotton plants, the Agency also is conducting an intensive risk-benefit analysis regarding the use of arsenic acid at this rate of application. The analysis is expected to lead to a decision by the Administrator to not change, further restrict, or cancel the use of this desiccant (see 43 FR 42867). The background information developed for this notice (such as the public exposure estimates) and other data, such as the ambient arsenic data now being collected near cotton gins in Texas, will be factored in the Administration's proposed decision regarding the future use of the desiccant under FIFRA (scheduled for 1984). Substitutes are being considered; but based on the analysis to date, it appears that there are no chemicals or new desiccation techniques that are nearly as cost-effective as arsenic acid in preparing the short season cotton for mechanical-stripper harvesting. Paraquat is the only other desiccant registered for use on

cotton fields, but it is not as effective a desiccant as arsenic acid.

EPA also has authority under Subtitle C—Hazardous Waste Management—of the Resource Conservation and Recovery Act (RCRA) to require special handling, storage and treatment of any hazardous waste material that is generated from cotton ginning. Since the gin wastes contain arsenic, the wastes may be identified as hazardous wastes under the Hazardous Waste Management regulations (see 40 CFR 261). If gin wastes are classified as hazardous and the gin generates and stores enough of the wastes on site, then the storage, transportation, and disposal of the wastes must meet the standards established under RCRA, e.g., the piles of gin wastes must be designed and operated to control dispersal of the waste by the wind (see 40 CFR 264.250). However, based on very limited data in the technical literature, it appears that the wastes would not be classified as hazardous and would not be subject to the hazardous waste regulations.

As seen from the other inorganic arsenic source category discussions, the OSHA workplace standards often indirectly provide for reduction of inorganic arsenic emissions to the atmosphere. However, in the case of cotton gins, OSHA's current inorganic arsenic workplace standard does not apply to agricultural facilities such as cotton gins (see 29 CFR 1910.1018(a)).

Secondary Lead Smelters

Secondary lead is produced by smelting lead-bearing scrap, and accounts for about half of the lead produced in the United States. In 1980, about 60 secondary lead smelters owned by 26 companies produced 670,000 Mg of lead. Though the exact number of smelters currently operating is difficult to determine due to the relatively rapid rate at which smelters are closing, it is estimated that 40 smelters are currently operating.

The normal sequence of operations of a secondary lead smelter is scrap receiving, charge preparation, furnace smelting, and refining and alloying. Prepared lead scrap (primarily used batteries) is combined with other furnace feed materials and charged to a reverberatory or blast furnace. The molten lead product is tapped into a holding and refining pot. Arsenic emissions occur during these operations because arsenic is present in many of the furnace feed materials and in all of the furnace products. The lead-bearing feed materials to reverberatory furnaces typically consist of crushed battery scrap that contains about 0.03 to 0.07

percent arsenic by weight. The lead-bearing feed materials to blast furnaces typically consist of crushed battery scrap and/or reverberatory furnace slag that contains as much as 2 percent arsenic by weight. Smelting furnace products can contain from 0.001 to 3 percent arsenic by weight. A large proportion of the arsenic fed to reverberatory furnaces reports to the reverberatory furnace slag, while a large proportion of the arsenic fed to blast furnaces reports to the hard lead product. During the smelting operations, the arsenic-containing raw materials are subjected to high furnace temperatures, which can vaporize the arsenic in the form of arsenic trioxide. Uncontrolled arsenic emissions can vary widely and are affected by such factors as the amount of arsenic in the feed material, the operating conditions of the furnace, the amount of chlorides in the feed material, and the slag composition.

The sources of arsenic emissions from secondary lead smelters can be divided into three broad classes. These are process emissions, process fugitive emissions, and area fugitive emissions. Process emissions occur from the main furnace vents and consist of metal and metal oxide fumes entrained in the furnace combustion products. The furnace offgas streams are directed to one or more control devices prior to atmospheric discharge. Process fugitive emissions occur intermittently during furnace charging, slag tapping, lead tapping, and refining. They are collected by hoods and directed to a control device prior to atmospheric discharge.

The area fugitive sources can include the battery storage area, the battery breaking yard, the charge make-up area, the slag storage area, smelter access roads, and furnace building fugitives. A study at one smelter showed that the largest area fugitive contributors to lead emissions were the charge make-up area (32 percent), the battery breaking yard (21 percent), and the slag storage area (19 percent). Of the area fugitive sources, the charge make-up area and the slag storage area are expected to be significant sources of arsenic emissions. The prime contributor to fugitive emissions in the battery breaking yard is the lead oxide battery paste which does not contain arsenic. Flue dust handling in the charge make-up area is of particular concern because of the relatively high arsenic content and small particle size of the flue dust at secondary lead smelters. However, this source is well controlled at most smelters.

As a result of complying with the applicable SIP's and NSPS for

particulate emissions, secondary lead smelters have applied fabric filters to control particulate emissions from smelting furnaces. The average of the operating temperature data available for fabric filters used on secondary lead smelting furnaces is 80° C (176° F). Fabric filters provide good control of arsenic in particulate form; and because the fabric filters used at most secondary lead smelters are operated at relatively low temperatures, it is believed that some of the vapor-phase arsenic is condensed and captured as well. Several plants have installed a scrubber after the fabric filter to comply with State and/or local SO₂ emission regulations. It is estimated that arsenic emissions from a scrubber/fabric filter combination may be about 60 percent less than arsenic emissions from a fabric filter alone. (As described later, this estimate is based on very limited data and is uncertain.)

The OSHA workplace standard for lead has resulted in good control of process fugitive sources at secondary lead smelters. Furnace charging, slag tapping, and lead tapping are controlled at most smelters by a combination of hoods and enclosures coupled with low-temperature (<37° C) fabric filters.

The OSHA lead standard also directly affects the control of some of the area fugitive sources, in particular the flue dust handling practices in the charge make-up area. A recent telephone survey and visits to five secondary lead smelters showed that the majority of smelters have improved their fuel dust handling practices in an attempt to meet the OSHA lead standard. Thus, as mentioned earlier, the area fugitive source with the highest potential for arsenic emissions, flue dust handling, is well controlled at the majority of smelters. The most prevalent control technique used is direct recycle of flue dust to the furnace via screw conveyors. A survey of the lead SIP's that are currently being developed to achieve compliance with the National Ambient Air Quality Standard (NAAQS) for lead indicated that additional area fugitive emission controls will be required for at least nine secondary lead smelters that have caused lead NAAQS exceedences.

There very little actual arsenic emissions data available for secondary lead smelters. However, particulate and lead emissions from furnaces at secondary lead smelters have been well characterized, and several studies of combustion sources have shown that lead and arsenic behave in a similar manner when exposed to high temperatures. Because of the parallels, arsenic emissions have been estimated from measured process and fugitive lead

emissions at a secondary lead smelter in conjunction with lead-to-arsenic ratios measured in dustfall near secondary lead smelters. The available flue dust arsenic content data from different smelters range from 0.04 to 1.1 percent by weight arsenic, indicating the potential for a wide range of arsenic emissions from plants in the source category. In the following discussion, arsenic emission ranges are shown for individual plants. The ranges shown for individual plants reflect the variability in lead-to-arsenic ratios observed at different smelters. The estimated nationwide emissions and the estimated annual cancer incidence, however, are based on the mid-point of the estimated emission ranges in order to reflect the industry as a whole. Since most of the flue dust arsenic content data available are clustered at the low end of the range of data, use of the midpoint is a conservative approach. The estimated maximum lifetime risk is based upon the maximum emissions estimated for individual plants because this risk parameter reflects the worst case ambient concentration situation.

The estimated baseline nationwide arsenic emissions from process sources at secondary lead smelters is 15.0 Mg/yr. Estimated individual plant arsenic emissions from process sources controlled by fabric filters range from 0.016 to 0.33 Mg/yr for a small plant and from 0.065 to 1.3 Mg/yr for a large plant, depending on the lead content and the lead-to-arsenic ratio of the particulate emissions. Based on these emissions estimates, the aggregate risks associated with process sources at secondary lead smelters are estimated as ranging from 0.08 to 1.3 cancer incidences per year, and the estimated maximum lifetime risk calculated ranges from 0.3 in 10,000 to 5 in 10,000.

The estimated baseline nationwide arsenic emissions from process fugitive sources at secondary lead smelters is 12.3 Mg/yr. Estimated individual plant arsenic emissions from process fugitive sources controlled by fabric filters range from 0.012 to 0.24 Mg/yr for a small plant and from 0.048 to 0.96 for a large plant, depending on the lead content and the lead-to-arsenic ratio of the particulate emissions. Based on these emissions estimates, aggregate risks associated with process fugitive sources at secondary lead smelters are estimated to range from 0.07 to 1.3 lung cancer incidences annually, and the estimated maximum lifetime risk calculated ranges from 0.4 in 10,000 to 6.5 in 10,000.

The estimated baseline nationwide arsenic emissions from area fugitive sources at secondary lead smelters is

27.9 Mg/yr. This estimate was obtained by applying a fixed lead-to-arsenic ratio to each component of a set of measured area fugitive lead emissions data from one secondary lead plant. However, it is expected that the lead-to-arsenic ratio is not the same for each of the component area fugitive sources and that the estimate is likely to overstate the magnitude of area fugitive arsenic emissions from secondary lead smelters. Estimated individual plant arsenic emissions from area fugitive sources range from 0.028 to 0.56 Mg/yr for a small plant and from 0.11 to 2.2 Mg/yr for a large plant. Based on these emissions estimates, the aggregate risks associated with area fugitive sources at secondary lead smelters are estimated to range from 0.2 to 3.3 lung cancer incidences annually, and the estimated maximum lifetime risk calculated ranges from 2 in 10,000 to 32 in 10,000.

Nationwide, the total baseline estimated arsenic emissions from process, process fugitive, and area fugitive sources are 55 Mg per year. The estimate maximum lifetime risk ranges from 2.1 in 10,000 to 34 in 10,000. This range is calculated using the maximum ambient arsenic concentration predicted by dispersion modeling results for each of 40 secondary lead smelters known to be operating. The estimate of arsenic emissions used in the model for this calculation corresponds to the high end of the individual plant ranges given above for process, process fugitive, and area fugitive sources. Daily ambient arsenic monitoring has been conducted for 3 years at five sites located around the plant that has the highest flue dust arsenic content identified at any secondary lead smelter. The measured average arsenic concentrations are a factor of 2 lower than the modeled arsenic concentration for this plant when the high-end arsenic emission estimates are input to the model. Based on the dispersion modeling results for each of the 40 secondary lead smelters known to be operating, the estimated annual cancer incidence from all emissions sources ranges from 0.4 to 5.7. The arsenic emissions estimates input to the model for this calculation correspond to the midpoint of the individual plant emissions ranges for process, process fugitive, and area fugitive sources.

The control strategy considered for reducing process arsenic emissions from secondary lead smelters consists of a combination system of a fabric filter followed by a scrubber to control furnace emissions. Under the existing OSHA standard for lead, sources of process fugitive emissions are already

well controlled. The area fugitive source that is believed to be of most concern (flue dust handling) is well controlled at most plants, and no other significant area fugitive sources that are not controlled with BAT have been identified. This leaves the addition of scrubbers to existing fabric filter systems for the control of process emissions as the only viable control strategy.

The fabric filter/wet scrubber combination is a demonstrated technology in the secondary lead smelting industry. However, retrofitting existing smelters with scrubbers may be difficult because of space limitations, and may cost more than installation at a new facility. Use of a scrubber would also result in wastewater treatment and solid waste disposal problems.

Actual measurements of the inorganic arsenic emissions reduction efficiency of scrubbers have not been made. The arsenic emission reduction estimates used in this analysis are based on lead emissions reduction data and are uncertain. By adding a scrubber to control furnace emissions, estimated nationwide arsenic emissions from process sources would be reduced from 15.0 Mg/yr to about 6.8 Mg/yr, resulting in a cost effectiveness range of \$600,000 to \$12 million per Mg of arsenic. Estimates show that the maximum lifetime risk associated with process sources of arsenic emissions at secondary lead smelters would be reduced by about 65 percent relative to the current levels (from a range of 0.3 in 10,000 to 5 in 10,000 to a range of 0.11 in 10,000 to 1.76 in 10,000). However, the maximum lifetime risk associated with all sources of arsenic emissions at secondary lead smelters would be reduced by less than 1 percent. The reason for this is that the fugitive emissions, which are released at or near ground level, have the greatest effect on exposure. The estimated annual cancer incidence for process sources would decline by about 60 percent, but the estimated annual incidence for secondary lead smelters as a whole would decline by only about 14 percent (from a range of 0.4 to 5.7 per year to a range of 0.31 to 4.9 per year).

Nationwide capital and annualized costs associated with the use of wet scrubbers at all secondary lead smelters would be about \$21.6 million and \$13.4 million, respectively. A preliminary economic analysis indicates that these costs would have severe economic impacts on an already severely depressed industry. The control costs would result in a 3.5 percent increase in the price of lead if the control costs can

be passed on to the lead consumer. It is more likely, however, that the control costs will not be passed forward in lead prices because of competition from primary lead smelters for the same market. Instead, secondary lead smelters would attempt to pass costs backward to lead scrap dealers. Because domestic smelters are in competition with foreign smelters for purchasing lead scrap, it is expected that passing costs back to lead scrap dealers would increase the rate of export of lead scrap and possibly force the closure of at least seven of the smaller smelters. In addition, the economic analysis indicates that several smelters would have difficulty financing the required capital.

EPA is not proposing standards under Section 112 for inorganic arsenic emissions from secondary lead smelters because, based on the information available, EPA has determined that the existing level of control represents BAT, and the Agency cannot, from the data available, reasonably conclude that the risks remaining after application of BAT are unreasonable, considering the uncertainty in the available data, and the negative economic impacts that would result from additional control. The Agency plans to continue its efforts, begun before the Court order was received, to obtain additional data on arsenic emission rates and control system performance for both fugitive and process sources by conducting tests at several secondary lead smelting facilities. The data will not be available until after this notice is published. When the data have been collected and evaluated, the information will be added to the docket relevant to this notice and will be available for public review.

Requests for Comments

EPA requests comments on its proposed decisions not to issue standards for inorganic arsenic emissions from the categories of sources just described. These decisions will be reconsidered if additional information indicates that reductions of public health risks are significantly greater, costs are significantly lower, or controls are more available than those on which EPA based its decision.

Source Categories for Which Standards Are Proposed

Summary of Proposed Standards

National emission standards for hazardous air pollutants are proposed for low-arsenic-throughput copper smelters, high-arsenic-throughput copper smelters, and glass manufacturing

plants. Each owner or operator of an existing source subject to any of these standards would have to be in compliance with the standard within 90 days of promulgation of the final standard, unless a waiver of compliance from the Administrator is obtained. A waiver of compliance for a period not exceeding 2 years can be obtained. Each owner or operator of a source for which construction or modification commences after the date of publication of the proposed standard would have to operate the source in compliance after the date of promulgation of the final standard. The proposed standards are summarized in this section.

Low-Arsenic-Throughput Copper Smelters

The proposed standards for primary copper smelters processing feed material with an annual average inorganic arsenic content less than 0.7 percent inorganic arsenic would require control of secondary emissions from converter operations and from smelting furnace matte and slag tapping operations. The proposed standards for converter secondary emissions would apply to smelters with an average annual inorganic arsenic feed rate to the converters of 6.5 kilograms per hour or greater. The standards for matte and slag tapping operations would apply to smelters with an annual average combined inorganic arsenic process rate in the matte and slag of 40 kilograms per hour or greater.

For the capture of secondary emissions from converter operations the proposed standards would require the installation of a secondary hood system consisting of a fixed enclosure with a horizontal air curtain on the converters. For the collection of secondary emissions from matte and slag tapping and converter operations the proposed standards would limit particulate emissions from the collection device to 11.6 milligrams of particulate matter per dry standard cubic meter of exhaust air.

Compliance with the proposed particulate emission limit would be determined by measuring the total particulate matter emissions using EPA

Reference Method 5. Continuous opacity monitoring of gases exhausted from a particular control device would be required to ensure the control device is being properly operated and maintained. Continuous monitoring of airflow, and inspection and maintenance procedures would be required to ensure the secondary hood system is being properly operated and maintained. The reporting requirements for the proposed standards consist of semiannual reporting of occurrences of excess opacity and occurrences of airflows lower than a reference performance level, and annual reporting of the annual average arsenic content of the smelter feed material, the annual arsenic feed rate to the converters, and the annual arsenic process rate in the matte and slag.

High-Arsenic-Throughput Copper Smelters

The proposed standards for primary copper smelters that process feed material with an annual average inorganic arsenic content of 0.7 percent or more would require control of secondary emissions from converting operations. The proposed standards are expressed in terms of an equipment specification for the capture system and a maximum allowable particulate emission limit for the collection device. The required equipment would consist of a fixed enclosure with a horizontal air curtain. Particulate emissions from the collection device would not be permitted to exceed 11.6 milligrams per dry cubic meter of exhaust gas.

Compliance with the proposed emission limit would be determined using EPA Reference Method 5. Continuous monitoring of the opacity of the exhaust from the particulate collection device would be required. To ensure the proper operation of the capture system, continuous monitoring of the airflow, and inspection and maintenance procedures would be required. The reporting requirements of the proposed standards consist of semiannual reporting of occurrences of excess opacity and occurrences of airflows lower than a reference

performance level, and annual reporting of the annual average arsenic content of the feed material.

Glass Manufacturing Plants

The proposed standards for glass manufacturing plants would require either (1) control of inorganic arsenic emissions from each glass melting furnace to the level achievable by an electrostatic precipitator (ESP) or fabric filter, or (2) that uncontrolled (i.e., preceding an add-on control device) inorganic arsenic emissions be maintained at 0.40 Mg/yr or less. Each owner or operator choosing to comply with the proposed standards by reducing inorganic arsenic emissions to levels achievable by an ESP or fabric filter would be required to meet a particulate matter emission limit. The particulate emission limits would vary according to different categories of glass. (The particulate emission limits are listed in Table IV-1 of Part IV of this preamble.)

EPA Reference Method 5 would be used to determine compliance with the particulate emission limits. The opacity of the exhaust from the collection device would be required to be monitored continuously. EPA Reference Method 108 would be used to demonstrate that uncontrolled emissions of inorganic arsenic are 0.40 Mg/yr or less. The reporting requirements of the proposed standards would consist of semiannual reporting of occurrences of excess opacity.

Summary of Environmental, Health, Energy, and Economic Impacts

The nationwide impacts of the proposed standards for inorganic arsenic emissions from low-arsenic-throughput copper smelters, high-arsenic-throughput copper smelters, and glass manufacturing plants are summarized in Table I-1. There are no wastewater impacts associated with any of the proposed standards. The impacts of the proposed standards for each of these source categories are presented in detail in Parts II, III, and IV.

TABLE I-1.—SUMMARY OF IMPACTS OF PROPOSED STANDARDS

	Low-arsenic copper smelters		High-arsenic copper smelters		Glass manufacturing plants	
	No NESHAP	NESHAP	No NESHAP	NESHAP	No NESHAP	NESHAP
Environmental Impacts						
Arsenic emissions, mg/yr	738	627	282	172	36.7	4.7
Solid waste, mg/yr	3,200,000	3,211,000	182,000	193,000	20	67
Health Impacts¹						
Maximum lifetime risk $\times 10^{-4}$	43 to 690	9.4 to 150	230 to 3,600	58 to 920	6.4 to 100	0.97 to 15.6
Cancer incidence per year	0.10 to 1.6	0.04 to 0.64	1.1 to 17.4	0.21 to 3.4	0.07 to 1.2	0.01 to 0.21

TABLE I-I.—SUMMARY OF IMPACTS OF PROPOSED STANDARDS—Continued

	Low-arsenic copper smelters		High-arsenic copper smelters		Glass manufacturing plants	
	No NESHAP	NESHAP	No NESHAP	NESHAP	No NESHAP	NESHAP
Cost/Economic Impacts						
Incremental capital costs, millions of dollars		35.3		3.5		27.4
Incremental annualized costs, millions of dollars		9.5		1.5		4.9
Price increase, percent		0.1 to 4.4		0.5 to 0.8		0.04 to 3.1
Incremental energy impacts, MW-hr/yr		+25,000		+1,500		+3,400

*The ranges in these quantifications of public health impacts reflect the uncertainty of combining the three different dose-response relationships relevant to the three occupational studies which EPA used as the basis for the development of unit risk estimates. Other significant uncertainties associated with EPA's quantification of public health impact are discussed in the Public Health Risks section of this notice. In addition, the modeled ambient air concentrations depend upon (1) plant configurations, which differ and are difficult to determine for more than a few plants; (2) emission point characteristics, which differ from plant to plant and are difficult to obtain for more than a few plants; and (3) emission rates, which differ among plants and with time.

II. INORGANIC ARSENIC EMISSIONS FROM PRIMARY COPPER SMELTERS PROCESSING FEED MATERIALS CONTAINING 0.7 PERCENT OR GREATER ARSENIC

Proposed Standards

The proposed standards would regulate inorganic arsenic emissions from primary copper smelters that process feed material with an annual average inorganic arsenic content of 0.7 weight percent or more. The proposed standards would require the use of best available technology (BAT) to limit secondary inorganic arsenic emissions from copper converting operations. Secondary inorganic arsenic emissions are emissions that escape capture from the primary emission control system. The BAT for the capture of secondary inorganic arsenic emissions from converter charging, blowing, skimming, holding, and pouring operations is a secondary hood system consisting of a fixed enclosure with a horizontal air curtain. For collection of secondary inorganic arsenic emissions, BAT is a baghouse or equivalent control device. The proposed standards are expressed in terms of equipment specifications for the capture system and a maximum allowable particulate emission limit for the collection device. Particulate emissions from the collection device would not be permitted to exceed 11.6 milligrams of particulates per dry standard cubic meter of exhaust gas (mg/dscm). This limit reflects BAT for collection of secondary inorganic arsenic emissions.

To determine the applicability of the proposed standards to a primary copper smelter, the inorganic arsenic content of the feed materials would be measured using the proposed Reference Method 108A. To determine compliance with the proposed particulate emission limit, Reference Methods 1, 2, 3, and 5 in Appendix A of 40 CFR Part 60 would be used. Continuous opacity monitoring of gases exhausted from a particulate control device would be required to ensure the control device is being

properly operated and maintained. Continuous monitoring of airflow would be required to ensure the secondary hood system is being properly operated and maintained.

Summary of Health, Environmental, Energy, and Economic Impacts

The proposed standards would affect primary copper smelters that process feed material having an annual average inorganic arsenic content of 0.7 weight percent or more. This category is defined as high-arsenic-throughput smelters. The only existing primary copper smelter in the high-arsenic-throughput smelter category is owned and operated by ASARCO, Incorporated (ASARCO) and located in Tacoma, Washington. The annual average inorganic arsenic content of the feed material is not expected to be increased to 0.7 percent or above at any other existing smelter, and no new smelters are projected to be built. For this reason only the ASARCO smelter located in Tacoma, Washington (hereafter referred to as the ASARCO-Tacoma smelter), has been analyzed for the purpose of calculating the health, environmental, economic, and energy impacts of the proposed standards.

As will be discussed in the next section, to facilitate regulatory analysis EPA has separated the primary copper smelting industry into two source categories based on the annual average inorganic arsenic content of the smelter feed material. Primary copper smelters which process feed material with an annual average inorganic arsenic content less than 0.7 weight percent are addressed in Part III of this preamble.

The proposed standards would reduce total inorganic arsenic emissions from the ASARCO-Tacoma smelter from the current level of 282 megagrams (Mg) (311 tons) per year to a level of 172 Mg (189 tons) per year. As a result of this reduction in inorganic arsenic emissions, it is estimated that the number of incidences of lung cancer due to inorganic arsenic exposure for the approximately 370,000 people living

within about 20 kilometers (12.5 miles) of the ASARCO-Tacoma smelter would be reduced from a range of 1.1 to 17.6 incidences per year to a range of 0.2 to 3.4 incidences per year. The proposed standards would reduce the estimated maximum lifetime risk from exposure to airborne inorganic arsenic from a range of 2.3 to 37 in 100 to a range of 0.58 to 9.2 in 100. The maximum lifetime risk represents the probability of a person contracting cancer who has been exposed continuously during a 70-year period to the maximum annual inorganic arsenic concentration due to inorganic arsenic emissions from the ASARCO-Tacoma smelter. (These estimated health impacts were calculated based on a number of assumptions and contain considerable uncertainty as discussed in Part I of this preamble and in Appendix E of the background information document.)

Application of the controls required by the proposed standards would increase the amount of solid waste (i.e., collected particulate matter containing inorganic arsenic) entering the ASARCO-Tacoma smelter waste disposal system by approximately 11 gigagrams (Gg) (12,000 tons) per year. Currently, the ASARCO-Tacoma smelter generates approximately 182 Gg (200,000 tons) per year of solid waste (including slag). The additional amount of solid waste generated can be handled by the existing waste handling system at the smelter. Because the control systems expected to be used to achieve the proposed standards are dry systems, there would be no water pollution impact.

Energy impacts under the proposed standards would be increased electrical power consumption. The annual energy requirement for the ASARCO-Tacoma smelter is approximately 2.9×10^9 kilowatt-hours per year (kWh/y). Additional energy requirements at the ASARCO-Tacoma smelter due to the proposed standards are estimated to be approximately 1.5×10^7 kWh/y, representing an increase in the annual

smelter energy consumption of about 0.5 percent.

For the ASARCO-Tacoma smelter, capital and annualized costs required to meet the proposed standards would be approximately \$3.5 million and \$1.5 million, respectively. The primary economic impacts associated with the proposed standards are projected decreases in profitability for the ASARCO-Tacoma smelter. It is anticipated that the proposed standards will not adversely affect the economic viability of the smelter or employment at the smelter. In addition, it is estimated that the proposed standards could result in an increase in the price of copper of up to 0.8 percent.

Rationale

Selection of Source Category

Copper smelting involves the processing of copper-bearing ores containing varying concentrations of inorganic arsenic. EPA estimates that current controlled emissions of inorganic arsenic from primary copper smelters are 1,012 megagrams (Mg) (1,116 tons) per year.

Several studies have assessed health problems in communities where primary copper smelters are located. Increased lung cancer has been reported among male and female residents living near a primary copper smelter located in Anaconda, Montana (this smelter was permanently closed in 1981). The National Cancer Institute has released a study showing excess mortality from respiratory cancer in counties where primary copper smelters are located. (14)

EPA initiated a study in 1977 of the populations exposed to various ambient air concentrations of inorganic arsenic. This study, in summarizing 1974 data collected by EPA's National Air Sampling Network (NASN), shows that the annual average concentration of inorganic arsenic for five urban areas within 80 kilometers of selected smelters was 10 times greater than the annual average for all of the sites (in excess of 250) in the nationwide network. At a site within 16 kilometers of the ASARCO-Tacoma smelter, the annual average was more than 25 times the national average.

Based on information provided by the copper smelting industry, EPA has determined that the ASARCO-Tacoma smelter processes feed containing a higher concentration of inorganic arsenic than any other primary copper smelter in the United States. The ASARCO-Tacoma smelter is a custom smelter. ASARCO purchases ore concentrates from other mining and milling producers to process at its

Tacoma smelter. Typically, feed material containing on the average 4.0 weight percent inorganic arsenic is processed at the ASARCO-Tacoma smelter at the rate of 940 kilograms of inorganic arsenic per hour (kg/h). The level of inorganic arsenic concentration in the feed materials processed at the ASARCO-Tacoma smelter is an order of magnitude greater than the level processed at the other 14 primary copper smelters. The second highest average inorganic arsenic content in the feed material processed at a domestic smelter is 0.6 weight percent. The second highest average process rate of inorganic arsenic at a domestic smelter is approximately 170 kg/h. In fact, the inorganic arsenic process rate for the ASARCO-Tacoma smelter is significantly greater than the combined inorganic arsenic process rate of 625 kg/h for the other 14 smelters.

Because of the potential for high inorganic arsenic emissions and the proximity of the population, calculated risks and cancer incidence are substantially higher for the ASARCO-Tacoma smelter than for other smelters. Consequently, the benefits associated with the application of specific control technologies to the ASARCO-Tacoma smelter versus the other smelters are significantly different when considered in terms of emission and risk reduction, costs, energy, and other impacts. For this reason, EPA believes it is reasonable for purposes of regulation to separate smelters into two source categories based on the annual average inorganic arsenic concentration in the feed.

The source category for high-arsenic-throughput smelters is primary copper smelters processing feed with an annual average inorganic arsenic content of 0.7 percent or more. The value 0.7 percent was selected based on the consideration of the inorganic arsenic content of the feed materials processed at the existing smelters other than the ASARCO-Tacoma smelter. The regulatory analysis of the 14 existing smelters which process feed material with an annual average inorganic arsenic content less than 0.7 weight percent is presented in Part III of this preamble.

EPA has, as a matter of prudent health policy, taken the position that human carcinogens must be treated as posing some risk of cancer at any non-zone level of exposure. Therefore, in conjunction with the Administrator's determination that (1) there is a high probability that inorganic arsenic is carcinogenic to humans, and (2) that there is significant public exposure to inorganic arsenic emissions from the ASARCO-Tacoma smelter, the

Administrator has determined that inorganic arsenic emissions from high-arsenic-throughput smelters are significant and should be regulated.

In making the decision to regulate high-arsenic-throughput smelters, the Administrator considered whether other regulations affecting high-arsenic-throughput smelters were adequate to control atmospheric inorganic arsenic emissions. The Administrator has concluded that existing regulations are not adequate to protect the public health and welfare from sources of inorganic arsenic emissions at high-arsenic-throughput smelters with an ample margin of safety. Based on an analysis of the costs and impacts of more stringent alternatives, it is the Administrator's judgment that a substantial reduction in inorganic arsenic emissions to the atmosphere from the current level is achievable and appropriate. Therefore, EPA has decided to proceed with the development of standards to control inorganic arsenic emissions from high-arsenic-throughput smelters under Section 112 of the Clean Air Act.

EPA expects that only the ASARCO-Tacoma smelter would be in the high-arsenic-throughput smelter source category. Should any other existing smelter process feed materials having an annual average inorganic arsenic feed content above 0.7 weight percent, the smelter would become subject to the proposed standards. In addition, the proposed standards would also apply to any new smelter processing feed materials with an annual average inorganic arsenic concentration of 0.7 weight percent or more.

Other than the ASARCO-Tacoma smelter, no existing smelter is expected to process feed materials having an annual average inorganic arsenic feed content above 0.7 weight percent within the next 5 years. Also, it is projected that no new domestic primary copper smelters will be built within the next 5 years. This projection is based on EPA's conclusion that annual industry growth will be accommodated by existing smelters, which are presently not operating or are operating below capacity.

Description of Smelting Process and Emission Points

A primary copper smelter is a facility that produces copper from copper sulfide ore concentrates using pyrometallurgical techniques. These techniques are based on copper's strong affinity for sulfur and its weak affinity for oxygen as compared to that of iron and other base metals in the ore. The

purpose of smelting is to separate the copper from the iron, sulfur, and other impurities present in the ore concentrate.

Primary copper smelting involves three basic steps. First, the copper sulfide ore concentrates are heated in a roaster to remove a portion of the sulfur contained in the concentrate. The solid material produced by a roaster is called "calcine." The calcine is loaded into small rail cars (called "larry cars"). This operation is called "calcine discharging."

The larry cars transfer the calcine to a smelting furnace. At most smelters, raw copper sulfide ore concentrate is charged directly to the smelting furnace. In the smelting furnace, the calcine or raw, unroasted ore concentrate is heated to form a molten bath containing separate layers of matte (an impure mixture of copper and iron sulfide) and slag (a mixture of nonmetallic impurities). Molten slag is skimmed from the upper layer of the bath and poured from openings in the furnace walls (called "ports") into inclined troughs (called "launders"), which empty the slag into a vessel mounted on a small rail car (called a "slag pot"). This operation is called "slag tapping." Molten matte is poured from a second set of furnace ports into launders, which empty the matte into ladles. This operation is called "matte tapping."

The ladle is transported by an overhead crane to a copper converter. The molten matte is poured from the ladle into a large opening on the top of the converter vessel. Air is blown into the converter to first oxidize the iron sulfide in the matte. The resulting iron silicate slag is poured directly from the converter mouth into a ladle. When all of the iron is oxidized and removed, the remaining copper sulfide is oxidized to form a high-purity copper product (called "blister copper"). The blister copper is poured directly from the converter into a ladle for transfer to an anode furnace (for further refining of the copper) or directly to the anode casting area (for casting of the copper into copper anodes).

Roaster and smelting furnace offgases are produced by the combustion of fuel and the reaction of materials in the high-temperature environments. Converter offgases result from blowing air through the matte and the reaction of materials in the molten matte. Inorganic arsenic in the ore concentrates is volatilized during roasting, smelting, and converting, and is exhausted from the process equipment in the offgases. Offgases discharged from roasters, smelting furnaces, and converters, in the absence of any controls, would have the highest

inorganic arsenic emissions of any of the copper smelting sources at the ASARCO-Tacoma smelter. An inorganic arsenic material balance was provided by ASARCO and reviewed by EPA to inventory the inorganic arsenic inputs versus outputs from each process at the ASARCO-Tacoma smelter. The material balance shows that the inorganic arsenic emission rates in the absence of any controls would be 255 kg/h for the roasters, 608 kg/h for the smelting furnace, and 207 kg/h for the converters.

During converting, most of the remaining amount of inorganic arsenic and other impurities originally in the copper ore are removed from the copper matte to produce blister copper (98 to 99 percent pure copper). Blister copper from the converters may be further refined in anode furnaces prior to casting of copper anodes (solid slabs of blister copper). Because of the small quantity of inorganic arsenic remaining in the blister copper charged to the anode furnace, inorganic arsenic emissions from anode furnaces are very low when compared to the inorganic arsenic emissions from roasters, smelting furnaces, or converters. The material balance for the ASARCO-Tacoma smelter shows that inorganic arsenic emissions from anode furnaces in the absence of any controls would be 0.4 kg/h.

The ASARCO-Tacoma smelter is the only primary copper smelter that recovers arsenic from collected waste materials. Dust collected in the flues and control devices at the smelter is processed to produce arsenic trioxide for sale to arsenic chemical manufacturing companies. In addition, metallic arsenic is produced at the smelter site. The material balance shows that inorganic arsenic emissions from the arsenic trioxide and metallic arsenic manufacturing processes in the absence of any controls would be 376 kg/h.

Secondary inorganic arsenic emissions from converters are those emissions that escape capture from the primary emission control system. When the converter is rolled out for charging matte into the converter mouth, skimming slag formed in the converter, or pouring blister copper into a ladle, the primary hood is moved up and away from the converter mouth to provide clearance for the overhead crane and ladle. As a result, charging, skimming, and pouring operations can emit significant amounts of secondary inorganic arsenic because these operations occur outside the range of the converter's primary offgas exhaust hood. Additional secondary inorganic arsenic emissions also escape capture

by the primary offgas exhaust hood during blowing and holding operations. For the ASARCO-Tacoma smelter, the material balance shows that the secondary inorganic arsenic emissions rate from converter operations in the absence of any controls would be 14 kg/h.

Secondary inorganic arsenic emissions also escape to the atmosphere during calcine discharging at the roaster and during matte tapping and slag tapping at the smelting furnace. An estimate based on the material balance for the ASARCO-Tacoma smelter shows that inorganic arsenic emissions from matte tapping in the absence of any controls would be 4 kg/h. Inorganic arsenic emissions from calcine discharging and slag tapping are estimated to be less than 1 kg/h. Secondary inorganic arsenic emissions from anode furnace operations are less than 0.1 kg/h. Miscellaneous sources of secondary inorganic emissions from primary copper smelter operations include the handling and transfer of dust from control device storage hoppers, equipment flues, and dust chambers. At the ASARCO-Tacoma smelter these activities are conducted at many locations throughout the plant. Although the amount of inorganic arsenic emissions at each location is very small, the cumulative total of emissions from many locations can be a significant quantity. The material balance for the ASARCO-Tacoma smelter shows that secondary inorganic arsenic emissions from miscellaneous sources would be about 6 kg/h in the absence of any controls.

Policy for Determining Control Levels

For this source category, which consists of only the ASARCO-Tacoma smelter, a three-step approach has been followed to determine the control requirements being proposed. This approach is based on the policy discussed in Part I of this preamble.

The first step consists of determining whether current controls at the ASARCO-Tacoma smelter reflect application of BAT. BAT is the technology which, in the judgment of EPA, is the most advanced level of control which is adequately demonstrated considering environmental, energy, and economic impacts. BAT considers economic feasibility; and, for this smelter, BAT does not exceed the most advanced level of control that the smelter could afford without closing.

For those emission points where BAT is in place, EPA determines whether a NESHAP standard is needed to assure

that BAT will remain in place and will be properly operated and maintained. A primary consideration is the existence of other Federally enforceable standards. If BAT is not in place on specific emission points or if there is reason to expect that BAT may not remain in operation, these emission points are identified for development of standards.

The second step involves the selection of BAT for the emission points at the ASARCO-Tacoma smelter identified for the development of standards. To select BAT, regulatory alternatives are defined based on demonstrated control technology. The environmental, economic, and energy impacts of the alternatives are determined. Based on an assessment of these impacts, one of the alternatives is selected as BAT.

The third step involves consideration of regulatory alternatives beyond BAT for all of the inorganic arsenic emission points at the ASARCO-Tacoma smelter. The risk of cancer incidence due to inorganic arsenic exposure in the population distributed around the ASARCO-Tacoma smelter is estimated. This estimated risk which remains after application of BAT is evaluated considering costs, economic impacts, risk reduction, and other impacts that would result if a more stringent alternative were selected. If the residual risk is judged not to be unreasonable considering the other impacts or beyond BAT controls, more stringent controls than BAT are not required. However, if the residual risk is judged to be unreasonable, then an alternative more stringent than BAT would be required.

Determination of the Adequacy of Current Controls

Inorganic arsenic emission sources at the ASARCO-Tacoma smelter are currently controlled using a variety of capture and collection techniques. Capture techniques are used to gather and confine secondary inorganic arsenic emissions and to transport them to a collection device. Collection techniques are used to remove inorganic arsenic from process offgases and captured gases prior to venting the gases to the atmosphere. Each inorganic arsenic emission source at the ASARCO-Tacoma smelter was examined by EPA to determine the extent to which inorganic arsenic emissions are currently controlled and whether the level of control represents BAT.

Controls currently in place at the ASARCO-Tacoma smelter collect inorganic arsenic emissions in the roaster, smelting furnace, converter, and anode furnace process offgases. During these process operations, inorganic arsenic is volatilized and emitted as a

metallic oxide vapor in the process offgases. By cooling the process offgases, the inorganic arsenic vapor condenses to form inorganic arsenic particulates, which can be collected in a conventional particulate control device. Because of the high-inorganic-arsenic content of the feed materials process at the ASARCO-Tacoma smelter, the concentration of inorganic arsenic in the process offgases greatly exceeds the inorganic arsenic saturation concentration at gas temperatures less than 121° C (250°F). Consequently, for process offgases cooled to temperatures below 121° C, inorganic arsenic emission control levels can be achieved that approach the performance capability of a control device for collecting total particulate matter.

Roaster process offgases at the ASARCO-Tacoma smelter are cooled to a temperature less than 121° C and the inorganic arsenic particulates are collected in a baghouse. The smelting furnace process offgases are cooled to a temperature of 92° C, and the inorganic arsenic particulates are collected in an electrostatic precipitator. Converter process offgases are exhausted to a liquid SO₂ plant or a single-contact sulfuric acid plant. Because the presence of solid and gaseous contaminants can cause serious difficulties in the operation of the SO₂ or acid plants, the converter process offgases are first cleaned by passing the gases through a water spray chamber, an electrostatic precipitator, scrubbers, and mist precipitators. This gas cleaning process removes over 99 percent of the contaminants, including inorganic arsenic, from the offgases prior to entering the SO₂ or acid plants. In the event that the volume of converter process offgases exceeds the capacity of the SO₂ and acid plants or when the plants are not operating, the excess converter offgases are diverted to an electrostatic precipitator. This electrostatic precipitator also serves as the full-time control device for the anode furnace process offgases. Cooling of the gases in the ducting lowers the gas temperature to less than 120° C prior to entering the electrostatic precipitator.

Controls for inorganic arsenic emissions from roaster, smelting furnace, converter, and anode furnace process offgases are in place at the ASARCO-Tacoma smelter in order to comply with existing total particulate emission regulations of the Puget Sound Air Pollution Control Agency (PSAPCA). These regulations are expressed in terms of very stringent process weight particulate emission limits. The PSAPCA regulations are included as part of the Washington State

implementation plan (SIP) for attaining the Federal ambient air quality standard for particulate matter and, therefore, are Federally enforceable regulations.

Roaster, smelting furnace, converter, and anode furnace process offgases are potentially significant sources of inorganic arsenic emissions. Because of the high inorganic arsenic vapor concentrations in the process offgases at a high-arsenic-throughput smelter, cooling of the offgases to below 121° C results in condensation of the vapor to form particulates. Thus, collection of the inorganic arsenic particulates in properly designed and operated particulate control devices can effectively control the emission to the atmosphere of inorganic arsenic in the process offgases. The types of control systems currently used at the ASARCO-Tacoma smelter to collect inorganic arsenic from process offgases achieve inorganic arsenic collection efficiencies greater than 96 percent.

The control systems in place at the ASARCO-Tacoma smelter to control roaster, smelting furnace, converter, and anode furnace process offgas inorganic arsenic emissions represent the best demonstrated level of control considering economic feasibility. Therefore, the roaster, smelting furnace, converter, and anode furnace process offgases are already controlled using BAT. Existing Federally enforceable regulations require the controls to remain in place and to be properly operated and maintained to reduce total particulate matter emissions. These regulations serve to assure that BAT for inorganic arsenic will remain in place. Therefore, additional standards based on BAT are not necessary at this time for smelter roaster, smelting furnace, converter, or anode furnace process offgases.

Existing controls in place at the ASARCO-Tacoma smelter significantly reduce the quantity of inorganic arsenic emissions from the arsenic trioxide and metallic arsenic manufacturing processes. Arsenic laden offgases from the Godfrey roasters pass through the arsenic kitchens where arsenic trioxide condenses on the walls of the chambers and is collected as a product. Gases passing through the kitchens are vented to a baghouse. The temperature of the gases at the inlet to the baghouse is less than 121° C. Offgases from the metallic arsenic furnaces are also vented to the same baghouse. Inorganic arsenic emission points at conveyors, charge hoppers, storage bunkers, and the barreling and carloading stations are controlled by capturing the emissions using local hoods and venting the

emissions to several small baghouses. These controls are in place at the ASARCO-Tacoma smelter to comply with PSAPCA arsenic and particulate regulations and with the U.S. Occupational Safety and Health Administration (OSHA) inorganic arsenic worker exposure standard.

The composition of the total particulate matter emissions from the arsenic manufacturing processes at the ASARCO-Tacoma smelter is inorganic arsenic particulates. All inorganic arsenic emission points are controlled by collecting the particulate emissions using baghouses. The major process offgas streams are combined and vented to a new baghouse installed in 1982. The baghouse design represents the most advanced level of particulate matter collection technology demonstrated to date. Additional reduction inorganic arsenic emissions is not possible using available control technology. Therefore, EPA considers the controls at the ASARCO-Tacoma smelter arsenic manufacturing plant to be BAT. Since these controls are required by Federally enforceable regulations, EPA is not developing additional BAT standards for arsenic manufacturing processes at this time.

The major source of secondary arsenic emissions at the ASARCO-Tacoma smelter is the converter operations. ASARCO has recently installed a prototype control system on one of the three converters used at the smelter for copper converting operations. (A fourth converter is used as a holding furnace only.) A secondary hood system consisting of a fixed enclosure with a horizontal air curtain is used to capture the secondary inorganic arsenic emissions. The captured emissions are vented to an electrostatic precipitator (designated by ASARCO as the No. 2 ESP). The company is planning to install similar secondary hood systems on the other two converters and to vent the captured emissions to the No. 2 ESP. However, regulations do not exist that would specifically require the use of BAT to limit secondary inorganic arsenic emissions from converter operations. Because of the potential for converter operations to emit large quantities of secondary inorganic arsenic, and because of the demonstrated availability of controls for these emissions EPA decided to develop standards based, as a minimum, on BAT for secondary inorganic arsenic emissions from converter operations.

Smelting furnace secondary inorganic arsenic emissions from matte tapping and slag tapping are captured and collected at the ASARCO-Tacoma

smelter. Copper matte or slag flows from ports in the furnace walls through a launder which directs the molten material to a point where it is transferred to a ladle or slag pot. At the ASARCO-Tacoma smelter, the matte tapping launders are enclosed by semicircular covers. Slag tapping launders are covered by fixed hoods mounted above the troughs. Local exhaust hoods are mounted about 1 meter (3 feet) above each tap port. At each launder-to-ladle transfer point for matte tapping, a retractable exhaust hood is used to capture emissions generated at the ladle. An overhead crane places the ladle on the floor in front of the launder. The hood is then lowered over the ladle prior to tapping and is raised after the tap is complete. The overhead crane returns and picks up the ladle of molten matte for transfer to the converters. At each launder-to-slag pot transfer point for slag tapping, large fixed exhaust hoods are mounted above the slag pot transfer point. The captured secondary emissions from matte tapping and slag tapping are vented to the No. 2 ESP.

At the ASARCO-Tacoma smelter, all emission points from smelting furnace matte tapping or slag tapping are enclosed or are covered by local exhaust hoods. In EPA's judgment, this capture system, if properly operated and maintained, represents BAT for capture of secondary emissions from smelting furnace matte tapping and slag tapping because no other demonstrated technology can achieve a higher level of capture efficiency. The capture system is in place to fulfill a tripartite agreement between ASARCO, OSHA, and the United Steelworkers of America (union representing workers at the ASARCO-Tacoma smelter). The agreement specifies the engineering controls and work practices to be implemented at the ASARCO-Tacoma smelter for achieving compliance with the Federal OSHA inorganic arsenic worker exposure standard and, therefore, is Federally enforceable. Although not specified in the agreement, the captured secondary inorganic arsenic emissions are vented to an electrostatic precipitator for collection. The level of performance of this control device is equivalent to the level of performance of BAT for collection of process inorganic arsenic emissions. EPA has no reason to believe that ASARCO will not continue to properly operate and maintain the electrostatic precipitator; therefore, EPA concluded that BAT is in place at the ASARCO-Tacoma smelter for capture and collection of secondary inorganic

arsenic emissions from smelting furnace matte tapping and slag tapping.

Roaster secondary inorganic arsenic emissions from calcine discharge are also captured and collected at the ASARCO-Tacoma smelter. Calcine is gravity loaded into larry cars from hoppers located at the bottom of the roaster. An exhaust hood is mounted on either side of each hopper. A spring-loaded top having three small openings covers each larry car. When the larry car is positioned under the hopper, the openings in the car top align with the hopper outlet and the two exhaust hoods. Because the top is spring-loaded, a tight connection is achieved between the top and the hopper outlet and hoods. During loading, an induced draft fan is activated to ventilate the space under the car top and to capture the emissions generated by the loading operation. The captured secondary emissions are combined with the roaster offgases prior to venting to the baghouse. In addition to the local hoods located at the calcine discharge point, the calcine hopper area is enclosed to form a tunnel-like structure. This area is ventilated with the exhaust air being combined with the exhaust air from the local exhaust hoods.

The capture system used at the ASARCO-Tacoma smelter for capturing secondary inorganic arsenic emissions from roaster calcine discharge is the most advanced technology demonstrated. In EPA's judgment, this system represents BAT. Similar to the controls in place at the ASARCO-Tacoma smelter for smelting furnace matte tapping and slag tapping, the calcine discharge capture system is in place to fulfill the tripartite agreement to achieve the OSHA inorganic arsenic worker exposure standard. The captured secondary inorganic arsenic emissions are vented to the baghouse which has been determined to be BAT for collection of inorganic arsenic emissions from the roaster process offgases. Therefore, BAT is in place at the ASARCO-Tacoma smelter for capture and collection of secondary inorganic emissions from roaster calcine discharge.

To control secondary inorganic arsenic emissions from the handling and transfer of flue dust, the ASARCO-Tacoma smelter has implemented the best control practices available. All dust conveyor systems are enclosed in dust-tight housings. Hopper and storage bins are equipped with dust level indicators. Dust-tight connections are used to transfer material from hoppers and bins to vehicles. This equipment is in place to fulfill the tripartite agreement to achieve

the OSHA worker exposure standard. Because BAT is already required in order to comply with existing Federal regulations, additional standards based on BAT are not necessary at this time for miscellaneous sources of secondary inorganic arsenic emissions at high-arsenic-throughput smelters.

The anode furnaces in operation at the ASARCO-Tacoma smelter are of an atypical design that is not used at any other primary copper smelter located in the United States. Secondary inorganic arsenic emissions (perhaps up to 0.1 kg/h) escape to the atmosphere from a large opening in the anode furnace wall. This opening allows the furnace operators to perform activities necessary for refining the blister copper. Secondary inorganic arsenic emissions from the anode furnace could conceivably be captured using an elaborate secondary hood system. However, the effectiveness of such a theoretical capture system is uncertain considering the design of the anode furnaces and the nature of operations required to operate the furnaces. EPA believes that any capture system designed to provide the necessary access to the anode furnaces would impose very high costs. Based on the small reduction in total smelter inorganic arsenic emissions that would be expected to result from controlling anode furnace secondary emissions, it is EPA's judgment that the costs for installing controls to capture the anode furnace secondary inorganic arsenic emissions are excessive. Therefore, EPA has determined that the existing equipment represents BAT and, as a result, no standards are being developed at this time for secondary inorganic arsenic emissions from anode furnaces.

In summary, roaster, smelting furnace, and converter process offgases as well as anode furnace, arsenic plant, and flue dust handling sources are judged to be currently controlled using BAT. Also, secondary inorganic emissions from roaster calcine discharge, and smelting furnace matte tapping and slag tapping are captured and collected using BAT. These controls are required by existing Federally enforceable regulations or are expected by EPA to remain in place and to be properly operated and maintained. With the exception of the prototype secondary hood on one converter, no controls are currently in place to limit secondary emissions from the converters. Therefore, because capture technology has been demonstrated, EPA decided to develop standards based, as a minimum, on BAT for secondary emissions from converters.

Selection of BAT for Converters

Control Technology. Primary converter hoods capture process emissions during converter blowing periods; but, during charging, skimming, holding, or pouring operations, the mouth of the converter is no longer under the primary hood, and converter emissions escape capture by the hood. There are three alternative control methods for capturing secondary emissions from converter operations: (1) fixed and retractable secondary hoods, (2) air curtain secondary hoods, and (3) building evacuation.

Four domestic smelters currently use fixed secondary hoods to capture converter secondary emissions. These hoods are attached to the upper front side of the converter primary hoods. More complex retractable secondary hood designs are used at one domestic smelter and smelters in Japan. Visual observations made at two domestic copper smelters showed that fixed and retractable secondary hoods captured a portion of the secondary emissions from converter operations. However, the capture efficiencies of existing fixed and retractable secondary hood designs are judged by EPA to be less than 90 percent.

A more advanced method for the capture of converter secondary emissions is the use of an air curtain secondary hood. Walls are erected to enclose the sides and the back of the area around the converter mouth. A portion of the enclosure back wall is formed by the primary hood. Openings at the top and in the front of the enclosure allow for movement of the overhead crane cables and block, and the ladle. Edges of the walls in contact with the primary hood or the converter vessel are sealed. A broad, horizontal airstream blows across the entire width of the open space at the top of the enclosure. This airstream is called an "air curtain." The air curtain is produced by blowing compressed air from a narrow horizontal slot extending the length of a plenum along the top of one of the side walls. The air is directed to a receiving hood along the top of the opposite side wall. An induced draft fan in the ducting behind the receiving hood pulls the airstream into the hood. When the converter is rolled out away from the primary hood for charging, skimming, or pouring, the air curtain sweeps the converter offgases and emissions which are generated by material transfer between the converter and the ladle into the receiving hood. The captured emissions are then vented to a collection device or released

directly to the atmosphere through a stack.

The air curtain secondary hood has been demonstrated as an effective method for capturing converter secondary emissions. For the past 3 years, air curtain secondary hoods have been in place to control converter secondary emissions at copper smelters in Japan. A prototype air curtain secondary hood was installed in 1982 on one of the converters at the ASARCO-Tacoma smelter.

In January 1983, EPA conducted a test program designed to evaluate the effectiveness of the capture of secondary emissions by the prototype air curtain secondary hood at the ASARCO-Tacoma smelter. The capture efficiency of the system was evaluated by performing a gas tracer study and visual observations. The gas tracer study involved injecting a gas tracer inside the boundaries of the fixed enclosure and measuring the amount of the gas tracer in the exhaust gases in the ducting downstream of the enclosure receiving hood. The capture efficiency was then calculated by a material balance of the inlet and outlet tracer gas mass flow rates. Based on the results of this test program, EPA believes an air curtain secondary hood is capable of achieving an overall capture efficiency of 95 percent.

Capture of converter secondary emissions by building evacuation is accomplished by controlling the airflow patterns within the building housing the converters and by maintaining a sufficient air change or ventilation rate. Control of airflow in the ventilated area is obtained by isolating it from other areas and by the proper design and placement of inlet and outlet openings. Proper location and sizing of inlet and outlet openings provide effective airflow patterns so that the secondary emissions cannot escape to adjacent areas or recirculate within the area.

EPA believes that a well-designed building evacuation system should be capable of achieving at least 95 percent capture efficiency of secondary emissions. However, the building evacuation systems currently used in the non-ferrous metallurgical industry have not demonstrated this level of control. A building evacuation system is being used at the ASARCO copper, lead, and zinc smelter located in El Paso, Texas, to capture secondary emissions from copper converters and a zinc smelting furnace operated inside a building. While preventing the venting of secondary emissions to the ambient air outside the building, use of the building evacuation system at the ASARCO-El

Paso smelter has resulted in elevated concentrations of inorganic arsenic, lead, and SO_2 inside the building in addition to excessive heat buildup. To alleviate these unacceptable working conditions, building openings have been increased and roof ventilators designed for emergency use only have been operated routinely. As a result of increasing the number of building openings, the capture efficiency of the building evacuation system has been decreased. The building evacuation system as presently operated at the ASARCO-El Paso smelter achieves a capture efficiency of less than 95 percent.

The control technology for the collection of secondary inorganic arsenic emissions is based on the cooling of the exhaust gases to condense the inorganic arsenic vapors to form particulates, and the subsequent collection of the inorganic arsenic particulates in a conventional particulate control device. Baghouse and electrostatic precipitator control devices are currently used at primary copper smelters to collect secondary inorganic arsenic emissions as well as particulate matter emissions.

To evaluate the efficiency of a conventional particulate control device, EPA tested the baghouse in place at the ASARCO-El Paso smelter used for the collection of secondary emissions from the converters. Emission measurements for inorganic arsenic and total particulates were conducted at the baghouse inlet and outlet for three test runs. At the baghouse outlet, inorganic arsenic concentrations ranged from 0.015 to 0.39 milligram per dry standard cubic meter of exhaust gas (mg/dscm). The corresponding total particulate concentrations at the baghouse outlet ranged from 1.1 to 11.6 mg/dscm. Gas temperatures at the baghouse inlet were less than 50°C (112°F). The inorganic arsenic collection efficiency was over 99 percent for two of the test runs and was greater than 94 percent for the third test run. The test results showed that the overall average inorganic arsenic collection efficiency of the baghouse for three test runs was 96 percent. EPA concluded from the tests that a properly designed, operated, and maintained baghouse or equivalent particulate control device can achieve a collection efficiency of at least 96 percent for inorganic arsenic.

Regulatory Alternatives. To determine the level of control that reflects BAT for control of converter secondary emissions, technical alternatives were identified for reducing inorganic arsenic

emissions from the ASARCO-Tacoma smelter.

For the purpose of analysis, these alternatives are identified here and in the background information document as Regulatory Alternatives I and II. For Regulatory Alternative I, no national emission standard would be established for inorganic arsenic emissions from high-arsenic-throughput smelters. No additional controls beyond the controls already in place at the ASARCO-Tacoma smelter to comply with existing regulations (e.g. Washington State implementation plan, OSHA inorganic arsenic worker exposure standard) would be required. Regulatory Alternative I corresponds to the baseline level of control.

Regulatory Alternative II represents control of secondary inorganic arsenic emissions from converter operations at the ASARCO-Tacoma smelter. This alternative is based on capture of the secondary emissions using a secondary hood consisting of a fixed enclosure with a horizontal air curtain. The captured secondary emissions would be vented to a baghouse or equivalent control device for collection.

Regulatory Alternative I (baseline case) would not change the existing air and non-air quality environmental impacts of operations at the ASARCO-Tacoma smelter. Total inorganic arsenic emissions from the ASARCO-Tacoma smelter would remain at the current level of 282 Mg (311 tons) per year. In addition, there would be no energy or economic impacts associated with this alternative.

Regulatory Alternative II would reduce total inorganic arsenic emissions from the ASARCO-Tacoma smelter by 110 Mg (121 tons) per year to a level of 172 Mg (189 tons) per year. The amount of collected particulate matter containing inorganic arsenic would be approximately 11 gigagrams (Gg) (12,000 tons) per year. This would increase the amount of solid waste generated at the ASARCO-Tacoma smelter from 182 to 193 Gg (200,000 to 213,000 tons) per year, an increase of about 6 percent. The additional solid waste can be handled by the smelter's existing solid waste disposal system. Because the alternative is based on use of an electrostatic precipitator, a dry particulate collection device, there would be no water pollution impact.

The energy impacts of Regulatory Alternative II would be increased electrical energy consumption. To operate the control system specified by the alternative, annual electrical energy consumption would be 1.5×10^7 kilowatt-hours per year (kWh/y). Total

smelter energy consumption is approximately 2.9×10^9 kWh/y. Thus, Regulatory Alternative II would increase the total ASARCO-Tacoma electrical energy consumption by 0.5 percent.

The capital costs for installing the control system specified by Regulatory Alternative II is \$3.5 million. This represents a major capital expenditure for ASARCO. However, ASARCO is a major publicly held corporation with a good credit rating and good access to financing. Even considering the possibility of additional capital expenditures for control equipment for the two ASARCO low-arsenic-throughput smelters (the ASARCO-El Paso and Hayden primary copper smelters are addressed in Part III of this preamble), it is EPA's determination that ASARCO would be able to obtain the necessary capital to install the control system at the ASARCO-Tacoma smelter. The annualized cost to implement Regulatory Alternative II is estimated to be \$1.5 million. If ASARCO chooses to absorb the costs by reducing its profit margin, the profitability of the ASARCO-Tacoma smelter could be reduced up to 8 percent. If ASARCO chooses to maintain its normal profit margin and attempts to recover the costs by increasing copper prices, the price increase would amount to 0.5 to 0.8 percent.

In summary, under Regulatory Alternative II, total smelter inorganic arsenic emissions would be reduced by 39 percent from 282 Mg per year to 172 Mg per year. The reduction in emissions would be achieved with a small increase in the amount of solid waste generated at the smelter. There would be no water pollution impact. Energy consumption at the smelter would be slightly increased. The primary economic impacts associated with this alternative are a projected modest decrease in profitability for the ASARCO-Tacoma smelter and a possible small increase in the price of copper. In EPA's judgment, this alternative would not adversely affect the economic viability of the ASARCO-Tacoma smelter or employment at the smelter. Because a significant reduction in inorganic arsenic emissions from the ASARCO-Tacoma smelter is achievable with reasonable economic, energy, and non-air quality environmental impacts, EPA selected Regulatory Alternative II as BAT.

It should be noted that the level of control selected as BAT is based upon the Administrator's best judgement and the information available at this time. As discussed later, comments and information are being requested on

additional control measures. The final decision on BAT will reflect consideration of these comments and may, therefore, include measures (e.g., production curtailments or improved operating and housekeeping practices) which are not now included in Alternative II.

Consideration of Emission Reduction Beyond BAT and Decision on Basis for Proposed Standards.

After identifying BAT, EPA considered the estimated residual health risks and possible control alternatives that would reduce emissions to rates lower than that achievable with BAT. The health risk is expressed by the number of incidences of cancer due to inorganic arsenic exposure in the population distributed around the ASARCO-Tacoma smelter. Based on epidemiological studies, EPA derived a unit risk number for exposure to airborne inorganic arsenic. The unit risk number is a measure of potency expressed as the probability of cancer in a person exposed to $1 \mu\text{g}/\text{m}^3$ of airborne inorganic arsenic for a lifetime (70 years). Annual cancer incidence (the number of cases per year) associated with inorganic arsenic emissions from the ASARCO-Tacoma smelter is the product of the total population exposure around the smelter and the unit risk number divided by 70 years. Total exposure is determined by dispersion modeling estimates of the inorganic arsenic concentration in the ambient air surrounding the smelter combined with data for the distribution of the estimated 370,000 people living within about 20 kilometers (12.5 miles) of the ASARCO-Tacoma smelter. For the current level of inorganic arsenic emissions from the ASARCO-Tacoma smelter, the annual cancer incidence is estimated to range from 1.1 to 17.6 cases per year. With BAT in place at the ASARCO-Tacoma smelter for all of the significant inorganic arsenic emission points it is estimated that the annual cancer incidence would be reduced to a range of 0.2 to 3.4 cases per year. Application of BAT would reduce the estimated maximum lifetime risk from exposure to airborne inorganic arsenic from a range of 2.3 to 37 in 100 to a range of 0.58 to 9.2 in 100. The maximum lifetime risk represents the probability of a person contracting cancer who has been continuously exposed during a 70-year period to the maximum annual inorganic arsenic concentration due to inorganic arsenic emissions from the ASARCO-Tacoma smelter.

All known control alternatives were examined with the particular emphasis on the further control of secondary

emissions, which on the basis of modeling results, cause the highest ambient exposure and resultant health risks. This examination, which included evaluation of controls used on smelters in both the United States and Japan as well as the possibility of technology transfer from other source categories, identified no demonstrated technological controls more efficient than those identified as BAT. Therefore, the remaining alternatives are limited to two basic categories: (1) production limitations or curtailments and (2) limitations on the smelter inorganic arsenic throughput.

Impacts of Controls Beyond BAT

Without specific and detailed knowledge of all economic information, which is known only to ASARCO, EPA cannot estimate with certainty the extent to which production curtailment or limitation on inorganic arsenic feed rate may be affordable. The smelter is currently operating under a production curtailment program designed to limit ambient sulfur dioxide (SO_2) levels. This program, which EPA believes to achieve at least a corresponding effect on ambient inorganic arsenic concentrations, currently results in production curtailment of approximately 30 percent. When converter controls are in place, the amount of curtailment needed may be less but is expected to be not less than 20 or 25 percent. Thus, while further curtailments may be possible, it is doubtful that the degree of curtailment necessary to significantly reduce risk (e.g., a 50 percent additional curtailment would reduce the estimated maximum risk from a range of 0.58 to 9.2 in 100 to a range of 0.29 to 4.6 in 100) would be affordable.

An analysis of the importance of high-inorganic-arsenic feed to the economic viability of the ASARCO-Tacoma smelter leads to the conclusion that the smelter would probably close if high-inorganic-arsenic-contact materials could not be processed. High-inorganic-arsenic-content copper ore concentrate and lead smelter by-products represent about one third of the feed material input to the ASARCO-Tacoma smelter. If forced to discontinue use of these feed materials, ASARCO would need to compete with other copper smelting companies for additional supplies of copper ore. In the face of Japanese competition and current copper ore shortages, it is questionable whether sufficient supplies of low-arsenic-content copper ore concentrate could be obtained at prices that would allow profitable operation. More importantly, the use of high-inorganic-arsenic feed allows ASARCO to produce arsenic

trioxide and metallic arsenic. EPA estimates that the sale of arsenic trioxide and metallic arsenic represents about 10 to 15 percent of the ASARCO-Tacoma smelter's total revenue and could account for most of the profit. Therefore, for purposes of this analysis, EPA is concluding that any potential means for limiting inorganic arsenic emissions to the extent necessary to significantly reduce risks would result in closure of the ASARCO-Tacoma smelter.

The arsenic produced by the ASARCO-Tacoma smelter supplies about one third of the total nationwide demand for arsenic. The remaining two-thirds is imported and represents over half of the world production outside the U.S. If ASARCO-Tacoma stopped production of arsenic, the world arsenic production capacity would have to increase by 25 percent to make up the shortage. It is considered doubtful that such an increase would be possible even with substantial upward price pressure. The impact that this shortage would have on industrial products (e.g., pressure treated lumber) and agricultural uses (e.g., cotton desiccants, herbicides) has not been estimated.

Consideration of Health Risks

As detailed in Section I of this preamble, the estimated health risks cited above associated with exposure to ambient inorganic arsenic are at best only a very crude estimator of the actual health effects. The degree of uncertainty in these estimates is very large because of the many assumptions and approximations involved in their derivation. Nevertheless, the estimated risks due to emissions from the ASARCO-Tacoma smelter are high relative to other inorganic arsenic sources and to other sources of hazardous pollutants that have been regulated. These levels, therefore, provide a basis for serious question as to whether limiting emissions based on BAT would protect public health and provide an ample margin of safety. Moreover, direct ambient exposure is not the only potential health impact since the inorganic arsenic emitted into the atmosphere accumulates on land and in water resulting in other avenues of exposure. It should be noted that primarily due to arsenic, the Commencement Bay Near Shore Tide Flats area (which includes the ASARCO-Tacoma smelter) has been proposed as a National Priority List Site by EPA under the Superfund program (47 FR 58476, December 30, 1982).

Consideration of Impacts of Beyond BAT

Closure of the ASARCO-Tacoma smelter would result in severe social and economic impact on the local economy. Moreover, since the ASARCO-Tacoma smelter is the only domestic smelter capable of smelting high-impurity copper ores and production of associated by-products including arsenic, closure of the smelter would result in a total loss of this domestic production capability. Closure of the smelter would eliminate the jobs of about 500 ASARCO employees and 300 additional jobs in the Tacoma area. Closure would also mean elimination of \$20 million per year in revenues to local companies and \$2 million per year in State and local taxes.

Decision and Proposed Standards

As detailed in Part I of this preamble, under EPA's interpretation of Section 112, the smelter should be controlled at least to the level that reflects BAT and to a more stringent level if necessary to prevent unreasonable risks. The decision as to whether the remaining risks are unreasonable is based upon consideration of the individual and population risks and consideration of the impacts, including costs, economic, and other impacts associated with further reduction of these risks.

The primary purpose of standards promulgated under Section 112 is to protect the public health. The Administrator is concerned that the estimated residual risk after application of BAT at ASARCO-Tacoma may be unreasonable, and, as such, that additional controls beyond BAT may be warranted. As indicated earlier, EPA has not identified technological controls more efficient than BAT; therefore, in making a decision on an appropriate control level of ASARCO-Tacoma, the Administrator's consideration of beyond BAT alternatives was limited to production and arsenic throughput limitations. These control measures could further reduce emissions of inorganic arsenic and associated health risks. Arsenic throughput, for example, could be limited to a level comparable to a low-arsenic-throughput smelter (less than 0.7 percent inorganic arsenic in the total smelter charge), although estimated health risks would still be expected to be higher for ASARCO-Tacoma than for the other smelters due to its location in a highly populated area.

The Administrator believes that control beyond BAT could result in closure of the ASARCO-Tacoma smelter. This would reduce the smelter

contribution to the estimated health risks to zero; but would also result in a loss of jobs, a loss of domestic production capacity in both the copper and arsenic industries, and a loss of revenues to local businesses and governments. Certainly the impacts associated with closure of the smelter would be felt directly and immediately by the local population, particularly the employees of the smelter. With these potential serious negative impacts, a decision to require beyond BAT controls must be carefully considered.

Given that the calculated health risks estimated to remain after the application of BAT would be the basis for a decision to require beyond BAT controls and, in this case, possibly cause closure of the ASARCO-Tacoma smelter, the Administrator believes it is necessary to scrutinize the basis for these calculated estimates as a part of the decision-making process. The estimated health risks were calculated by combining a unit risk estimate for inorganic arsenic with the ambient concentrations of inorganic arsenic predicted by modeling and with population data for the area surrounding the ASARCO-Tacoma smelter. As discussed in Part I of this preamble and Appendix E of the BID, there are simplifying assumptions and fundamental uncertainties inherent in each of the components of the calculation, resulting in a number of uncertainties in the risk estimates.

Uncertainties in the unit risk estimate exist due to a number of simplifying assumptions. Among these is the assumption that a linear relationship exists between cancer risks and level of exposure and this relationship is the same at the low levels of public exposure as at the high levels of occupational exposure. There is no solid scientific basis for any mathematical extrapolation model that relates carcinogen exposure to cancer risk at the extremely low concentrations that must be dealt with in evaluating environmental hazards. Because its scientific basis, although limited, is the best of any of the current mathematical extrapolation models, the linear nonthreshold model has been adopted here as the primary basis for risk extrapolation at low levels of exposure. Additional assumptions made in the determination of the unit risk estimate are that all people are equally susceptible to cancer and that persons are exposed continuously from birth throughout their lifetimes (70 years). The Administrator believes that the assumptions made in determining the unit risk estimate are reasonable for public health protection in that they lead

to a rough but plausible estimate of the upper-limit of risk. That is, it is not likely that the true unit risk would be much more than the estimated unit risk, but it could be considerably lower.

Uncertainties in the ambient modeling exist due to the limitations of the dispersion model and the assumptions and potential error in the data input to the model. Limitations in the model include its inability to account for the variable operating conditions of the smelter and variable meteorology; that is, one set of operating and meteorological conditions was assumed for modeling purposes. The meteorological conditions used are believed to be representative. However, the smelter operating conditions used in the modeling do not account for the frequent curtailment of operations now required at ASARCO-Tacoma to reduce emissions of sulfur dioxide, and therefore, probably result in an overestimate of ambient air concentrations of inorganic arsenic (since arsenic emissions would be reduced as well). Also, the model does not account for sources of arsenic other than the ASARCO-Tacoma smelter that are in the area.

In addition, there were many inputs to the model such as location of each emission source at the smelter and the rate, temperature, and height at which those emissions are released to the atmosphere. Each of these input parameters is subject to error, but perhaps the most crucial parameter is the estimate of emission rates. The emission rates used by EPA were based on actual emission test data whenever possible. However, for some sources, most notably converter secondary emissions, test data were not available at the time the estimates were made; therefore, some assumptions were made for modeling and impact analysis purposes. The EPA assumed, for instance, that converter secondary inorganic arsenic emissions were approximately 15 percent of those measured in the primary converter offgases. Preliminary results of testing conducted in January 1983 on converter No. 4 at ASARCO-Tacoma indicate that emissions may be significantly less than this.

Additional uncertainties arise from the use of population data. The people dealt with in the analysis are not located by actual residence. They are "located" in the Bureau of Census data for 1970 (the most recent available) by population centroids of census districts. The effect is that the actual locations of residences with respect to the estimated ambient air concentrations is not known

and the relative locations used in the exposure model have changed since the 1970 census. In addition, it is assumed that people remain in the same location for a lifetime (70 years), the only exposure of the population that occurs is due to the ASARCO-Tacoma smelter, and only persons within 20 kilometers of the emission source are affected.

In summary, there is a high degree of uncertainty in the estimated health risks due to the many assumptions and uncertainties associated with the components of the estimates. While the estimated risks may be meaningful in a relative sense, they should not be regarded as accurate representations of true cancer risks. Furthermore, it should be noted that: (1) ambient monitoring data available for the Tacoma area show significantly lower ambient concentrations of inorganic arsenic than those predicted by the model, and (2) data on lung cancer incidence rates for the ten largest cities in Washington for the years 1970 through 1979 show that Tacoma ranks fifth, and the lung cancer rates in Tacoma are below the national average lung cancer rate.

In light of the high degree of uncertainty in the estimated health risks, the apparent absence of further control alternatives short of closure, the serious negative impacts associated with closure, and the absence of comments from the affected public, the Administrator cannot conclude at this time that the risks remaining after the application of BAT are unreasonable. Therefore, standards are being proposed for the category of high-arsenic-throughput smelters based on the application of BAT.

Even though standards are proposed based on BAT, the Administrator remains concerned that the estimated residual health risks, although uncertain, are high relative to those estimated for other source categories regulated by NESHAPs as well as other sources of arsenic. The Administrator believes it is necessary to take extraordinary measures to ensure that his final determination of the control level that is appropriate for high-arsenic-throughput copper smelters is based on the most complete and accurate information available. Therefore, the following steps are being taken:

First, EPA is continuing to refine its estimates of emissions and associated health risks for the ASARCO-Tacoma smelter. This will include a complete, on-site emission source inventory by EPA personnel, emission testing where feasible, and improved modeling. In particular, efforts are currently underway to model the effect of ASARCO-Tacoma's production

curtailment. Additionally, further evaluation of controls that could potentially be applied to reduce emissions of inorganic arsenic (particularly secondary emissions) at ASARCO-Tacoma will take place. This evaluation will not be limited to add-on control equipment but will also cover other measures such as improved operating and housekeeping practices.

Secondly, a public hearing for the proposed standards for high-arsenic-throughput copper smelters will be held in the Tacoma, Washington area. This will give those people who would be most affected by the standards the opportunity to comment in person.

Finally, the Administrator has established a special task force to be chaired by EPA's Region X office in Seattle, Washington. The task force will aid the Administrator in securing available information from the area which would be most pertinent in the development of the final standards for high-arsenic-throughput copper smelters. In addition to participating in EPA's evaluation of emission sources and applicable control technologies, the task force will consult with experts outside of EPA in the areas of health impacts analysis and innovative control technologies for arsenic.

The Administrator is requesting comments on all aspects of the proposed standards and their associated impacts. Comments are also requested on other control measures that may be BAT and on alternatives that would reduce estimated health risks more than the alternative of applying BAT, but would not result in smelter closure. These comments should consider in particular, the means of reducing low-level secondary inorganic arsenic emissions, which result in the highest exposure. The Administrator is also specifically requesting comments on whether the estimated residual health risks associated with the BAT alternative are unreasonable, considering the uncertainty of these estimates and that the only apparent alternative for significantly reducing the risks would likely result in closure of the ASARCO-Tacoma smelter.

Selection of Format of Proposed Standards

Under the authority of Section 112 of the Clean Air Act, national emission standards must, whenever possible, take the format of a numerical emission limit. Typically, an emission limit is written in terms of an allowable mass emission rate (mass of pollutant per unit time) or an allowable concentration (mass of pollutant per volume of gas). In some instances, a process weight limit (weight

of pollutant per unit of product or input) or a minimum percent emission reduction of pollutant (control system collection efficiency) is used. All of these types of standards require the direct measurement of emissions to determine compliance. As an alternative, or as a supplement to a standard involving direct measurement of emissions, an emission limit may take the form of a restriction on opacity as measured by EPA Reference Method 9 or on visible emissions as measured by EPA Reference Method 22 or other method. However, in certain instances, numerical emission limits are not possible. Section 112(e)(2) recognizes this situation by defining two conditions when it is not feasible to prescribe or enforce an emission limit. The conditions are: (1) when the pollutants cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant; or (2) when the application of a measurement methodology is not practicable due to technological or economic limitations. In such instances, Section 112(e)(1) authorizes design, equipment, work practice, or operational standards.

For the development of a standard for the capture of secondary inorganic arsenic emissions from converter operations, EPA first considered establishing a numerical emission limit. However, mass rate, concentration, process weight, and percent emission reduction formats for the capture of secondary emissions from converter operations are not feasible because neither the capture efficiency nor the quantity of emissions that escape capture by the secondary hood system can be measured accurately. Visible emission data are available which describe the performance of secondary hood systems over a limited range of operating conditions. However, these data are not considered to represent a sufficient basis for establishing emission standards which must be achieved at all times. Therefore, the format selected for the proposed standards for the capture of secondary inorganic arsenic emissions from converter operations is one in which equipment and work practices are specified.

For the development of a standard for the collection of secondary inorganic arsenic emissions from converter operations, EPA concluded a numerical emission limit is feasible. EPA first considered developing an emission limit specifically for inorganic arsenic. Inorganic arsenic emissions from converter operations vary in relation to the inorganic arsenic content of the ore concentrate processed. Smelting a high-

inorganic-arsenic-content ore concentrate has the potential for higher inorganic arsenic emissions than a low-inorganic-arsenic-content-ore concentrate. The ASARCO-Tacoma smelter is a custom smelter processing ore concentrates shipped from domestic and foreign copper mines. An interruption or discontinuation in shipments from one supplier could change the average inorganic arsenic content of the total smelter charge processed at the ASARCO-Tacoma smelter. Thus, the future inorganic arsenic content of secondary emissions from the ASARCO-Tacoma smelter may increase or decrease depending on the mix of suppliers selling ore concentrate to ASARCO.

The potential variability in the inorganic arsenic content of secondary emissions from the ASARCO-Tacoma smelter increases the complexity of developing numerical emission limits specifically for inorganic arsenic. Emission limits for inorganic arsenic based on a mass emission rate, process weight, or concentration format would establish an upper limit on inorganic arsenic emissions only. An inorganic arsenic emission limit based on the BAT emission control requirements specifically for the ASARCO-Tacoma smelter based on current data might not require application of BAT if other ore concentrates were processed. In contrast, a percent reduction format would require the application of BAT regardless of the level of inorganic arsenic content in the feed materials. However, high collection efficiency may not be continuously achievable for the entire range of inorganic arsenic concentrations which could occur in the captured gas streams from the secondary emission sources.

As an alternative, an emission limit for total particulates that reflects the level of control device performance necessary to achieve BAT for collection of secondary inorganic arsenic emissions can be developed. There are several advantages to using a total particulate emission limit to regulate inorganic arsenic emissions. First, total particulate emissions from primary copper smelter operations remain relatively constant regardless of the inorganic arsenic content of the ore concentrate. Thus, a total particulate emission limit would require the use of BAT for all high-arsenic ore concentrates regardless of variations in the inorganic arsenic content of the feed. The second advantage to a total particulate emission limit is that EPA Reference Method 5 can be used to determine compliance. This method is

widely used; and because it captures larger quantities of particulates, it offers the potential for greater precision. Therefore, for these reasons EPA decided to develop standards for collection of inorganic arsenic emissions based on a total particulate emission limit.

Mass emission rate, percent emission reduction, process weight rate, and concentration formats were considered by EPA for setting emission limits for the collection of captured secondary emission gas streams. All four of these formats provide viable alternatives for setting total particulate emission limits.

A mass rate format would limit total particulate emissions per unit of time. However, this format would not reflect differences in production rates (e.g., amount of ore concentrate, calcine, and matte processed). The mass emission rate standard would only place an upper limit on the total amount of particulates emitted per hour or per day.

A percent reduction format would specify a minimum percent reduction of total particulate emissions across a control device. Determination of compliance with a percent reduction standard requires measurement of both uncontrolled and controlled emissions. The measurement of emissions at the inlet to control devices poses testing difficulties due to ductwork and control device configurations. The ductwork modifications necessary to perform accurate inlet testing at the ASARCO-Tacoma smelter would significantly increase the cost of the compliance determination.

A mass per unit production format would limit total particulate emissions per unit of copper produced or smelter charge. Determination of compliance with a mass per production unit standard requires the development of a material balance or production values concerning the operation of the copper smelter. Development of this information depends on the availability and reliability of process data provided by the company. Gathering these data increases the testing and recordkeeping requirements and, consequently, increases the compliance determination costs.

A concentration format would limit total particulate emissions per unit volume of exhaust gases discharged to the atmosphere. Compliance determination of concentration standards requires a minimum of data and information, decreasing the costs of testing and reducing chances of measurement errors. Furthermore, vendors of particulate control devices usually guarantee equipment

performance in terms of pollutant concentration in the discharge gas stream. There is a potential for circumventing a concentration standard by diluting the exhaust gases discharged to the atmosphere with excess air, thus lowering the concentration of total particulates emitted but not the total mass emitted. However, for this application, this problem can be solved by specifying a measurement location. Therefore, because a concentration format would involve lower resource requirements and a less complicated compliance determination procedure than the other formats, EPA selected a concentration format as the most suitable format for the proposed standards for collection of secondary emissions.

Selection of Numerical Emission Limit and Equipment Specifications

The proposed standards are based upon the application of a secondary hood system to capture converter secondary emissions and a baghouse or equivalent particulate control device to collect the captured secondary emissions from converters.

The format selected for the proposed standard for capture of secondary inorganic arsenic emissions from converters consists of equipment and work practice specifications. EPA believes that the prototype secondary hood design installed on converter No. 4 at the ASARCO-Tacoma smelter is capable of achieving a capture efficiency level consistent with BAT if the system is installed and operated properly. Therefore, the design and operation of this system were the basis for the equipment and work practice specifications.

The principal components of the secondary hood system are a hood enclosure, an air curtain plenum and exhaust hood, fans, and sufficient ductwork to convey the captured emissions to a control device. Because each secondary hood system must be custom designed due to variations in converter configuration and space availability, EPA chose not to specify physical dimensions for the hood enclosure. Instead, EPA decided to specify the design practices that are necessary to follow in order to obtain a secondary hood system capable of achieving at least a 95 percent capture efficiency. These design practices are: (1) the configuration and dimensions of the hood enclosure are sized so that the converter mouth, charging ladles, skimming ladles, and other material transfer vessels are housed within the confines or influence of the hood during

each mode of converter operation; (2) the back of the hood enclosure is fully enclosed and sealed against the primary hood; (3) the edges of the hood enclosure side walls in contact with the converter vessel remain sealed during each mode of converter operation; (4) the size of the opening at the top and front of the hood enclosure necessary for the entry and egress of ladles and crane apparatus is minimized to the fullest extent practical; and (5) the hood enclosure is fabricated in such a manner and of materials of sufficient strength to withstand incidental contact with ladles and crane apparatus with no damage.

The air curtain is produced by blowing compressed air from a narrow horizontal slot extending the length of a plenum along the top of one side wall of the hood enclosure. The dimensions of this slot and the velocity of the air blown through the slot are essential design parameters for determining the momentum of the air curtain. Sufficient air curtain momentum must be maintained to prevent emissions rising from the converter operations inside the hood enclosure from penetrating the air curtain and escaping to the ambient air.

To ensure that the owner or operator has the capability of developing sufficient momentum in the air curtain to capture secondary emissions, the proposed standards specify that the air curtain fan be sized to deliver a minimum of 22,370 watts (30 air horsepower) at the slot.

After installation of an air curtain secondary hood system, the owner or operator would be required to operate it at conditions optimum for the capture of secondary inorganic arsenic emissions (see "Optimization of Secondary Hood Air Curtain System"). In addition, the owner or operator would be required to visually inspect the components of the system at least once every month and maintain each converter and associated secondary hood system in a manner consistent with minimizing inorganic arsenic emissions.

Over a 1-week period, EPA personnel observed the ASARCO prototype secondary hood system during all converter operating modes. Based on these observations, EPA concluded that the work practices followed by the individual converter and crane operators can significantly impact the amount of secondary emissions that are captured by the secondary hood system. To assure the maximum capture of secondary emissions, the Administrator is proposing five work practices to be followed by the converter and crane operators. These work practices are (1) air curtain and exhaust flow rates shall be increased by the converter operator

to optimum conditions prior to raising the primary hood and rolling the converter out for skimming; (2) once rolled out, the converter operator shall hold the converter in an idle position until fuming from the molten bath ceases prior to commencing skimming; (3) during skimming, the crane operator shall raise the receiving ladle off the ground and position the ladle as close as possible to the converter to minimize the drop distance between the converter mouth and receiving ladle; (4) the rate of flow into the receiving ladle shall be controlled by the converter operator to the extent practicable to minimize fuming; and (5) upon completion of a charge, the crane operator shall withdraw the charging ladle from the confines of the hood enclosure in a slow and deliberate manner.

The Administrator believes that it may be appropriate to specify minimum time periods to be associated with some of these work practices, such as with (1), (2), and (4) above. The public is invited to comment on the need to specify minimum times to be associated with the proposed work practice standards and on what times may be appropriate.

ASARCO has stated it intends to install air curtain secondary hood systems (similar to the system already in place on converter No. 4) on its converters that will remain in service at the Tacoma smelter. EPA therefore expects that ASARCO would meet NESHAP requirements for controlling secondary inorganic arsenic emissions from converters at Tacoma by installing air curtain secondary hood systems. However, the proposed equipment specification is not intended to preclude the use of other secondary inorganic arsenic capture systems which may be as effective as an air curtain secondary hood. Upon written application to EPA, the use of an alternative secondary inorganic arsenic capture system which has been demonstrated to EPA's satisfaction to be equivalent in terms of capture efficiency for inorganic arsenic may be approved (see "Equivalent Systems for the Capture of Secondary Emissions from Converter Operations" in Part III of this preamble).

To reflect the level of control device performance necessary to achieve BAT for collection of secondary inorganic arsenic emissions, EPA selected a format specifying a maximum allowable total particulate emissions limit. For selecting the numerical value of the limit, EPA reviewed the particulate emission source test results for the control devices judged to represent BAT. The test results were discussed in the Control Technology section of this part of the preamble. These results consist of

a series of three consecutive sample runs for which the measured total particulate matter emissions at the control device outlet ranged from 1.1 to 11.6 mg/dscm. The average value for the three runs was 5.1 mg/dscm. The results show that a control level of at least 11.6 mg/dscm can be achieved; and, most likely, control devices will achieve significantly lower emission levels. Therefore, EPA selected 11.6 mg/dscm as the proposed emission limit.

Selection of Emission Test Methods

The use of EPA Reference Method 5—"Determination of Particulate Emissions from Stationary Sources" in Appendix A of 40 CFR Part 60 would be required to determine compliance with the concentration standard for total particulate matter emissions. Calculations applicable under Method 5 necessitate the use of data obtained from three other EPA test methods conducted before the performance of Method 5. Method 1—"Sample and Velocity Traverse for Stationary Sources" must be conducted in order to obtain representative measurements of pollutant emissions. The average gas velocity in the exhaust stack is measured by conducting Method 2—"Determination of Stack Gas Velocity and Volumetric Flow Rate—(Type S Pitot Tube)." The analysis of gas composition is measured by conducting Method 3—"Gas Analysis for Carbon Dioxide, Oxygen, Excess Air and Dry Molecular Weight." These three tests provide data necessary in Method 5 for converting volumetric flow rate to mass flow rate. In addition, Method 4—"Determination of Moisture Content in Stack Gases" is suggested as an accurate mode of predetermination of moisture content.

Selection of Monitoring Requirements

Section 114 of the Clean Air Act authorizes EPA to establish monitoring requirements for the purpose of determining violations of standards proposed under the Clean Air Act. All monitoring data must be maintained in such a manner so as to be accessible to EPA.

The performance of the equipment used to capture the secondary emissions from the converter operations is highly dependent on flow rate. If the flow rate is not measured, it is not possible for either the operator or EPA to determine whether the equipment is properly operated and maintained. Therefore the proposed standards require continuous monitoring of the time and air flow rate through the air curtain systems, and keeping a log of times for each of the

converter operations. This would allow the correlation of recorded gas flow rates with the corresponding converter operation.

To help the Administrator determine whether each secondary hood system is being properly operated and maintained, measured airflow rates would be compared to source specific reference values established during the optimization of each system for each converter operating mode. (See "Optimization of Secondary Hood System".) To establish source specific airflow reference values, the owner or operator would determine the flow rates that correspond to each converter operating mode while the secondary hood system is operating under optimum conditions.

The proposed standards for the collection of secondary inorganic arsenic emissions are based upon a total particulate concentration limit. One alternative to monitoring the performance of the collection device is to periodically test the collection device using Method 5. However, this alternative is costly and is not considered reasonable. Continuous monitoring of opacity or an operating parameter of the collection device may be used to indirectly monitor performance by indicating whether or not the collection device is operating in the same manner as when it demonstrated compliance during the emission test. Of these two alternatives, monitoring opacity is simpler to apply. Therefore, the monitoring requirement selected for the collection of secondary arsenic emissions is to continuously monitor opacity using a transmissometer.

To implement this monitoring requirement, it would be necessary to establish a reference opacity level against which future performance of the control system could be compared. To establish the source specific reference opacity level, the owner or operator of the source would be required to conduct continuous opacity monitoring during the emission test. The opacity monitoring results would be reduced to 6-minute averages, and the opacity level would be established at the 97-5 percent upper confidence level of a normal or log normal (whichever is more representative) distribution of the 6-minute average opacity values. This opacity value would be the basis for determining whether the collection device is continuously performing effectively. Any monitored opacity reading above the emission test opacity reading would indicate that the collection device may no longer be

meeting the proposed total particulate emission limit. A Method 5 test could then be performed to determine compliance.

Optimization Of Air Curtain Secondary Hood System

It is intended that the installation of equipment specified in the proposed standards for the capture of converter secondary emissions will give the owner or operator of each affected converter the capability of reducing emissions to a level consistent with the application of BAT. In developing the equipment specifications, the Administrator has been specific for some requirements as in the case of fan horsepower capacity, and more general for others, such as the dimensions of the secondary hood. Some of the requirements are general because unless there are any new smelters, which is considered unlikely, each installation will be a retrofit; that is, each air curtain secondary hood system will have to be custom designed to fit each existing converter. Due to space limitations, existing pollution control equipment already in place and other considerations, the exact configuration of each secondary hood with air curtain system installed will vary from smelter to smelter.

Beyond hood configuration, the performance of each air curtain secondary hood system will depend on a balance of several other parameters, including the dimensions of the air curtain slot, the velocity of air through the slot, and the distance from the slot to the offtake. These parameters are adjustable in the sense that they can be altered in a relatively short time and at relatively small cost. It is expected that after the initial installation of each air curtain secondary hood system, there will be a "shakedown" or optimization period during which the proper balance of system parameters will be determined for each particular installation.

For every air curtain secondary hood installation, there will be an optimum set of operating conditions, beyond which further "fine tuning" of the system will not result in increased capture efficiency. Section 112(e)(1) of the Clean Air Act states, in part, that if the Administrator promulgates a design or equipment standard, "he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment." "Proper operation" of an air curtain secondary hood system includes operating the system as close to optimum conditions as possible, and the owner or operator would be required to do so under the proposed standards. It is not the

Administrator's intent, however, to require the owner or operator to operate a system beyond optimum conditions (i.e., at flow rates and power requirements that do not achieve additional capture) or to prevent operational changes that may not affect the capture efficiency of the system.

Authority for determination of the optimum conditions for each air curtain secondary hood system installed to meet the proposed standards would rest with the Administrator. Due to the variables involved, and the fact each installation will be site specific, it is not possible for the Administrator to prescribe in advance what will constitute optimum operating conditions for each air curtain secondary hood installation. Objective techniques, such as the tracer study used to evaluate the air curtain secondary hood system on the No. 4 converter at the ASARCO-Tacoma smelter, are available to help determine capture efficiency. However, a final determination of whether a system has truly been optimized, or if not, what steps should (or could) be taken to improve it, will largely be a matter of judgment.

One approach the Administrator is considering as a method for determining optimum conditions for each air curtain secondary hood installation would be to have each system evaluated by a panel of persons with expertise in assessing visible emissions of air pollutants. The panel could be comprised of 3 or more persons, including representatives of industry, EPA and local air pollution control agencies.

The panel would evaluate each air curtain secondary hood as follows: (1) the panel would review the plans and specifications of the system prior to installation; (2) the panel would agree on initial operating conditions for the system; (3) the panel would observe the operation of the system during each mode of converter operation under the initial operating conditions. Estimates of the capture effectiveness achieved, based on visual observations, would be recorded by each panel member for each mode of operation. In addition, comments on the minimum and maximum capture effectiveness achieved, the duration, location and density of visible emissions observed, and a qualitative assessment of the volume of the emissions escaping capture (e.g., light, moderate, heavy, etc.) would be recorded; (4) based on this initial evaluation, the panel would agree on what modifications would be needed to further optimize the operation of the air curtain secondary hood; and (5) the panel would again view the

system (as in 3) after modification to compare its performance to pre-modification performance. After this, steps 4 and 5 would be repeated as needed until there was agreement among the panel members that the system had been optimized. The panel would then recommend a set of optimum operating conditions for that system to the Administrator along with documentation of their evaluation. In the event of disputes, panel members would submit separate recommendations. The Administrator would make a final determination of the optimum conditions based on the panel's recommendation and supporting documentation.

If, subsequent to a determination that a system has been optimized, an owner of operator proposes to make an additional modification to the system, the panel would again be convened and would observe the system both before and after the change as prescribed in (3) above. The modification could be approved by the Administrator if the panel found it did not reduce capture efficiency.

The Administrator believes this approach would assure that the air curtain secondary hood system is designed and operating conditions established which will minimize secondary inorganic arsenic emissions to the greatest extent possible, but would also allow the owner or operator to make modifications to the system that would not reduce capture efficiency. The public is invited to comment on the need to evaluate the optimization of each air curtain secondary hood system and on the panel approach being considered by the Administrator.

Reporting and Recordkeeping Requirement

Owners or operators of sources covered by the proposed standards would be subject to the reporting and recordkeeping requirements of the proposed standards, as well as those prescribed in the General Provisions (Subpart A) of 40 CFR Part 61. Under § 61.10 of the General Provisions, an initial report from each existing source is required to be submitted within 90 days of the effective date. For purposes of determining initial applicability, the proposed standards for high-arsenic-throughput smelters specify that the initial report required in § 61.10(a) will include information on the weight percent inorganic arsenic in the total smelter charge. The proposed standards further require that each month the computation of a rolling annual average of the inorganic arsenic content of the total smelter charge be made and that the monthly computation of a rolling

annual average of the inorganic arsenic content of the total smelter charge be made and that the monthly computations be recorded and kept on site for at least 2 years. The monthly computations would have to be reported to EPA on an annual basis to ensure that applicability with respect to the standards had not changed.

Under Section 114, EPA is authorized to establish reporting requirements to determine whether there is a violation of standards proposed under the Clean Air Act. Concern as to whether the systems for the control of inorganic arsenic emissions are continuing to meet the proposed standards would primarily arise when monitoring showed opacity levels in excess of those determined during the compliance demonstration or airflow rates that vary significantly from those established during the optimization procedure. Therefore, in determining the necessary reporting requirements, it was considered reasonable to require reporting only when such "excess emission" conditions exist. Reporting of these excess emission conditions would be required on a semiannual basis. Currently, only the copper smelting companies collect any of this information. In addition, there are no reporting requirements by other governmental agencies for this type of information which would result in overlapping data requirements. The types of information to be included in the reports are discussed below.

For the converter secondary hood system, each semiannual report would indicate: (1) the reference airflow rates established for each converter operational mode, and (2) a record of airflow rates for each day when the airflow rates are less than 20 percent of the corresponding reference values.

For the collection devices for secondary emissions, each semiannual report would provide: (1) a record of transmissometer readings for each day on which the opacity exceeded the reference opacity limit determined at the time the collection device demonstrated compliance, and (2) the values of the emission test opacity limits.

Impacts of Reporting and Recordkeeping Requirements

EPA believes that these reporting and recordkeeping requirements are necessary to assist the Agency in (1) identifying sources, (2) observing the compliance testing and demonstration of monitoring devices, (3) determining initial compliance, and (4) enforcing the standard after the initial compliance determination.

The Paperwork Reduction Act (PRA) of 1980 (Pub. L. 96-511) requires that the

Office of Management and Budget (OMB) approve reporting and recordkeeping requirements that qualify as an "information collection request" (ICR). For the purposes of accommodating OMB's review, EPA uses 2-year periods in its impact analysis procedures for estimating the labor-hour burden of reporting and recordkeeping requirements.

The average annual burden on high-arsenic-throughput copper smelters to comply with the reporting and recordkeeping requirements of the proposed standards over the first 2 years after the effective date is estimated to be 1,310 person-hours.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires that differential impacts of Federal regulations upon small businesses be identified and analyzed. The RFA stipulates that an analysis is required if a substantial number of small businesses will experience significant impacts. Both measures must be met; that is, a substantial number of small businesses must be affected and they must experience significant impacts, to require an analysis. Twenty percent or more of the small businesses in an affected industry is considered a substantial number. The EPA definition of significant impact involves three tests, as follows: (1) prices of products produced by small entities rise 5 percent or more, assuming costs are passed on to consumers; (2) annualized investment costs for pollution control are greater than 20 percent of total capital spending; or (3) costs as a percent of sales for small entities are 10 percent greater than costs as a percent of sales for large entities.

The Small Business Administration (SBA) definition of a small business for Standard Industrial Classification (SIC) Code 3331, Primary Smelting and Refining of Copper, is 1,000 employees. The ASARCO-Tacoma smelter is owned by a company that has more than 1,000 employees. Therefore ASARCO does not meet the SBA definition of a small business and thus no regulatory flexibility analysis is required.

III. INORGANIC ARSENIC EMISSIONS FROM PRIMARY COPPER SMELTERS PROCESSING FEED MATERIALS CONTAINING LESS THAN 0.7 PERCENT ARSENIC

Proposed Standards

The proposed standards would regulate inorganic arsenic emissions from primary copper smelters that process feed material with an annual

average inorganic arsenic concentration less than 0.7 percent. Standards are being proposed to regulate secondary inorganic arsenic emissions from copper smelting furnaces and all converter operations. These standards are being proposed both for the capture and for the collection in a control device of secondary inorganic arsenic emissions from converter operations. The proposed standards would also require the collection of secondary emissions from matte and slag tapping operations at the smelting furnace.

The proposed standards for converter operations would apply to smelters with an annual average arsenic feed rate to the converters of 6.5 kilograms per hour (kg/h) average or greater. The proposed standards for matte and slag tapping operations would apply to smelters with an annual average combined inorganic arsenic process rate in the matte and the slag of 40 kg/h or greater.

The proposed standard for the capture of secondary inorganic arsenic emissions from converters would be an equipment standard. The proposed standard would require the installation of a secondary hood system consisting of a fixed enclosure with a horizontal air curtain on the converters. Equivalency determinations for control techniques other than the secondary hood system as specified in the equipment standard would be made on a case-by-case basis. None of the proposed standards would limit the control technique which may be used to comply with the proposed standards provided equivalency in performance can be shown.

The proposed standard would limit particulate emissions from the collection device to 11.6 milligrams of particulate matter per standard cubic meter (mg/dscm) of exhaust air. To determine compliance with the proposed particulate emission limit, Reference Methods 1, 2, 3, and 5 in Appendix A of 40 CFR Part 60 would be used. Continuous opacity monitoring of gases exhausted from a particulate control device would be required to ensure the control device is being properly operated and maintained. Continuous monitoring of airflow and inspection and maintenance procedures would be required to ensure the secondary hood system is being properly operated and maintained.

Summary of Environmental, Health, Energy, and Economic Impacts

The proposed standards affect primary copper smelters which process feed material having an annual average inorganic arsenic content less than 0.7 percent. This category is defined as low-arsenic-throughput smelters.

It is estimated that the proposed standards would affect six existing domestic primary copper smelters. No new smelters are projected to be built in the next 5 years. Analysis of the 14 smelters in the category included calculation of the environmental, economic, and energy impacts of the proposed standards.

The proposed standards would reduce secondary inorganic arsenic emissions from the affected smelters by about 111 megagrams per year (121 tons per year). As a result of this inorganic arsenic emission reduction, it is estimated that the number of incidences per year of lung cancer due to inorganic arsenic exposure for persons residing within 20 kilometers of the affected smelters would be reduced from a range of 0.1 to 1.6 incidence per year to a range of 0.04 to 0.64 incidence per year. The proposed standards would reduce the estimated maximum lifetime risk from exposure to airborne inorganic arsenic at the low-arsenic-throughput smelters from a range of 43 in 10,000 to 690 in 10,000 to a range of 9.4 in 10,000 to 150 in 10,000. The estimated maximum lifetime risk represents the probability of a person contracting cancer who has been exposed continuously during a 70-year period to the maximum annual inorganic arsenic concentration due to emissions from the smelters. These estimated health impacts were calculated based on a number of assumptions and contain considerable uncertainty as discussed in Appendix E of the background information document (BID) for this source category.

Application of the controls required under the proposed standards would increase the amount of solid waste (i.e., arsenic-laden dust) entering the smelter waste handling systems by approximately 11,100 Mg (12,100 tons) per year. Currently, the low-arsenic-throughput smelters generate approximately 3.2×10^6 Mg (3.5×10^6 tons) per year. The additional amount of solid waste generated under the proposed standards would add relatively minimal quantities which could be easily handled by the smelters.

The control systems expected to be used to meet the proposed standards are dry systems. Therefore, there would be no direct water pollution impact. If scrubbers were used to meet the proposed standards, secondary water pollution impacts may result if the arsenic-containing dusts are disposed of along with acid plant slurry. However, no adverse water pollution impact is anticipated since the amount of additional wastewater generated could be treated at existing water pollution

control systems installed due to existing regulations.

Energy requirements under the proposed standards would result in increased electrical consumption. Current annual energy requirements for the affected low-arsenic-throughput smelters total approximately 6.0×10^3 MW utility capacity. Additional energy requirements at the low-arsenic-throughput smelters due to the proposed standards are estimated to be approximately 6.4 MW, or approximately 0.1 percent above plant energy requirements without the proposed standards.

Capital and annualized costs required to meet the proposed standards would be approximately \$35.3 million and \$9.5 million, respectively. The primary economic impacts associated with the proposed standards are projected decreases in profitability for the six affected low-arsenic smelters if costs cannot be passed through. If the costs are passed forward in the form of a price increase, it is estimated that the proposed standards would result in a 0.1 to 4.4 percent increase in the price of copper. Under the proposed standards, no plant closures are anticipated.

The control technology, which is the basis for the proposed standards, should be less costly when integrated into the original design of a new plant rather than retrofitted to an existing plant. Therefore, EPA considers it appropriate to apply the proposed standards to new plants, thereby establishing a minimum level of required inorganic arsenic control for all low-arsenic-throughput smelters.

Rationale

Selection of Source Category

Copper smelting involves the processing of copper-bearing ores containing varying concentrations of inorganic arsenic. Several studies have assessed health problems in communities where copper smelters are located. A detailed discussion of these studies can be found in Part II of this preamble, which discusses the high-arsenic-throughput smelter category. In making the decision to regulate low-arsenic-throughput smelters, the Administrator considered that arsenic emissions from the source category and resulting exposure are significant. Based on an analysis of the costs and impacts of more stringent alternatives, it is the Administrator's judgment that a substantial reduction in secondary inorganic arsenic emissions to the atmosphere from the current level is achievable and appropriate. There are

no other regulations in place which cause these reductions to occur. Therefore, EPA has decided to proceed with standards to control secondary inorganic arsenic emissions from low-arsenic-throughput copper smelters under Section 112.

The two source categories for primary copper smelters are: (1) smelters processing feed with an annual average inorganic arsenic content less than 0.7 percent (low-arsenic-throughput smelters), and (2) smelters processing feed with an annual average inorganic arsenic content 0.7 percent or more (high-arsenic-throughput smelters). Selection of the value 0.7 percent was based on the consideration of the highest average inorganic arsenic concentration currently used at a domestic smelter other than the ASARCO-Tacoma smelter (the one high-arsenic-throughput smelter). Each category is evaluated separately for the purpose of establishing regulations. Only the category of smelters which process feed material with an annual average inorganic arsenic content less than 0.7 percent is being addressed in this section of the preamble.

Description of Emission Points

A description of the copper smelting process is presented in Part II of this preamble and will not be repeated here. The discussion which follows is limited to the emission points at low-arsenic-throughput smelters.

Inorganic arsenic emissions from primary copper smelters can be categorized as either process emissions or secondary emissions. Process emissions are those emissions from roasters, smelting furnaces, and converters which are confined in exhaust gas streams. Secondary emissions are those emissions which escape capture from the primary emission control system. Chapter 2 of the BID for this source category discusses in detail all potential sources of inorganic arsenic emissions at primary copper smelters.

Process emission sources at low-arsenic-throughput primary copper smelters are the roasters, smelting furnaces, converters, and anode furnaces. The three sources which have the greatest potential arsenic emissions are the roasters, smelting furnaces, and converters. Currently, these process sources are generally well controlled at 9 of the 14 existing low-arsenic-throughput smelters. Because process emissions are a significant source of inorganic arsenic emissions, especially at those sources which are not well controlled, EPA evaluated the

requirements of additional process controls.

Anode furnaces at primary copper smelters are used to treat the blister copper. Blister copper, due to the nature of the smelting process, has a low concentration of inorganic arsenic. In addition, there is no known U.S.-applied control technology demonstrated to reduce emissions from the anode furnaces. Therefore, process emissions from anode furnaces were not considered for regulation.

Converter operations (charging, blowing, skimming, holding, and pouring), multihearth roaster discharge, and smelting furnace matte and slag tapping have the greatest potential for secondary inorganic arsenic emissions.

Converter operations are difficult to control in terms of capturing the secondary inorganic arsenic emissions; however, secondary emissions from the converters are typically 7 to 25 times greater than matte and slag tapping emissions combined. There is limited capture of these secondary emissions at 5 of the 14 smelters and emissions are collected at 2 of these smelters. However, EPA believes that further control of secondary emissions from converters is possible at all smelters. Therefore, EPA has considered further regulations for these sources.

Currently all of the 14 existing smelters use localized hoods to capture furnace matte tapping emissions and roaster calcine discharge emissions. Twelve of the fourteen existing smelters use localized hoods to capture furnace slag tapping emissions. In most of these cases, the localized hoods were installed to reduce worker exposure to pollutants discharged into the furnace building. Only three smelters use collection devices to control these captured emissions, while the other smelters discharge the emissions to the atmosphere. Since collection devices have been demonstrated on these secondary inorganic arsenic emission sources to reduce arsenic emissions to the atmosphere, EPA also considered these sources for further regulation.

Further regulations are not being considered for the control of secondary inorganic arsenic emissions from miscellaneous sources. These miscellaneous sources include the transfer, handling, and conveying of dust from control device storage hoppers, smelter flues, and dust chambers. These secondary emission sources are relatively small and would be difficult to control further.

Policy for Determining Control Levels

For this source category of 14 existing smelters EPA used a three-step

approach for determining the control levels upon which the proposed standards are based. This approach is based upon the policy described in Part I of this preamble.

The first step consisted of examining the adequacy of current controls for each inorganic arsenic emission source at the low-arsenic smelters. The level of current control for each source was compared to EPA's determination of BAT for the source. For the sources judged by EPA to have BAT in place, EPA then determined if Federally enforceable standards required the controls to be continuously operated and maintained or if these controls could reasonably be expected to remain in use without regulations. Based on this evaluation, EPA identified the emission sources at the low-arsenic smelters which required the development of standards to assure inorganic arsenic emissions were controlled continuously using BAT.

The second step involved the selection of BAT for the emission points at the low-arsenic smelters identified for the development of standards. To select BAT, regulatory alternatives were defined, based on current or projected controls plus new controls as called for by the particular alternative. The environmental, economic, and energy impacts of the alternatives were determined. Based on an assessment of these impacts, the alternatives which reflected BAT at each smelter were selected.

The third step involved consideration of regulatory alternatives beyond BAT for all of the inorganic arsenic emission sources at the low-arsenic smelters. The risk of cancer incidence due to inorganic arsenic exposure in the population distributed around the low-arsenic smelters was estimated. This estimated risk which remains after application of BAT was evaluated considering costs, economic impacts, risk reduction, and other impacts that would result if a more stringent alternative were selected. If the residual risk was judged not to be, unreasonable considering the other impacts of controls beyond BAT, more stringent controls than BAT would not be required. However, if the residual risk was judged to be unreasonable, then an alternative more stringent than BAT would be required.

Determination of the Adequacy of Current Controls

Inorganic arsenic emissions sources at the low-arsenic smelters are currently controlled using a variety of capture and collection techniques. Capture techniques are used to gather and

confine secondary inorganic arsenic emissions and to transport them to a collection device. Or, in some cases, secondary emissions are captured and simply vented out of a tall stack for better dispersion. Collection techniques are used to remove inorganic arsenic from process offgases and captured gases prior to venting the gases to the atmosphere. Each inorganic arsenic emission source at the low-arsenic smelters was examined by EPA to determine the extent to which inorganic arsenic emissions are currently controlled and whether the level of control represents BAT. In performing the examination, EPA reviewed the existing process operations and pollution control equipment. Four of the smelters were undergoing improvements due to either consent decree requirements (Phelps Dodge-Ajo, Phelps Dodge-Morenci, and ASARCO-Hayden) or modernization (Kennecott-Hurley). For purposes of evaluating whether BAT controls were installed, the new smelter configurations were used.

The first sources to be examined were the process sources (roasters, smelting furnaces, and converters) at the low-arsenic-throughput smelters. During these process operations, inorganic arsenic is volatilized and emitted predominantly as a metallic oxide vapor in the process offgases. By cooling the process offgases, the inorganic arsenic vapor sublimates to form inorganic arsenic particulates, which can be collected in a conventional particulate control device. The two most important factors affecting the collectability of inorganic arsenic emissions are the operating temperature of the control device and the concentration of arsenic in the exhaust gas stream. The temperature of the offgas stream determines the amount of inorganic arsenic which can exist as vapor. The concentration of inorganic arsenic compared to the saturation vapor pressure at the offgas temperature determines the quantity of inorganic arsenic which can condense and potentially be captured in a particulate control device. Vapor pressure data indicate a significant logarithmic increase in the vapor pressure of arsenic trioxide (the prevalent oxide of inorganic arsenic in the offgas), and thus the amount of arsenic which can exist in the vapor state, with temperature. Furthermore, the vapor pressure data indicate that arsenic trioxide maintains an appreciable vapor pressure at relatively low temperatures. EPA test data demonstrate the need to cool the gas stream to be treated as much as practicable to condense as much of the

arsenic trioxide vapor as possible prior to its entering a control device for collection. There are limits to the extent to which the offgases can be cooled. Corrosion due to the condensation of sulfuric acid can be a major problem if gases are cooled below the acid dew point. Therefore, to ensure the use of existing electrostatic precipitator (ESP) technology without major corrosion problems, BAT evaluations for flue gas cooling to enhance particulate inorganic arsenic collection are limited to a minimum temperature of 121°C (250°F).

Four of the existing smelters incorporate roasting of the copper ore concentrates to remove impurities prior to entering the smelting furnaces. The ASARCO-El Paso and Phelps Dodge-Douglas smelters use multihearth roasters, and the Tennessee Copper-Copperhill and Kennecott-Hayden smelter use fluid bed roasters. Process offgases from the fluid bed roasters at Tennessee Copper-Copperhill and Kennecott-Hayden and the multihearth roasters at ASARCO-El Paso are treated by acid plant controls to remove SO₂ emissions before being exhausted to the atmosphere. Because of the highly efficient particulate removal equipment required, the acid plant controls are considered 99 percent effective for the removal of arsenic. These acid plant controls represent the most advanced level of control adequately demonstrated considering economic feasibility. Therefore, the roasters at these smelters are already controlled using BAT.

The multihearth roaster at Phelps Dodge-Douglas uses an ESP operating at an elevated temperature (260°C) to control process offgases. EPA estimates that this control device currently achieves an emission reduction of about 30 percent. EPA evaluated the possibility of cooling the process gases to 121°C prior to entering the ESP. The expected concentration of inorganic arsenic in the offgases, after cooling to 121°C, was calculated using arsenic emission rates and flow rate data supplied by the company. This calculated concentration is then compared to the saturation concentration at 121°C. However, the concentration of arsenic in the offgases at Phelps Dodge-Douglas would still be below the saturation concentration. As a result, it is predicted that the inorganic arsenic would remain in the vapor state and pass through the particulate control device with no additional particulate arsenic removal. Because no additional arsenic emission reduction is predicted when this gas stream is cooled to 121°C, and because additional cooling would

necessitate costly corrosion resistance measures, EPA concluded that the existing ESP at Phelps-Douglas represents the most advanced level of control adequately demonstrated considering economic feasibility, and is thus BAT.

Smelting furnace offgases at all but 6 of the 14 smelters are controlled currently by acid plants or will be controlled by acid plants under consent decree. As with the roasters, the acid plants are considered to be 99 percent efficient for removing inorganic arsenic and represent BAT controls at these smelters. The ASARCO-El Paso smelter cools the smelting furnace offgases to about 105°C before entering an ESP. The inorganic arsenic concentration in the smelting furnace offgases greatly exceeds the inorganic arsenic saturation concentration at 10°C, and, therefore, the arsenic is present predominantly in the particulate state. Test data indicate that the inorganic arsenic removal efficiency for the cold ESP at ASARCO-El Paso is approximately 96 percent. Additional cooling is not predicted to result in any appreciable increase in arsenic removal; therefore, the existing cold ESP at ASARCO-El Paso represents the most advanced level of control considering economic feasibility, and is thus BAT.

The remaining five smelters all control smelting furnace offgases with electrostatic precipitators operating at temperatures between 190°C and 315°C. EPA evaluated the possibility of achieving additional inorganic arsenic removal in the existing ESP's by cooling the gas streams to 121°C. In all cases, the concentration of inorganic arsenic would be well below the saturation concentration at 121°C. As a result, the inorganic arsenic would remain as a vapor as it passed through the particulate control device, and no additional inorganic arsenic removal could be predicted. As with the roasters at Phelps Dodge-Douglas, cooling the gas stream further to try to condense the arsenic to particulate would cause serious corrosion problems and would require costly preventative measures. Consequently, EPA concluded that the existing ESP's on the smelting furnace offgases at the Kennecott-Hayden, Magma-San Manuel, Kennecott-McGill, Phelps Dodge-Douglas, and the White Pine smelters were BAT for these sources.

Converter process offgases at 11 of the 14 low-arsenic-throughput smelters are controlled by acid plants. As with the other process sources, these controls are considered BAT for inorganic arsenic. Converter offgases at the Phelps

Dodge-Douglas smelter are controlled by an ESP operating at 230°C, and at the Kennecott-McGill smelter by multiclones operating at 433°C. The converters at the White Pine smelter are uncontrolled with an exhaust gas temperature of 345°C. In all cases, EPA evaluated the possibility of cooling the gas streams to 121°C and collecting the particulate inorganic arsenic in an ESP. The calculations for the Phelps Dodge-Douglas and White Pine smelters indicated that the concentration would be below the saturation concentration, and no additional arsenic removal was predicted. As concluded previously, the existing control scenarios at these two smelters are then considered BAT. The calculations for the Kennecott-McGill smelter, however, indicated that the concentration of inorganic arsenic was significant enough that cooling of the gas stream to 121°C would result in the condensation of over half of the arsenic present to the particulate state and would allow collection of this particulate in a particulate control device.

To summarize the process emission sources, EPA concluded that the control systems currently in place at ten smelters and those systems which will be installed due to consent decree and modernization programs at four smelters to control roaster, smelting furnace, and converter process offgas inorganic arsenic emissions (with the exception of the process emissions from the converters at Kennecott-McGill) represent the most advanced level of control adequately demonstrated considering economic feasibility. Therefore, these process sources are already controlled by BAT. Existing Federally enforceable regulations for particulate and SO₂ emissions will require the controls to remain in place and to be properly operated and maintained to reduce emissions. These regulations serve to assure that BAT for inorganic arsenic will remain in place. It should be noted that if the controls required by consent decree at the three smelters are not installed as expected, EPA will reconsider the need for process standards based upon BAT.

In particular, there is some uncertainty regarding the consent decree for the Phelps Dodge-Ajo smelter. The smelter is negotiating changes to the consent decree because the company now feels that the changes outlined in the decree (installation of oxygen-fuel/oxygen sprinkle smelting and acid plant controls) are no longer required to comply with the recently approved multipoint rollback (MRP) SIP regulations for sulfur dioxide control (48

FR 1717, January 14, 1983). If the smelting furnace and associated pollution control equipment changes are not made as specified in the existing consent decree, EPA would then reconsider the need for standards for smelting furnaces. It is expected that standards based on BAT for smelting furnaces would affect only the Phelps Dodge-Ajo smelter and would necessitate cooling of the reverberatory furnace exhaust gas. Such cooling would result in reduction of inorganic arsenic emissions of about 110 Mg/yr (from about 200 Mg/yr to 90 Mg/yr) at a capital cost of about \$1.5 million and an annualized cost of \$1.6 million.

Additional inorganic arsenic control can be achieved by the addition of flue gas cooling and particulate controls at the Kennecott-McGill smelter. Therefore, because of the sizeable current inorganic arsenic emission rate (394 Mg/yr) and because demonstrated technology is available, EPA decided to evaluate standards based on BAT for the converter process offgas emissions from the Kennecott-McGill smelter.

In all cases, secondary inorganic arsenic emissions from the low-arsenic-throughput copper smelters are cool enough to be present essentially in particulate form only. This allows the captured secondary inorganic arsenic emissions to be collected in conventional particulate control devices. The major source of secondary inorganic arsenic emissions at the low-arsenic-throughput smelters is the converter operations. There is limited capture of secondary converter emissions at 5 of the 14 smelters, and particulate control equipment to collect the captured emissions is or will be installed at two of these. Total baseline secondary emissions from the converters at all the smelters are 137 Mg/yr. These emissions have the greatest potential health impact because they are generally low-level emissions and are not emitted through stacks. Technology for capture and collection of these emissions has been demonstrated. Therefore, because of the potential for the converter operations to emit large quantities of secondary inorganic arsenic emissions, and because of the demonstrated availability of controls for these emissions, EPA decided to evaluate standards based on BAT for secondary inorganic arsenic emissions from converter operations.

Three of the low-arsenic-throughput smelters have multihearth roasters with associated calcine discharge secondary inorganic arsenic emissions. One of these smelters, however, will be changing over to a smelting technology which does not require roasting as part

of a consent decree modification discussed in the regulatory baseline section. For the two remaining smelters, calcine discharge secondary emissions are captured in localized hoods and sent to a particulate control device. This equipment is already installed at these smelters and is considered BAT.

Smelting furnace secondary inorganic arsenic emissions from matte tapping operations are captured at all smelters using localized hoods. This equipment is installed at all smelters and is considered best technology for capture. Secondary emissions from furnace slag tapping operations are currently captured at 11 of the 14 smelters. This capture is also accomplished with localized hooding. Because this equipment is not used at all smelters, EPA analyzed the impacts of requiring capture for slag tapping secondary inorganic arsenic emissions.

Captured secondary inorganic arsenic emissions from matte tapping operations are collected in particulate control devices at two smelters and captured secondary inorganic arsenic emissions from slag tapping are collected at only one smelter. Because these inorganic arsenic emissions are in the particulate state and because capture and collection equipment have been demonstrated in the industry, EPA decided to analyze the alternative of requiring collection of secondary inorganic arsenic emissions from matte and slag tapping operations.

Selection of BAT for Process and Secondary Inorganic Arsenic Emissions

The control of process and secondary inorganic arsenic emissions at low-arsenic-throughput primary copper smelters is identical to the technology discussed in Part II of this preamble. Therefore, the discussion on technology is only summarized here.

Capture of Secondary Emissions

The capture of secondary inorganic arsenic emissions from primary copper smelters can be achieved by the application of local ventilation techniques (i.e., ventilation hoods and air curtains) or general ventilation techniques (i.e., building evacuation). Once captured, the emissions may be vented directly to a collection device or combined with process exhaust gases prior to collection.

Converter Operations—Local ventilation techniques for the capture of secondary emissions include the use of fixed secondary hoods, retractable secondary hoods, or air curtain secondary hoods. General ventilation techniques, such as building evacuation,

take the form of either natural air changes due to wind and density differences, or mechanically assisted air changes.

The most effective local ventilation technique evaluated for the capture of converter secondary emissions involves the use of a secondary hood system consisting of a fixed enclosure with an air curtain. In January, 1983, EPA conducted a test program designed to evaluate the effectiveness of the capture of secondary emissions by the prototype fixed-enclosure-with-air-curtain system at the ASARCO-Tacoma smelter. This system was determined to be representative of a capture system which could be used at all smelters. The capture efficiency of the system was evaluated by performing a gas tracer study and visual observation. The gas tracer was released inside the boundaries of the fixed enclosure, and the amount of the gas tracer in the exhaust gases was measured in the ducting downstream of the enclosure receiving hood. The capture efficiency was then calculated by a material balance of the inlet and outlet tracer gas mass flow rates. Based on the results of this test program, the overall average capture efficiency of the fixed-enclosure-with-air-curtain system was determined by EPA to be 95 percent.

Capture of converter secondary emissions by building evacuation is accomplished by controlling the airflow patterns within the building housing the converter and by maintaining a sufficient air change or ventilation rate. In theory, EPA believes a building evacuation system should be capable of achieving at least 95 percent capture of secondary emissions. However, the building evacuation systems in use have not demonstrated this level of control. Building evacuation is presently being used at ASARCO's primary copper smelter located in El Paso, Texas, to capture secondary emissions from the converters. While preventing the venting of secondary emissions to the ambient air outside the building, use of the building evacuation system at the ASARCO-El Paso smelter has resulted in elevated concentrations of inorganic arsenic, lead, and SO_2 inside the building, in addition to excessive heat buildup. To alleviate these unacceptable working conditions, building openings have been increased, and ventilators designed for emergency use have been operated routinely. Consequently, the building evacuation system at the ASARCO-El Paso smelter achieves a capture efficiency less than 95 percent.

Slag Tapping—Local ventilation techniques for slag tapping operations are very similar to those used for matte

tapping. EPA observed furnace slag tapping operations at the ASARCO-Tacoma smelter at both the tap port and the slag launder to slag pot transfer point using EPA Methods 22 and 9. The performance demonstrated by the matte tapping controls at ASARCO-Tacoma suggests that a properly designed and operated ventilation system applied to slag tapping operations should be capable of achieving at least 90 percent capture.

Collection of Inorganic Arsenic Emissions.

As discussed previously, the two most important factors affecting the collectability of inorganic arsenic emissions are the operating temperature of the control device and the concentration of arsenic in the exhaust gas stream. The temperature of the offgas stream determines the amount of inorganic arsenic which can exist as vapor. The concentration of inorganic arsenic compared to the saturation vapor pressure at the offgas temperature determines the quantity of inorganic arsenic which can condense and potentially be captured in a particulate control device.

Several methods were evaluated for cooling the converter process offgas at the Kennecott-McGill smelter. These methods included tempering with dilution air, radiative cooling, and evaporative cooling. Each method has its advantages and disadvantages. Dilution air is the simplest method. However, it may be uneconomical as the amount of dilution air required may result in a two- to four-fold increase in gas volume to be treated and, thus, an increase in the size and cost of the collection device and fan applied. In addition, dilution air lowers the concentration of arsenic in the gas stream, thus increasing the amount of arsenic which can exist in the vapor phase. Radiative cooling relies on heat loss due to natural convection and radiation to achieve cooling. The major drawback to this method is limited flexibility for temperature control. Evaporative cooling is relatively simple and requires little space. The major drawback to this method is the potential for corrosion. Which method, or combination of methods, is used to achieve cooling depends on the specific circumstances.

In contrast to process offgases, secondary emission streams are relatively lower in temperature, seldom having a temperature higher than 93° C (200° F). At this low temperature, further cooling of the secondary emissions would have an insignificant effect on the amount of inorganic arsenic which could

be collected by the control device. Therefore, additional gas cooling prior to collection is not required for secondary inorganic arsenic emissions.

Converter process inorganic arsenic emissions may be effectively collected through the use of baghouses, electrostatic precipitators, or venturi scrubbers if emissions are sufficiently precooled. Baghouse collectors (fabric filters) have historically achieved a high collection efficiency over a broad range of applications, although never specifically for control of converter offgases. Single-stage electrostatic precipitators are widely used in the primary copper industry for the control of process particulate emissions from converter operations. Both wire-in-plate and wire-in-tube types are used. They are generally, however, operated at elevated temperatures, usually at 200° C to 340° C (400° F to 650° F). The application of venturi scrubbers at primary copper smelters is limited to a few smelters where scrubbers are used to augment process gas stream precooling and cooling prior to acid manufacturing. High operating costs and water handling problems make their use less desirable than other control devices.

The concentration of arsenic in the gas stream is very important in determining achievable arsenic emission reductions. To achieve any arsenic trioxide emission reduction by condensation, the quantity of arsenic trioxide in the gas stream must be sufficiently high so that the resultant arsenic trioxide concentration at the control device operating temperature exceeds the predicted saturation concentration. The concentration of inorganic arsenic in the converter offgases from the Kennecott-McGill smelter exceeded the saturation concentration at a temperature of 121° C. Calculations indicated that over half of the arsenic present was in the particulate state.

The effect of the overall collection efficiency of the control device on achievable arsenic emission reduction is self-evident; the higher the efficiency for particulate matter, the higher the efficiency for arsenic.

To evaluate the performance capabilities of various collection devices on process emissions, EPA conducted emission source tests on process gas streams from roasters, smelting furnaces, and converters. Baghouse, electrostatic precipitator (ESP), and venturi scrubber collection systems were evaluated. Based on the test results for the collection efficiency of baghouses, electrostatic precipitators,

and venturi scrubbers, EPA concluded that these three control devices, when applied to process arsenic emission sources, are equivalent in performance. Given sufficiently high arsenic concentration in the offgas and sufficiently low offgas temperature, control efficiencies for inorganic arsenic in excess of 97 percent can be achieved.

Captured secondary inorganic arsenic emissions may be effectively collected through the use of baghouses, electrostatic precipitators, and venturi scrubbers. Only three domestic copper smelters use baghouse or ESP collection devices exclusively for secondary emissions. No presently operating primary copper smelter uses a venturi scrubber for the collection of secondary emissions. There is no reason to believe that a venturi scrubber system could not be installed to effectively collect secondary inorganic arsenic emissions, but high operating costs and water handling problems associated with the use of venturi scrubbers make their use less desirable than other devices.

To help evaluate the performance of collection devices used to collect secondary inorganic arsenic emissions, EPA conducted tests on the baghouse at ASARCO-El Paso used to treat combined converter and anode furnace secondary emissions. The results of these tests are summarized below.

Secondary emissions from converters and anode furnaces at the ASARCO-El Paso smelter are captured by building evacuation. Inlet and outlet emission measurements for inorganic arsenic were made by EPA at the El Paso baghouse during converter operations. Tests were conducted only when one or more converters were in operation. The test results indicated an average inorganic arsenic removal efficiency of 96.2 percent, with a range (in three runs) from 94.5 to 99.1 percent.

In summary, baghouses, electrostatic precipitators, and venturi scrubbers are comparable in terms of secondary inorganic arsenic emission reduction performance. However, due to lower inlet loadings associated with secondary emissions in general, it is expected that collection devices used for secondary emissions streams will not always achieve high inorganic arsenic collection efficiencies, because of the lower arsenic concentrations in these gas streams.

Selection of Regulatory Baseline

In selecting the basis of the proposed standards, it was first necessary to establish the regulatory baseline. The regulatory baseline represents no additional regulatory action. In other words, the baseline alternative

describes the industry in the absence of a NESHAP arsenic regulation. The baseline alternative provides the basis for computing the incremental impacts associated with each of the regulatory alternatives selected for consideration.

The regulatory baseline was selected as including only those existing air pollution controls installed before the court order (January 13, 1983) or required by existing legal actions. EPA realizes that it may be necessary for some smelters to install additional controls in the future to meet other Clean Air Act or OSHA requirements. However, given the uncertainty of future deadlines concerning controls required under OSHA or the nonferrous smelter order (NSO) program, it was not possible to anticipate, for purposes of this analysis, what controls would be required or when they would have to be installed.

Three smelters (Phelps Dodge-Ajo and Morenci, and ASARCO-Hayden) currently are operating under consent decrees to install new furnace configuration and acid plant control equipment for SO₂ removal. Final compliance dates for these consent decrees have been established as 1985. Since these controls are mandated by the court and final compliance will be in the near future, these controls were considered as part of the regulatory baseline.

In addition, the Kennecott-Hurley smelter is currently modernizing its facilities. This work has already begun and is expected to be completed at about the same time as the smelters operating under a consent decree. For these reasons, the smelter configuration, after modernization, was selected as part of the regulatory baseline. Chapter 4 of the BID for this source category explains in detail the process and control equipment considered in the regulatory baseline.

Regulatory Alternatives

Following the definition of the regulatory baseline, designated as Alternative I, four other regulatory alternatives were defined for the low-arsenic-throughput smelters. These alternatives represent application of inorganic arsenic controls independently on various emission points at the smelters and are characterized by the control equipment that would be required (beyond what is required to meet baseline requirements) to meet these levels of control.

Alternative II would require the control of process inorganic arsenic emissions. This alternative affects only one smelter where additional inorganic arsenic removal is predicted (Kennecott-

McGill). This alternative is based on the use of flue gas cooling followed by a particulate control device (baghouse, ESP, or scrubber) to collect process arsenic emissions. Under this alternative, an adequate particulate control device operating at less than 121° C (250° F) would be required to be installed on the converter process offgases at the Kennecott-McGill smelter.

Alternative III would require the capture and collection of secondary inorganic arsenic emissions from converter operations. This alternative is based on the use of a secondary hood system or equivalent for the capture of secondary emissions and a particulate control device (baghouse or an equivalent technology) for the collection of secondary inorganic arsenic emissions from the converters.

Alternative IV would require the capture of slag tapping secondary emissions and the collection of secondary inorganic arsenic emissions from matte tapping and slag tapping operations. Under this alternative the capture of the slag tapping secondary emissions would be accomplished using localized ventilation hoods. Collection of the secondary emissions would be accomplished in a particulate control device (baghouse or an equivalent technology).

Selection of Best Available Technology

Alternative II would require cooling and particulate collection for the process emissions from the converters at the Kennecott-McGill smelter. As discussed earlier in the adequacy determination, the concentration of inorganic arsenic in the reverberatory furnace offgases at Kennecott-McGill is well below the saturation concentration at 121°C, resulting in no predicted arsenic collection from the furnace gas stream, even with cooling to 121°C prior to passage through the existing ESP. The analysis of this alternative therefore assumed use of evaporative cooling to cool the converter offgases to 121°C and installation of an electrostatic precipitator for the collection of particulate arsenic emissions. Calculations of the predicted inorganic arsenic concentration indicated that about 60 percent of the arsenic in the offgases would be in particulate form at the reduced temperature. Assuming the ESP would achieve 96 percent reduction of the particulate arsenic, and overall inorganic arsenic emission reduction of 57 percent was predicted (161 Mg As/yr).

The costs associated with these controls would be about \$9.8 million

capital investment and an annualized cost of about \$4.1 million. The economic analysis of Alternative II indicated a 45 to 150 percent reduction in profitability (the latter case indicating a net operating loss) for the Kennecott-McGill smelter if the converter process controls were installed and the costs were absorbed by the company. If the costs could be passed through, copper prices would have to be raised 10 to 15 percent. Considering these impacts, EPA's analysis indicated Kennecott-McGill would close rather than install the controls. EPA has concluded that the cost and economic impact of additional controls for the converter process emissions at the Kennecott-McGill smelter are unreasonable and that such controls are beyond BAT. Therefore, the existing process controls at the Kennecott-McGill smelter are considered BAT for that particular smelter. In addition, arsenic emissions which are discharged to the atmosphere through stacks are subject to much greater dispersion than the ground-level secondary emissions.

It should be pointed out that this BAT decision is based primarily on the economic analysis performed for the Kennecott-McGill smelter and the conclusion that this smelter would likely close if required to install process controls. Thus, while multiclones, when considered from a technical perspective, are clearly not the best possible controls, the Agency believes that multiclones are the best available technology considering cost at this smelter. The Agency recognizes that this decision serves to perpetuate any economic disparity which results from the use of process controls on some smelters and not on others. However, the Agency does not believe that elimination of such inequity is an appropriate purpose of a NESHAP.

Alternative III would require the capture of secondary emissions from converter operations and the collection of the emissions in a particulate control device (baghouse or equivalent). As noted earlier, the converter is the largest source of secondary inorganic arsenic emissions at the copper smelters. None

of the existing smelters currently has best controls installed for limiting secondary inorganic arsenic emissions from converters. Therefore, the cost and environmental impacts of installing a secondary hood system consisting of a fixed enclosure and air curtain were evaluated for all 14 smelters. The smelters were ranked as to their potential to emit secondary inorganic arsenic emissions from the converters (see Table III-1). The analysis indicates that significant emission reduction is achievable at a reasonable cost for the six smelters with the greatest potential inorganic arsenic emissions. The economic analysis indicates that the imposition of controls on the Kennecott-McGill smelter would cause serious reductions in profitability (12 to 40 percent). It should be noted, however, that this analysis is necessarily limited and cannot include all factors known to the company. However, considering the cost of converter controls alone, with no other control costs required, the analysis does not predict closure at Kennecott-McGill.

TABLE III-1. ENVIRONMENTAL AND COST IMPACTS ASSOCIATED WITH SECONDARY INORGANIC ARSENIC EMISSION CONTROL SYSTEMS FOR CONVERTER OPERATIONS

Smelter	Potential arsenic emissions, Mg/yr	Arsenic feed rate to converters, kg/h	Baseline arsenic emissions, Mg/yr	Predicted arsenic emission reduction, Mg/yr	Annualized control costs, \$1,000	Cost per unit emission reduction, \$/Mg As
ASARCO-El Paso	98.0	98.9	27.5	18.9	307	16,200
ASARCO-Hayden	58.5	97.1	30.1	24.9	408	16,400
Kennecott-McGill	45.9	41.6	45.9	41.6	2,696	64,800
Kennecott-Garfield	7.7	19.2	7.7	7.0	1,300	185,400
Phelps Dodge-Morenci	6.9	6.7	6.9	6.3	1,908	302,900
Kennecott-Hayden	6.5	7.2	6.5	5.9	1,982	335,900
Phelps Dodge Douglas	4.3	4.2	4.3	4.0	2,943	710,800
Phelps Dodge-Ajo	2.6	4.1	2.6	2.3	1,562	679,100
Inspiration-Miami	1.7	5.4	1.7	1.6	2,943	1,777,000
Phelps Dodge-Hidalgo	1.2	2.2	1.2	1.1	1,745	1,586,000
Tennessee Copper-Copperhill	0.7	0.7	0.7	0.6	1,278	2,130,000
Magma-San Manuel	0.5	0.6	0.5	0.45	3,979	8,842,000
Kennecott-Hurley	0.5	0.78	0.5	0.46	2,296	5,861,000
White Pine	0.3	0.5	0.3	0.27	1,278	4,733,000

At the remaining eight smelters, which have lower potential secondary inorganic arsenic emissions from the converters, the costs of the controls with respect to the emission reduction achievable are very high (cost effectiveness ranging from about \$700,000 per megagram arsenic reduced to over \$8 million per megagram arsenic reduced). In addition, the analysis indicates that the imposition of controls on the remaining eight smelters would close at least two (Phelps Dodge-Douglas and Tennessee Copper-Copperhill), and the affordability was questionable for three more. Therefore, EPA has concluded that the costs and economic impacts are disproportionate to the emission reduction benefits for these eight smelters and that BAT would

not include converter controls for these eight facilities.

In establishing this cutoff between the group of six smelters with the greatest potential converter fugitive emissions and the group of eight with lower potential emissions, the Agency considered emission rates, emission reduction potential, control costs, and the economic impacts of controls. This analysis led to the clear conclusion that the additional control is reasonable for the smelters with the highest potential emissions and that control is unreasonable (considering the small benefit) for smelters with the lowest potential emissions. The analysis did not, however, provide a clear, objective formula for establishing the precise point at which costs and other impacts

become unreasonable relative to the emission reduction benefits. Therefore, the cutoff being proposed reflects the Agency's best judgment of BAT, based on consideration of the factors which are relevant to this decision and most particularly on the Agency's judgment that arsenic emissions should be minimized. The Agency recognizes that others may have different views on where an appropriate cutoff, if any, should be made and is specifically requesting comments on this.

To ensure that the proposed standards would be based only on those sources where additional controls would represent BAT, a cutoff expressed in objective measurable terms was sought to exclude the eight smaller emitters discussed above. The parameter

selected is the total arsenic feed rate to the converters. The potential inorganic arsenic emissions from the converters is closely related to the arsenic feed rate to the converters. To obtain the arsenic feed rate, a grab sample of the feed materials to the converters would be required daily with subsequent analysis of a monthly composite sample for inorganic arsenic using Method 108A. Measurement of this parameter does not present a burden since the smelters monitor the quality of the converter feed for production purposes. Therefore, a cutoff based at the level of 6.5 kg/h arsenic feed rate was selected. This feed rate would be calculated using the average percent arsenic in the converter feed materials and the feed rate of these materials.

Establishing the cutoff on the basis of arsenic input to the converters also provides the potential opportunity for the smelters to use lower arsenic ores and thereby avoid the need for converter controls. EPA has not examined the extent to which this practice may be possible but realizes that this possibility is limited by contract, ownership, and physical proximity to ore deposits. Nevertheless, this does provide a means for reducing emissions which is possibly less expensive than use of control technology.

Alternative IV would require the capture of fugitive emissions from slag tapping operations using localized ventilation techniques (hooding) and the collection of the emissions from both matte and slag tapping operations in a

particulate control device (baghouse or equivalent). Again the smelters were ranked as to their potential to emit secondary inorganic arsenic emissions from matte and slag tapping operations (see Table III-2). The analysis indicates that the costs are not unreasonable and the potential emission reductions are greatest for the four smelters with the greatest potential to emit secondary inorganic arsenic emissions. The analysis also indicates that seven of the remaining ten smelters would experience very high costs associated with the small amount of emission reduction (\$640,000/Mg As to over \$6 million/Mg As). Therefore, EPA concluded that, for the four smelters with the greatest potential to emit, BAT is additional controls, and, for the ten remaining smelters, BAT is no additional controls.

TABLE III-2.—ENVIRONMENTAL AND COST IMPACTS ASSOCIATED WITH SECONDARY INORGANIC ARSENIC EMISSION CONTROL SYSTEMS FOR MATTE AND SLAG TAPPING OPERATIONS

Smelter	Potential arsenic emissions, Mg/yr	Arsenic process rate, ¹ kg/h	Baseline arsenic emissions, Mg/yr	Predicted arsenic emission reduction, Mg/yr	Annualized control costs, \$1,000	Cost per unit emission reduction, \$/Mg As
ASARCO-Hayden	13.8	196.0	1.8	0	0	
ASARCO-El Paso	6.5	102.1	1.2	0.4	153	382,500
Kennecott-McGill	4.5	53.4	4.5	3.9	257	65,900
Kennecott-Garfield	2.0	48.7	2.0	1.7	514	302,400
Phelps Dodge-Morenci	0.9	10.5	0.9	0.8	514	642,500
Kennecott-Hayden	0.9	9.4	0.9	0.8	257	321,300
Inspiration-Miami	0.8	19.5	0.8	0.7	261	372,900
Phelps Dodge-Douglas	0.6	10.2	0.4	0.35	514	1,469,000
Phelps Dodge-Ajo	0.6	14.2	0.6	0.52	257	494,300
Phelps Dodge-Hidalgo	0.2	4.3	0.2	0.17	257	1,512,000
Kennecott-Hurley	0.1	1.6	0.1	0.08	265	3,313,000
Tennessee Copper-Copperhill	0.09	1.1	0.09	0.07	257	3,671,000
Magma-San Manuel	0.09	1.0	0.09	0.09	54	6,425,000
White Pine	0.05	0.6	0.05	0.04	257	6,425,000

¹ Combined arsenic process rate in both the matte and slag.

As in the case of the converter secondary emission cutoff, EPA selected a parameter which would objectively differentiate between the two groups of smelters. The arsenic content of the matte and slag are directly related to the quantity of secondary inorganic arsenic emissions. Because it is likely that emissions from matte and slag tapping operations would be combined into one collection system, a cutoff based on the combined arsenic content of the matte and the slag was selected. This approach was considered reasonable since only daily grab samples of matte and slag would be required with arsenic analysis performed on a monthly composite sample using Method 108A. The arsenic content would be calculated using the percent arsenic in the matte and slag and the matte tap and slag tap rates. The cutoff selected to exclude smaller sources where costs become unreasonable was 40 kg/h total arsenic in the matte and the furnace slag. Additional standards for requiring slag

tapping emissions capture will not be necessary since all smelters operating above the matte and slag tap cutoff already have installed localized hoods considered to be BAT. It should be noted that using this cutoff would require the Kennecott-McGill smelter to install collection equipment for matte and slag tapping operations. The imposition of matte and slag tap controls in addition to converter controls at the Kennecott-McGill smelter increases the cost impacts at this smelter and pushes them closer to closure.

The following paragraphs discuss the energy and environmental impacts associated with the selection of BAT. By applying fixed enclosures with air curtains and particulate control technologies with efficiencies of 95 percent and 96 percent, respectively, to converter secondary emissions (91.2 percent overall reduction), and particulate control technologies with efficiencies of 96 percent to captured

matte tap and slag tap secondary emissions at the affected smelters, a total emission reduction associated with the proposed standards of 111 Mg/yr of arsenic (from 134 Mg secondary emissions to 23 Mg secondary emissions) is achieved.

Standards based upon BAT will require the use of approximately 6.4 MW of electricity beyond the baseline energy requirements for the affected low-arsenic-throughput smelters.

With respect to solid waste impacts, standards based upon BAT would result in approximately 11,100 Mg per year of additional solid waste beyond baseline for the affected low-arsenic-throughput smelters. This quantity is not significant in terms of the total solid waste currently generated annually at these smelters (estimated at 3.2 million Mg).

As all the control technologies selected involve dry control systems, there will be no direct water pollution impact. If scrubbers were used, secondary water pollution impacts

might result if the arsenic-containing dusts are disposed of along with acid plant slurry. However, no adverse water pollution impact is anticipated since existing regulations require control of these wastes.

EPA has considered each of the impacts cited above and concludes that they are reasonable in light of the emission reduction achieved.

Consideration of Risk Remaining After BAT and Selection of the Level of the Standard

With the implementation of converter controls for smelters with a total arsenic feed to the converter of 6.5 kg/h or greater and the implementation of matte and slag tap controls for smelters with a combined arsenic process rate of 40 kg/h or greater in the matte and the slag, BAT would be in place at all smelters. EPA estimated the health risk remaining after application of BAT to all of these smelters and examined the residual risk to determine whether the risk is unreasonable in view of the health risk and other impacts that would result if a more stringent regulatory alternative were selected as BAT.

The health risk is expressed by the estimated number of incidences of cancer due to inorganic arsenic exposure in the population distributed around the affected smelters. For the current level of inorganic arsenic emissions from the smelters, the annual cancer incidence is estimated to range from 0.1 to 1.6 incidence per year. With BAT in place at these smelters for all of the significant inorganic arsenic emission points, the estimated annual cancer incidence would be reduced to a range of 0.04 to 0.64 incidence per year. Application of BAT would reduce the estimated maximum lifetime risk from exposure to airborne inorganic arsenic from a range of 43 in 10,000 to 690 in 10,000 to a range of 9.4 in 10,000 to 150 in 10,000. The estimated maximum lifetime risk represents the probability of a person contracting cancer who has been continuously exposed during a 70-year period to the maximum annual inorganic arsenic concentration due to inorganic arsenic emissions from the low-arsenic-throughput smelters.

Regulatory alternatives beyond BAT were examined by EPA for inorganic arsenic emission points at three categories of smelters: (1) smelters where additional controls for secondary emissions from converter operations, and matte and slag tap operations would be installed to achieve BAT; (2) smelters where additional controls for only secondary emissions from converter operations would be installed to achieve BAT; and (3) smelters where

BAT is already in place for all sources, and no additional controls would be required to achieve BAT.

There are four smelters (ASARCO-El Paso, ASARCO-Hayden, Kennecott-McGill, Kennecott-Garfield) in the first category. Implementation of converter controls and matte and slag tap controls for secondary emissions would result in BAT for these sources. The EPA analysis indicated that except in the case of Kennecott-McGill, there were no demonstrated technologically based alternatives for further reduction of inorganic arsenic emissions for these smelters short of shutdown. The alternative of flue gas cooling for converter process controls at Kennecott-McGill was evaluated previously. Although this technology would result in approximately 60 percent reduction in converter process arsenic emissions, the associated costs are predicted to result in closure. There is then, in effect, no alternative for beyond BAT reduction of inorganic arsenic emissions from the Kennecott-McGill smelter short of closure. Shutdown of these four smelters would reduce the estimated residual cancer incidence for the source category from a range of 0.04 to 0.64 incidence per year to 0.01 to 0.23 incidence per year; however, this would result in the loss of about 2,000 jobs.

There are two smelters (Kennecott-Hayden, Phelps Dodge-Morenci) in the second category. Implementation of converter controls for secondary emissions would result in achieving BAT for these sources. Addition of matte and slag tap controls would have virtually no effect on the residual risk reduction estimate and would impose additional capital and annualized costs (\$2.68 million and \$0.77 million, respectively). Addition of flue gas cooling at Kennecott-Hayden would result in no additional arsenic emission reduction, and, therefore, no reduction in estimated residual risk.

The remaining eight smelters are in the third category, where the analysis concluded that BAT was currently in place at these smelters. Alternatives beyond BAT considered for these smelters were additional process controls at the Magma-San Manuel, Phelps Dodge-Douglas, and White Pine smelters, and the addition of converter, and matte and slag tap secondary emission controls at all eight smelters. The EPA analysis indicated that no additional arsenic emission reduction could be achieved by requiring flue gas cooling at Phelps Dodge-Douglas, Magma-San Manuel and White Pine so there would be no reduction in estimated residual risk. Requiring secondary emission controls for

converter operations at all eight smelters would result in a reduction of estimated cancer incidence from a range of 0.04 to 0.64 incidence per year to a range of 0.03 to 0.55 incidence per year. Estimated maximum lifetime risk would be reduced from a range of 9.4 in 10,000 to 150 in 10,000 to a range of 7.5 in 10,000 to 120 in 10,000. However, the imposition of these controls would close at least two smelters and the viability of three more is questionable. Requiring secondary emission controls for matte and slag tap at all eight smelters would result in no reduction of estimated residual risk of cancer incidence.

An alternative to reducing inorganic arsenic in the emission offgases is to reduce inorganic arsenic in the feed material to the smelter. However, reducing the arsenic content of the feed materials prior to the smelting process through physical or chemical means has not been technologically demonstrated for pyrometallurgical smelters.

In summary, EPA concluded that implementation of any alternatives beyond BAT would mean closure of 4 smelters and use of controls more effective than BAT at the remaining 10 smelters. These beyond BAT alternatives reduce the estimated maximum lifetime risk to a range of 7.5 in 10,000 to 120 in 10,000 and the estimated annual cancer incidence to a range of 0.008 to 0.12. However, imposition of controls more effective than BAT would likely close 2 of the 10 smelters and the viability of 3 more is questionable. At smelters where controls more effective than BAT could be applied without causing closure, the resultant reduction in risk would be negligible. Considering the relatively small reduction in risk that would be possible by alternatives beyond BAT, and the very high costs and economic impacts of these alternatives, EPA concluded that the estimated residual risks associated with BAT are not unreasonable. Therefore, the proposed standards are based on BAT.

Alternative Regulatory Strategies

EPA recognizes that the policy upon which the proposed decision is based gives limited weight to information on exposure and health risks in determining BAT and gives substantial weight to the economic feasibility of installing technologically available emission controls. For example, the degree of public exposure to inorganic arsenic from low-arsenic copper smelters varies significantly from plant to plant. This is because the BAT being proposed for this source category is based primarily on the economic and technical feasibility of

controlling smelters with varying arsenic feed rates. Because it is more cost-effective on a dollars per megagram basis to control smelters with higher arsenic input levels, EPA is proposing to require secondary emission controls on converters only for existing smelters with an inorganic arsenic feed rate of 6.5 kg/h or greater. Since some smelters with arsenic feed rates lower than 6.5 kg/h are located in areas with relatively high population while other smelters with arsenic feed rates greater than 6.5 kg/h are located in areas with relatively low populations, EPA recognizes that its method for determining BAT may result in the lack of controls on certain smelters that pose greater estimated health risks than some of the smelters that the Agency is proposing to regulate. The Agency therefore requests public comment on the degree to which information on exposure and public risks should be used to establish BAT.

EPA is considering two alternatives for using this information to determine BAT for low-arsenic primary copper smelters. As detailed below, these are subdividing source categories according to (1) population density (e.g., defining high and low population density source categories), and (2) estimated before-control cancer incidence rates and maximum individual risk. Once EPA has adopted a specific set of population exposure categories, the Agency would establish BAT for sources in each exposure category and then consider the residual risk. The following discussion describes how these could be applied and includes cutoff criteria that illustrate the possible application to low-arsenic copper smelters. EPA requests comments on the approaches outlined below and, although the cutoffs which are presented are for illustrative purposes, comments are also requested on these or other cutoffs which may be appropriate. Comments received will be considered by the Agency both in making final decisions on this standard and by an agencywide task force on toxics integration which is considering a unified Agency strategy on regulation of toxic chemicals.

Population Density Approach

Under this alternative, EPA would subdivide the source category on the basis of population density before determining BAT. The advantage of this approach is that a stricter standard could be applied to plants where potential exposures, and thus potential threats to public health, are greater.

Under this approach, EPA would first subdivide the source category according to the population living within some distance of the plant. EPA is considering

defining this distance as 20 kilometers around each copper smelter. Up to this distance dispersion models used to calculate concentrations are reasonably accurate. At further distances they are less reliable and predict only very small concentrations of inorganic arsenic. EPA would then subdivide each source category into population density subcategories. For example, low arsenic copper smelters would be subdivided into high population density and low population density smelters. EPA is considering defining the high/low population density cutoff as 10,000 people using the most recent reasonably available population census tract data. BAT would be defined for both high and low density population categories.

High Population Density—For high population density low arsenic copper smelters, EPA would consider requiring secondary inorganic arsenic control systems for converter operations at smelters with arsenic feed rates greater than 25 kg/h. According to the information contained in the background information documents (BID's), this would result in controls at the ASARCO-El Paso smelter. EPA is also considering requiring secondary inorganic arsenic emission systems for matte and slag tapping operations at smelters in this subcategory where the combined arsenic process rate in both the matte and slag operations exceeds 15 kg/h. This would result in controls on the ASARCO-El Paso, Kennecott-Garfield, and Inspiration-Miami smelters.

Low Population Density—For low population density low-arsenic copper smelters, EPA is considering requiring secondary emission control systems for converter operations at smelters with feed rates greater than 35 kg/h. This would result in controls on the Kennecott-McGill and ASARCO-Hayden smelters. EPA is also considering requiring secondary emission control systems at matte and slag tapping operations at smelters in this subcategory when the combined process rate exceeds 35 kg/h. This would result in controls on the Kennecott-McGill and ASARCO-Hayden smelters.

Cancer Incidence And Health Risk Based Approach

A second alternative would be for EPA to make more explicit use of both before-control maximum individual risk and estimated incidence of cancer in the exposed population in subdividing these source categories. As stated earlier, maximum individual lifetime risk is the probability of someone contracting cancer who is continuously exposed to maximum annual average arsenic

concentration during an entire lifetime (70 years). Cancer incidence is a summation of all the risks to people living within 20 kilometers of a source divided by 70 to yield expected cancer incidences per year.

The major disadvantage in this approach is the great uncertainty surrounding health risk estimates. One must make numerous assumptions when producing quantitative estimates of public health risks. More particularly, factors such as meteorology, terrain, population distribution, plant characteristics, reentrainment of inorganic-arsenic-containing dust, and other site specific factors all affect the extent of public exposure to arsenic. Moreover, individual characteristics such as physiology, physical activity level, activity patterns, and the effects of exposures to other substances alter the sensitivity of individuals to inorganic arsenic. In order to estimate exposure effects, EPA must make a considerable number of simplifying assumptions that may well affect the accuracy of the final risk estimates. These assumptions and the methodologies are laid out in the background information documents listed in the beginning of this preamble.

Nevertheless, risk information, whatever its limits, is the information that bears most directly on the harms EPA seeks to avoid. The approach EPA now follows relies on use of this information in the Agency's analysis of residual risk when deciding whether controls beyond BAT are appropriate. The Agency requests comment on the appropriateness of using such information in subdividing categories for the purposes of establishing BAT.

If this approach were followed, the Agency would subdivide the low-arsenic copper smelters into higher risk and lower risk subcategories. For instance, if the before-control maximum individual risks and estimated cancer incidence rates from a smelter exceeded some predetermined levels, the smelter would be placed in the higher risk category. If they did not, it would be placed in the lower risk category. BAT would then be defined for each subcategory.

EPA would determine the high/low risk cutoff by jointly considering maximum individual risk and cancer incidence. That is, if the before-control maximum estimated individual risk level for a particular plant were 10^{-6} , the estimated annual cancer incidence rate would have to exceed some value, e.g. 0.14, in order for the plant to fall into the higher risk category. For a plant imposing a higher estimated maximum individual risk, say 10^{-4} , the estimated annual cancer incidence rate necessary

to place it in the higher risk category might be lower, e.g. 0.014. Theoretically, for the higher maximum individual risk levels, the Agency could set the estimated cancer incidence level in such a way that even one person at that high exposure would cause a plant to be regulated. For instance, if the before-control estimated individual risk for a particular plant is 10^{-2} , the before-control estimated annual cancer incidence level could be set as low as 0.00014 (10^{-2} divided by 70) so that a single individual having near that source at a 10^{-2} risk would place it in the higher risk category.

For purposes of illustration only, EPA presents the following possible cutoffs. These are not the product of any particular analytical methodology, although they appear to provide defensible results when applied to low-arsenic-feed smelters. They are offered primarily to assist commenters in focusing on the new approaches suggested.

If the maximum individual risk is greater than:	and	The expected annual cancer incidence is greater than:	Then	The smelter would be classified "higher risk"
10^{-1}		0.0014		
10^{-2}		0.0014		
10^{-3}		0.0140		
10^{-4}		0.0140		
10^{-5}		0.1400		
10^{-6}		1.4000		

The Administrator would like to reiterate that these numbers are presented only for illustrative purposes. The Administrator recognizes that the selection of these numbers should involve public discussion.

EPA's analysis indicates that using these cutoffs would result in the Kennecott-McGill, ASARCO-Hayden, Inspiration Miami, ASARCO-El Paso, and Phelps Dodge-Ajo smelters being classified "higher risk" while all other smelters would be "lower risk."

BAT for higher risk smelters would be defined as secondary inorganic arsenic control systems for converter, matte tapping, and slag tapping operations. BAT for lower risk smelters would be the existing level of control.

If EPA were to follow this approach, the final rule would probably specify the unit risk number, dispersion model[s] and modeling assumptions, and method[s] for establishing the numbers and locations of exposed persons that would be used to determine maximum individual risk and expected annual cancer incidence for each smelter.

Selection of Format of Proposed Standards

Under the authority of Section 112, a NESHAP must, whenever possible, take the format of a numerical emission limit. Typically, an emission limit is written in terms of an allowable mass emission rate (mass of pollutant per unit time) or an allowable concentration (mass of pollutant per volume of gas). In some instances, a process weight limit (weight of pollutant per unit of product or input) or a minimum percent emission reduction of pollutant (control system collection efficiency) is used. All of these types of standards require the direct measurement of emissions to determine compliance.

However, in certain instances, numerical emission limits are not possible. Section 112(e)(2) recognizes this situation by defining two conditions when it is not feasible to prescribe or enforce an emission limit. The conditions are: (1) when the pollutants cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant; or (2) when the application of a measurement methodology is not practicable due to technological or economic limitations. In such instances, Section 112(e)(1) authorizes design, equipment, work practice, or operational standards.

Mass rate, concentration, process weight, and percent emission reduction emission limits for the capture of secondary inorganic arsenic emissions from converter operations are not considered feasible. Opacity data are available which describe the performance of fixed enclosures with air curtains over a limited range of operating conditions. However, these data are not considered to represent a sufficient basis for establishing emission standards which must be achieved at all times. Therefore, the proposed standards for the capture of secondary emissions from converter operations will be set forth in terms of equipment and work practice requirements.

Secondary inorganic arsenic emissions vary due to the changes in the arsenic content of the feed and other process variables. Therefore, if standards were to be set specifically for arsenic collection for secondary emission streams, an efficiency standard would appear to be a logical choice to assure the application of BAT in all cases. However, the concentration of arsenic in secondary emissions gas streams could be very low. It is not possible to guarantee that a consistently high collection efficiency for arsenic could be attained over the entire range of arsenic concentrations which might

occur in secondary emissions gas streams. For this reason, an efficiency standard cannot be set which would both be achievable and assure the application of BAT for secondary inorganic arsenic control for all normal operating conditions.

As an alternative to standards specifically for arsenic, standards for total particulate (which would include arsenic particulate) were considered for the collection of secondary emissions. Secondary emission gas streams are cool enough so that the inorganic arsenic in the gas stream should exist and be collectable as particulate. In addition, while the arsenic fraction may vary, total particulate emissions are relatively constant in terms of concentration, thus making it possible to select a standard which would require the use of BAT for arsenic regardless of variations in the arsenic content of the feed. Such a standard achieves the result of minimizing inorganic arsenic emissions by requiring use of the best available technology. For these reasons, standards expressed as concentration of total particulate were selected for the collection of secondary emissions from matte and slag tapping, and converters.

Selection of Emission Limits and Equipment Specification

As described previously, the proposed standards for smelters will require the application of secondary hood systems to capture converter secondary emissions. Baghouses, or equivalent control technologies, will be required to collect the captured secondary emissions from matte and slag tapping, and converters. EPA has determined that the combination of these technologies represents the best available technology (BAT) for limiting inorganic arsenic emissions from primary copper smelters comprising the low-arsenic-throughput smelter source category, considering cost, economic, and energy impacts. The proposed standards are, therefore, designed to limit organic arsenic emissions to levels attainable through the installation and proper use of these technologies.

The proposed standards for the capture of secondary arsenic emissions from converters are set forth in terms of equipment and work practice requirements. The proposed equipment specification reflects the prototype secondary hood air curtain system installed at the ASARCO-Tacoma smelter. The proposed work practice standards are based on EPA's observation or work practices at ASARCO-Tacoma that significantly impact the amount of secondary

emissions that are captured by the secondary hood system. The equipment specification and work practice standards proposed for the low-arsenic-throughput smelters are identical to those proposed for high-arsenic-throughput smelters. A detailed description of these equipment and work practice requirements can be found in Part II of this preamble under "Selection of Emission limits and Equipment Specifications."

The proposed standards for secondary emission collection systems are based upon the performance of baghouses. As described under "Control Technology," EPA believes that a properly designed and operated ESP or wet scrubber would also be capable of achieving this level of performance. The emission limit for secondary emissions being proposed is 11.6 milligrams of particulate matter per standard cubic meter (0.005 grains particulate matter per standard cubic foot) measured at the outlet of the collection device. This standard is applicable to secondary emissions from matte and slag tapping, and converter operations. The performance test method to be used for the emission standard is EPA Reference Method 5, which measures both inorganic arsenic and other particulate emissions at 121° C (250° F).

The limit of 11.6 mg/dscm (0.005 gr/dscf) for secondary emissions is based upon data obtained using Method 5 on the secondary emission control system at ASARCO-El Paso. The performance of this system and the test results are described under "Control Technology" and are presented in Appendix C of the BID for this source category.

Optimization Of Secondary Hood Air Curtain System

It is intended that the installation of equipment specified in the proposed standards for the capture of converter secondary emissions will give the owner or operator of each affected converter the capability of reducing emissions to a level consistent with the application of BAT. In developing the equipment specifications, the Administrator has been specific for some requirements as in the case of fan horsepower capacity, and more general for others, such as the dimensions of the secondary hood. Some of the requirements are general because unless there are any new smelters, which is considered unlikely, each installation will be a retrofit; that is, each air curtain secondary hood system will have to be custom designed to fit each existing converter. Due to space limitations, existing pollution control equipment already in place and other considerations, the exact

configuration of each secondary hood with air curtain system installed will vary from smelter to smelter.

Beyond hood configuration, the performance of each air curtain secondary hood system will depend on a balance of several other parameters, including the dimensions of the air curtain slot, the velocity of air through the slot, and the distance from the slot to the offtake. These parameters are adjustable in the sense that they can be altered in a relatively short time and at relatively small cost. It is expected that after the initial installation of each air curtain secondary hood system, there will be a "shakedown" or optimization period during which the proper balance of system parameters will be determined for each particular installation.

For every air curtain secondary hood installation, there will be an optimum set of operating conditions, beyond which further "fine tuning" of the system will not result in increased capture efficiency. Section 112(e)(1) of the Clean Air Act states, in part, that if the Administrator promulgates a design or work practice standard, "he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment." "Proper operation" of an air curtain secondary hood system includes operating the system as close to optimum conditions as possible, and the owner or operator would be required to do so under the proposed standards. It is not the Administrator's intent, however, to require the owner or operator to operate a system beyond optimum conditions (i.e., at flow rates and power requirements that do not achieve additional capture) or to prevent operational changes that may not affect the capture efficiency of the system.

Authority for determination of the optimum conditions for each air curtain secondary hood system installed to meet the proposed standards would vest with the Administrator. Due to the variables involved, and the fact that each installation will be site specific, it is not possible for the Administrator to prescribe in advance what will constitute optimum operating conditions for each air curtain secondary hood installation. Objective techniques, such as the tracer study used to evaluate the air curtain secondary hood system on the No. 4 converter at the ASARCO-Tacoma smelter, are available to help determine capture efficiency. However, a final determination of whether a system has truly been optimized, or if not, what steps should (or could) be

taken to improve it, will largely be a matter of judgment.

One approach the Administrator is considering as a method for determining optimum conditions for each air curtain secondary hood installation would be to have each system evaluated by a panel of persons with expertise in assessing visible emissions of air pollutants. The panel could be comprised of 3 or more persons, including representatives of industry, EPA, and local air pollution control agencies.

The panel would evaluate each air curtain secondary hood as follows: (1) the panel would review the plans and specifications of the system prior to installation; (2) the panel would agree on initial operating conditions for the system; (3) the panel would observe the operation of the system during each mode of converter operation under the initial operating conditions. Estimates of the capture effectiveness achieved, based on visual observations, would be recorded by each panel member for each mode of operation. In addition, comments on the minimum and maximum capture effectiveness achieved, the duration, location and density of visible emissions observed, and a qualitative assessment of the volume of the emissions escaping capture (e.g., light, moderate, heavy, etc.) would be recorded; (4) based on this initial evaluation, the panel would agree on what modifications would be needed to further optimize the operation of the air curtain secondary hood; and (5) the panel would again view the system (as in 3) after modification to compare its performance to pre-modification performance. After this, steps 4 and 5 would be repeated as needed until there was agreement among the panel members that the system had been optimized. The panel would then recommend a set of optimum operating conditions for that system to the Administrator along with documentation of their evaluation. In the event of disputes, panel members would submit separate recommendations. The Administrator would make a final determination of the optimum conditions based on the panel's recommendation and supporting documentation.

If, subsequent to a determination that a system has been optimized, an owner or operator proposes to make an additional modification to the system, the panel would again be convened and would observe the system both before and after the change as prescribed in (3) above. The modification could be approved by the Administrator if the panel found it did not reduce capture efficiency.

The Administrator believes this approach would assure that the air curtain secondary hood system is designed and operating conditions established which will minimize secondary inorganic arsenic emissions to the greatest extent possible, but would also allow the owner or operator to make modifications to the system that would not reduce capture efficiency. The public is invited to comment on the need to evaluate the optimization of each air curtain secondary hood system and on the panel approach being considered by the Administrator.

Equivalent Systems for the Capture of Secondary Emissions From Converter Operations

Although the equipment specified in the proposed regulation for the capture of secondary emissions from converter operations is an air curtain secondary hood system, it is not EPA's intention to preclude the use of other capture systems that may be as effective as the air curtain secondary hood system. Under Section 112(e)(3) of the Clean Air Act, if a design, equipment, work practice or operational standard is promulgated, the Administrator is authorized to approve an alternative means of emission limitation if it will achieve a reduction at least equivalent to the means specified in the regulation. The Administrator anticipates that the promulgated standards for both high- and low-arsenic throughput copper smelters will include provisions under which a source owner may obtain approval for the use of an alternative capture system. Approval would be based on demonstration that the alternative system is equivalent or superior to the air curtain secondary hood system in terms of capture efficiency for secondary inorganic arsenic emissions. Demonstration of equivalency would have to be by a method approved by the Administrator and designed specifically for the system to be evaluated.

As previously indicated, the prototype air curtain secondary hood system installed on converter No. 4 at the ASARCO-Tacoma smelter is the basis for the equipment specifications in the proposed standards. The performance of the ASARCO-Tacoma system was evaluated by EPA in January 1983. The techniques used to evaluate the ASARCO system included (1) a tracer mass balance, (2) opacity measurements with a transmissometer, and (3) visual observation. Details of the evaluation program are discussed in the report, "Evaluation of an Air Curtain Hooding System for a Primary Copper

Converter—ASARCO, Inc., Tacoma, Washington."(15)

Although problems were encountered with transmissometer readings, the results of the tracer study and visual observations provided a basis for judging the capture efficiency of the system. In the tracer study, a suitable tracer (sulfur hexafluoride) was quantitatively injected at various points within the air curtain control area during all modes of converter operation. By combining the measurements of the tracer concentration at a sampling point downstream of the secondary hood suction plenum with flow rate measurements, it was possible to calculate the amount of tracer captured by the air curtain and suction plenum. The capture efficiency was then calculated from the amount of tracer injected and the amount captured. The tracer study indicated an overall average capture efficiency of the ASARCO-Tacoma system of 95 percent.

Throughout the tracer study, visual observations of the ASARCO-Tacoma air curtain secondary hood system were also made by EPA and local agency personnel. System performance was characterized by a variety of visual indicators, including the duration and opacity of fume spillage from the hood and an assessment of the capture effectiveness achieved. In general, the observation logs showed that the visual assessments of capture effectiveness correlated with the average collection efficiencies determined by the tracer technique. Lighting, background conditions, and occasional viewing obstructions (such as the overhead crane) caused problems during the observation of the hood during some modes of converter operation. The capture effectiveness of the system was most viewable during charging operations and although the system's capture effectiveness varied depending on mode of converter operation, it was felt that the capture effectiveness observed during charging was a good indicator of the system's overall performance.

The Administrator believes that both the tracer technique and the use of visual observations may also be suitable methods for evaluating the performance of alternative capture systems to determine equivalency. Specifically, the Administrator believes it would be reasonable to consider an alternative capture system equivalent to a secondary hood with air curtain system if the results of a tracer study designed specifically for that system showed an overall average capture efficiency of 95 percent or greater. With regard to visible

emission observations, the Administrator believes that an alternative system may be equivalent to a secondary hood with air curtain system if no visible emissions were seen to escape the capture system during converter charging.

The public is invited to comment on the possible use of these techniques to determine equivalency and also to suggest any other techniques that may be effective.

Selection of Monitoring Requirements

This section discusses the selection of the proposed monitoring requirements. The purpose of monitoring is to determine whether or not the equipment used to control arsenic emissions is properly operated and maintained to meet the proposed emission standards. Authority for these proposed monitoring requirements is found in Section 114 of the Clean Air Act which authorizes the Administrator to require monitoring equipment or methods for the purpose of determining violations of standards proposed under the Clean Air Act. In addition, all monitoring data would be maintained in such a manner so as to be accessible to the Administrator and his authorized personnel.

The performance of the equipment used to capture the secondary emissions from the converter operations is highly dependent on flow rate. If the flow rate is not measured, it is not possible for either the operator or EPA to determine whether the equipment is properly operated and maintained. Therefore the proposed standards require continuous monitoring of the time and air flow rate through the air curtain system, and keeping a log of times for each of the converter operations. This would allow correlation of recorded gas flow rates with the corresponding converter operation.

To help the Administrator determine whether each secondary hood system is being properly operated and maintained, measured air flow rates would be compared to source specific reference values for each converter operating mode. To establish source specific air flow reference values, the owner or operator would determine the flow rates which correspond to each converter operating mode while the secondary hood system is operating under optimum conditions.

Monitoring performance of the collection device for secondary emissions is important to the operator and EPA to determine whether the collection equipment is properly operated and maintained. One alternative to monitoring the

performance of the collection device is to periodically test the collection device using EPA Reference Method 5. However, this alternative is not considered reasonable. Continuous monitoring of opacity or an operating parameter of the collection device may be used to indirectly monitor performance by indicating whether or not the collection device is operating in the same manner as when it demonstrated compliance. Of these two alternatives, monitoring opacity is thought to be somewhat simpler to apply. The recommended monitoring requirement for the collection of secondary emissions is to continuously monitor opacity using a transmissometer.

To implement this monitoring requirement, it would be necessary to establish a reference opacity level against which future performance of the control system could be compared. To establish the source-specific reference opacity level, the owner or operator of the source would be required to conduct continuous opacity monitoring during the emission test. The opacity monitoring results would be reduced to 6-minute averages, and the opacity level would be established at the 97.5 percent upper confidence level of a normal or log normal (whichever is more representative) distribution of the 6-minute average opacity values. This opacity level would be the basis for determining whether the collection device is continuously performing effectively. Any monitored opacity reading above the emission test opacity reading would indicate that the collection device may no longer be meeting the proposed total particulate emission limit. A Method 5 test could then be performed to determine compliance.

Selection of Emission Test Methods

The emission test method selected to determine compliance with the proposed standard for the collection of secondary emissions is EPA Reference Method 5. This test method measures particulate emissions (both inorganic arsenic and other particulates) collected at 121°C (250°F). (For a full discussion of this method, see Appendix A, 40 CFR 60.) As was noted and explained earlier, it is necessary to measure total particulate matter rather than just inorganic arsenic for secondary emissions. Therefore, EPA Reference Method 108 is inappropriate and was not considered.

Reporting and Recordkeeping Requirement

Owners and operators of sources covered by the proposed standard

would be subject to the reporting and recordkeeping requirements of the proposed standards, as well as those prescribed in the General Provisions (Subpart A) of 40 CFR Part 61. Under § 61.10 of the General Provisions, an initial report from each existing source is required to be submitted within 90 days of the effective date. For purposes of determining initial applicability, the proposed standards for low-arsenic throughput smelters specify that the initial report required in § 61.10(a) will include information on the weight percent inorganic arsenic in the total smelter charge, the converter arsenic charging rate, and the smelting furnace arsenic tapping rate. The proposed standards further require that each month the computation of a rolling annual coverage of the inorganic arsenic content of the total smelter charge, the converter arsenic charging rate, and the smelting furnace arsenic tapping rate be made and that the monthly computations be recorded and kept on site for at least 2 years. These monthly computations would have to be reported to EPA on an annual basis to ensure that applicability with respect to the standards had not changed.

Under Section 114, the Administrator is authorized to establish reporting requirements to determine whether there is a violation of standards proposed under the Clean Air Act. Concern as to whether the systems for the control of arsenic emissions are continuing to meet the proposed standards would primarily arise when monitoring showed opacity levels in excess of those determined during the compliance demonstration or air flow rates that vary significantly from those established during the optimization procedures. Therefore, in determining the necessary reporting requirements, it was considered reasonable to require reporting only when such "excess emission" conditions exist. Reporting of these excess emission conditions would be required on a semiannual basis. Currently, there are no existing sources, besides the copper smelters, which collect any of this information. In addition, there are no reporting requirements by other governmental agencies for this type of information which would result in overlapping data requirements. The types of information to be included in the reports are discussed below.

For the converter secondary hood system, each semiannual report would indicate: (1) the reference air flow rates established for each converter operating mode, and (2) a record of air flow rates for each day when the air flow rates are

less than 20 percent of the corresponding reference air flow rate values.

For the collection devices for secondary emissions, each semiannual report would provide: (1) a record of transmissometer readings for each day on which the opacity exceeded the opacity limit determined at the time the collection device demonstrated compliance, at any time of the day; and (2) the values of the emission test opacity limits.

Impacts of Reporting and Recordkeeping Requirements

EPA believes that these reporting and recordkeeping requirements are necessary to assist the Agency in (1) identifying sources, (2) observing the compliance testing and demonstration of monitoring devices, (3) determining initial compliance, and (4) enforcing the standard after the initial compliance determination.

The Paperwork Reduction Act (PRA) of 1980 (Pub. L. 96-511) requires that the Office of Management and Budget (OMB) approve reporting and recordkeeping requirements that qualify as an "information collection request" (ICR). For the purposes of accommodating OMB's review, EPA uses 2-year periods in its impact analysis procedures for estimating the labor-hour burden of reporting and recordkeeping requirements.

The average annual burden on low-arsenic-throughput copper smelters to comply with the reporting and recordkeeping requirements of the proposed standards over the first 2 years after the effective date is estimated to be 15,200 person-hours.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires that differential impacts of Federal regulations upon small business be identified and analyzed. The RFA stipulates that an analysis is required if a substantial number of small businesses will experience significant impacts. Both measures, substantial numbers of small businesses and significant impacts, must be met to require an analysis. If either measure is not met then no analysis is required. Twenty percent or more of the small businesses in an affected industry is considered a substantial number. The EPA definition of significant impact involves three tests, as follows: one, costs of production rise 5 percent or more, assuming costs are not passed onto consumers; or two, annualized investment costs for pollution control are greater than 20 percent of total

capital spending; or three, costs as a percent of sales for small entities are 10 percent greater than costs as a percent of sales for large entities.

The Small Business Administration (SBA) definition of a small business for Standard Industrial Classification (SIC) Code 3331, Primary Smelting and Refining of Copper, is 1,000 employees. The 14 low-arsenic-throughput smelters are owned by seven companies. All seven have more than 1,000 employees. Therefore, none of the seven companies meets the SBA definition of a small business and thus no regulatory flexibility analysis is required.

IV. INORGANIC ARSENIC EMISSIONS FROM GLASS MANUFACTURING PLANTS

Proposed Standard

The proposed standard would limit the amount of inorganic arsenic emitted from glass melting furnaces to levels achievable by best available technology (BAT). The Administrator has determined that BAT for glass melting furnaces that emit greater than 0.40 Mg (0.44 ton) per year of arsenic uncontrolled is the use of an electrostatic precipitator (ESP) or fabric filter. The application of BAT for these furnaces represents at least a 90 percent reduction in the amount of arsenic that would otherwise be emitted. The Administrator has also determined that for furnaces that emit 0.40 Mg (0.44 ton) per year or less arsenic uncontrolled, the cost of applying add-on control devices is disproportionate to the emission reduction that would result, and, therefore, that BAT for these furnaces is no control. Consequently, the proposed standard would require each owner or operator of a source to either reduce emissions to levels achievable by an ESP or fabric filter, or to maintain uncontrolled (i.e., preceding an add-on control device) arsenic emission levels at 0.40 Mg (0.44 ton) per year or less.

The source which would be covered by the proposed standard is each glass melting furnace that uses arsenic as a raw material. The proposed standard would exempt pot furnaces. The proposed standard would not explicitly exempt any other furnace type; however, it is expected that all-electric melting furnaces, hand glass melting furnaces, and small (i.e., less than 4.55 Mg (5.00 tons) per day capacity) furnaces would be able to comply with the proposed standard without having to use an add-on particulate control device since it is believed that the uncontrolled arsenic emissions from these furnaces would not exceed 0.40 Mg (0.44 ton) per year. This belief is based on limited

information about these furnace types. Therefore, comments are specifically requested on this subject.

Each owner or operator choosing to comply with the proposed standard by reducing arsenic emissions to levels achievable by an ESP or fabric filter would be required to meet an emission limit expressed in terms of particulate matter. The emission limits would be expressed in terms of particulate matter because particulate matter levels accurately reflect the performance of ESP's and fabric filters in reducing arsenic emissions. The particulate emission limits would vary according to the different categories of glass and would be expressed as grams of total particulate matter (as measured by Reference Method 5) per kilogram of glass produced. These proposed particulate emission limits are presented in Table IV-1:

TABLE IV-1. EMISSION LIMIT
(g of particulate/kg of glass produced)

Glass category	Furnace fired with gaseous fuel and all-electric melters	Furnace fired with liquid fuel
Container glass	0.100	0.130
Pressed and blow glass:		
Borosilicate	500	650
Soda-lime and lead	100	130
Other than borosilicate, soda-lime, and lead	250	325
Wool fibreglass	250	325
Flat glass	225	225

For furnaces simultaneously firing both gaseous and liquid fuel, the applicable limit would be determined by prorating the limits for gas- and liquid-fuel-fired furnaces based on the proportion of gas and liquid fuel used.

The proposed standard would require each owner or operator choosing to comply with the particulate emission limits to demonstrate compliance with these limits by conducting an emission test using EPA Reference Method 5, "Determination of Particulate Emissions from Stationary Sources." These owners or operators would also be required to monitor opacity continuously. The proposed standard does not include an opacity limit, but instead prescribes procedures for each owner or operator who must monitor opacity to establish a source-specific opacity level. This level would be viewed as indicative of a properly operated and maintained control device. The owner or operator would be required to maintain records of the opacity monitoring results and to report every 6 months if opacities in excess of the source-specific level occurred during the preceding 6-month period. Reports of excess opacity would

not be used to cite a source in violation of the standard, but would serve, instead, to alert enforcement personnel that the control device may not be operated and maintained properly.

The proposed standard would require each owner or operator choosing to comply with the standard by maintaining uncontrolled (i.e., preceding an add-on control device) arsenic emission levels at or below 0.40 Mg (0.44 ton) per year to demonstrate compliance by measuring the arsenic emissions from the furnace using EPA Reference Method 108, "Determination of Particulate and Gaseous Arsenic Emissions." The results of this measurement would be used along with estimates of the anticipated production of arsenic-containing glass over the next 12-month period to estimate the annual arsenic emission rate. The proposed standard would require that 6 months after the initial compliance demonstration, and every 6 months thereafter, each owner or operator calculate what the arsenic emissions were during the preceding 6-month period based on the actual glass production rate during that period. If this calculation reveals that arsenic emissions during the preceding 12-month period (or 6-month period, in the case of the first 6-month calculation) exceeded 0.40 Mg (0.44 ton), then the source was in violation of the standard and the owner or operator must report this fact to the administrator within 10 days.

In addition to requiring a calculation of the arsenic emission rate for the preceding 6-month period, the proposed standard would require that every 6 months each owner or operator estimate arsenic emissions over the next 12-month period. If this estimate indicates that arsenic emissions will exceed 0.40 Mg (0.44 ton) during the 12-month period, then the owner or operator must demonstrate compliance with the particulate emission limits, and, within 10 days, give written notice to the Administrator of when the Method 5 emission test will be conducted. The proposed standard would also require that the owner or operator maintain records of all measurements and calculations made to estimate arsenic emissions.

Summary of Health, Environmental, Energy, and Economic Impacts

The impacts presented are based on an analysis of the glass melting furnaces that EPA has identified as using arsenic as a raw material and for which EPA has arsenic emissions data. There are 32 such furnaces. The available data show that five of these furnaces emit arsenic

at uncontrolled levels at or below 0.40 Mg (0.44 ton) per year. Thus, it was assumed that these furnaces would not need to install add-on control devices to comply with the standard. Of the remaining 27, 13 are already controlled by either ESP's or fabric filters, and company representatives have indicated that these controls can achieve the proposed particulate emission limits. Therefore, the impact analysis assumes that 14 furnaces would need to install add-on controls to comply with the proposed standard.

It is presumed that there are more arsenic-using furnaces than the 32 that were included in the impact analysis. However, insufficient information about location, size, ownership, and emissions were available on these furnaces to include them in the analysis. It is believed, though, that the arsenic emissions from the arsenic-using furnaces that are included in the analysis represent the majority of the arsenic emissions from glass melting furnaces. Moreover, it is believed that these furnaces account for most of the furnaces that would have to install add-on particulate control devices to comply with the proposed standard. The arsenic-using furnaces that are not included in the impact analysis are believed to be mostly pot furnaces, all-electric furnaces, and fossil-fuel-fired furnaces (other than pot furnaces) used to produce handmade glass products. Pot furnaces are exempt from the proposed standard and, as mentioned earlier, it is considered unlikely that either of the other two furnace types would have uncontrolled (i.e., preceding an add-on control device) arsenic emissions greater than 0.40 Mg (0.44 ton) per year.

The impact analysis also does not consider impacts on new glass melting furnaces. This is because, in the absence of the proposed standard, new glass melting furnaces would need to install add-on particulate control devices as a result of being subject to the new source performance standard (NSPS) for glass manufacturing plants. Though the NSPS exempts all-electric furnaces, hand glass melting furnaces, and small (i.e., less than 4.55 Mg (5.00 tons) per day capacity) furnaces, it is believed that these furnace types could comply with the proposed standard without having to install add-on control devices.

The proposed standard would reduce total inorganic arsenic emissions from the 32 glass melting furnaces from the current level of 36.7 Mg (40.4 tons) per year to 4.7 Mg (5.2 tons) per year. As a result of this reduction in arsenic emissions, it is estimated that,

nationwide, the number of incidences of cancer resulting from exposure to arsenic emissions from glass manufacturing plants would be reduced from a range of 0.073 to 1.17 incidences per year to a range of 0.013 to 0.210 incidence per year. The proposed standard would reduce the estimated maximum individual lifetime risk from exposure to airborne arsenic from a range of 6.4 in 10,000 to 100 in 10,000 to a range of 0.97 in 10,000 to 15.6 in 10,000. The maximum individual lifetime risk represents the probability of someone contracting cancer who has been exposed continuously during a 70-year period to the maximum annual arsenic concentrations due to the arsenic emissions from glass manufacturing plants.

The proposed standard would achieve the reduction in nationwide arsenic emissions with small adverse impacts on other aspects of the environment. The control devices which would be used to meet the standard do not produce wastewater effluents. Most of the arsenic-containing particulate matter collected would be recycled to the furnace. That which could not be recycled would be subject to disposal requirements under the Resource Conservation and Recovery Act (RCRA) and would represent an industry-wide increase of 67 Mg (74 tons) in the amount of solid waste generated under current conditions.

The energy impact of the standard would be minimal. The electricity requirements of the add-on particulate controls for all the affected furnaces amount to about 3,400 megawatt-hours per year or about a 1 percent increase in the total energy requirements of all the affected furnaces.

The capital and annualized costs to install and operate an add-on control device for a 100-ton-per-day furnace would be \$2.6 million and \$494,000, respectively. Based on the costs of applying add-on control devices to the 14 existing furnaces that are expected to have to install add-on control devices, total industry-wide capital and annualized costs would be \$27.4 million and \$4.9 million, respectively. If the control costs are passed on to the consumer in the form of product price increases, the price increases for the 14 furnaces are estimated to range from 0.04 to 3.1 percent. This estimate assumes that only the price of the arsenic-containing glass product would be increased to absorb the control costs. If control costs were absorbed by the glass producer, declines in the profits on the sales of the arsenic-containing glass were estimated to range from 2.1 to 10.6

percent for 12 of the 14 furnaces. The remaining two furnaces, from which arsenic-containing glass is only a part of the annual glass production, were estimated to have profit declines of 44.6 and 68.6 percent. These impacts were calculated assuming that the control costs are charged only to the arsenic-containing glass. To the extent that the control costs would be spread over all the glass produced at these furnaces, the profit impacts would be less.

Rational

Selection of Source Category

Glass manufacturing plants are among the nine categories of stationary sources of inorganic arsenic emissions that were identified as potentially posing significant risks to public health. An estimated 36.7 Mg (40.4 tons) of inorganic arsenic is emitted each year from glass melting furnaces at glass manufacturing plants.

Arsenic is currently used in only a small fraction of all the glass manufactured in the U.S., primarily as a fining agent and to provide certain properties to the glass. In 1978 there were 129 glass-producing companies which together operated 338 individual plants. As of May 1983, 15 plants were identified by EPA as using arsenic. These 15 plants are operated by 5 companies in 8 states and contain at least 32 furnaces that use arsenic. The use of arsenic in glass production declined 80 percent between 1968 and 1981. However, further declines are not anticipated unless additional substitutes for arsenic can be found.

Glass manufacturing plants are usually categorized into one of four general sectors: flat glass, container glass, pressed and blown glass, and wool fiberglass. Although the currently known use of arsenic is mostly confined to the pressed and blown glass sector, the potential for arsenic use remains in other sectors. Arsenic is not known to have ever been used as raw material in the wool fiberglass sector. However, until a few years ago, arsenic was used as a raw material in the container and flat glass sectors. Even though most of the plants in these sectors have stopped using arsenic and industry representatives state that there is no technical need for the use of arsenic in these sectors, the EPA is not certain that arsenic use in these sectors has been completely eliminated or will not be used in the future. Therefore, the source category was not defined to exclude any of the four sectors.

There are no existing regulations designed to control ambient

concentrations of arsenic. However, some State particulate matter regulations have resulted in the use of add-on control devices that effectively reduce particulate emissions and, consequently, arsenic emissions that are in particulate form. For example, the 13 existing arsenic-using furnaces that are controlled with electrostatic precipitators (ESP's) or fabric filters account for less than 2 percent of the arsenic emitted by the 32 known arsenic-using furnaces.

In the absence of a standard, the estimated maximum individual lifetime risk of contracting cancer would range from 6.4 in 10,000 to 100 in 10,000 for the most exposed individuals. Maximum individual lifetime risk is the probability of someone contracting cancer who is continuously exposed to the maximum annual average arsenic concentration during an entire lifetime (70 years). Additionally, in the absence of a standard there would be an estimated 0.073 to 1.17 cancer incidences per year due to arsenic emissions from glass manufacturing plants. As discussed in Part I, because there is considerable uncertainty in the assumptions and methodology used to quantify the health impacts, these estimates should not be construed as accurate, absolute values, and should be used for comparison purposes only.

Based on the magnitude of arsenic exposures from this source category, the resulting estimated maximum individual lifetime risks and estimated incidence of cancer in the exposed population (including consideration of the uncertainties associated with these quantitative risk estimates), and the availability of control technology to reduce arsenic emissions, EPA finds that arsenic emissions from glass manufacturing plants create a significant risk of cancer and that development of a national emission standard under Section 112 of the Clean Air Act is warranted for this source category.

Selection of Emission Points to be Covered by the Standard

Glass manufacturing involves three basic steps: raw material handling and mixing; melting; and forming and finishing.

In the first step, the raw materials, such as sand and soda ash, are received, unloaded, and mixed according to the desired product recipe. Although the potential for fugitive emissions from the handling and mixing of these dry products is high, owners and operators of glass manufacturing plants have responded to standards promulgated by the Occupational Safety and Health

Administration (OSHA) by implementing stringent controls. These controls, which are designed to protect employees from exposure to arsenic in the workplace, mainly involve the use of a liquid rather than a powdered form of arsenic. Where powdered arsenic trioxide is still used, handling and mixing operations are in enclosed areas, which are vented through fabric filters. With these controls in place, total emissions from the handling and mixing of raw materials amount to less than 1 percent of total glass industry emissions. Because the industry is uniformly practicing these effective fugitive controls, fugitive emissions from the handling and mixing step were not considered for further controls.

After the raw materials are mixed, they are introduced into the melting furnace, where at temperatures of 1500° to 1700°C they are transformed into a uniform bed of molten glass. Virtually all of the air pollutants, including arsenic, from glass manufacturing plants are generated in the melting furnace. These pollutants result from the combustion of the furnace fuel, usually natural gas, and from the physical and chemical reactions in the melting furnace.

The majority of the arsenic introduced into the melting furnace remains in the glass produced from the furnace. The amount retained varies according to several factors, such as the type of glass being manufactured and the type of furnace. Data submitted by the industry indicate that the arsenic retained in the glass ranges from 70 to 99 percent. Most of the remainder of the arsenic is emitted in the combustion gases—either in a vapor state or, upon cooling, in the form of particulate matter—and is released through the furnace stack.

One of the factors that determines the amount of uncontrolled arsenic emissions is the type of furnace used. Most existing plants using arsenic as a raw material have either regenerative- or recuperative-type furnaces. Regenerative furnaces recover heat from combustion gases by alternating the use of two chambers of refractory heating material called checkerworks. By contrast, recuperative furnaces use one continuously operating, shell-and-tube heat exchanger for combustion air preheating. Both regenerative furnaces and recuperative furnaces melt raw materials by firing fossil fuels. The melting in some fossil-fuel-fired furnaces is augmented by the use of electricity. All-electric resistance melters are also used. Electric melting, which is more energy efficient than using fossil fuel and which currently accounts for about 10 percent of the glass melting, is

believed to produce significantly lower levels of arsenic emissions than fossil-fuel-fired furnaces. However, the use of electric melting is limited to the production of certain types of glass.

Some furnaces melt glass in covered pots. These furnaces, termed "pot furnaces" contain one or more refractory vessels, called "pots," in which glass is melted by indirect heating. The openings to these pots are in the outside walls of the furnace and are covered with refractory stoppers during melting. Because the glass is sealed off from the furnace atmosphere, no material from the glass melt can escape from the furnace with the furnace exhaust. Therefore, pot furnaces, as described here, would emit no arsenic emissions.

In addition to the arsenic emissions from the glass melting furnace, there is the potential for exposure to fugitive airborne arsenic particles from residue or slag which accumulates on the checkerworks of regenerative furnaces and from collected particulate matter (flue dust) at furnaces controlled by add-on control devices. This potential arises when the material is improperly disposed of and is reentrained as wind-blown fugitive particulate matter. Currently, the industry either recycles this material as a furnace feed or disposed of it as hazardous waste.

The third step involving potential emissions from glass manufacturing plants in the forming and finishing process. In this final step, the hot molten glass is extracted from the furnace and subjected to a variety of different forming methods including pressing; blowing in molds; and drawing, rolling, and casting. Then the formed glass is immediately conveyed to continuous annealing ovens to remove internal stresses by controlled cooling. As is the case in the first step, materials handling and mixing, the amount of total emissions, including arsenic, in this final step is negligible.

Based on current estimates of arsenic emissions from glass manufacturing plants, virtually all of the emissions from glass manufacturing plants are released from the glass melting furnace. Therefore, EPA selected the glass melting furnace as the only emission point to be covered by the proposed standard. Associated with this selection EPA designated "each glass melting furnace that uses arsenic as a raw material" as the "source" to which the proposed standard applies. However, EPA concluded that pot furnaces should be exempt from the proposed standard because, even though they may use

arsenic as a raw material, they do not emit arsenic.

Selection of Basis of Proposed Standard

The selection of the basis of the proposed standard involved first an identification of techniques for reducing inorganic arsenic emissions from new and existing glass manufacturing plants. This was followed by an identification of regulatory alternatives and an analysis of the environmental, energy, and economic impacts of each. Based on this analysis, the alternative representing best available technology (BAT) was selected. BAT is that technology, which in the judgment of the Administrator, is the most advanced level of control adequately demonstrated, considering economic, energy, and environmental impacts. For existing sources, BAT would not exceed the most advanced level of control that at least most members of an industry could afford without plant closures. Following the selection of BAT, the process was carried a step further by examining the residual health risks remaining after application of BAT to determine whether they were unreasonable in view of the health benefits and costs that would result if a more stringent alternative than BAT were selected as the basis for the standard.

Identification of Emission Techniques

There are three basic approaches for reducing inorganic arsenic emissions from glass melting furnaces. These include (1) the use of add-on particulate collection devices, (2) the use of electric boosting or all-electric furnaces to reduce furnace emissions, and (3) the reduction or elimination of arsenic as a feedstock in the raw material batch.

A particulate collection device is an effective arsenic emission control device provided the arsenic is in particulate form. There are two forms of add-on control devices used to control particulate emissions from glass melting furnaces that use arsenic: electrostatic precipitators (ESP's) and fabric filters. Eleven of the 32 known arsenic-using furnaces use ESP's and 2 use fabric filters. Testing performed by the industry and the EPA has shown that both fabric filters and ESP's can reduce arsenic emissions by at least 90 percent.

Since arsenic in vapor form is not captured by a particulate control device, the effectiveness of a particulate control device in controlling arsenic emissions would be enhanced if vapor-phase arsenic were condensed to particulate form prior to entering the control device. Based on theoretical considerations, it would be expected that arsenic is emitted from glass melting furnaces as

arsenic trioxide. The vapor pressure characteristics of arsenic trioxide suggest that in low-temperature gas streams there would be a smaller fraction of the total arsenic in the vapor phase than at higher temperatures. However, available data from EPA tests of particulate control devices on two glass furnaces that use liquid arsenic acid in the batch materials (rather than powdered arsenic trioxide) are contrary to the expected theoretical relationship between gas stream temperature and the amount of arsenic in the vapor phase.

At one plant, where the gas stream temperature was about 210°C (408°F), the concentration of arsenic in the inlet gas stream was such that all of the arsenic present would be expected to be in the vapor phase. However, less than 1 percent of the total arsenic was in the vapor phase, as evidenced by the fact that the control device (an ESP) was 99 percent efficient in reducing the arsenic emissions. At another plant, where the gas temperature within the control device was 138°C (280°F), the concentration of arsenic in the inlet gas stream was such that all the arsenic present would be expected to be in the vapor phase at the control device temperature, yet the control device (a fabric filter) was determined to be 93 percent efficient. Because these test data do not support the expected theoretical relationship between gas stream temperature and the portion of the total arsenic that is in vapor form, it is uncertain whether gas stream cooling would be effective in increasing the efficiency of particulate control devices in reducing arsenic emissions from glass melting furnaces. Although the expected theoretical relationship was not demonstrated on the two control devices used on glass furnaces that use liquid arsenic acid in the batch material, the relationship may be demonstrated at furnaces using powdered arsenic trioxide, because powdered arsenic trioxide may result in a substantial higher portion of arsenic in vapor form.

The second technique for reducing arsenic emissions from glass plants is through the use of an all-electric or electric boosted furnace. In an all-electric furnace no direct fossil fuel combustion is involved. Electric boosting is the term used to describe a method of glass melting in which an electric current is used to augment glass melting in a furnace firing gas or oil. For all-electric and electric boosted furnaces, heat is generated by passing an electric current through the molten glass. Because the heat is supplied internally to the glass, a higher percentage of the total energy supplied

to the furnace is converted to usable heat.

The use of electricity can decrease the generation of emissions from the glass melting furnace. However, the percent reduction of arsenic emissions achieved by electric boosting is uncertain and may be variable. The EPA's estimates of the industry's uncontrolled arsenic emissions include the reductions achieved by electric boosting. For example, the furnace identified as having the highest arsenic emissions in the industry uses electric boosting. All-electric melters generally have much lower emissions than do fossil-fuel-fired furnaces because the surface of the melter generally is maintained at near ambient temperatures. This minimizes losses from vaporization and, accordingly, reduces emissions from the melter.

Even though there may be emission reductions achieved by electric boosting and all-electric melters, it is not technically possible to use electric boosting in all furnaces or to substitute all-electric melters for fossil-fuel-fired furnaces. Only certain types of glass have the electrical properties suitable for electric melting, and some glass formulations corrode the electrodes used in the all-electric melters. Therefore, EPA concluded that the use of electric boosting or all-electric melters is not a demonstrated control technique in the sense that neither electric boosting nor all-electric melters can be specified and evaluated for the purpose of developing standards.

The third approach to reducing or eliminating arsenic emissions from glass manufacturing plants is to reduce or eliminate the use of arsenic as a raw material for the glass being produced. The complete elimination of arsenic as a raw material appears to be feasible for the container, flat, and wool fiberglass categories. However, if certain specialty glasses in the pressed and blown category are to be continued to be produced, arsenic use must continue since there are currently no substitutes available. Arsenic use in the production of certain specialty glass has been reduced to the minimum amounts necessary to maintain the quality and quantity of products demanded by the market place. Therefore, to reduce arsenic use further or to eliminate it entirely would probably result in the elimination of the arsenic-containing products and, possibly, the shutdown of most or all existing furnaces using arsenic in the pressed and blown glass category. However, the EPA believes that there may be no technical barrier to the elimination of arsenic in the

production of glass in the other categories. Therefore, the EPA invites comments on the feasibility of eliminating arsenic use in the flat glass, container glass, and wool fiberglass categories.

Identification of Regulatory Alternatives

The EPA has considered the available emission reduction technique and identified three regulatory alternatives for reducing arsenic emissions from new and existing glass manufacturing plants.

Under Regulatory Alternative I, no national emission standard would be established for arsenic emissions from glass manufacturing plants. Therefore, under this alternative, no additional controls beyond those already mandated by other regulations (e.g., State implementation plans, NSPS) would be required. Regulatory Alternative I corresponds to the baseline level of control.

Regulatory Alternative II is based on the use of add-on particulate collection devices (ESP's or fabric filters) on glass melting furnaces and represents at least 90 percent arsenic emission control at these furnaces.

Regulatory Alternative III would ban arsenic emissions altogether. This could be accomplished either through the elimination of arsenic as a feedstock or through any method that assures complete retention of the arsenic in the glass. The EPA is not aware of any means of assuring that arsenic is completely retained in the glass. Therefore, it is believed that Alternative III would result in the elimination of arsenic as a feedstock and, possibly, the closure of many or all of the arsenic-using glass furnaces in the pressed and blown glass category.

Impacts of Regulatory Alternatives

The individual furnace impacts presented below are computed by applying the regulatory alternatives to various-sized hypothetical individual furnaces, called "model furnaces." The industry-wide impacts that are presented represent the aggregate impacts on the furnaces that EPA expects would be affected by each regulatory alternative. As discussed previously, EPA limited its impact analysis to those arsenic-using furnaces for which EPA has arsenic emissions data. There are 32 such furnaces; and, as discussed previously, it is believed that these furnaces represent the majority of the arsenic emissions from glass melting furnaces. Regulatory Alternative I would affect no furnaces. Regulatory Alternative II would necessitate that the 19 furnaces that emit arsenic and currently do not have add-on controls

install add-on particulate controls to reduce arsenic. Regulatory Alternative III would affect all 32 furnaces that emit arsenic.

Environmental Impacts. Under Regulatory Alternative I there would be no change in environmental impacts. Arsenic emissions from arsenic-using furnaces would be about 36.7 Mg/yr (40.4 tons/yr). In addition, particulate emissions from these furnaces would be 960 Mg/yr (1,056 tons/yr).

Under Regulatory Alternative II, the arsenic emissions from existing arsenic-using furnaces would be reduced to approximately 4.3 Mg (4.8 tons) per year and particulate emissions would be reduced to 82 Mg/yr (90 tons/yr). No adverse water pollution impacts would occur since the add-on control devices do not produce wastewater. The arsenic-containing particulate matter collected by the add-on control device would increase the solid waste generated at a glass plant. However, it is a common practice in the industry to recycle the collected particulate matter back to the furnace thereby minimizing the potential solid waste impact of Regulatory Alternative II. To the extent that the collected particulate matter is not recycled, it is handled as a hazardous waste. Assuming that it would only be possible to recycle 90 percent of the particulate matter, it is estimated that 87 Mg (96 tons) per year would have to be disposed of under Alternative II. This represents an increase of 67 Mg (74 tons) in the amount of solid waste generated under baseline conditions.

Under Regulatory Alternative III, arsenic emissions from glass melting furnaces would be zero. If the industry were to respond to Regulatory Alternative III by closing down the existing arsenic-using glass furnaces, all air pollutants which would have been emitted from these furnaces would be eliminated. There would be little or no reduction in water quality since glass plants do not discharge effluent, and a small, positive solid waste impact would result. It was estimated that about 20 Mg of solid waste are currently disposed of per year by the existing arsenic-using glass manufacturing plants.

Energy Impacts. Regulatory Alternative I would have no energy impacts. The incremental energy impacts of Regulatory Alternative II above the baseline case result from the electrical requirements of the add-on control device and fans. The annual electric energy use of a particulate control device for a 100-ton-per-day furnace is estimated to be about 270,000 kilowatt-hours, or about 30 times the average annual consumption of a typical

single family household. The total industry-wide energy impact under Regulatory Alternative II amounts to about 3.4 million kilowatt-hours per year based on use of add-on control devices. Regulatory Alternative III would result in a nationwide energy savings of 580,000 megawatt-hours per year if the industry were to respond to Alternative III by closing the 32 arsenic-using glass furnaces. However, these savings do not take into account the energy losses that may occur because of the absence of certain specialty glasses used in energy conservation and solar-energy collection.

Cost and Economic Impacts. Regulatory Alternative I would have no cost or economic impacts. The cost and economic impacts of Regulatory Alternative II are based on the costs of retrofitting ESP's, which are slightly more expensive than fabric filters. In this sense, the cost and economic impacts, which are quantified in this section, are worst-case estimates. The economic impacts of Regulatory Alternative III focus on those associated with the shutdown of the 32 arsenic-using furnaces.

The capital cost of Regulatory Alternative II for a 100-ton-per-day glass melting furnace would be about \$2.6 million (all costs for 4th quarter 1982 dollars). The annualized costs of Regulatory Alternative II would be approximately \$494,000 for this same size furnace. If this same furnace produced tableware or other machine-made consumerware and if these costs were passed through in the form of product price increases, it was estimated that the product price increases would be 0.5 and 0.4 percent for capacity utilization rates of 70 and 100 percent, respectively. If the glass manufacturer completely absorbed these costs, the decreases in profit on sales were estimated to be 5.1 and 3.1 percent for capacity utilization rates of 70 and 100 percent, respectively.

Worst-case economic impacts of Regulatory Alternative II were also analyzed. These impacts would be associated with individual arsenic-containing products and would occur at furnaces that produce these products as a limited part of their full production. The production of TV envelope tubes and borosilicate tubing were estimated to incur the most adverse impact, with impacts being particularly large at 25-ton-per-day furnaces that produce the particular product only 25 percent of the time. In the case of TV envelope tubes, if 100 percent of the control costs were passed through in the form of price increases for the TV envelope tube

product only, price increases of 13.3 percent were predicted. If these costs were completely absorbed and charged only to the TV envelope tube product, profit on sales were estimated to decrease by 114 percent. Similarly, for a 25-ton-per-day furnace that produces borosilicate tubing only 25 percent of the time, it was estimated that the cost of controls could result in a price increase of 8.2 percent assuming full cost pass-through. If the costs were completely absorbed by the manufacturer, the decrease in profit on sales was estimated to be 122 percent.

It is believed that these impacts represent worst-case impacts for hypothetical furnace size/product type combinations. No actual furnaces matching these cases and currently without add-on controls are known to exist. The arsenic-using furnaces that are known to produce TV envelope tubes are at least 100-ton-per-day furnaces and are already controlled by add-on control devices and, therefore, are not expected to be affected by Alternative II. Likewise, the arsenic-using furnaces that have been identified as producing borosilicate tubing are not expected to be affected by Alternative II because they are already controlled by add-on control devices.

The cost and economic impacts that are expected to result from Regulatory Alternative II are those expected for the 19 known arsenic-using furnaces that would need to install add-on control devices under Regulatory Alternative II. The industry-wide impacts, based on control of these 19 furnaces, are discussed below.

Industry-wide capital costs for Alternative II would be about \$29.8 million and the annualized costs would be about \$5.4 million. If these costs are passed through in the form of price increases, it is estimated that the price increases would range from 0.04 to 3.1 percent for the 19 furnaces expected to incur the cost of Regulatory Alternative II. If the costs are fully absorbed, decreases in profit on sales for these 19 furnaces are estimated to range from 2.1 to 68.6 percent. These impacts assume that the cost of control would be charged only to the arsenic-containing product. To the extent that glass producers would spread the control costs over all products produced by the affected furnace, the impacts would be

less. Moreover, it is believed that the assumptions of full cost absorption or full cost pass-through are not valid, because it is expected that glass producers would balance cost absorption and price increases so that economic impacts are minimized.

If the industry responded to Regulatory Alternative III by closing all existing arsenic-using furnaces, the economic impacts would be significant. It is estimated that these furnaces produce products which are valued at \$1.9 billion annually and provide jobs for about 30,000 workers. Communities relying on the plants containing these furnaces would be adversely affected by the layoffs and lost tax revenues. Other impacts are very difficult to quantify and include the possible loss of valuable products which currently make use of glass containing arsenic. Regulatory Alternative III is not expected to affect furnaces that produce container glass, flat glass, and wool fiberglass because it is believed that arsenic is not being used in the production of these glass types.

Selection of Best Available Technology

In selecting best available technology (BAT) for new and existing glass melting furnaces, EPA examined the regulatory alternative to determine the most advanced level of control adequately demonstrated considering the economic, energy, and environmental impacts and technological problems associated with retrofit. The EPA first considered the most stringent option, Regulatory Alternative III, which would ban arsenic emissions from glass melting furnaces. As discussed previously, the only apparent means of meeting this alternative is to eliminate arsenic as a feedstock. Thus, the arsenic-containing specialty glass products would be eliminated and, in the worst case, the existing arsenic-using glass melting furnaces would be forced to close. Since it is estimated that these furnaces produce products valued at \$1.9 billion annually and provide about 30,000 jobs, the economic impact of furnace closure would be significant. In addition, the loss of the specialty glass products would have indirect adverse impacts that are difficult to quantify. Given the direct and indirect adverse economic impacts of furnace closure, the EPA rejected Alternative III as BAT and next considered Regulatory Alternative II.

Regulatory Alternative II would result in at least 90 percent reduction of arsenic emissions from affected glass melting furnaces. However, because of the differences among furnaces, particularly the differences in uncontrolled arsenic emissions rates, EPA examined the effect of these differences on the cost impacts and emission reduction benefits of Alternative II. This examination led to the decision that furnaces that emit 0.40 mg (0.44 ton) or less arsenic per year uncontrolled (i.e., preceding an add-on control device) should be excluded from the requirement to achieve 90 percent control of arsenic emissions. This decision is based on EPA's conclusion that the cost of add-on controls for such furnaces is unreasonable considering the small emission reduction that would be gained by controlling them.

The EPA arrived at this conclusion after examining the arsenic emission reductions that would be achieved by add-on control devices installed on each of the 19 existing arsenic-using furnaces that do not already have add-on controls. As shown in Table IV-2 which lists the furnaces in order of decreasing emissions, the magnitude of uncontrolled arsenic emissions from each furnace and the emission reduction achieved by controlling each furnace become relatively small near the bottom of the list. Nothing this and the fact that the annualized cost of controlling each furnace remains relatively constant regardless of the magnitude of emissions from the furnace, EPA conclude that as the emissions from furnaces become smaller, the cost of controlling the furnaces becomes unreasonable considering the emission reduction achieved. Therefore, EPA decided that it was reasonable to establish an emission level whereby furnaces that emit at or below this level would be excluded from the 90 percent control requirement, which necessitates the use of an add-on control device. In EPA's judgment this level is 0.40 Mg (0.44 ton) per year. The cost-effectiveness of control at this level is \$795,000 per megagram. With an exclusion at this level, 99.5 percent of the total potential emission reduction would be achieved by installing add-on control devices on the 14 furnaces that emit more than 0.40 (0.44 ton) per year.

TABLE IV-2. EMISSION AND COST ESTIMATES FOR THE 19 UNCONTROLLED ARSENIC-USING FURNACES

Existing furnaces without add-on control devices	Uncontrolled arsenic emissions, Mg/yr	Emission reduction achievable by add-on control device, Mg/yr	Cumulative emission reduction as percent of total potential emission reduction (percent)	Annualized cost of add-on control device (dollars)	Cumulative annualized cost as percent of total potential annualized cost (percent)	Cost per unit emission reduction \$/Mg
1	15.20	13.68	42.50	494,000	9.16	36,100
2	3.35	3.02	51.68	339,000	15.45	112,300
3	3.09	2.78	60.52	368,000	22.27	132,400
4	3.09	2.78	69.16	342,000	28.61	123,000
5	1.99	1.79	74.72	348,000	35.06	194,000
6	1.83	1.65	79.85	494,000	44.22	299,400
7	1.82	1.64	84.95	226,000	48.41	137,800
8	1.27	1.14	88.49	269,000	53.40	236,000
9	0.91	0.82	91.04	242,000	57.89	295,100
10	0.76	0.68	93.15	494,000	67.05	726,500
11	0.73	0.66	95.20	295,000	72.52	447,000
12	0.55	0.50	96.75	326,000	78.56	652,000
13	0.55	0.50	98.36	357,000	85.18	714,000
14	0.45	0.40	99.54	318,000	91.08	795,000
15	0.12	0.11	99.88	132,000	93.53	1,200,000
16	0.04	0.036	99.99	348,000	99.98	6,666,700
17						
18						
19						

* Four furnaces vented to one stack.

* Total not equal to 100 percent due to round-off error.

In establishing this exclusion level between the group of furnaces with the greatest potential emissions and the group with lower potential emissions, the Agency considered emission rates, emission reduction potential, control costs, and the economic impacts of controls. This analysis led to the clear conclusion that control is reasonable for furnaces with the highest potential emissions and that control is unreasonable (considering the small benefit) for furnaces with the lowest potential emissions. The analysis did not, however, provide a clear, objective formula for establishing the precise point at which costs and other impacts become unreasonable relative to the emission reduction benefits. Therefore, the level being proposed reflects the Agency's best judgment of BAT, based on consideration of the factors which are relevant to this decision and most particularly on the Agency's judgment that arsenic emissions should be minimized. The proposed exclusion level would have the effect of extending the degree of control that is now in place at 13 of the 32 arsenic-using furnaces to 14 additional furnaces that are currently without add-on controls. EPA believes that this level would exclude all-electric furnaces and small hand glass furnaces. The Agency recognizes that others may have different views on where an appropriate cutoff, if any, should be made and is specifically requesting comments on the appropriateness of the level selected and on the validity of the data on which the selection was based.

In making this selection, the Administrator recognizes that certain products may be adversely impacted and that in certain cases, glass producers may discontinue production of these products or change this

production to other furnaces. Also, while no closures have been predicted, the Administrator recognizes that the closure of one or more furnaces is not impossible. However, considering the extent to which controls are now used in the industry and the significant emissions from glass-melting furnaces, the Administrator has concluded that the degree of control reflected by Alternative II is BAT.

Consideration of Risk Remaining After BAT

After Regulatory Alternative II was selected as representing BAT, EPA examined the estimated health risks remaining after the application of BAT to determine whether they are unreasonable in view of the risk reduction and other impacts that would result if controls beyond BAT were selected.

After the application of BAT, it is estimated that there would be 0.013 to 0.210 cancer incidence per year due to arsenic emissions from existing arsenic-using glass furnaces. The estimated maximum individual lifetime risk to the most exposed population after the application of BAT would range from 0.97 in 10,000 to 15.6 in 10,000.

Eliminating the 0.40 Mg (0.44 ton) per year exclusion level would not affect the estimated maximum lifetime risk and would have negligible effect on estimated cancer incidence. Therefore, Alternative III represents the only alternative that would significantly affect estimated maximum lifetime risk and estimated cancer incidence. Under Regulatory Alternative III, there would be zero arsenic emissions from glass melting furnaces and, therefore, no increased risk of cancer due to arsenic emissions from glass plants above that

which would exist from exposure to other sources of arsenic emissions. However, under Regulatory Alternative III, there would be severe economic impacts resulting from potential furnace closures. Considering that the reduction in risk that is possible with Alternative III is small relative to the high costs of the elimination of the products derived from arsenic-using glass furnaces and the possible elimination of the jobs provided by these furnaces, EPA determined that the risks remaining after applying BAT are not unreasonable. The EPA concluded, therefore, that the proposed standard should be based on BAT (Regulatory Alternative II).

Though it was decided that the proposed standard should not ban arsenic emissions, EPA believes that there is no technical need for the use of arsenic in the container glass, flat glass, and wool fiberglass sectors, and is considering including in the final standard a ban on arsenic emissions from these three sectors. The EPA specifically requests comments on this subject.

Selection of Format of Proposed Standard

The decision by EPA that the proposed standard should be based on BAT means that the proposed standard should require the level of control achievable by BAT. It was determined that BAT is represented by Regulatory Alternative II, which means, in effect, that BAT for furnaces that emit greater than 0.40 Mg (0.44 ton) of arsenic per year uncontrolled (i.e., preceding an add-on control device) is the use of an add-on particulate control device, while BAT for furnaces that emit 0.40 Mg (0.44 ton) or less per year is no control.

Consequently, the proposed standard should require that a furnace either meet the level of control achievable by add-on particulate control devices or maintain uncontrolled arsenic emissions at 0.40 Mg (0.44 ton) per year or less. The selection of the format of the part of the standard that would require the level of control achievable by an add-on particulate control device is discussed in this section.

The level of control achievable by an add-on particulate control device could be described in terms of either the level of arsenic control achievable or the level of particulate matter control achievable. A format that would limit the amount of inorganic arsenic emitted was considered. However, among the various glass batch recipes, there is considerable variability in the arsenic emission levels due to variability in the amount of arsenic used in the feedstock and the amount of arsenic retained in the product glass. Therefore, if the arsenic emission limit were set high enough to allow for the maximum arsenic emissions level that would be expected for the variability observed, the standard may not result in each furnace being controlled to the BAT level. Some furnaces might be able to achieve the arsenic limit without installing an add-on particulate control device.

Using an efficiency format, which would require a percent reduction of arsenic emissions, the problem of the variability in the arsenic emissions level would be avoided. However, to demonstrate compliance with an efficiency standard, it is necessary to make emission measurements at both the inlet and outlet of the control device. Because measurements at two locations are necessary, the cost of demonstrating compliance with an efficiency format standard is higher than demonstrating compliance with other format types.

The EPA decided that a format that would limit the amount of particulate matter emitted would be a better approach to dealing with the variability of arsenic emission levels than an efficiency format. Because arsenic particulate matter is only a fraction of the total particulate matter emitted from a glass melting furnace, the variability that is observed in arsenic emission levels should not be observed in the levels of total particulate matter emitted from a furnace. Moreover, particulate emission levels accurately reflect the performance of add-on particulate control devices. Therefore, EPA decided that the format of the part of the proposed standard that would require the level of control achievable by add-

on particulate control devices should be a particulate matter emission limit.

The regulation of inorganic arsenic through a particulate emission limit which necessitates the use of an add-on particulate control device is effective for reducing arsenic in the particulate form. However, as discussed in a previous section, arsenic in the vapor phase is not controlled by particulate collection devices. Since the vapor pressure characteristics of arsenic trioxide suggest that at lower temperatures there should be a smaller fraction of the total arsenic in the vapor phase than at higher temperatures, it initially appeared reasonable to consider establishing an upper limit for the temperature of the gas stream entering the control device. However, as discussed earlier, available test data on furnaces that use liquid arsenic acid in the batch material (rather than powdered arsenic trioxide) raise uncertainty about the effect of gas cooling on the arsenic control performance of particulate collection devices used on glass furnaces. These data showed that the fraction of total arsenic in particulate form was much greater than expected based on vapor pressure considerations. This may be due to the use of liquid arsenic acid, which may result in arsenic compounds that have a lower vapor pressure than arsenic trioxide. Based on the available data, EPA decided that the proposed standard should not specify an upper limit on the gas stream temperature. However, EPA plans to gather more information on the effect of temperature and type of arsenic (liquid arsenic acid or powdered arsenic trioxide) used in the batch material. Based on the new information EPA may require a temperature limit, the use of liquid arsenic acid, or both a temperature limit and the use of liquid arsenic acid in the final standard and is requesting comment on this subject.

It seems reasonable that any temperature limitation should apply only to those furnaces that would have to install add-on control devices to comply with the proposed standard. This is because estimates of the cost of installing a new add-on control device show that the total annualized costs of gas cooling followed by a particulate collection device are generally less than the total annualized costs of a control device alone. This lower annualized cost is due to the fact that gas cooling results in a smaller volume of gas to treat and thus reduces the required size of the particulate collection device. Thus, to the extent that limiting temperature results in capture of arsenic that would

otherwise be emitted as vapor, this is accomplished at no extra cost at furnaces that would need to install control devices. For furnaces that already have an add-on particulate control device in place, retrofitting and operating a gas cooling system would increase the cost of control.

Selection of Emission Limits

After it was determined that the format for the proposed standard would be a particulate emission limit, the selection of specific particulate emission limits which would reflect BAT for each industry sector remained to be addressed by EPA.

Within the glass industry, there are several distinct industry sectors based upon the type of glass produced. The different glass types require distinct furnace sizes, furnace configurations, and operating conditions, and consequently, have different emission levels. Equally important, from a regulatory perspective, are the distinctions in the market conditions and product slates. These distinctions in economic conditions reflect differences in the ability of the various industry sectors to bear the costs of regulation. In the development of the glass manufacturing plant NSPS, these technical and economic conditions were taken into account in establishing emission levels reflecting best demonstrated technology (BDT) for six glass industry sectors. The BDT on which the NSPS is based is the same as the BAT that the EPA selected to serve as the basis of the proposed standards [i.e., the use of add-on particulate control devices (ESP's or fabric filters)]. Because of this and because EPA has determined that add-on particulate control devices used on existing glass furnaces can meet the NSPS emission limits, the proposed standard would establish the identical emission limits by industry sector established for the glass manufacturing plant NSPS promulgated on October 7, 1980 (45 FR 66742). Therefore, the proposed standard would set six different emission limits—one each for three of the four recognized industry sectors (container glass, flat glass, and wool fiberglass) and three within the pressed and blown sector. These six emission limits were further differentiated by the type of fuel used in the glass furnace. As for the glass manufacturing plant NSPS, oil-fired furnaces would be allowed a 30 percent increase over the limits established for gas-fired furnaces and all-electric furnaces (except for flat glass for which there is no differential). This difference

reflects the inherent emission contributions of the oil and gas fuels.

Demonstration of Compliance

An owner or operator who chooses to comply with the proposed standard by achieving the particulate emission limits, must demonstrate compliance by measuring particulate emissions using EPA Reference Method 5. This method is discussed in the "Selection of Emission Test Methods" section. The proposed standard would require that an owner or operator who wants to comply with the proposed standard by maintaining uncontrolled (i.e., preceding an add-on control device) arsenic emissions at or below 0.40 Mg (0.44 ton) per year, demonstrate compliance by measuring uncontrolled (i.e., preceding an add-on control device) arsenic emissions from the furnace using EPA Reference Method 108. This method is being proposed today and is discussed in the "Selection of Emission Test Methods" section. The proposed standard allows that another method be used if the Administrator determines it to be adequate for determining compliance. In addition, as provided under § 61.13 of the General Provisions of 40 CFR Part 61, the Administrator may waive the requirement for an emission test. It is intended that this waiver provision would allow an owner or operator who can clearly demonstrate through material balance or other non-test data that the annual uncontrolled arsenic emissions from a furnace do not exceed 0.40 Mg (0.44 ton) not to have to conduct an emission test. The results of the arsenic emission measurement would be used to develop a "measured arsenic emission factor" for the arsenic-containing glass type that was being produced while the Method 108 (or equivalent method) test was being conducted.

In addition, the proposed standard would require that the owner or operator perform a material balance calculation for the furnace operating conditions existing during the Method 108 (or equivalent method) test. This calculation would be used to develop a "theoretical arsenic emission factor." The ratio of the measured arsenic emission factor to the theoretical arsenic emission factor would be computed for use in estimating measured arsenic emissions as described in the following paragraphs.

For the initial demonstration that a furnace is in compliance with the proposed standard, the owner or operator would estimate the arsenic emissions from the furnace over the next 12-month period, using the measured arsenic emission factor that was

developed for the arsenic-containing glass produced while the Method 108 test was conducted along with an estimate of the amount of this arsenic-containing glass that will be produced during the next 12-month period. If arsenic-containing glass types other than the type that was produced during the test are expected to be produced during the next 12 months, then the owner or operator would develop theoretical emission factors for these glass types based on material balance calculations. Then, by multiplying these theoretical emission factors by the ratio of the measured to theoretical emissions factor, measured arsenic emission factors would be computed for the other glass types. These emission factors would then be used, along with estimates of the amounts of the other glass types that will be produced during the next 12 months, to estimate arsenic emissions for that period.

The proposed standard would require that 6 months after the initial compliance demonstration, and every 6 months thereafter, the owner or operator calculate and record what the level of uncontrolled arsenic emissions was during the preceding 6-month period. This level would be computed using one or more measured emission factors (depending on whether one or more arsenic-containing glass types were produced) and the known amounts of arsenic-containing glass that were produced during the period. For the purposes of these 6-month calculations, it would not be necessary to conduct a Method 108 test again. The measured emission factors would be computed, as discussed earlier, by multiplying theoretical emission factors by the ratio of the measured to theoretical emission factor that was calculated initially. If the 6-month calculation reveals that arsenic emissions during the preceding 12-month period (or 6-month period, in the case of the first 6-month calculation) exceeded 0.40 Mg (0.44 ton), then the source was in violation of the standard and the owner or operator must report this fact to the Administrator within 10 days of performing the calculation.

In addition to requiring a retrospective estimate of arsenic emissions for the previous 6-month period, the proposed standard requires that every 6 months the owner or operator estimate the uncontrolled arsenic emissions expected during the next 12-month period. If this estimate indicates that uncontrolled arsenic emissions will exceed 0.40 Mg (0.44 ton), then the owner or operator must demonstrate compliance with the particulate emission limits, and, within 10 days, give written notice to the

Administrator of when they intend to conduct the Method 5 compliance test.

Selection of Monitoring Requirements

The proposed standard would require owners or operators choosing to comply with the standard by achieving the particulate emission limits of the standard to install, operate, and maintain a continuous opacity monitoring system. Monitoring of source emissions provides a convenient tool for enforcement authorities and a means by which plant operators can detect control equipment malfunctions. No method exists for continuously measuring particulate emissions directly. However, the opacity of exhaust gases can be measured continuously by using a transmissometer. A transmissometer is an optical device mounted in the stack which continuously monitors the percentage of light transmitted through a representative portion of the flue gas and records as percent opacity the percentage of light attenuated due to absorption and scattering by particulate matter. The total installed cost of a transmissometer is about \$25,000 per source with annualized costs of about \$14,000 (including data handling and training operators). Compared to the costs of a particulate control device, these costs are small and were determined to be reasonable considering that there are no other reasonable alternatives for insuring that the control device is continuously functioning properly.

There are currently insufficient opacity data from glass manufacturing plants to establish a single opacity limit for all sources. Therefore, the proposed standard would require that a source-specific opacity level be established for each affected source at the time of the particulate emission test that demonstrates compliance with the particulate emission limits. This opacity level would not be an enforceable visible emission limit, but rather would serve as an indicator for plant and enforcement personnel that the control device may not be operating properly.

To establish the source-specific opacity level, the owner or operator of the source would be required to conduct continuous opacity monitoring during the emission test. The opacity monitoring results would be reduced to 6-minute averages, and the opacity level would be established at the 97.5 percent upper confidence level of a normal or log normal (whichever is more representative) distribution of the 6-minute-average opacity values.

The proposed standard would require that all opacity monitoring results be

maintained at the source for a period of at least 2 years and that the owner or operator submit a report to EPA every 6 months if opacity in excess of the source-specific level occurred during the preceding 6-months period. The reports of the excess emission would not be used directly in determining compliance with the standard, but would serve as an indication to enforcement authorities that an emission test may be required.

Selection of Emission Test Methods

Two emission test methods were selected for use in implementing the proposed standard. However, the proposed standard allows other test methods to be used if the Administrator (1) specifies or approves, in specific cases, the use of a reference method with minor changes in methodology, (2) approves the use of an equivalent method, or (3) approves the use of an alternative method the results of which he has determined to be adequate for indicating whether a specific source is in compliance.

The EPA Reference Method 5, "Determination of Particulate Emissions from Stationary Sources," (Appendix A, 40 CFR 60) was selected as the emission test method for demonstrating compliance with the proposed particulate emission limits. Reference Method 5 has been shown to provide a representative measurement of particulate emissions and was specified for use in demonstrating compliance with the glass manufacturing plants NSPS. As was done in the glass manufacturing plant NSPS, the proposed standard would modify Method 5 for this application to allow a higher filter box temperature. This modification was made to eliminate the effects of sulfuric acid on the measurement of particulate matter. Sulfur trioxide (SO₃), which exists as a gas in the exhaust gas of furnaces firing fuel oil containing more than 0.5 weight percent sulfur, is not collected by an add-on particulate control device but may condense as sulfuric acid onto the filter of the sampling train when the filter box temperature is at 120°C (the temperature specified by Method 5). Therefore, to prevent sulfuric acid from being collected by the sample filter and counted as particulate matter, the proposed standard would allow operation of the filter and the probe at up to 177°C, which is above the sulfuric acid dew point. This modification would be allowed only for furnaces that are firing fuel oil having a sulfur content greater than 0.5 weight percent.

Calculations applicable under Method 5 necessitate the use of data obtained from other EPA reference methods—

Methods 1, 2, 3, and optionally Method 4. These are also described in Appendix A of 40 CFR 60. The proposed regulation explains how the results of Method 5 are converted into the units of the emission limits. Since the proposed emission limits would be expressed as mass of emissions per unit of mass of glass produced, it will be necessary to quantify the mass of glass pulled. Glass production would be determined by direct measurement or computed from materials balanced data. The materials balance computation may consist of a process relationship between feed material input rate and the glass pull rate. In all materials balance computations, glass pulled from the furnace shall include product, cullet, and any waste glass. The hourly glass pull rate for a furnace would be determined by averaging the glass pull rate over the time of the performance test.

The EPA Reference Method 108, "Determination of Particulate and gaseous Arsenic Emissions," was selected as the emission test method for determining whether a furnace emits 0.40 Mg (0.44 ton) or less of arsenic per year uncontrolled (i.e., preceding an add-on control device). This method is being proposed today along with the proposed standard. Method 108 produces emission measurement results expressed as mass of arsenic emitted per hour. Since the exclusion level would be expressed as mass or arsenic emitted per year, the proposed regulation prescribes that the results of Method 108 be used to establish an emission factor (i.e., mass of arsenic per unit of mass of glass pulled). This emission factor would then be used along with yearly production estimates to estimate the mass of arsenic emitted per year.

Reporting and Recordkeeping Requirements

Owners or operators of sources covered by the proposed standard would be subject to the reporting and recordkeeping requirements of the proposed standard, as well as those prescribed in the General Provisions (Subpart A) of 40 CFR Part 61. Sources subject to the proposed standard are all glass melting furnaces that use arsenic as a raw material (except pot furnaces).

Reporting Requirements

Existing sources, arsenic-using furnaces for which construction or modification commenced before the date of publication of the proposed standard, would be required to submit an initial source report to EPA as provided in § 61.10(a). The owner or operator of each existing source is

required to provide the following data in this initial source report: identification of owner or operator, source location, technical information on furnace design and production process, types of hazardous pollutants emitted, amount of hazardous pollutants emitted over the past 12 months, a description of any pollution controls which may be in place, and a statement of the feasibility of complying with the standard within 90 days of the date of promulgation of the standard. The purpose of this report is to assist EPA in identifying all existing arsenic-using glass furnaces and the amounts of arsenic emitted, and to determine their likelihood of compliance. Section 61.10(c) requires that the owner or operator report to EPA any changes in the initial source report.

For new sources, arsenic-using furnaces for which construction or modification commenced after the date of publication of the proposed standard, there is a series of one-time reports designed to confirm whether the furnace is affected by the standard and to provide notice to EPA of important milestones in the construction or modification process. The first of these is a written application to EPA from the owner or operator of the furnace. This report, required by § 61.06, is for the purpose of determining whether the planned construction or modification of the furnace would qualify the furnace as a new source subject to the standard. If, based upon this report, EPA determines that the furnace would be a new source that is subject to the standard, EPA will inform the owner or operator that the furnace is subject to the proposed standard whereupon the owner or operator would apply to EPA for approval to construct or modify the furnace. This application, prescribed under § 61.07, requires that the owner or operator provide process and emissions control data to EPA so that the Agency can determine if the source would comply with the standard. After EPA has approved the proposed construction or modification, the owner or operator would be required to notify EPA of certain project milestones including notification of the anticipated date of initial startup, as required in § 61.09(a)(1), and notification of the actual date of startup, as required under § 61.09(a)(2).

To allow EPA to confirm that a source is in compliance with the standard, the proposed standard requires that the owner or operator of a source notify EPA of the anticipated date of the initial emission test and, as applicable, the demonstration of the opacity monitoring system. After these tests have been

completed, the owner or operator is required to report the results to EPA in order the compliance can be determined.

The owner or operator of a source choosing to comply with the proposed standard by meeting the particulate matter emission limits would be required to report to EPA every 6 months if occurrences of excess opacity were recorded during the reporting period. These reports would identify the date, time, and duration of the excess opacity occurrences. Although these reports would not be used directly to determine compliance, they would serve as the primary means by which EPA enforcement personnel can evaluate the performance of the controls. Based on these reports, EPA may require additional emission testing.

The owner or operator of a source choosing to comply with the proposed standard by maintaining uncontrolled arsenic emissions at 0.40 Mg (0.44 ton) per year or less would be required to perform calculations every 6 months to estimate what arsenic emissions were during the preceding 6-month period and what level of arsenic emissions is expected during the next 12-month period. If these calculations reveal that arsenic emissions exceeded 0.40Mg (0.44 ton) during the past 12-month period, then the owner or operator must report this to the Administrator within 10 days of performing the calculation. If these calculations indicate that arsenic emissions will exceed 0.40 Mg (0.44 ton) during the next 12-month period, then the owner or operator must demonstrate compliance with the particulate matter emission limits and must, within 10 days of performing the calculation, notify EPA of the anticipated date of the emission test.

Recordkeeping Requirements

The owner or operator of a new or existing source would be required to maintain a file of the following records: all measurements, including monitoring and testing data; all calculations used to produce the required reports of emission estimates; monitoring system performance evaluations, including calibration checks and adjustments; the occurrence and duration of any startup, shutdown, or malfunction in the operation of the furnace; and malfunction of the air pollution control system; any periods during which the continuous monitoring system or device is inoperative; and all maintenance and repairs made to the air pollution controls or monitoring system. These records would be required to be maintained at the source for a period of 2 years. The purpose of the recordkeeping requirements is to enable

EPA enforcement authorities to verify data submitted in reports and, in general, to aid in determining compliance with the proposed standard.

Impacts of Reporting and Recordkeeping Requirements

EPA believes that these reporting and recordkeeping requirements are necessary to assist the Agency in (1) identifying arsenic-using glass furnaces, (2) observing the emission testing and demonstration of the opacity monitoring devices, (3) determining initial compliance, and (4) enforcing the standard after the initial compliance determination. The proposed standard provides that new or modified glass furnaces, which are subject to the proposed standard and choose to comply with the proposed standard by achieving the particulate matter emission limits, would not be subject to the NSPS for glass manufacturing plants. Therefore, there would be no duplication of reporting and recordkeeping requirements between the two standards.

The Paperwork Reduction Act (PRA) of 1980 (Pub. L. 96-511) requires that the Office of Management and Budget (OMB) approve reporting and recordkeeping requirements that qualify as an "information collection request" (ICR). For the purposes of accommodating OMB's review, EPA uses 2-year periods in its impact analysis procedures for estimating the labor-hour burden of reporting and recordkeeping requirements.

The average annual burden on the glass manufacturing industry to comply with these reporting and recordkeeping requirements over the first 2 years is estimated to be 26,900 person-hours. The supporting statement that documents calculation of this burden is filed as item II-B-4 in docket A-83-08.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 requires that differential impacts of Federal regulations upon small businesses be identified and analyzed. The RFA stipulates that a regulatory flexibility analysis is required if a substantial number of small businesses will experience significant impacts. Both measures must be met. That is, substantial numbers of small businesses must be affected and they must experience significant impacts to require an analysis. Twenty percent or more of the small businesses in an affected source category is considered a substantial number.

Though EPA taken actions to identify small businesses in the glass industry, the Agency has insufficient information

about the number of small businesses that would be affected by the proposed standard (i.e., the number that use arsenic) to determine conclusively whether a substantial number would incur significant impacts. Consequently, because EPA could not conclude that a regulatory flexibility analysis was not needed, a preliminary analysis has been prepared.

This analysis involved the identification of the small businesses in the country and an investigation of the use of arsenic and arsenic emissions from the furnaces at several of these facilities. The analysis indicated that because of several aspects of the proposed standard, it is unlikely that a substantial number of small businesses would incur significant impacts. These aspects are: (1) the exclusion of furnaces that emit 0.40 Mg of arsenic per year or less from the requirement of add-on control devices, (2) the exemption of pot furnaces, and (3) the provision that the emission testing requirement can be waived if non-test methods are adequate to demonstrate that arsenic emissions do not exceed 0.40 Mg/yr. The analysis is filed as item II-B-5 in docket A-83-08. The analysis will be completed before the standard is promulgated as final.

V. MISCELLANEOUS

As prescribed by Section 112, establishment of these standards was preceded by the Administrator's determination that inorganic arsenic presents a significant carcinogenic risk to human health, and is, therefore, a hazardous air pollutant as defined in Section 112(a)(1) of the Act. Inorganic arsenic was added to the list of hazardous air pollutants on June 5, 1980. In accordance with Section 117 of the Act, publication of these proposed standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed standards, including health, economic, and technological issues, and on the proposed test method.

These standards will be reviewed 5 years from the date of promulgation. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and reporting requirements.

An economic impact assessment was prepared for each standard and for other regulatory alternatives. All

aspects of the assessment were considered in the formulation of the standards to ensure that costs were carefully considered in determining the levels of the standards. The economic impact assessment for each standard is included in the BID's for the proposed standards.

Public Hearings

Public hearings will be held to discuss the proposed standards in accordance with Sections 112(b)(1)(B) and 307(d)(5) of the Clean Air Act. As indicated in the DATES section of this preamble, two hearings are scheduled. The first hearing will be held in Washington, D.C. on August 23, 24, and 25, 1983. The second hearing, which will address only the proposed standards for the high-arsenic primary copper smelter category, will be held in Tacoma, Washington on August 30, 1983. Persons wishing to make oral presentations on the proposed standards should contact the appropriate person listed in the DATES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after each hearing. Written statements should be addressed to the Central Docket Section address given in the Addresses section of this preamble.

A verbatim transcript of each of the hearings and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see Addresses section of this preamble). Also, a verbatim transcript of the hearing to be held in Tacoma will be placed in the Docket A-80-40 that will be available at the EPA Region X office in Seattle (see Addresses section of this preamble).

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of the proposed standards. The principal purposes of the docket are (1) to allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials [§ 307(d)(7)(A)]).

Paperwork Reduction Act

The reporting and recordkeeping (information collection) provisions associated with the proposed standards (§§ 61.06, 61.07, 61.09, 61.10, 61.163, 61.164, 61.166, 61.173, 61.176, 61.177, 61.178, 61.183, 61.186, 61.187, 61.188) have

been submitted for approval to the Office of Management and Budget (OMB) under Section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Each final rule will explain how the reporting and recordkeeping requirements respond to any OMB or public comments. Public comments on the reporting and recordkeeping requirements should be sent to the Office of Information and Regulatory Affairs of OMB to the attention of the desk officer for EPA.

Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. None of the proposed standards is considered major because none is expected to result in:

- (1) an annual effect on the economy of \$100 million or more;
- (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rulemaking was submitted to the Office of Management and Budget for review as required by the Executive Order 12291.

Regulatory Flexibility Analysis

A preliminary regulatory flexibility analysis has been prepared for the proposed standard for glass manufacturing plants. The results of this analysis, which are discussed in more detail in Part IV of this preamble, indicate that it is unlikely that the proposed standard for glass manufacturing plants would have a significant economic impact on a substantial number of small business entities. However, because this conclusion is based on limited information about small glass firms, comments and information are specifically requested on this subject. The regulatory flexibility analysis will be completed prior to promulgation of the final standard.

Regulatory Flexibility Act Certification

Pursuant to provisions of 5 U.S.C. 605(b), I hereby certify that the proposed standards for high-arsenic and low-arsenic copper smelters, if promulgated, will not have a significant economic impact on a substantial number of small business entities because none of the

firms in the copper smelting industry is small.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl Chloride.

Dated: July 11, 1983.

William D. Ruckelshaus,
Administrator.

References

- (1) Lee, A.M. and J.F. Fraumeni, Jr., "Arsenic and Respiratory Cancer in Man: An Occupational Study," *Journal of National Cancer Institute*, 42:1045-52, 1969, Docket Number (OAQPS 79-8) II-1-1.
- (2) National Academy of Sciences, "Arsenic," Committee on Medical and Biologic Effects of Environmental Pollutants, Washington, D.C. 1977, Docket Number (OAQPS 79-8) II-A-3.
- (3) International Agency of Research on Cancer, "IARC Monographs on Evaluation of the Carcinogenic Risk of Chemicals to Humans," Supplement 4, October 1982.
- (4) U.S. EPA, "An Assessment of the Health Effects of Arsenic," April 1978, Docket Number (OAQPS 79-8) II-A-5.
- (5) U.S. EPA, Science Advisory Board, Subcommittee on Arsenic, Report of the Subcommittee's Review of Arsenic as a Possible Hazardous Air Pollutant, May 22-23, 1978, January 10, 1979, and April 18, 1979, Docket Numbers (OAQPS 79-8) II-B-3, II-B-4, and II-B-6.
- (6) Suta, Benjamin, "Human Exposures to Atmospheric Arsenic," SRI International, Report to EPA under Contract No. 68-01-4314 and 68-02-2835, May 1980, Docket Number (OAQPS 79-8) II-A-9.
- (7) U.S. EPA, "An Assessment of Health Effects of Arsenic Germane to Low Level Exposure," Revised External Review-Draft, Washington, D.C., October 1978, Docket Number (OAQPS 79-8) II-A-6.
- (8) National Academy of Sciences, Safe Drinking Water Committee, National Research Council, "Drinking Water and Health," Washington, D.C., 1977.
- (9) U.S. EPA, "The Carcinogen Assessment Group's Final Risk Assessment on Arsenic," May 2, 1980, Docket Number (OAQPS 79-8) II-A-10.
- (10) U.S. EPA, et. al., "Environmental Cancer and Heart and Lung Disease," Fifth Annual Report to Congress by the Task Force on Environmental Cancer and Heart and Lung Disease, August, 1982.
- (11) Systems Application, Inc. "Human Exposure to Atmospheric Concentrations of Selected Chemicals," (Prepared for the U.S. Environmental Protection Agency, Research Triangle Park, North Carolina), Volume I, Publication Number EPA-2/250-1, and Volume II, Publication Number EPA-1/250-2.
- (12) U.S. EPA, "Health Assessment Document for Acrylonitrile," Draft Report from Office of Health and Assessment, EPA-600/8-82-007, November 1982.
- (13) Carcinogen Assessment Group, U.S. Environmental Protection Agency, "Carcinogen Assessment Group's Final

Report on Population Risk to Ambient Benzene Exposures." 1978.

(14) Blot, W.J., and Fraumeni, J.F., Jr. "Arsenical Air Pollution and Lung Cancer," *The Lancet*, pp. 142-144, July 1975.

(5) PEDCo Environmental, Inc., "Emission Test Report-Evaluation of an Air Curtain Hooding System for a Primary Cooper Converter, ASARCO, Inc., Tacoma, Washington," (preliminary draft). Prepared for U.S. Environmental Protection Agency, Research Triangle Park, N.C., Volumes I and II, March, 1983, Docket Number (A-80-4) II-A-40.

It is proposed that Part 61 of Chapter I, Title 40 of the Code of Federal Regulations be amended by adding a new Subpart N and a new Reference Method 108 to Appendix B, as follows:

PART 61—[AMENDED]

1. The Table of Contents of Part 61 is amended by adding Subpart N and by adding an entry for new Test Method 108 to Appendix B as follows:

Subpart N—National Emission Standards for Inorganic Arsenic Emissions From Glass Manufacturing Plants

- Sec.
- 61.160 Applicability and designation of source.
 - 61.1601 Definitions.
 - 61.1602 Emission limits.
 - 61.1603 Procedures for demonstrating compliance.
 - 61.1604 Emission monitoring.
 - 61.1605 Emission testing.
 - 61.1606 Reporting and recordkeeping requirements.

Appendix B—Test Methods

Method 108—Determination of Particulate and Gaseous Arsenic Emissions

Authority: Secs. 112 and 301(a), Clean Air Act as amended (42 U.S.C. 7412 and 7601(a)), and additional authority as noted below.

2. Part 61 is amended by adding Subpart N as follows:

Subpart N—National Emission Standard for Inorganic Arsenic Emissions From Glass Manufacturing Plants

§ 61.160 Applicability and designation of source.

(a) The source to which this subpart applies is each glass melting furnace that uses arsenic as a raw material, except pot furnaces.

(b) An owner or operator who would be subject to the provisions of both 40 CFR Part 60, Subpart CC and to this subpart, shall be exempt from 40 CFR Part 60 Subpart CC if he demonstrates compliance with § 61.162(a)(1).

§ 61.161 Definitions.

The terms used in this subpart are defined in the Clean Air Act, in § 61.02, or in this section as follows:

"Arsenic-containing glass type" means any glass that is distinguished from other glass solely by the weight percent of arsenic in the batch feed material and by the weight percent of arsenic in the glass produced. Any two or more glasses that have the same weight percent of arsenic in the batch feed material as well as in the glass produced shall be considered to belong to one arsenic-containing glass type, without regard to the recipe used or any other characteristics of the glass or the method of production.

"Borosilicate recipe" means raw material formulation of the following approximate weight proportions: 72 percent silica, 7 percent nepheline syenite, 13 percent anhydrous borax, 8 percent boric acid, and 0.1 percent miscellaneous materials.

"Container glass" means glass made of soda-lime recipe, clear or colored, which is pressed and/or blown into bottle, jars, ampoules, and other products listed in Standard Industrial Classification 3221 (SIC 3221).

"Flat glass" means glass made of soda-lime recipe and produced into continuous flat sheets and other products listed in SIC 3211.

"Glass melting furnace" means a unit comprising a refractory vessel in which raw materials are charged, melted at high temperature, refined, and conditioned to produce molten glass. The unit includes foundations, superstructure and retaining walls, raw material charger systems, heat exchangers, melter cooling system, exhaust system, refractory brickwork, fuel supply and electrical boosting equipment, integral control systems and instrumentation, and appendages for conditioning and distributing molten glass to forming apparatuses. The forming apparatuses, including the float bath used in flat glass manufacturing, are not considered part of the glass melting furnace.

"Glass produced" means the weight of the glass pulled from the glass melting furnace.

"Lead recipe" means raw material formulation of the following approximate weight proportions: 56 percent silica, 8 percent potassium carbonate, and 36 percent red lead.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other

preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"Measured arsenic emission factor" means the amount of inorganic arsenic, expressed in grams per kilogram of glass produced, as determined based on inorganic arsenic measured using EPA Reference Method 108.

"Pot furnace" means a glass melting furnace that contains one or more refractory vessels in which glass is melted by indirect heating. The openings of the vessels are in the outside wall of the furnace and are covered with refractory stoppers during melting.

"Pressed and blown glass" means glass that is pressed, blown, or both, including textile fiberglass, noncontinuous flat glass, noncontainer glass, and other products listed in SIC 3229. It is separated into:

- (a) Glass of borosilicate recipe.
- (b) Glass of soda-lime and lead recipes.
- (c) Glass of opal, fluoride, and other recipes.

"Shutdown" means the cessation of operation of a source for any purpose.

"Soda-lime recipe" means raw material formulation of the following approximate weight proportions: 72 percent silica, 15 percent soda, 10 percent lime and magnesia, 2 percent alumina, and 1 percent miscellaneous materials (including sodium sulfate).

"Theoretical arsenic emission factor" means the amount of inorganic arsenic, expressed in grams per kilogram of glass produced, as determined based on a material balance.

"Uncontrolled arsenic emissions" means the inorganic arsenic in the glass melting furnace exhaust gas preceding any add-on particulate control device.

"Wool fiberglass" means fibrous glass of random texture, including fiberglass insulation, and other products listed in SIC 3296.

§ 61.162 Emission limits.

(a) Each owner or operator of a glass melting furnace subject to the provisions of this subpart shall comply with either paragraph (a)(1) or paragraph (a)(2) of this section.

(1) No owner or operator shall cause to be discharged into the atmosphere—

(i) From any glass melting furnace fired exclusively with a gaseous fuel or using an all-electric melting process, particulate matter at emission rates exceeding those specified in Table N-1, Column 2, or

(ii) From any glass melting furnace fired exclusively with a liquid fuel, particulate matter at emission rates

exceeding those specified in Table N-1, Column 3, or

(iii) From any glass melting furnace fired simultaneously with gaseous and liquid fuels, particulate matter at emission rates exceeding STD as specified by the following equation:

$$STD = X(0.3Y + 1)$$

where:

STD = Particulate matter emission limit, g of particulate/kg of glass produced.

X = Emission rate specified in Table N-1 for furnaces fired with gaseous fuel (Column 2).

Y = Fraction of total (gaseous and liquid) fuel heating value supplied by the liquid fuel fired in the glass melting furnace as determined in § 61.165(b)(9).

TABLE N-1.—EMISSION LIMITS

(g of particulate/kg of glass produced)

Column 1	Column 2	Column 3
Glass Manufacturing Plant Industry Sector	Furnaces fired with gaseous fuel and All-electric melters	Furnaces fired with liquid fuel
Container glass	0.100	0.130
Pressed and blown glass:		
Borosilicate recipes	0.500	0.650
Soda-lime and lead recipes	0.100	0.130
Other than borosilicate, soda-lime, and lead recipes (including opal, fluoride, and other recipes)	0.250	0.325
Wool fiberglass	0.250	0.325
Flat glass	0.225	0.225

(2) No owner or operator shall operate a glass melting furnace with uncontrolled arsenic emissions in excess of 0.40 Mg (0.44 ton) per year.

§ 61.163 Procedures for demonstrating compliance.

(a) Unless a waiver of emissions testing is obtained under § 61.13, each owner or operator subject to the provisions of this subpart shall test emissions from each source using the test methods and procedures as specified in § 61.165:

(1) Within 90 days of the effective date of the standard for a source that has an initial startup date preceding the effective date; or

(2) Within 90 days of startup for a source that has an initial startup date after the effective date.

(b) Each owner or operator subject to the provisions of this subpart shall provide the Administrator at least 30 days prior notice of the emissions test to afford the Administrator the opportunity to have an observer present.

(c) Each emissions test shall be conducted while the source is operating under such conditions as the Administrator may specify to the owner or operator based on representative performance of the source.

(d) Each owner or operator subject to the provisions of this subpart shall furnish the Administrator a written report of the results of the emissions test within 60 days of conducting the test.

(e) Each owner or operator who chooses to comply with § 61.162(a)(2) shall determine the level of uncontrolled arsenic emissions by:

(1) Measuring uncontrolled arsenic emissions from the source according to procedures described in § 61.165(c). Uncontrolled arsenic emissions shall be measured during the production of the arsenic-containing glass type (as defined in § 61.161) that the owner or operator expects will generate the highest rates of uncontrolled arsenic emissions from the source during the succeeding 12 months. The result of this measurement shall be converted to a "measured arsenic emission factor," expressed as g/kg, as described in § 61.165(c)(5).

(2) Deriving a "theoretical arsenic emission factor," expressed as g/kg, based on a material balance calculation performed for the same batch of glass produced during the measurement of arsenic emissions required under § 61.163(e)(1).

(3) Calculating the ratio of the measured arsenic emission factor from § 61.163(e)(1) to the theoretical arsenic emission factor from § 61.163(e)(2). This ratio shall be used as a "correction factor" in the development of arsenic emission estimates based on the use of theoretical emission factors as described in § 61.163(e)(4) and § 61.163(f).

(4) Estimating uncontrolled arsenic emissions for the initial 12-month period as follows:

(i) If the arsenic-containing glass type (as defined in § 61.161) that was produced during the measurement of uncontrolled arsenic emissions required under § 61.163(e)(1) is the only arsenic-containing glass type that will be produced during the 12-month period, then the owner or operator shall estimate arsenic emissions for the 12-month period by multiplying the measured arsenic emission factor from § 61.163(e)(1) by the amount (in kg) of the arsenic-containing glass type that the owner or operator plans to produce during the 12-month period.

(ii) If arsenic-containing glass types (as defined in § 61.161) other than the type that was produced during the measurement of arsenic emissions required under § 61.163(e)(1) will be produced during the 12-month period, then the owner or operator shall estimate uncontrolled arsenic emissions for the 12-month period as follows:

(A) For each arsenic-containing glass type that will be produced during the 12-

month period the owner or operator shall:

(1) derive a "theoretical arsenic emission factor" based on a material balance calculation, and

(2) calculate a "measured arsenic emission factor" by multiplying the theoretical arsenic emission factor from § 61.163(e)(4)(ii)(A)(1) by the "correction factor" from § 61.163(e)(3).

(B) Uncontrolled arsenic emissions for the 12-month period shall be estimated by multiplying each measured arsenic emissions factor from § 61.163(e)(4)(ii)(A)(2) by the amount (in kg) of the respective arsenic-containing glass types that the owner or operator plans to produce during the 12-month period, and summing the products of each multiplication.

(f) The records required by § 61.160(c), shall contain the following:

(1) an estimate of the uncontrolled arsenic emissions from the source during the immediately preceding 6-month period computed as follows:

(i) For each arsenic-containing glass type (as defined in § 61.161) produced during the preceding 6 months, determine a "measured arsenic emission factor" as follows:

(A) If the arsenic-containing glass type is the same as that produced during the measurement of arsenic emissions required by § 61.163(e)(1), use the "measured arsenic emission factor" from § 61.163(e)(1).

(B) If the arsenic-containing glass type is other than the type produced during the measurement of arsenic emissions required by § 61.163(e)(1), use the procedures described in § 61.163(e)(4)(ii)(A)(2).

(ii) For each arsenic-containing glass type produced during the preceding 6 months, estimate the uncontrolled arsenic emissions during the preceding 6 months by multiplying each measured arsenic emission factor from § 61.163(f)(1)(i) by the amount (in kg) of the respective arsenic-containing glass type that was produced during the preceding 6 months.

(iii) Sum the products obtained in § 61.163(f)(1)(ii) to obtain the estimated uncontrolled arsenic emissions from the source during the preceding 6 months.

(2) an updated arsenic emission forecast for the next 12-month period taking into account anticipated changes in production rates, arsenic-containing glass types to be produced, and other factors that might affect uncontrolled arsenic emissions, and computed by the procedures described in § 61.163(e)(4)(i) and (ii).

§ 61.164 Emission monitoring.

(a) An owner or operator who chooses to comply with § 61.162(a)(1) shall install, calibrate, maintain, and operate a continuous monitoring system for the measurement of the opacity of emissions discharged into the atmosphere from the source.

(b) All continuous monitoring systems shall be installed and operational prior to conduction of an emissions test as required in § 61.163(a). Verification of operational status shall, as a minimum, consist of an evaluation of the monitoring system in accordance with the requirements and procedures contained in Performance Specification 1 of Appendix B of 40 CFR Part 60. A written report of the results of the continuous monitoring system evaluation shall be furnished to the Administrator within 60 days of conducting the evaluation.

(c) During the emission test required in § 61.165(b) each owner or operator subject to § 61.164(a) shall:

(1) Conduct continuous opacity monitoring during each test run.

(2) Calculate 6-minute opacity averages from 24 or more data points equally spaced over each 6-minute period during the test runs.

(3) Determine, based on the 6-minute opacity averages, the opacity value corresponding to the 97.5 percent upper confidence level of a normal or lognormal (whichever the owner or operator determines is more representative) distribution of the average opacity values.

(4) An owner or operator may redetermine the opacity value corresponding to the 97.5 percent upper confidence level as described in § 61.164(c)(3) if the owner or operator conducts continuous opacity monitoring during each test run of an emission test that demonstrates compliance with the emission limits in § 61.162(a)(1), and recalculates the 6-minute averages described in § 61.164(c)(2).

(d) The requirements of § 60.13(d), (d)(3), and (f) shall apply to an owner or operator subject to § 61.164(a).

(e) Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required under § 60.13(d) and (d)(3), all continuous monitoring systems shall be in continuous operation and shall meet minimum frequency of operation requirements by completing a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(f) An owner or operator subjects to § 61.164(a) shall reduce all opacity data to 6-minute averages. Six-minute

averages shall be calculated from 24 or more data points equally spaced over each 6-minute period. Data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments shall not be included in the data averages computed under this paragraph.

(g) After receipt and consideration of written application, the Administrator may approve alternative continuous monitoring systems for the measurement of one or more process or operating parameters that is or are demonstrated to enable accurate and representative monitoring of a properly operating control device. After the Administrator approves an alternative continuous monitoring system for an affected source, the requirements of § 61.164(a)-(f) will not apply for that source.

§ 61.165 Emission testing.

(a) Emission tests shall be conducted and data reduced in accordance with the test methods and procedures contained in this section unless the Administrator—

(1) Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

(2) Approves the use of an equivalent method;

(3) Approves the use of an alternative method the results of which he has determined to be adequate for indicating whether a specific source is in compliance; or

(4) Waives the requirements for emission tests as provided under § 61.13.

(b) Reference Method 5 in Appendix A of 40 CFR Part 60 shall be used to determine compliance with § 61.162(a)(1) as follows:

(1) Method 1 shall be used for sample and velocity traverses, and

(2) Method 2 shall be used to determine velocity and volumetric flow rate.

(3) Method 3 shall be used for gas analysis.

(4) Method 5 shall be used to determine the concentration of particulate matter and the associated moisture content. Each test shall consist of three separate runs. The sampling time for each run shall be at least 60 minutes and the collected particulate matter shall weigh at least 50 mg. For the purpose of determining the concentration of particulate matter, the arithmetic mean of the results of the three runs shall apply.

(5) For any glass melting furnace fired with a liquid fuel containing more than 0.50 weight percent sulfur, Method 5 shall be conducted with the probe and filter holder heating system in the

sampling train set to provide a gas temperature no greater than 177°C.

(6) The particulate emission rate, E , shall be computed as follows:

where:

$$E = Q \times C$$

E = particulate emission rate, g/h.

Q = average volumetric flow rate from Method 2, dscm/h.

C = average concentration of particulate matter from Method 5, g/dscm.

(7) The rate of glass produced, P , shall be determined by dividing the weight, in kilograms (kg), of glass pulled from the source during the emission test by the number of hours (h) taken to perform the test. The glass pulled, shall be determined by direct measurement or computed from materials balance.

(8) For the purposes of demonstrating compliance with the emission limits in § 61.162(a)(1), the furnace particulate emission rate, R , shall be computed as follows:

$$R = (E - A) \div P$$

where:

R = furnace emission rate, g/kg.

E = particulate emission rate from § 61.165(b)(6), g/h.

A = zero production rate correction as follows:

$A = 227$ g/h for container glass, pressed and blown (soda-lime and lead) glass, and pressed and blown (other than borosilicate, soda-lime, and lead) glass.

$A = 454$ g/h for pressed and blown (borosilicate) glass, wool fiberglass, and flat glass.

P = rate of glass production from § 61.165(b)(7), kg/h.

(9) When gaseous and liquid fuels are fired simultaneously in a glass melting furnace, the heat input of each fuel, expressed in joules, is determined during each testing period by multiplying the gross calorific value of each fuel fired (in joules/kilogram) by the rate at which each fuel is fired (in kilogram/second) to the glass melting furnace. The decimal fraction of liquid fuel heating value to total fuel heating value is determined by dividing the heat input of the liquid fuels by the sum of the heat input for the liquid fuels and the gaseous fuels. Gross calorific values are determined in accordance with American Society of Testing and Materials (A.S.T.M.) Method D 240.64(73) (liquid fuels) and D 1826-64(7) (gaseous fuels), as applicable. The owner or operator shall determine the rate of fuels burned during each testing period by suitable methods and shall confirm the rate by a material balance over the glass melting system.

(c) Reference Method 108 in Appendix B of 40 CFR Part 61 shall be used to

determine compliance with § 61.162(a)(2) as follows:

(1) Method 1 shall be used for sample and velocity traverses, and

(2) Method 2 shall be used to determine velocity and volumetric flowrate.

(3) Method 3 shall be used for gas analysis.

(4) The rate of glass produced, P (kg/h) shall be determined by dividing the weight, in kilograms (kg), of glass pulled from the source during the emission test by the number of hours (h) taken to perform the test. The glass pulled, in kilograms, shall be determined by direct measurement or computed by materials balance.

(5) For the purpose of the procedures described in § 61.163(e)(1), the "measured arsenic emission factor" shall be computed as follows:

$$R_a = E_a \div P$$

where:

R_a = "measured arsenic emission factor," g/kg.

E_a = arsenic emission rate from Method 108, g/h.

P = rate of glass production from § 61.165(c)(4), kg/h.

§ 61.166 Reporting and recordkeeping requirements.

(a) Each owner or operator required to install a continuous opacity monitoring system under § 61.164 shall submit a written report to the Administrator semiannually if excess opacity occurred during the preceding 6-month period. For purposes of this section, an occurrence of excess opacity is any 6-minute period during which the average opacity, as measured by the continuous monitoring system, exceeds the opacity level determined under § 61.164(c)(3) or, of redetermined, the opacity under § 61.164(c)(4).

(b) All semiannual reports shall be postmarked by the 30th day following the end of each 6-month period and shall include the following information:

(1) The magnitude of excess opacity, any conversion factor(s) used, and the date and time of commencement and

completion of each occurrence of excess opacity.

(2) Specific identification of each occurrence of excess opacity that occurs during startups, shutdowns, and malfunctions of the source.

(3) The date and time identifying each period during which the continuous monitoring system was inoperative, except for zero and span checks, and the nature of the system repairs or adjustments.

(c) Each owner or operator who demonstrates compliance with § 61.162(a)(2) shall, 6 months after demonstrating compliance and every 6 months thereafter, record the arsenic emission estimates prescribed under § 61.163(f).

(1) If the arsenic emission estimates prescribed under § 61.163(f)(1) reveal that uncontrolled arsenic emissions during the preceding 12-month period [or preceding 6-month period, in the case of the first 6-month period following the demonstration of compliance with § 61.162(a)(2)] exceeded 0.40 Mg (0.44 ton) per year, then the owner or operator shall report this fact to the Administrator. All such reports shall be postmarked by the 10th day following the end of the 6-month reporting period.

(2) If the arsenic emission estimate prescribed under § 61.163(f)(2) indicates that uncontrolled arsenic emissions will exceed 0.40 Mg (0.44 ton), then the owner or operator shall demonstrate compliance with § 61.162(a)(1). In this case, the owner or operator shall, within 10 days, notify the Administrator of the anticipated date of the emission test required under § 61.163(a).

(d) Any owner or operator of a source subject to the provisions of this subpart shall maintain a file of the following records: all measurements, including monitoring and testing data; all calculations used to produce the required reports of emission estimates; monitoring system performance evaluations, including calibration checks and adjustments; the occurrence and duration of any startup, shutdown,

or malfunction in the operation of the furnace; any malfunction of the air pollution control system; any periods during which the continuous monitoring system or device is inoperative; and all maintenance and repairs made to the air pollution controls or monitoring system. This file shall be recorded in a permanent form suitable for inspection and shall be retained for at least 2 years following the date of such measurements, maintenance, reports, and records.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

3. Part 61 is amended by adding Method 108 to Appendix B as follows:

Appendix B—Test Methods

• • • • •

Method 108—Determination of Particulate and Gaseous Arsenic Emissions

1. Applicability and Principle.

1.1 Applicability. The Method applies to the determination of inorganic arsenic (As) emissions from stationary sources as specified in the regulations.

1.2 Principle. Particulate and gaseous arsenic emissions are withdrawn isokinetically from the source and collected on a glass mat filter and in water. The collected arsenic is then analyzed by means of atomic absorption spectrophotometry.

2. Apparatus.

2.1 Sampling Train. A schematic of the sampling train is shown in Figure 108-1; it is similar to the Method 5 train of 40 CFR 60, Appendix A.

Note.—This and all subsequent references to other methods refer to the methods in 40 CFR 60, Appendix A. The sampling train consists of the following components:

2.1.1 Probe Nozzle, Probe Liner, Pitot Tube, Differential Pressure Gauge, Filter Holder, Filter Heating System, Metering System, Barometer, and Gas Density Determination Equipment. Same as Method 5, Sections 2.1.1 to 2.1.6 and 2.1.8 to 2.1.10, respectively.

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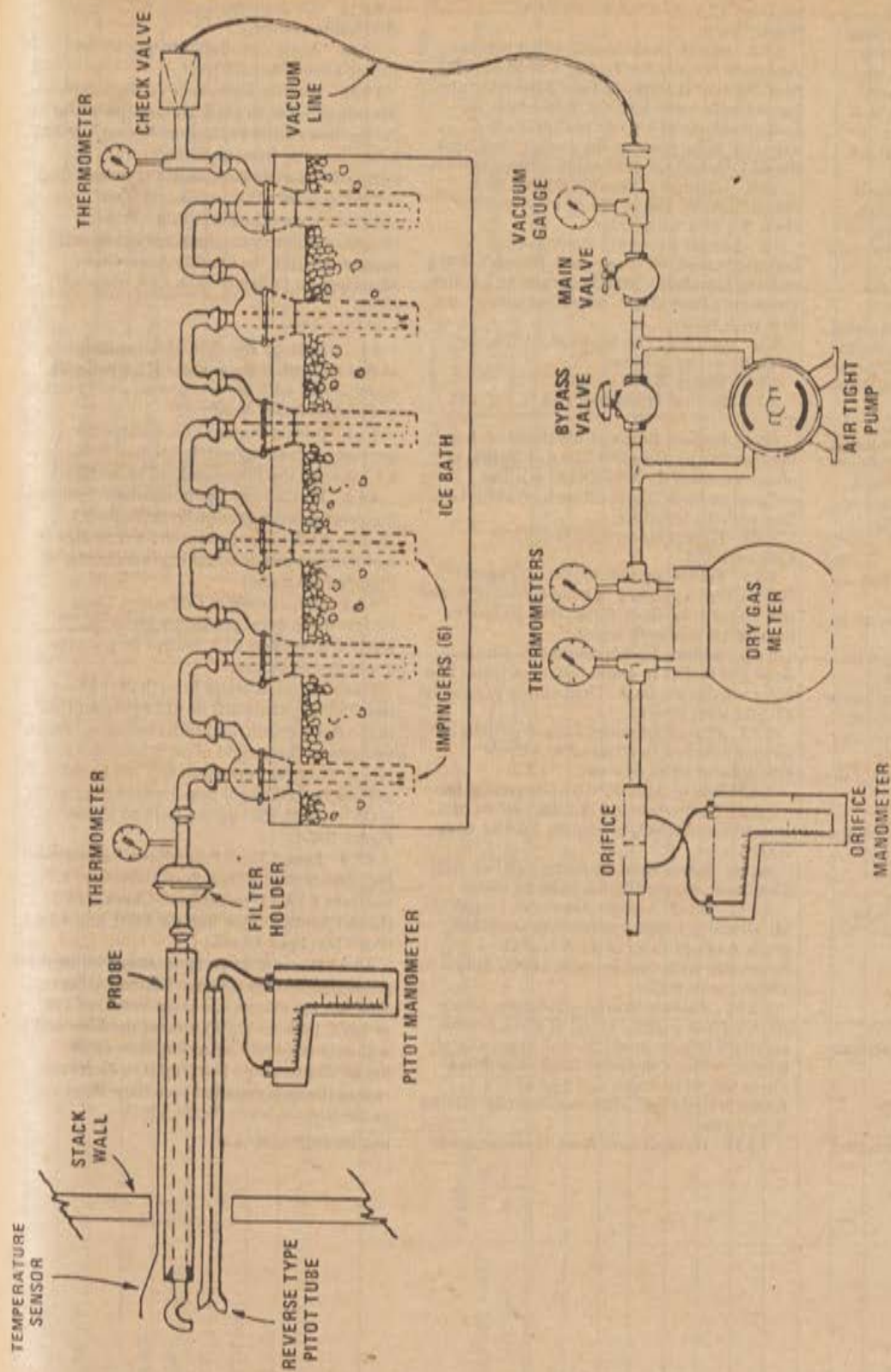


Figure 103-1. Arsonic sampling train.

2.1.2 Impingers. Six impingers connected in series with leak-free ground-glass fittings or any similar leak-free noncontaminating fittings. For the first, third, fourth, fifth, and sixth impingers, use the Greenburg-Smith design, modified by replacing the tip with a 1.3-cm-ID (0.5 in.) glass tube extending to about 1.3 cm (0.5 in.) from the bottom of the flask. For the second impinger, use the Greenburg-Smith design with the standard tip. The tester may use modifications (e.g., flexible connections between the impingers, materials other than glass, or flexible vacuum lines to connect the filter holder to the condenser), subject to the approval of the Administrator.

Place a thermometer, capable of measuring temperature to within 1°C (2°F), at the outlet of the sixth impinger for monitoring purposes.

2.2 Sample Recovery. The following items are needed:

2.2.1 Probe-Liner and Probe-Nozzle Brushes, Petri Dishes, Graduated Cylinder or Balance, Plastic Storage Containers, Rubber Policeman, and Funnel. Same as Method 5. Sections 2.2.1 and 2.2.4 to 2.2.8, respectively.

2.2.2 Wash Bottles. Polyethylene (2).

2.2.3 Sample Storage Containers. Chemically resistant, polyethylene or polypropylene for glassware washes, 500- or 1,000-ml.

2.3 Analysis. The following equipment is needed:

2.3.1 Spectrophotometer. Equipped with an electrodeless discharge lamp and a background corrector to measure absorbance at 193.7 nm. For measuring samples having less than 10 µg As/ml, use a vapor generator accessory.

2.3.2 Recorder. To match the output of the spectrophotometer.

2.3.3 Beakers. 150-ml.

2.3.4 Volumetric Flasks. Glass 50=, 100=, 200=, 500=, and 1,000=ml; and polypropylene, 50=ml.

2.3.5 Erlenmeyer Flasks. 250=ml.

2.3.6 Balance. To measure within 0.5 g.

2.3.7 Volumetric Pipets. 1=, 2=, 3=, 5=, 8=, and 10=ml.

2.3.8 PARR Acid Digestion Bomb.

2.3.9 Oven.

2.3.10 Hot Plate.

3. Reagents

Unless otherwise specified, use American Chemical Society reagent grade (or equivalent) chemicals throughout.

3.1 Sampling. The reagents used in sampling are as follows:

3.1.1 Filters, Silica Gel, Crushed Ice, and Stopcock Grease. Same as Method 5.

Sections 3.1.1, 3.1.2, 3.1.4, and 3.1.5, respectively.

3.1.2 Water. Deionized distilled to meet American Society for Testing and Materials Specification D 1193-74, Type 3 (incorporated by reference—see § 60.17). When high concentrations of organic matter are not expected to be present, the analyst may omit the KMnO_4 test for oxidizable organic matter.

3.1.3 Hydrogen Peroxide (H_2O_2), 10 Percent (W/V). Dilute 294 ml of 30 percent H_2O_2 to 1 liter with water.

3.2 Sample Recovery. 0.1 N sodium hydroxide (NaOH) is required. Dissolve 4.00 g of NaOH in about 500 ml of water in a 1-liter volumetric flask. Then, dilute to exactly 1.0 liter with water.

3.3 Analysis. The reagents needed for analysis are as follows:

3.3.1 Water. Same as 3.1.2.

3.3.2 Sodium Hydroxide, 0.1 N. Same as 3.2.

3.3.3 Sodium Borohydride (NaBH_4), 5 Percent (W/V). Dissolve 5.00 g of NaBH_4 in about 500 ml of 0.1 N NaOH in a 1-liter volumetric flask. Then, dilute to exactly 1.0 liter with 0.1 N NaOH .

3.3.4 Hydrochloric Acid (HCl), Concentrated.

3.3.5 Potassium Iodide (KI), 30 Percent (W/V). Dissolve 300 g of KI in 500 ml of water in a 1-liter volumetric flask. Then, dilute to exactly 1.0 liter with water.

3.3.6 Sodium Hydroxide, 1.0 N. Dissolve 40.00 g of NaOH in about 500 ml of water in a 1-liter volumetric flask. Then, dilute to exactly 1.0 liter with water.

3.3.7 Phenolphthalein. Dissolve 0.05 g of phenolphthalein in 50 ml of 90 percent ethanol and 50 ml of water.

3.3.8 Nitric Acid (HNO_3), Concentrated.

3.3.9 Nitric Acid, 0.8 N. Dilute 52 ml of concentrated HNO_3 to exactly 1.0 liter with water.

3.3.10 Nitric Acid, 50 Percent (V/V). Add 50 ml concentrated HNO_3 to 50 ml water.

3.3.11 Stock Arsenic Standard, 1 mg As/Ml. Dissolve 1.3203 g of primary standard grade As_2O_3 in 20 ml of 0.1 N NaOH . Neutralize with concentrated HNO_3 . Dilute to 1.0 liter with water.

3.3.12 Arsenic Working Solution, 1.0 µg As/ml. Pipet exactly 1.0 ml of stock arsenic standard into an acid-cleaned, appropriately labeled 1-liter volumetric flask containing about 500 ml of water and 5 ml of concentrated HNO_3 . Dilute to exactly 1.0 liter with water.

3.3.13 Hydrofluoric Acid, Concentrated.

3.3.14 Air. Suitable quality for atomic absorption analysis.

3.3.15 Acetylene. Suitable quality for atomic absorption analysis.

3.3.16 Quality Assurance Audit Samples. Arsenic samples in glass vials prepared by the Environmental Protection Agency's (EPA) Environmental Systems Laboratory at the Research Triangle Park, North Carolina. Each set will consist of two vials with two unknown concentrations. When making compliance determinations, obtain an audit sample set from the Quality Assurance Management Office at each EPA regional office.

4. Procedure

4.1 Sampling. Because of the complexity of this method, testers must be trained and experienced with the test procedures in order to obtain reliable results.

4.1.1 Pretest Preparation. Follow the general procedure given in Method 5, Section 4.1.1, except the filter need not be weighed.

4.1.2 Preliminary Determinations. Follow the general procedure given in Method 5, Section 4.1.2, except select the nozzle size to maintain isokinetic sampling rates below 28 liters/min (1.0 cfm).

4.1.3 Preparation of Collection Train. Follow the general procedure given in Method 5, Section 4.1.3, except prepare the impingers as follows:

Place 150 ml of water in each of the first two impingers and 200 ml of 10 percent H_2O_2 in the third, fourth, and fifth impingers. Weigh and record the weight of each impinger and liquid. Transfer approximately 200 to 300 g of preweighed silica gel from its container to the sixth impinger. Set up the train as shown in Figure 108-1.

4.1.4 Leak-Check Procedures. Follow the leak-check procedures given in Method 5, Sections 4.1.4.1 (Pretest Leak-Check), 4.1.4.2 (Leak-Checks During Sample Run), and 4.1.4.3 (Post-Test Leak-Check).

4.1.5 Arsenic Train Operation. Follow the general procedure given in Method 5, Section 4.1.5, except maintain a temperature of 110° to 135°C (230° to 275°F) around the filter and maintain isokinetic sampling flow rates below 28 liters/min (1.0 cfm). For each run, record the data required on a data sheet such as the one shown in Figure 108-2.

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4.1.6 Calculation of Percent Isokinetic. Same as Method 5, Section 4.1.6.

4.2 Sample Recovery. Begin proper cleanup procedure as soon as the probe is removed from the stack at the end of the sampling period.

Allow the probe to cool. When it can be safely handled, wipe off all external particulate matter near the tip of the probe nozzle, and place a cap over it to prevent losing or gaining particulate matter. Do not cap off the probe tip tightly while the sampling train is cooling because a vacuum would form in the filter holder.

Before moving the sampling train to the cleanup site, remove the probe from the sample train, wipe off the silicone grease, and cap the open outlet of the probe. Be careful not to lose any condensate that might be present. Wipe off the silicone grease from the filter inlet where the probe was fastened and cap it. Remove the umbilical cord from the last impinger and cap the impinger. If a flexible line is used between the first impinger and the filter holder, disconnect the line at the filter holder, and let any condensed water or liquid drain into the impingers. After wiping off the silicone grease, cap off the filter holder outlet and impinger inlet. Use either ground-glass stoppers, plastic caps, or serum caps to close these openings.

Transfer the probe and filter-impinger assembly to a cleanup area that is clean and protected from the wind so that the chances of contaminating or losing the sample is minimized.

Inspect the train before and during disassembly, and note any abnormal conditions. Treat the sample as follows:

4.2.1 Container No. 1 (Filter). Carefully remove the filter from the filter holder, and place it in its identified petri dish container. Use a pair of tweezers or clean disposable surgical gloves or both to handle the filter. If it is necessary to fold the filter, fold the particulate cake inside the fold. Carefully transfer to the petri dish any particulate matter and filter fibers that adhere to the filter holder gasket by using a dry Nylon bristle brush and a sharp-edged blade or both. (Note: Mention of trade names or specific products does not constitute endorsement by EPA.) Seal the container.

4.2.2 Container No. 2 (Probe). Taking care that dust on the outside of the probe or other exterior surfaces does not get into the sample, quantitatively recover particulate matter or any condensate from the probe nozzle, probe fitting, probe liner, and front half of the filter holder by washing these components with 0.1 N NaOH and placing the wash in a plastic storage container. Measure and record to the nearest ml the total volume of solution in Container No. 2. Perform the rinsing with 0.1 N NaOH as follows:

Carefully remove the probe nozzle, and rinse the inside surface with 0.1 N NaOH from a wash bottle. Brush with a Nylon bristle brush, and rinse until the rinse shows no visible particles, after which, make a final rinse of the inside surface.

Brush and rinse the inside parts of the Swagelok fitting with 0.1 N NaOH in a similar way until no visible particles remain.

Rinse the probe liner with 0.1 N NaOH. While squirting 0.1 N NaOH into the upper end of the probe, tilt and rotate the probe so that all inside surfaces will be wetted with the rinse solution. Let the 0.1 N NaOH drain from the lower end into the sample container. The tester may use a funnel (glass or polyethylene) to aid in transferring the liquid washes to the container. Follow the rinse with a probe brush. Holding the probe in an inclined position, squirt 0.1 N NaOH into the upper end as the probe brush is being pushed with a twisting action through the probe. Hold the sample container underneath the lower end of the probe, and catch any liquid and particulate matter brushed from the probe. Run the brush through the probe three times or more until no visible particulate matter is carried out with the rinse or until none remains in the probe liner on visual inspection. With stainless steel or other metal probes, run the brush through in the above prescribed manner at least six times since metal probes have small crevices in which particulate matter can be entrapped. Rinse the brush with 0.1 N NaOH, and quantitatively collect these washings in the sample container. After the brushing, make a final rinse of the probe as described above.

It is recommended that two people clean the probe to minimize sample losses. Between sampling runs, keep brushes clean and protected from contamination.

After ensuring that all joints have been wiped clean of silicone grease, brush and rinse with 0.1 N NaOH the inside of the front half of the filter holder. Brush and rinse each surface three times or more if needed to remove visible particulate. Make a final rinse of the brush and filter holder. Carefully brush and rinse out the glass cyclone, also (if applicable). After all washings and particulate matter have been collected in the sample container, tighten the lid so that liquid will not leak out when it is shipped to the laboratory. Mark the height of the fluid level to determine whether leakage occurs during transport. Label the container to identify clearly its contents.

Rinse the glassware a final time with water to remove residual NaOH before reassembling. Do not save the final rinse water.

4.2.3 Container No. 3 (Silica Gel). Note the color of the indicating silica gel to determine whether it has been completely spent, and make a notation of its condition. Transfer the silica gel from the sixth impinger to its original container, and seal. The tester may use as aids a funnel to pour the silica gel and a rubber policeman to remove the silica gel from the impinger. It is not necessary to remove the small amount of particles that may adhere to the impinger wall and are difficult to remove. Since the gain in weight is to be used for moisture calculations, do not use any water or other liquids to transfer the silica gel. If a balance is available in the field, the tester may follow the procedure for Container No. 3 in Section 4.5 (Analysis).

4.2.4 Container No. 4 (Arsenic Sample). Clean each of the first two impingers and connecting glassware in the following manner:

a. Wipe the impinger ball joints free of silicone grease, and cap the joints.

b. Weigh the impinger and liquid to within ± 0.5 g. Record in the log the weight of liquid along with a notation of any color or film observed in the impinger catch. The weight of liquid is needed along with the silica gel data to calculate the stack gas moisture content.

c. Rotate and agitate each impinger, using the impinger contents as a rinse solution.

d. Transfer the liquid to Container No. 4. Remove the outlet ball-joint cap, and drain the contents through this opening. Do not separate the impinger parts (inner and outer tubes) while transferring their contents to the cylinder.

e. (Note: In Steps e and f below, measure and record the total amount of 0.1 N NaOH used for rising.) Pour approximately 30 ml of 0.1 N NaOH into each of the first two impingers, and agitate the impingers. Drain the 0.1 N NaOH through the outlet arm of each impinger into Container No. 4. Repeat this operation a second time; inspect the impingers for any abnormal conditions.

f. Wipe the ball joints of the glassware connecting the impingers and the back half of the filter holder free of silicone grease, and rinse each piece of glassware twice with 0.1 N NaOH; transfer this rinse into Container No. 4. (Do not rinse or brush the glass-fritted filter support.) Mark the height of the fluid level to determine whether leakage occurs during transport. Label the container to identify clearly its contents.

4.2.5 Container No. 5 (SO₂ Impinger Sample). Because of the large quantity of liquid involved, the tester may place the solutions from the third, fourth, and fifth impingers in separate containers. However, the tester may recombine them at the time of analysis in order to reduce the number of analyses required. Clean the impingers according to the six-step procedure described under Container No. 4 using water instead of 0.1 N NaOH as the rising liquid.

4.2.6 Blanks. Save a portion of the 0.1 N NaOH used for cleanup as a blank. Take 200 ml of this solution directly from the wash bottle being used and place it in a plastic sample container labeled "NaOH blank." Also save samples of the water and 10 percent H₂O₂, and place in separate containers labeled "H₂O blank" and "H₂O₂" respectively.

4.3 Arsenic Sample Preparation.

4.3.1 Container No. 1 (Filter). Place the filter and loose particulate matter in a 150-ml beaker. Also, add the filtered material from Container No. 2 (see Section 4.3.3). Add 50 ml of 0.1 N NaOH. Then stir and warm on a hot plate at low heat (do not boil) for about 15 minutes. Add 10 ml of concentrated HNO₃, bring to a boil, then simmer for about 15 minutes. Filter the solution through a glass fiber filter. Wash with hot water, and catch the filtrate in a clean 150-ml beaker. Boil the filtrate, and evaporate to dryness. Cool, add 5 ml of 50 percent HNO₃, and then warm and stir. Allow to cool. Transfer to a 50-ml volumetric flask, dilute to volume with water, and mix well.

If there are any solids retained by the filter, place the filter in a PARR acid digestion bomb, and add 5 ml each of concentrated HNO₃ and HF acids. Seal the bomb, and heat it in an oven at 150°C for 5 hours.

CAUTION: Placing paper filters or any other kind of cellulose in the bomb could lead to an explosive hazard.

Remove the bomb from the oven, and allow it to cool. Quantitatively transfer the contents of the bomb to a 50-ml polypropylene volumetric flask, and dilute to exactly 50 ml with water.

4.3.2 Container No. 4 (Arsenic Impinger Sample).

Note.—Prior to analysis, check the liquid level in Containers No. 2 and No. 4; confirm as to whether leakage occurred during transport on the analysis sheet. If a noticeable amount of leakage occurred, either void the sample or take steps, subject to the approval of the Administrator, to adjust the final results.

Transfer the contents of Container No. 4 to a 500-ml volumetric flask, and dilute to exactly 500 ml with water. Pipet 50 ml of the solution into a 150-ml beaker. Add 10 ml of concentrated HNO_3 , bring to a boil, and evaporate to dryness. Allow to cool, add 5 ml of 50 percent HNO_3 , and then warm and stir. Allow the solution to cool, transfer to a 50-ml volumetric flask, dilute to volume with water, and mix well.

4.3.3 Container No. 2 (Probe Wash).

See note in 4.3.2 above. Filter (using a glass fiber filter) the contents of Container No. 2 into a 200-ml volumetric flask. Combine the filtered material with the contents of Container No. 1 (Filter).

Dilute the filtrate to exactly 200 ml with water. Then pipet 50 ml into a 150-ml beaker. Add 10 ml of concentrated HNO_3 , bring to a boil, and evaporate to dryness. Allow to cool, add 5 ml of 50 percent HNO_3 , and then warm and stir. Allow the solution to cool, transfer to a 50-ml volumetric flask, dilute to volume with water, and mix well.

4.3.4 Filter Blank.

Determine a filter blank using two filters from each lot of filters used in the sampling. Cut each filter into strips, and treat each filter individually as directed in Section 4.3.1, beginning with the sentence, "Add 50 ml of 0.1 N NaOH."

4.3.5 0.1 N NaOH and Water Blanks.

Treat separately 50 ml of 0.1 N NaOH and 50 ml water, as directed under Section 4.3.2, beginning with the sentence, "Pipet 50 ml of the solution into a 150-ml beaker."

4.4 Spectrophotometer Preparation.

Turn on the power; set the wavelength, slit width, and lamp current; and adjust the background corrector as instructed by the manufacturer's manual for the particular atomic absorption spectrophotometer. Adjust the burner and flame characteristics as necessary.

4.5 Analysis.

4.5.1 Arsenic Determination.

Prepare standard solutions as directed under Section 5.1, and measure their absorbances against 0.8 N HNO_3 . Then, determine the absorbances of the filter blank and each sample using 0.8 N HNO_3 as a reference. If the sample concentration falls outside the range of the calibration curve, make an appropriate dilution with 0.8 N HNO_3 so that the final concentration falls within the range of the curve. Determine the arsenic concentration in the filter blank (i.e., the average of the two blank values from each lot). Next, using the appropriate standard curve, determine the arsenic concentration in each sample fraction.

4.5.1.1 Arsenic Determination at Low Concentration.

The lower limit of flame atomic absorption spectrophotometry is 10 $\mu\text{g As/ml}$. If the arsenic concentration of any sample is at a lower level, use the vapor generator which is available as an accessory component. Follow the manufacturer's instructions in the use of such equipment. Place a sample containing between 0 and 5 μg of arsenic in the reaction tube, and dilute to 15 ml with water. Since there is some trial and error involved in this procedure, it may be necessary to screen the samples by conventional atomic absorption until an approximate concentration is determined. After determining the approximate concentration, adjust the volume of the sample accordingly. Pipet 15 ml of concentrated HCl into each tube. Add 1 ml of 30 percent KI solution. Place the reaction tube into a 50°C water bath for 5 minutes. Cool to room temperature. Connect the reaction tube to the vapor generator assembly. When the instrument response has returned to baseline, inject 5.0 ml of 5 percent NaBH_4 , and integrate the resulting spectrophotometer signal over a 30-second time period.

4.5.1.2 Mandatory Check for Matrix Effects on the Arsenic Results.

Since the analysis for arsenic by atomic absorption is sensitive to the chemical composition and to the physical properties (viscosity, pH) of the sample (matrix effects), check (mandatory) at least one sample from each source using the "Method of Additions."

Three acceptable "Method of Additions" procedures are described in the General Procedure Section of the Perkin Elmer Corporation Manual (incorporated by reference—see § 60.17). If the results of the Method of Additions procedure on the source sample do not agree to within 5 percent of the value obtained by the routine atomic absorption analysis, then reanalyze all samples from the source using the Method of Additions procedure.

4.5.2 Container No. 5 (SO_2 Impinger Sample).

Observe the level of liquid in Container No. 5, and confirm whether any sample was lost during shipping. Note any loss of liquid on the analytical data sheet. If a noticeable amount of leakage occurred, either void the sample or use methods subject to the approval of the Administrator, to adjust the final results.

Transfer the contents of the Container(s) No. 5 to a 1-liter volumetric flask and dilute to exactly 1.0 liter with water. Pipet 10 ml of this solution into a 250-ml Erlenmeyer flask, and add two to four drops of phenolphthalein indicator. Titrate the sample to a faint pink end point using 1 N NaOH. Repeat and average the titration volumes. Run a blank with each series of samples.

4.5.3 Container No. 3 (Silica Gel).

The tester may conduct this step in the field. Weigh the spent silica gel (or silica gel plus impinger) to the nearest 0.5 g; record this weight.

4.6 Audit Analysis.

With each set or sets of compliance samples, analyze the two unknown audit samples in the same manner as the source samples to evaluate the techniques of the analyst and the standards preparation. The same person, standard reagents, and analytical system shall be used

both for each set or sets of compliance samples and the EPA audit samples.

If this condition is met for compliance samples that are analyzed frequently, it is only necessary to analyze the audit samples once per quarter.

Calculate the concentration, in g/m^3 , using the specified sample volume in the audit instructions. (Note: The acceptability of the analyses of the audit samples may be obtained immediately by reporting the audit and compliance results by telephone.)

Include the results of both audit samples with the results of the compliance determination samples in appropriate reports to the EPA regional office or the appropriate enforcement agency.

5. Calibration.

Maintain a laboratory log of all calibrations.

5.1 Standard Solutions.

For the high level procedure pipet 1, 3, 5, 8, and 10 ml of the 1.0-mg As/ml stock solution into separate 100-ml volumetric flasks, each containing 5 ml of concentrated HNO_3 . If the low-level procedure is used, pipet 1, 2, 3, and 5 ml of 1.0 "g As/ml standard solution into the separate flasks. Dilute to the mark with water. Then treat the standards in the same manner as the samples (Section 4.3.4).

Check these absorbances frequently against 0.8 N HNO_3 (reagent blank) during the analysis to insure the base-line drift has not occurred. Prepare a standard curve of absorbance versus concentration. (Note: For instruments equipped with direct concentration readout devices, preparation of a standard curve will not be necessary.) In all cases, follow calibration and operational procedures in the manufacturer's instruction manual.

5.2 Sampling Train Calibration.

Calibrate the sampling train components according to the indicated Sections of Method 5: probe Nozzle (Section 5.1), Pitot Tube Assembly (Section 5.2), Metering System (Section 5.3), probe Heater (Section 5.4), Temperature Gauges (Section 5.5), leak Check of Metering System (Section 5.6), and Barometer (Section 5.7).

5.3 1 N Sodium Hydroxide Solution.

Standardize the NaOH titrant against 25 ml of standard 1.0 N sulfuric acid.

6. Calculations.

6.1 Nomenclature.

B_{gas} = Water in the gas stream, proportion by volume

C_s = Concentration of arsenic as read from the standard curve, g/ml

C_a = Actual audit concentration, g/m^3

C_d = Determined audit concentration, g/m^3

C_{SO_2} = Concentration of SO_2 , percent of volume

C_1 = Arsenic concentration in stack gas, dry basis, converted to standard conditions, g/dscm (g/dscf)

E_a = Arsenic mass emission rate, g/hr

F_d = dilution factor (equals 1 if the sample has not been diluted)

I = Percent of isokinetic sampling

m_{bl} = Total mass of all six impingers and contents before sampling.

m_n = Total mass of all six impingers and contents after sampling, g

m_n = Total mass of arsenic collected in a specific part of the sampling train, "g

m_{SO_2} = Mass of SO_2 collected in the sampling train, g

m_t = Total mass of arsenic collected in the sampling train, "g

N = Normality of NaOH titrant, meq/ml

T_m = Absolute average dry gas meter temperature (see Figure 108-2), °K (°R)

V_s = Volume of sample aliquot titrated, ml

V_m = Volume of gas sample as measured by the dry gas meter, dcm(dcf)

$V_{m(std)}$ = volume of gas sample as measured by the dry gas meter correlated to standard conditions, scm(scf)

V_a = Volume of solution in which the arsenic is contained, ml

V_{soln} = Total volume of solution in which the SO_2 is contained, liter

V_{SO_2} = Volume of SO_2 collected in the sampling train, dscm(dscf)

V_t = Volume of NaOH titrant used for the sample (average of replicate titrations), ml

V_{tb} = Volume of NaOH titrant used for the blank, ml

V_{tot} = Volume of gas sampled corrected to standard conditions, dscm(dscf)

$V_{w(std)}$ = Volume of water vapor collected in the sampling train, corrected to standard conditions, scm(scf).

ΔH = Average pressure differential across the orifice meter (see Figure 108-2), mm H_2O (in. H_2O).

6.2 Calculate the volume of SO_2 gas collected by the sampling train.

$$V_{SO_2} = K_1 (V_t - V_{tb}) N (V_{soln}/V_a) \quad \text{Eq. 108-1}$$

Where:

$K_1 = 1.203 \times 10^{-3} \text{ m}^3/\text{meq. for metric units.}$
 $= 4.248 \times 10^{-4} \text{ ft}^3/\text{meq. English units.}$

6.3 Calculate the sulfur dioxide concentration in the stack gas (dry basis adjusted to standard conditions) as follows:

$$C_{SO_2} = \frac{V_{SO_2}}{V_{m(std)} + V_{SO_2}} \times 100 \quad \text{Eq. 108-2}$$

6.4 Calculate the mass of sulfur dioxide collected by the sampling train.

$$M_{SO_2} = K_2 (V_t - V_{tb}) N (V_{soln}/V_a) \quad \text{Eq. 108-3}$$

Where:

$K_2 = 0.032 \text{ g/meq.}$

6.5 Average dry gas meter temperatures (T_m) and average orifice pressure drop (ΔH). See data sheet (Figure 108-2).

6.6 Dry Gas Volume. Using data from this test, calculate $V_{m(std)}$ by using Eq. 5-1 of Method 5. If necessary, adjust the volume for leakages. Then add V_{SO_2} .

$$V_{tot} = V_{m(std)} + V_{SO_2} \quad \text{Eq. 108-4}$$

6.7 Volume of Water Vapor.

$$V_{w(std)} = K_3 (m_n - m_{n1} - m_{SO_2}) \quad \text{Eq. 108-5}$$

Where:

$K_3 = 0.001334 \text{ m}^3/\text{g for metric units.}$
 $= 0.047012 \text{ ft}^3/\text{g for English units.}$

6.8 Moisture Content.

$$B_{as} = \frac{V_{w(std)}}{V_{tot} + V_{w(std)}} \quad \text{Eq. 108-6}$$

6.9 Amount of arsenic collected.

6.9.1 Calculate the amount of arsenic collected in each part of sampling train, as follows:

$$m_n = C_a F_d V_a \quad \text{Eq. 108-7}$$

6.9.2 Calculate the total amount of arsenic collected in the sampling train as follows:

$$m_t = m_n(\text{filters}) + m_n(\text{probe}) + m_n(\text{impinger}) - m_n(\text{Filter blank}) - m_n(\text{NaOH}) - m_n(\text{H}_2\text{O}) \quad \text{Eq. 108-8}$$

6.10 Calculate the arsenic concentration in the stack gas (dry basis, adjusted to standard conditions) as follows:

$$C_a = K_4 (m_t/V_{m(std)}) \quad \text{Eq. 108-9}$$

Where:

$K_4 = 10^{-6} \text{ g}/\mu\text{g}$

6.11 Pollutant Mass Rate. Calculate the arsenic mass emission rate using the following equation.

$$E_a = C_a Q_{std} \quad \text{Eq. 108-10}$$

The volumetric flow rate, Q_{std} , should be calculated as indicated in Method 2.

6.12 Isokinetic Variation. Using data from this test, calculate I. Use Eq. 5-8 of Method 5, except substitute V_{tot} for $V_{m(std)}$.

6.13 Acceptable Results. Same as Method 5, Section 6.12.

6.14 Relative Error (RE) for QA Audits, Percent.

$$RE = \frac{C_a - C_r}{C_r} \times \frac{100}{C_r} \quad \text{Eq. 108-11}$$

7. Bibliograph.

1. Same as Citations 1 through 9 of Section 7, of Method 5.

2. Perkin Elmer Corporation. Analytical Methods for Atomic Absorption Spectrophotometry. 303-0152. Norwalk, Connecticut. September 1976. pp. 5-6.

3. Standard Specification for Reagent Water. In: Annual Book of ASTM Standards. Part 31; Water, Atmospheric Analysis. American Society for Testing and Materials. Philadelphia, PA. 1974. pp. 40-42.

It is proposed that Part 61 of Chapter I, Title 40 of the Code of Federal Regulations be amended by adding a new Subpart O and new Reference Method 108A to Appendix B, as follows:

1. The Table of Contents of Part 61 is amended by adding Subpart O and by adding an entry for new Test Method 108A to Appendix B as follows:

Subpart O—National Emission Standards for Inorganic Arsenic Emissions From Primary Copper Smelters Processing Feed Materials Containing Less Than 0.7 Percent Arsenic

Sec.

61.170 Applicability and designation of sources

61.171 Definitions

61.172 Standards for new and existing sources

61.173 Compliance provisions

61.174 Equivalent equipment and procedures

61.175 Test methods and procedures

61.176 Monitoring requirements

61.177 Recordkeeping requirements

61.178 Reporting requirements

Appendix B—Test Methods

Method 108A—Determinations of Arsenic Content in Ore Samples From Nonferrous Smelters

Authority: Secs. 112 and 301(a), Clean Air Act as amended [42 U.S.C. 7412 and 7601(a)], and additional authority as noted below.

2. Part 61 is amended by adding Subpart O as follows:

Subpart O—National Emission Standards for Inorganic Arsenic Emissions From Primary Copper Smelters Processing Feed Materials Containing Less Than 0.7 Percent Arsenic

§ 61.170 Applicability and designation of sources.

(a) The provisions of this subpart are applicable to each smelting furnace and each copper converter in operation at all new and existing primary copper smelters, except as noted in § 61.172 (c) and (d), processing a total smelter charge containing less than 0.7 weight percent inorganic arsenic on a dry basis averaged over a 1-year period.

(b) [Reserved].

§ 61.171 Definitions.

As used in this subpart, all terms not defined here shall have the meaning given them in the Act and in subpart A of Part 61, and the following terms shall have the specific meanings given to them:

"Blowing" means the injection of air or oxygen-enriched air into the molten converter bath.

"Charging" means the transfer of copper matte or any other material to a copper converter.

"Converter arsenic charging rate" means the hourly rate at which arsenic is charged to the copper converter based on the arsenic content of the copper matte and of any lead matte that is charged to the copper converter.

"Copper converter" means any vessel in which copper matte is charged and is oxidized to copper.

"Copper Matte" means any impure metallic sulfide mixture produced by smelting copper sulfide ore concentrates.

"Holding" means the suspension of blowing operations while the molten converter bath is heated.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment, process equipment or of a process to operate in a normal usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"Primary copper smelter" means any installation or any intermediate process engaged in the production of copper from copper bearing materials through the use of pyrometallurgical techniques.

"Secondary emissions" means inorganic arsenic emissions that escape capture by a primary emission control system.

"Secondary hood system" means the equipment (including hoods, ducts, fans, and dampers) used to capture and to transport secondary inorganic arsenic emissions.

"Shutdown" means the cessation of operation of a stationary source for any purpose.

"Skimming" means the removal of slag from the molten converter bath.

"Smelting furnace" means any vessel in which the smelting of copper ore concentrates or calcines is performed and in which the heat necessary for smelting is provided by an electric current, rapid oxidation of the sulfur contained in the concentrate, or the combustion of a fossil fuel.

"Smelting furnace arsenic tapping rate" means the hourly rate at which arsenic is transferred from the smelting furnace during tapping based on the combined arsenic content of the copper matte and slag.

"Tapping" means the transfer of copper matte or slag from the smelting furnace.

"Total smelter charge" means the weight on a dry basis of all copper ore concentrates processed at a primary copper smelter plus the weight of all other materials introduced into the roasters, smelting furnaces, and converters at a primary copper smelter over a 1-month period.

§ 61.172 Standards for new and existing sources.

(a) Except as provided under paragraph (c) of this section, the owner or operator of each copper converter subject to the provisions of this subpart shall reduce inorganic arsenic emission to the atmosphere by meeting the following equipment and operating requirements, or equivalent, as provided in § 61.174:

(1) The owner or operator shall equip each copper converter with a secondary hood system, the principal components

of which are a hood enclosure, air curtain fan(s), exhaust system fan(s), and sufficient ductwork to convey the captured emissions to a control device. Each secondary hood system shall meet the following specifications:

(i) The configuration and dimensions of the hood enclosure shall be such that the copper converter mouth, charging ladles, skimming ladles, and any other material transfer vessels used will be housed within the confines or influence of the hood enclosure during each mode of copper converter operation.

(ii) The back of the hood enclosure shall be fully enclosed and sealed against the primary hood. Portions of the side-walls in contact with the copper converter shall be sealed against the copper converter.

(iii) Openings in the top and front of the hood enclosure to allow for the entry and egress of ladles and crane apparatus shall be minimized to the fullest extent practicable.

(iv) The hood enclosure shall be fabricated in such a manner and of materials of sufficient strength to withstand incidental contact with ladles and crane apparatus with no damage.

(v) One side-wall of the hood enclosure shall be equipped with a horizontal-slotted plenum along the top and opposite side-wall shall be equipped with an exhaust hood. The horizontal-slotted plenum shall be designed to allow the distance from the base to the top of the horizontal slot to be adjustable up to a dimension of 76 mm.

(vi) The horizontal-slotted plenum shall be connected to a fan. When activated, the fan shall push air through the horizontal slot, producing a horizontal air curtain above the copper converter and directed to the exhaust hood. The fan power output installed shall be sufficient to overcome static pressure losses through the ductwork upstream of the horizontal-slotted plenum and across the horizontal-slotted plenum, and to deliver at least 22,370 watts (30 air horsepower) at the horizontal-slotted plenum discharge.

(vii) The exhaust hood shall be sized to completely intercept the airstream from the horizontal-slotted plenum combined with the additional airflow resulting from entrainment by the airstream of the surrounding air. The exhaust hood shall be connected to a fan. When activated, the fan shall pull the combined airstream into the exhaust hood.

(viii) The entire system shall be equipped with dampers and instrumentation, as appropriate, so that the desired air curtain and exhaust flow

are maintained during each mode of copper converter operation.

(2) At all times the owner or operator of each copper converter shall operate the converter and associated secondary hood system in such a manner as to optimize the capture of secondary inorganic arsenic emissions.

(i) Optimum operating conditions for each secondary hood system shall be determined by the Administrator on a case-by-case basis.

(ii) The owner or operator shall operate each copper converter to optimize the capture of secondary inorganic arsenic emissions as follows:

(A) The air screen and exhaust flow rates shall be increased to their optimum conditions prior to raising the primary hood and rolling the converter out for skimming.

(B) Once rolled out, the converter shall be held in an idle position until fuming from the molten bath ceases prior to commencing skimming.

(C) During skimming, the crane operator shall raise the receiving ladle off the ground and position the ladle as close to the converter as possible to minimize the drop distance between the converter mouth and receiving ladle.

(D) The rate of flow into the receiving ladle shall be controlled to the extent practicable to minimize fuming.

(E) Upon the completion of the charge, the charging ladle or vessel used shall be withdrawn from the confines of the secondary hood in a slow deliberate manner.

(3) The owner or operator of each copper converter shall perform the following inspection and maintenance requirements after installing the secondary hood system to comply with paragraph (a)(1) of this section.

(i) At least once every month, visually inspect the components of the secondary hood system that are exposed to potential damage from crane and ladle operation, including the hood enclosure, side- and back-wall hood seals, and the air curtain slot.

(ii) Replace or repair any defective or damaged components of the secondary hood system within 30 days of discovering the defective or damaged components.

(iii) Maintain each copper converter and associated secondary hood system in a manner consistent with minimizing inorganic arsenic emissions. A determination of whether acceptable maintenance procedures are being used will be based on information supplied to the Administrator, which may include but is not limited to monitoring results, review of maintenance procedures,

inspection of the source, and review of records.

(b) Except as provided under paragraphs (c), (d), and (e) of this section, no owner or operator subject to the provisions of this subpart shall allow gases that contain particulate matter in excess of 11.6 milligrams per dry standard cubic meter to be discharged into the atmosphere from any smelting furnace secondary hood system or any copper converter secondary hood system.

(c) The provisions of § 61.172(a) and (b) do not apply to a copper converter if the converter arsenic charging rate is less than 6.5 kg/h averaged over a 1-year period, as determined under § 61.175.

(d) The provisions of § 61.172 (b) do not apply to a smelting furnace if the smelting furnace arsenic tapping rate is less than 40 dg/h averaged over a 1-year period, as determined under § 61.175.

(e) The emission limits set forth in § 60.172 (b) apply at all times except during periods of startup, shutdown, and malfunction.

§ 61.173 Compliance provisions.

(a) The owner or operator of each copper converter to which § 61.172 applies shall demonstrate compliance with the requirements of § 61.172 (a)(1) as follows:

(1) The owner or operator of each existing copper converter shall install capture equipment to meet the requirements of § 61.172(a)(1) no later than 90 days after the effective date, unless a waiver of compliance has been approved by the Administrator in accordance with § 61.11.

(2) The owner or operator of each new copper converter shall install capture equipment to meet the requirements of § 61.172(a)(1) prior to the initial startup of the converter, except that if startup occurs prior to the effective date, the owner or operator shall meet the requirements of § 61.172(a)(1) on the effective date.

(b) Unless a waiver of emission testing is obtained under § 61.13, the owner or operator of each smelting furnace and copper converter to which § 61.172 (b) applies shall test emissions as specified in § 61.175 to demonstrate compliance with § 61.172(b) as follows:

(1) After achieving optimum operating conditions for the equipment required in § 61.172(a)(1) but no later than 90 days after the effective date in the case of an existing smelting furnace or copper converter or a new smelting furnace or copper converter that has an initial startup date preceding the effective date, or

(2) After achieving optimum operating conditions for the equipment required in § 61.172(a)(1) but no later than 90 days after startup in the case of a new smelting furnace or copper converter, initial startup of which occurs after the effective date, or

(3) At such other times as may be required by the Administrator under Section 114 of the Act.

(c) Each owner or operator subject to paragraph (b) of this section shall provide the Administrator 30 days prior notice of the emissions test to afford the Administrator the opportunity to have an observer present.

(d) Each emission test shall be conducted while the source is operating under such conditions as the administrator may specify to the owner or operator based on representative performance of the source.

(e) Each owner or operator subject to paragraph (b) of this section shall furnish the Administrator a written report of the results of the emission test within 60 days of conducting the test.

§ 61.174 Equivalent equipment and procedures.

(a) Upon written application from any person, the Administrator may approve the use of equipment or procedures that have been demonstrated to his satisfaction to be equivalent, in terms of capturing inorganic arsenic emissions, to those prescribed under § 61.172(a). For an existing source, requests for using equivalent equipment or procedures as the initial means of capture are to be submitted to the Administrator within 30 days of the effective date of the standard. For a new source, requests for using equivalent equipment or procedures are to be submitted to the Administrator with the application for approval of construction required by § 61.07.

(b) Demonstration of equivalency shall be made using a method approved by the Administrator.

(c) The Administrator may condition approval of equivalency on requirements that may be necessary to ensure operation and maintenance to achieve the same emission capture as the equipment prescribed under § 61.172(a).

(d) If in the Administrator's judgment an application for equivalency may be approvable, the Administrator will publish a notice of preliminary determination in the Federal Register and provide the opportunity for public hearing. After notice and opportunity for public hearing, the Administrator will determine the equivalence of the alternative means of emission capture

and will publish the final determination in the Federal Register.

§ 61.175 Test methods and procedures.

(a) Emission tests shall be conducted and data reduced in accordance with the test methods and procedures contained in this section unless the Administrator—

(1) Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

(2) Approves the use of an equivalent method;

(3) Approves the use of an alternative method the results of which he has determined to be adequate for indicating whether a specific source is in compliance; or

(4) Waives the requirement for emission tests as provided under § 61.13.

(b) For the purpose of determining compliance with § 61.172(b), reference methods in 40 CFR Part 60, Appendix A shall be used as follows:

(1) Method 5 for the measurement of particulate matter,

(2) Method 1 for sample and velocity traverses,

(3) Method 2 for velocity and volumetric flow rate,

(4) Method 3 for gas analysis, and

(5) Method 4 for stack gas moisture.

(c) For Method 5, the sampling time for each run shall be at least 60 minutes and the minimum sampling volume shall be 0.85 dscm (30 dscf) except that smaller times or volumes when necessitated by process variables or other factors may be approved by the Administrator.

(d) For the purpose of § 61.172(c), the converter arsenic charging rate shall be determined as follows:

(1) Grab samples of copper matte and any lead matte charged to a copper converter shall be collected daily and a composite sample representative of each calendar month shall be analyzed for inorganic arsenic.

(2) Copper matte and lead matte samples shall be individually analyzed using Method 108A to determine the weight percent of inorganic arsenic contained in each sample.

(3) Converter arsenic charging rate shall be calculated once per month using the following equation:

$$R_c = \frac{A_c W_c + A_l W_l}{100 H_c}$$

Where:

R_c is the converter arsenic charging rate (kg/h)

A_c is the monthly average weight percent of arsenic in the copper matte charged during the month (%)

A_1 is the monthly average weight percent of arsenic in the lead matte charged during the month (%)

W_c is the total weight of copper matte charged to the copper converter during the month (kg)

W_l is the total weight of lead matte charged to the copper converter during the month (kg)

H_c is the total number of hours the copper converter was in operation during the month (h)

(4) An annual arsenic charging rate shall be determined for each copper converter once per month by computing the arithmetic average of the 12 converter arsenic charging rate values for the preceding 12-month period.

(e) For the purpose of § 61.172(d), the smelting furnace arsenic tapping rate shall be determined as follows:

(1) Grab samples of smelting furnace copper matte and slag shall be collected daily and a composite sample representative of each calendar month shall be analyzed for inorganic arsenic.

(2) Copper matte and slag samples shall be individually analyzed using Method 108A to determine the weight percent of arsenic contained in each sample.

(3) Smelting furnace arsenic tapping rate shall be calculated once per month using the following equation:

$$R_t = \frac{A_m W_m + A_s W_s}{100 H_t}$$

where:

R_t is the smelting furnace arsenic tapping rate (kg/h)

A_m is the monthly average weight percent of arsenic in the copper matte tapped during the month (%)

A_s is the monthly average weight percent of arsenic in the slag tapped during the month (%)

W_m is the total weight of copper matte tapped from the smelting furnace during the month (kg)

W_s is the total weight of slag tapped from the smelting furnace during the month (kg)

H_t is the total number of hours the smelting furnace was in operation during the month (h)

(4) An annual average smelting furnace arsenic tapping rate shall be determined for each smelting furnace once per month by computing the arithmetic average of the 12 smelting furnace arsenic tapping rate values for the preceding 12-month period.

(f) Each owner or operator subject to the provisions of this subpart shall collect daily grab samples of the total smelter charge and shall analyze a composite sample representative of each

calendar month for inorganic arsenic.

The procedures used to collect the samples of the total smelter charge shall be approved by the Administrator. Samples shall be analyzed for inorganic arsenic using Method 108A.

(g) An annual average weight percent of arsenic in the total smelter charge shall be determined for each smelter once per month by computing the arithmetic average of the 12 arsenic weight percent values for the preceding 12-month period.

§ 61.176 Monitoring requirements.

(a) An owner or operator of a source that is subject to the emission limit specified in § 61.172(b) shall install, calibrate, maintain, and operate a continuous monitoring system for the measurement of the opacity of emissions discharged from the source according to the following procedures:

(1) All continuous monitoring systems and monitoring devices shall be installed and operational prior to conduction of an emissions test as required in § 61.175(a). Verification of operational status shall, as a minimum, consist of an evaluation of the monitoring system in accordance with the requirements and procedures contained in Performance Specification 1 of Appendix B of 40 CFR Part 60. The owner or operator shall furnish the Administrator a written report of the results of the continuous monitoring system evaluation within 60 days of conducting such evaluation.

(2) The requirements of § 60.13 (d) and (f) shall apply to an owner or operator subject to the emission limits of § 61.172.

(3) Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required under § 60.13(d) all continuous monitoring systems shall be in continuous operation and shall meet minimum frequency of operation requirements by completing a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(4) The owner or operator shall calculate 6-minute opacity averages from 24 or more data points equally spaced over each 6-minute period. Data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments shall not be included in the data averages.

(5) During the emission test required in § 61.173(b) each owner or operator subject to this paragraph shall:

(i) Conduct continuous opacity monitoring during each test run.

(ii) Calculate 6-minute opacity averages from 24 or more data points

equally spaced over each 6-minute period during the test runs.

(iii) Determine, based on the 6-minute opacity averages, the opacity value corresponding to the 97.5 percent upper confidence level of a normal or lognormal (whichever the owner or operator determines is more representative) distribution of the average opacity values.

(iv) An owner or operator may redetermine the opacity value corresponding to the 97.5 percent upper confidence level if the owner or operator conducts continuous opacity monitoring during each test run of an emission test that demonstrates compliance with the emission limits in § 61.172(b), and recalculates the 6-minute averages described in this paragraph.

(b) An owner or operator of a source that is required to install the equipment prescribed under § 61.172(a) shall install, calibrate, maintain, and operate a continuous monitoring device for the measurement of the air flow rate through the horizontal-slotted plenum and through the exhaust hood.

§ 61.177 Recordkeeping requirements.

(a) Each owner or operator subject to the provisions of this subpart shall maintain at the source for a period of at least 2 years a monthly record of the total smelter charge and the weight percent of arsenic contained in this charge, and the monthly calculations of the average annual weight percent of arsenic in the total smelter charge for the preceding 12-month period.

(b) Each owner or operator required to install the equipment prescribed in § 61.172(a) shall maintain at the source for a period of at least 2 years records of the visual inspections and maintenance performed as required in § 61.172(a)(3).

(c) Each owner or operator who is exempt from § 61.172 (a) and (b) as described in § 61.172(c) shall maintain at the source for a period of at least 2 years the following records:

(1) For each copper converter, a daily record of the amount of copper matte and any lead matte charged to the copper converter and the hours of operation.

(2) For each copper converter, a monthly record of the weight percent of arsenic contained in the copper matte and lead matte as determined by § 61.175(d).

(3) For each copper converter, the monthly calculations of the average annual arsenic charging rate for the preceding 12-month period as determined by § 61.175(d).

(d) Each owner or operator who is exempt from § 61.172 (a) and (b) as

described in § 61.172(d) shall maintain at the source for a period of at least 2 years the following records:

(1) For each smelting furnace, a daily record of the amount of copper matte and slag tapped from the smelting furnace and the hours of operation.

(2) For each smelting furnace, a monthly record of the weight percent of arsenic contained in the copper matte and slag as determined by § 61.175(e).

(3) For each smelting furnace, the monthly calculations of the average annual smelting furnace arsenic tapping rate for the preceding 12-month period as determined by § 61.175(e).

(e) Each owner or operator subject to the provisions of § 61.172(b) shall maintain at the source, for a period of at least 2 years, a file of the following records: all measurements, including monitoring and testing data; all calculations used to produce the required reports of emission estimates; monitoring system performance evaluations, including calibration checks and adjustment; the occurrence and duration of any startup, shutdown, or malfunction in the operation of the stationary source; any malfunction of the air pollution control system; any periods during which the continuous monitoring system or device is inoperative; and all maintenance and repairs made to the air pollution control or monitoring system.

(f) Each owner or operator subject to the provisions of § 61.176(b) shall maintain at the source for a period of at least 2 years records of the reference flow rates for the horizontal-slotted plenum and exhaust hoods for each converter operating mode established during optimum operating conditions as determined by the Administrator under § 61.172(a)(2), and the average actual flow rates. In addition, a daily log shall be maintained of the start time and duration of each converter operating mode.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 61.178 Reporting requirements.

(a) For purposes of the information required in the initial report prescribed in § 61.10(a)(5), each owner or operator shall provide the average weight percent of arsenic in the total smelter charge, the average converter arsenic charging rate, and the smelting furnace arsenic tapping rate over the last 12 months preceding the date of the report.

(b) Each owner or operator subject to § 61.176(a) shall submit a written report to the Administrator semiannually if excess opacity occurred during the 6-

month period. For purposes of this paragraph, an occurrence of excess opacity is any 6-minute period during which the average opacity, as measured by the continuous monitoring system, exceeds the opacity level determined under § 61.176(a)(5).

(c) Each owner or operator subject to § 61.176(b) shall submit a written report to the Administrator semiannually if the air flow rates monitored are less than 20 percent of the reference flow rates, for any converter operating mode.

Reference flow rate values for each converter mode shall be determined when the equipment prescribed under § 61.172(a) is operating under optimum operating conditions, as determined by the Administrator under § 61.172(a)(2).

(d) All semiannual reports shall be postmarked by the 30th day following the end of each 6-month period and shall include the following information:

(1) The magnitude of excess opacity, any conversion factor(s) used, and the date and time of commencement and completion of each occurrence of excess opacity.

(2) The magnitude of reduced flow rates and the date and time of commencement and completion of each occurrence of reduced flow rate.

(3) Specific identification of each period of excess opacity or reduced flow rate that occurs during startups, shutdowns, and malfunctions of the source.

(4) The date and time identifying each period during which the continuous monitoring system or monitoring device was inoperative, except for zero and span checks, and the nature of the system repairs or adjustments.

(e) The owner or operator of each primary copper smelter shall submit a written report to the Administrator annually which includes:

(1) The monthly computations of the average annual weight percent of inorganic arsenic in the total smelter charge for each preceding 12-month period as calculated under § 61.175(f).

(2) The monthly computations of the average annual converter arsenic charging rate as calculated in § 61.175(d).

(3) The monthly computations of the average annual smelting furnace arsenic tapping rate as calculated in § 61.175(e).

(f) The annual report required in § 61.178(c) shall be postmarked by the 30th day following the end of each calendar year.

3. Part 61 is amended by adding Method 108A to Appendix B as follows:

Appendix B—[Amended]

Method 108A—Determination of Arsenic Content in Ore Samples From Nonferrous Smelters

1. Applicability and Principle.

1.1 Applicability. This method applies to the determination of inorganic arsenic (As) content of process ore and reverberatory matte samples from nonferrous smelters and other sources as specified in the regulations.

1.2 Principle. Arsenic bound in ore samples is liberated by acid digestion and analyzed by atomic absorption spectrophotometry.

2. Apparatus.

2.1 Sample Preparation

2.1.1 Parr Acid Digestion Bomb. Stainless steel with vapor-tight Teflon cup and cover.

2.1.2 Volumetric Pipets. 2- and 5-ml sizes.

2.1.3 Volumetric Flask. 50-ml polypropylene with screw caps, (one needed per sample). 100-ml glass (one needed per standard).

2.1.4 Funnel. Polyethylene or polypropylene.

2.1.5 Oven. Capable of maintaining a temperature of approximately 105 °C.

2.1.6 Analytical Balance. To measure to within 0.1 mg.

2.2 Analysis

2.2.1 Spectrophotometer and Recorder. Same as in Method 108, Section 2.3.1 and 2.3.2, except a graphite furnace should be used in place of the vapor generator accessory when measuring samples with low as levels.

2.2.2 Volumetric Flasks. Class A. 50-ml (one needed per sample and blank).

2.2.3 Volumetric Pipets. Class A. 1-, 5-, 10-, and 25-ml sizes.

3. Reagents.

Unless otherwise specified, use ACS reagent grade (or equivalent) chemicals throughout.

3.1 Sample Preparation.

3.1.1 Water. Same as in Method 108, Section 3.1.2. Use in all dilutions requiring water.

3.1.2 Nitric Acid (HNO₃). Concentrated. HANDLE WITH CAUTION.

3.1.3 Nitric Acid, 0.5 N. In a 1-liter volumetric flask containing water, add 32 ml of concentrated HNO₃ and dilute to volume with water.

3.1.4 Hydrofluoric Acid (HF). Concentrated. HANDLE WITH CAUTION.

3.1.5 Potassium Chloride (KCl) Solution. 10 percent (w/v). Dissolve 10 g KCl in water, add 3 ml concentrated HNO₃ and dilute to 100 ml.

3.1.6 Filter. Teflon filters, 3 micron porosity, 47mm size. (Available from Millipore Co., Type FS, Catalog Number FSLWO4700.)

3.2 Analysis.

3.2.1 Water. Same as in Section 3.1.1.

3.2.2 Sodium Hydroxide (NaOH), 0.1 N. Dissolve 2.00 g of NaOH in water in a 500-ml volumetric flask. Dilute to volume with water.

3.2.3 Nitric Acid, 0.5 N. Same as in Section 3.1.3.

3.2.4 Potassium Chloride Solution, 10 percent. Same as in Section 3.1.5.

3.2.5 Stock Arsenic Standard, 1 mg As/ml. Dissolve 1.320 g of primary grade As_2O_3 in 20 ml of 0.1 N NaOH. Slowly add 30 ml of concentrated HNO_3 . Dilute to 1 liter with water.

3.2.6 Nitrous Oxide. Suitable quality for atomic absorption analysis.

3.2.7 Acetylene. Suitable quality for atomic absorption analysis.

3.2.8 Quality Assurance Audit Samples. Same as in Method 108, Section 3.3.16.

4. Procedure.

4.1 Sample Collection. A sample that is representative of the ore lot to be tested must be taken prior to analysis. The sample must be ground into a finely pulverized state. (A portion of the samples routinely collected for metals analysis may be used provided the sample is representative of the ore being tested.)

4.2 Sample Preparation. Weigh 50 to 500 mg of finely pulverized sample to the nearest 0.1 mg. Transfer the sample into the Teflon cup of the digestion bomb, and add 2 ml each of concentrated HNO_3 and HF. Seal the bomb immediately to prevent the loss of any volatile arsenic compounds that may form. Heat in an oven at 115°C for 2 hours. Then remove the bomb from the oven and allow it to cool. Using Whatman No. 4 filter paper, quantitatively filter the digested sample into a 50-ml polypropylene volumetric flask. Rinse the bomb three times with small portions of 0.5 N HNO_3 , and filter the rinses into the flask. Add 5 ml of KCl solution to the flask, and dilute to 50 ml with 0.5 N HNO_3 .

4.3 Spectrophotometer Preparation. Same as in Method 108, Section 4.4.

4.4 Preparation of Standard Solutions. Pipet 1, 5, 10, and 25 ml of the stock As solution into separate 100-ml volumetric flasks. Add 10 ml KCl solution and dilute to the mark with 0.5 N HNO_3 . This will give standard concentrations of 10, 50, 100, and 250 g As/ml. For low-level-arsenic samples that require the use of a graphite furnace, prepare a series of standard solutions in the range appropriate to the sample concentrations and the graphite furnace operating range.

Dilute 10 ml of KCl solution to 100 ml with 0.5 N HNO_3 , and use as a reagent blank. Measure the standard absorbances against the reagent blank. Check these absorbances frequently against the blank during the analysis to assure that baseline drift has not occurred.

Prepare a standard curve of absorbance versus concentration. (Note: For instruments equipped with direct concentration readout devices, preparation of a standard curve will not be necessary.) In all cases, follow the calibration and operational procedures in the manufacturer's instruction manual. Maintain a laboratory log of all calibrations.

4.5 Analysis

4.5.1 Arsenic Determination. Determine the absorbance of each sample using the blank as a reference. If the sample concentration falls outside the range of the

calibration curve, make an appropriate dilution with 0.5 N HNO_3 so that the final concentration falls within the range of the curve. From the curve, determine the As concentration in each sample.

4.5.2 Mandatory Check for Matrix Effects on the Arsenic Results. Same as in Method 108, Section 4.5.1.2.

4.5.3 Audit Analysis. Same as in Method 108, Section 4.6.

5. Calculations.

5.1. Calculate the percent arsenic in the ore sample as follows:

$$\% \text{ AS} = \frac{5 C_s F_s}{W}$$

Where:

C_s = Concentration of As as read from the stand curve, g/ml.

F_s = Dilution factor (equals 1 if the sample has not been diluted).

W = Weight of ore sample analyzed.

5 = 50-ml sample $\times 100 / 10^3 \mu\text{g}/\text{mg}$.

6. Bibliography.

1. Same as Citations 2 and 3 in Section 7 of Method 108.

2. Unpublished Report, Emission Measurement Branch, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, August 1980.

It is proposed that Part 61 of Chapter I, Title 40 of the *Code of Federal Regulations* be amended by adding a new Subpart P as follows:

1. The Table of Contents of Part 61 is amended by adding Subpart P as follows:

Subpart P—National Emission Standards for Inorganic Arsenic Emissions From Primary Copper Smelters Processing Feed Materials Containing 0.7 Percent or Greater Arsenic

Sec.

61.180 Applicability and designation of sources.

61.181 Definitions.

61.182 Standards for new and existing sources.

61.183 Compliance provisions.

61.184 Equivalent equipment and procedures.

61.185 Test methods and procedures.

61.186 Monitoring requirements.

61.187 Recordkeeping requirements.

61.188 Reporting requirements.

Authority: Sec. 112 and 301(a), Clean Air Act as amended (42 U.S.C. 7412 and 7601(a)), and additional authority as noted below.

2. Part 61 is amended by adding Subpart P as follows:

Subpart P—National Emission Standards for Inorganic Arsenic Emissions From Primary Copper Smelters Processing Feed Materials Containing 0.7 Percent or Greater Arsenic

§ 61.180 Applicability and designation of sources.

The provisions of the subpart are applicable to each copper converter in operation at a primary copper smelter processing a total smelter charge containing 9.7 weight percent or more inorganic arsenic on a dry basis averaged over a 1-year period.

§ 61.181 Definitions.

As used in this subpart, all terms not defined here shall have the meaning given them in the Act and in subpart A of Part 61, and the following terms shall have the specific meanings given to them:

"Blowing" means the injection of air or oxygen-enriched air into the molten converter bath.

"Charging" means the transfer of copper matte or any other material to a copper converter.

"Control device" means the air pollution control equipment used to collect particulate emissions.

"Copper converter" means any vessel in which copper matte is charged and oxidized to copper.

"Copper matte" means any impure metallic sulfide mixture produced by smelting copper sulfide ore concentrates.

"Holding" means the suspension of blowing operations while the molten converter bath is heated.

"Primary copper smelter" means any installation or any intermediate process engaged in the production of copper from copper bearing materials through the use of pyrometallurgical techniques.

"Process emissions" means inorganic arsenic emissions from roasters, smelting furnaces, or copper converters that are captured and transported to a primary emission control device.

"Roaster" means any facility in which a copper ore concentrate charge is heated in the presence of air to eliminate a significant portion (5 percent or more) of the sulfur contained in the total smelter charge.

"Secondary emissions" means inorganic arsenic emissions that escape capture by a primary emission control system.

"Secondary hood system" means equipment (including hoods, ducts, fans, and dampers) used to capture and to transport secondary inorganic arsenic emissions.

"Shutdown" means the cessation of operation of a stationary source for any purpose.

"Skimming" means the removal of slag from the copper converter bath.

"Smelting furnace" means any vessel in which the smelting of copper ore concentrates or calcines is performed and in which the heat necessary for smelting is provided by an electric current, rapid oxidation of the sulfur contained in the concentrate, or the combustion of a fossil fuel.

"Tapping" means the transfer of copper matte or slag from the smelting furnace.

"Total smelter charge" means the weight on a dry basis of all copper ore concentrates processed at a primary copper smelter plus the weight of all other materials introduced into the roasters, smelting furnaces, and copper converters at a primary copper smelter over a 1-month period.

§ 61.182 Standards for new and existing sources.

(a) The owner or operator of each copper converter to which this subpart applies shall reduce inorganic arsenic emissions to the atmosphere by meeting the following equipment and operating requirements, or equivalent as provided in § 61.184:

(1) The owner or operator shall equip each copper converter with a secondary hood system, the principal components of which are a hood enclosure, air curtain fan(s), exhaust system fan(s), and sufficient ductwork to convey the captured emissions to a control device. Each secondary hood system shall meet the following specifications:

(i) The configuration and dimensions of the hood enclosure shall be such that the copper converter mouth, charging ladles, skimming ladles, and any other material transfer vessels used will be housed within the confines or influence of the hood enclosure during each mode of copper converter operation.

(ii) The back of the hood enclosure shall be fully enclosed and sealed against the primary hood. Portions of the side-walls in contact with the copper converter shall be sealed against the copper converter.

(iii) Openings in the top and front of the hood enclosure to allow for the entry and egress of ladles and crane apparatus shall be minimized to the fullest extent practicable.

(iv) The hood enclosure shall be fabricated in such a manner and of materials of sufficient strength to withstand incidental contact with ladles and crane apparatus with no damage.

(v) One side-wall of the enclosure shall be equipped with a horizontal-slotted plenum along the top and the opposite side-wall shall be equipped with an exhaust hood. The horizontal-slotted plenum shall be designed to allow the distance from the base to the top of the horizontal slot to be adjustable up to a dimension of 76 mm.

(vi) The horizontal-slotted plenum shall be connected to a fan. When activated, the fan shall push air through the horizontal slot, producing a horizontal air curtain above the copper converter and directed to the exhaust hood. The fan power output installed shall be sufficient to overcome static pressure losses through the ductwork upstream of the horizontal-slotted plenum and across the horizontal-slotted plenum, and to deliver at least 22,370 watts (30 air horsepower) at the horizontal-slotted plenum discharge.

(vii) The exhaust hood shall be sized to completely intercept the airstream from the horizontal-slotted plenum combined with the additional airflow resulting from entrainment by the airstream of the surrounding air. The exhaust hood shall be connected to a fan. When activated, the fan shall pull the combined airstream into the exhaust hood.

(viii) The entire secondary hood system shall be equipped with dampers and instrumentation, as appropriate, so that the desired air curtain and exhaust flow rates are maintained during each mode of copper converter operation.

(2) At all times the owner or operator of each copper converter shall operate the converter and secondary hood system in such a manner as to optimize the capture of secondary inorganic arsenic emissions.

(i) Optimum operating conditions for each secondary hood system shall be determined by the Administrator on a case-by-case basis.

(ii) The owner or operator shall operate each copper converter to optimize the capture of secondary inorganic arsenic emissions as follows:

(A) The air screen and exhaust flow rates shall be increased to their optimum conditions prior to raising the primary hood and rolling the converter out for skimming.

(B) Once rolled out, the converter shall be held in an idle position until fuming from the molten bath ceases prior to commencing skimming.

(C) During skimming, the crane operator shall raise the receiving ladle off the ground and position the ladle as close to the converter as possible to minimize the drop distance between the converter mouth and receiving ladle.

(D) The rate of flow into the receiving ladle shall be controlled to the extent practicable to minimize fuming.

(E) Upon the completion of the charge, the charging ladle or vessel used shall be withdrawn from the confines of the secondary hood in a slow deliberate manner.

(3) The owner or operator of each copper converter to which this subpart applies shall meet the following inspection and maintenance requirements after installing the secondary hood system to comply with paragraph (a)(1) of this section:

(i) At least once every month, visually inspect the components of the secondary hood system that are exposed to potential damage from crane and ladle operation, including the hood enclosure, side and back wall hood seals and the air curtain slot.

(ii) Replace or repair any defective or damaged components of the secondary hood system within 30 days of discovering the defective or damaged components.

(iii) Maintain each copper converter and associated secondary hood system in a manner consistent with minimizing inorganic arsenic emissions. A determination of whether acceptable maintenance procedures are being used will be based on information supplied to the Administrator, which may include but is not limited to monitoring results, review of maintenance procedures, inspection of the source, and review of records.

(b) Except as provided under paragraph (c) of this section, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any copper converter any secondary emissions that exit from a control device and contain particulate matter in excess of 11.6 milligrams per dry standard cubic meter.

(c) The emission limits set forth in paragraph (b) of this section apply at all times except during periods of startup, shutdown, and malfunction.

§ 61.183 Compliance provisions.

(a) The owner or operator of each copper converter shall meet the requirements of § 61.182(a)(1) as follows:

(1) The owner or operator of each existing copper converter shall install control equipment to meet the requirements of § 61.182(a)(1) no later than 90 days after the effective date, unless a waiver of compliance has been approved by the Administrator in accordance with § 61.11.

(2) The owner or operator of each new copper converter shall install control equipment to meet the requirements of

§ 61.182(a)(1) prior to the initial startup of the converter, except that if startup occurs prior to the effective date, the owner or operator shall meet the requirements of § 61.182(a)(1) on the effective date.

(b) Unless a waiver of emission testing is obtained under § 61.13, the owner or operator of each copper converter shall test emissions as specified in § 61.185 to demonstrate compliance with § 61.182(b) as follows:

(1) After achieving optimum operating conditions for the equipment required in § 61.182(a)(2) but not later than 90 days after the effective date in the case of an existing converter or a new converter that has an initial startup date preceding the effective date, or

(2) After achieving optimum operating conditions for the equipment in § 61.182(a)(2) but not later than 90 days after startup in the case of a new converter initial startup of which occurs after the effective date, or

(3) At such other times as may be required by the Administrator under Section 114 of the Act.

(c) Each owner or operator subject to paragraph (b) of this section shall provide the Administrator 30 days prior notice of the emissions test to afford the Administrator the opportunity to have an observer present.

(d) Each emission test shall be conducted while the source is operating under such conditions as the Administrator may specify to the owner or operator based on representative performance of the source.

(e) Each owner or operator subject to paragraph (b) of this section shall furnish the Administrator a written report of the results of the emissions test within 60 days of conducting the test.

§ 61.184 Equivalent equipment and procedures.

(a) Upon written application from any person, the Administrator may approve the use of equipment or procedures that have been demonstrated to his satisfaction to be equivalent in terms of capturing inorganic arsenic emissions, to those prescribed under § 61.182(a). For an existing source, requests for using equivalent equipment or procedures as the initial means of capture are to be submitted to the Administrator within 30 days of the effective date of the standard. For a new source, requests for using equivalent equipment or procedure are to be submitted to the Administrator with the application for approval of construction required by § 61.07.

(b) Demonstration of equivalency shall be made using a method approved by the Administrator.

(c) The Administrator may condition approval of equivalency on requirements that may be necessary to ensure operation and maintenance to achieve the same emission capture as the equipment prescribed under § 61.182(a).

(d) If in the Administrator's judgment an application for equivalency may be approvable, the Administrator will publish a notice of preliminary determination in the *Federal Register* and provide the opportunity for public hearing. After notice and opportunity for public hearing, the Administrator will determine the equivalence of the alternative means of emissions capture and will publish the final determination in the *Federal Register*.

§ 61.185 Test methods and procedures.

(a) Emission tests shall be conducted and data reduced in accordance with the tests methods and procedures contained in this section unless the Administrator—

(1) Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

(2) Approves the use of an equivalent method;

(3) Approves the use of an alternative method the results of which he has determined to be adequate for indicating whether a specific source is in compliance; or

(4) Waives the requirement for emission tests as provided under § 61.13.

(b) For the purpose of determining compliance with § 61.182(b) reference methods in 40 CFR Part 60, Appendix A shall be used as follows:

(1) Method 5 for the measurement of particulate matter,

(2) Method 1 for sample and velocity traverses,

(3) Method 2 for velocity and volumetric flow rate,

(4) Method 3 for gas analysis, and

(5) Method 4 for stack gas moisture.

(c) For Method 5, the sampling time for each run shall be at least 60 minutes, and the minimum sampling volume shall be 0.85 dscm (30 dscf) except that smaller times or volumes when necessitated by process variables or other factors may be approved by the Administrator.

(d) Each owner or operator subject to the provisions of this subpart shall collect daily grab samples of the total smelter charge and analyze a composite sample representative of each calendar month for inorganic arsenic. The procedures used to collect the samples of the total smelter charge shall be approved by the Administrator. Samples shall be analyzed for inorganic arsenic using Method 108A.

(e) An annual weight percent of arsenic in the total smelter charge shall be determined for each smelter once per month by computing the arithmetic average of the 12 arsenic weight percent values for the preceding 12-month period.

§ 61.186 Monitoring requirements.

(a) An owner or operator of a source that is subject to the emission limit specified in § 61.182(b) shall install, calibrate, maintain, and operate a continuous monitoring system for the measurement of the opacity of emissions discharged from the source according to the following procedures:

(1) All continuous monitoring systems and monitoring devices shall be installed and operational prior to conducting an emissions test as required in § 61.185(a). Verification of operational status shall, as a minimum, consist of an evaluation of the monitoring system in accordance with the requirements and procedures contained in Performance Specification 1 of Appendix B of 40 CFR Part 60. The owner or operator shall furnish the Administrator a written report of the results of the continuous monitoring system evaluation within 60 days of conducting such evaluation.

(2) The requirements of § 60.13 (d) and (f) shall apply to an owner or operator subject to the emission limit of § 61.182.

(3) Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required under § 60.13 (d) and (d)(3), all continuous monitoring systems shall be in continuous operations and shall meet minimum frequency of operation requirements by completing a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(4) An owner or operator shall calculate 6-minute opacity averages from 24 or more data points equally spaced over each 6-minute period. Data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments shall not be included in the data averages computed under this paragraph.

(5) During the emission test required in § 61.183(b) each owner or operator subject to this paragraph shall:

(i) Conduct continuous opacity monitoring during each test run.

(ii) Calculate 6-minute opacity averages from 24 or more data points equally spaced over each 6-minute period during the test runs.

(iii) Determine, based on the 6-minute opacity averages, the opacity value

corresponding to the 97.5 percent upper confidence level of a normal or lognormal (whichever the owner or operator determines is more representative) distribution of the average opacity values.

(iv) An owner or operator may redetermine the opacity value corresponding to the 97.5 percent upper confidence level if the owner or operator conducts continuous opacity monitoring during each test run of an emission test that demonstrates compliance with the emission limits in § 61.182(b), and recalculates the 6-minute averages described in this paragraph.

(b) An owner or operator of a source that is required to install the equipment prescribed under § 61.182(a) shall install, calibrate, maintain, and operate a continuous monitoring device for the measurement of the air flow rate through the horizontal-slotted plenum and through the exhaust hood.

§ 61.187 Recordkeeping requirements.

(a) Each owner or operator subject to the provisions of this subpart shall maintain at the source for a period of at least 2 years a monthly record of the total smelter charge and the weight percent of arsenic contained in this charge, and the monthly calculations of the annual weight percent of arsenic in the total smelter charge for the preceding 12-month period.

(b) Each owner or operator required to install the equipment prescribed in § 61.182(a) shall maintain at the source for a period of at least 2 years records of the visual inspections and maintenance performed as required in § 61.182(a)(3).

(c) Any owner or operator of a source subject to the provisions of § 61.182(b) shall maintain a file of the following records: all measurements, including monitoring and testing data; all calculations used to produce the required reports of emission estimates; monitoring system performance evaluations, including calibration

checks and adjustments; the occurrence and duration of any startup, shutdown, or malfunction in the operation of the stationary source; any malfunction of the air pollution control system; any periods during which the continuous monitoring system or device is inoperative; and all maintenance and repairs made to the air pollution control or monitoring system.

(d) Each owner or operator subject to the provisions § 61.186 (b) shall maintain at the source for a period of at least 2 years records of the reference flow rates for the horizontal-slotted plenum and exhaust hoods for each converter operating mode established during optimum operating conditions as determined by the Administrator under § 61.182(a)(2), and the average actual flow rates. In addition, a daily log shall be maintained of the start time and duration of each converter operating mode.

(Section 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 61.188 Reporting requirements.

(a) For purposes of the information required in the initial report prescribed in § 61.10(a)(5), each owner or operator shall provide the average weight percent of arsenic in the total smelter charge over the last 12 months preceding the date of the report.

(b) Each owner or operator required to install a continuous opacity monitoring system under § 61.186 shall submit a written report to the Administrator semiannually if excess opacity occurred during the 6-month period. For purposes of this paragraph, an occurrence of excess opacity is any 6-minute period during which the average opacity, as measured by the continuous monitoring system, exceeds the opacity level determined under § 61.186(a)(5).

(c) Each owner or operator subject to § 61.186(b) shall submit a written report to the Administrator semiannually if the air flow rates monitored are less than 20

percent of the reference flow rates, for any converter operating mode. Reference flow rate values for each converter mode shall be determined when the equipment prescribed under § 61.182(a) is operating under optimum operating conditions, as determined by the Administrator under § 61.182(a)(2).

(d) All semiannual reports shall be postmarked by the 30th day following the end of each 6-month period and shall include the following information:

(1) The magnitude of excess opacity, any conversion factor(s) used, and the date and time of commencement and completion of each occurrence of excess opacity.

(2) The magnitude of reduced flow rates and the date and time of commencement and completion of each occurrence of reduced flow rate.

(3) Specific identification of each period of excess opacity or reduced flow rate that occurs during startups, shutdowns, and malfunctions of the source.

(4) The date and time identifying each period during which the continuous monitoring system or monitoring device was inoperative, except for zero and span checks, and the nature of the system repairs or adjustments.

(e) The owner or operator of any primary copper smelter shall submit a written annual report to the Administrator, which includes the monthly computations of the average annual weight percent of inorganic arsenic in the smelter charge for each preceding 12-month period as calculated in § 61.185(d).

(f) The annual report required in § 61.178(c) shall be postmarked by the 30th day following the end of each calendar year.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

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Register

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Wednesday,
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Part III

Department of Labor

Employment and Training Administration

**Title IV-A, B and E of the Job Training
Partnership Act (Pub. L. 97-300);
Proposed Implementing Regulations**

DEPARTMENT OF LABOR

Employment and Training
Administration

20 CFR Parts 632, 633, 634 and 684

Title IV-A, B and E of the Job Training
Partnership Act (Pub. L. 97-300);
Proposed Implementing RegulationsAGENCY: Employment and Training
Administration, Labor.

ACTION: Proposed Rule.

SUMMARY: This document proposes new rules for programs under Title IV-A, IV-B and IV-E of the Job Training Partnership Act (JTPA). The purpose of this publication is to request comments on these proposed rules. JTPA requires that full implementation of the programs authorized by these parts occur on October 1, 1983. These regulations provide the administrative and programmatic guidance and direction necessary to achieve JTPA implementation. The information, instructions and authority for program operators and others affected by these parts are contained in these regulations.

DATE: Comments must be submitted on or before August 19, 1983.

ADDRESS: Comments should be addressed to the Assistant Secretary of Labor for Employment and Training, U.S. Department of Labor, 601 D. Street, NW., Washington, D.C. 20213. Attention: Patrick O'Keefe, Director Transition Task Force.

FOR FURTHER INFORMATION CONTACT: Patrick J. O'Keefe, Telephone (202) 376-6600.

SUPPLEMENTARY INFORMATION: On October 13, 1982, the President signed into law the JTPA, Pub. L. 97-300. The new statute replaces the Comprehensive Employment and Training Act (CETA) with a new program to train economically disadvantaged persons. Emphasis in the Act is placed on training geared towards the private sector, for placement in permanent, unsubsidized jobs. Title IV of the Act concerns Federally Administered Programs. These proposed rules cover only certain Parts of Title IV. These Parts are: Part A, Section 401, Native American Programs; Part A, Section 402, Migrant and Seasonal Farmworker Programs; Part B, Sections 421-439, Job Corps; and Part E, Sections 461-465, Labor Market Information. Any regulations to be published on other Parts of Title IV will be issued at a later date.

The new statute contains in Section 181, provisions for transition from programs operated under the

Comprehensive Employment and Training Act to the programs authorized under the new Act. Full implementation of the new Act's systems and program requirements is required by October 1, 1983.

Regulatory Process and Rationale

The discussion in the following sections of this Preamble present the general process of development of these regulations and the rationale for development of specific regulations.

Indian and Native American Programs
(INAP)

Title IV, Section 401 establishes comprehensive employment and training programs for Indian, Alaskan Native, and Hawaiian Native communities. More specifically, it states that "such programs are essential to the reduction of economic disadvantages among individual members of those communities and to the advancement of economic and social development in the communities consistent with their goals and lifestyles" (Sec. 401(a)).

Unlike other Sections of JTPA which relate to a new training delivery system administered through the States, Section 401 is very similar to Section 302 of CETA in that it continues the national administration of the Indian and Native American Program. Therefore, Section 401(h)(3) states: Such programs shall be administered in such a manner as to maximize the Federal commitment to support growth and development as determined by representatives of the communities and groups served by this Section. Further, "Funds available for this Section shall be expended for programs and activities consistent with the purpose of this Section including but not limited to such programs and activities carried out by recipients under other provisions of this Act." (Sec. 401(f)).

These draft regulations contain the flexibility for program development that is consistent with the statute. Indian and Native American entities that are recipients of JTPA funds will be allowed to use a wide program mix, including all the program activities that were available under CETA.

These regulations were developed after appropriate consultation with representatives of Indians and other Native Americans, as required by Section 401(h)(1).

In order to afford reviewers of this document and opportunity to place all planning and operational considerations in context, these regulations are intended to be complete and free-standing.

Comments received as a result of this publication will be reconciled by the Department so that final regulations can be published.

INAP Legislative Changes

The JTPA makes little substantive change in the program design previously established for Native American Programs. JTPA does have a specific provision, not found in CETA, calling for the Secretary to provide technical assistance to programs under this Part (Sec. 401(i)).

INAP Regulatory Development
Considerations

In preparing these proposed regulations, the Department established several basic principles, consistent with overall legislative thrust, to guide the process. These principles have been and will continue to be part of an open dialogue with the Native American community.

The law contains only ten paragraphs which require a great deal of amplification in order to adequately regulate a national program. The following principles point out the differences between JTPA regulations and those in effect for CETA Indian Programs.

1. Allowable Activities/Program
Deliverers

a. No substantive changes in eligible delivery agents, implementation provisions or in the type of activities allowed will be made from current practice.

b. More emphasis will be placed, however, on direct employment and training activities with work experience. PSE and supportive services deemphasized. A guideline has been established that not more than 5 percent of the funds should be spent on "other" (including supportive services) activities.

c. Administrative costs are targeted at 15 percent of a total grant. This is a reduction from the current 20 percent. Recognizing that some Native American grantees may face special administrative problems, a waiver up to 20 percent is allowed.

2. Grantee Designation/Master Plan
Concept

a. The grantee designation process is being expanded to be more objective and to clearly identify minimum responsibility standards which must be met in order to be designated. A conditional designation status is also allowed. Much closer attention will be paid to financial management factors

throughout the designation and funding process.

b. New provisions have been developed which stipulate the remedy available in cases where an ALJ overrules a designation decision. If an ALJ rules that the Department should have designated a complainant and directs the grant officer to change the designation, the ruling will not interfere with current operations.

Rather, in such cases, the complainant will be designated during the succeeding designation period assuming minimum standards are still met. This provision will eliminate the problems of disrupting program operations and better ensure effective services to enrollees while maintaining a remedy for aggrieved designation applicants. When an ALJ overrules a designation decision, the organization originally designated may not appeal the ALJ's decision.

c. Designation will be for two years rather than the current one year. All grantees will be under a four-year Master Plan agreement with Comprehensive Annual Plan updates. The Department will have the authority to unilaterally modify a grant in cases where simple funding increases are required.

3. Funding Threshold

In order for an organization to be funded it must be entitled to a total formal allocation from Title IV, Section 401 and Title II-B of at least \$120,000, or be able to demonstrate the ability to achieve this level through other sources, or submit information on past administrative and program performance which demonstrates the capability to operate a small but effective grant. Grantees/organizations will be encouraged to consort. A standard consortium agreement with clearly established joint and individual liability will be required when consortia are established.

4. Reduced Administrative Burden

Administrative requirements throughout the regulations are being eliminated where the Department does not need them to maintain adequate administrative and fiscal control. This decision accounts for over a 35 percent reduction from the extant CETA regulations. Since eliminating administrative provisions provides greater grantee discretion, stronger responsibility tests have been added. In this manner, the Department meets its responsibility for national direction and reduces regulatory burden. Grantees unable to meet the responsibility tests may be terminated, suspended or not designated under clearly defined rules.

5. Reporting

Reporting requirements have been changed to require quarterly versus annual reports, which will be tied to performance standards and financial management. The grantee's principal executive officer or financial officer will verify the report's accuracy.

6. Allocation Procedures/Performance Bonus

Beginning with Program Year 1985, the Department will, after consultation with Indian organizations, reserve up to 6 percent of the Section 401 allocation for distribution as incentives for superior performance. This is a marked change from the current practice of 100 percent formula allocation and, due to the controversy associated with this decision, will be part of a continuing dialogue with the Native American community.

7. Employer Involvement in Planning and Design

A private industry council will not be required of Section 401 grantees. However, recognizing the importance of employer involvement in training, the regulations call for employer input to program planning and design and identify a number of methods which may be used. Grantees will be encouraged to identify innovative approaches to employer involvement.

Migrant and Seasonal Farmworker Programs (MSFW)

Title IV Section 402 of the new statute provides for migrant and seasonal farmworker programs to be continued much in the same manner as they did under CETA. The statute directs that because of the special nature of farmworker employment and training problems, such programs shall be centrally administered at the national level.

MSFW Legislative Changes

JTPA makes little substantive change in the program design previously established under CETA for migrant and seasonal farmworker programs; JTPA adds various administrative provisions including personnel having particular competence in the field, the competitive selection of grantees or contractors pursuant to standard government procurement policies, and allowing for two year designation of grantees.

MSFW Regulatory Development Considerations

Consistent with the basic thrust of the Act, certain fundamental changes have been made in the administration of the

program through these proposed regulations.

1. The regulations will make no major program changes. They will, however, accelerate the recent trend toward more job training as opposed to supportive services.

2. These regulations reflect the new performance standards language and the more rigorous administrative and procurement provisions of the Title II JTPA regulations.

3. Governors will be given the first right to submit an acceptable application to serve an area for which no acceptable application has been received.

4. The minimal grant threshold goes from \$100,000 to \$120,000 and the old hold harmless provision has been dropped.

5. New language eliminates from competition applicants who fail to meet pre-determined minimal standards and spells out "for cause" and "emergency" termination conditions. It also defines applicant's appeal rights more narrowly than in the past.

6. Competitive procedures formerly spelled out in the regulations will be published, instead, in an SGA.

7. Formula allocations go from 80 percent of the total appropriation to 94 percent with 6 percent reserved for technical assistance and special projects.

8. New cost limitations restrict expenditures for administrative and supportive services and set a 50-percent floor under training costs.

Job Corps (JC)

Title IV-B of the Act maintains the Job Corps as a distinct national program designed to provide education, vocational training and a variety of support services needed to prepare eligible youth to become more responsible, productive and employable.

JC Legislative Changes

The Act maintains the basic design of the Job Corps program, and contains only a few provisions which are different from the program mandated under CETA. These differing legislation provisions are outline below. Only one of these provisions requires regulatory change.

1. Section 424(a) adds entities administering programs under Title II of the Act to the list of organizations and agencies eligible to conduct outreach and screening activities. Current Job Corps policies and procurement procedures provide authority for the involvement of administrative entities, and no regulatory change is required.

2. Section 424(b) authorizes the Secretary to make payments to individuals and organizations for the cost of recruitment, screening and selection of candidates. The language represents an acknowledgement of current policy. No regulatory change is required.

3. Section 426(a) provides for enrollment in excess of two years to allow corpsmembers' completion of an advanced career program. It is proposed that the regulations at 684.34 be revised to authorize such extensions.

4. Section 427(a)(2) restricts nonresidential participation in the Job Corps to 10 percent of the individuals enrolled in any year. The Department will monitor enrollment levels and mixes on a quarterly basis to ensure compliance; no regulatory change is required.

5. Sections 428 (d)(1) through (d)(5) authorize the Secretary to provide for advanced career training programs in postsecondary institutions and for training in company-sponsored training programs for corpsmembers who may participate for up to one additional year, set forth the benefits such corpsmembers are eligible for, and provide that such programs must be of demonstrated success in order to continue. The Secretary has authority at § 684.110 to conduct such programs and can implement them without a regulatory change.

6. Sections 429 (a) and (c) increase the maximum personal and readjustment allowance levels which may be established by the Secretary. The regulations at § 684.82 stipulate the method used to make payments, not the amounts of payments, and provide that notice of any changes will be published in the Federal Register. No regulatory change is required.

7. Section 433(a)(2) authorizes the Secretary to conduct pilot projects for 22 to 24 year olds. The regulations at § 684.110 provide sufficient flexibility to accommodate such a pilot, and no regulatory change is required.

8. Section 434 (c)(1) and (c)(2) authorize the Secretary to test education and training activities and to disseminate information gained from Job Corps program experience. Such activities are currently authorized at § 684.110. No regulatory change is required.

9. Section 434(d) authorizes the Secretary, in conjunction with the Department of Defense, to conduct pilot projects to prepare youth for military service and establishes parameters for the operation of such programs on a permanent basis should the Departments of Labor and Defense

agree to their continuation. Such programs may be implemented under § 684.110 with no regulatory change.

10. Section 434(e) authorizes the Secretary to undertake pilot projects utilizing community-based organizations of demonstrated effectiveness for Job Corps center operation. Such pilot projects may be conducted under Section 684.110 with no regulatory change.

11. Section 439 authorizes the Secretary to accept charitable donations on behalf of the Job Corps. This provision will be, as in the past, handled administratively, and no regulatory change is required for implementation of the section.

JC Regulatory Development Considerations

The following summarizes regulatory changes proposed for Job Corps, reflecting the legislative requirement in "3" above, as well as certain administrative clarifications. At this time, only these significant changes to the regulations are being proposed. A complete revision of the Job Corps regulations, containing minor reference changes and editorial corrections, will be published at a later date.

1. It is proposed that criteria for selection and funding of Job Corps center operators be revised to more accurately reflect areas of program emphasis and place greater weight on past performance and fiscal integrity of contractors, consistent with the Department's procurement policy and emphasis on accountability and responsibility of program operators.

2. To provide authority for extension of enrollment authorized in Section 426(a) of the Act, language is added to these proposed regulations at § 684.34.

3. The prior regulations required that Center Directors forward the official records of terminated corpsmembers to regional offices. The Department has found that it is desirable to permit Job Corps Centers to be the custodians of official records from a time and cost-effectiveness standpoint. The proposed revisions to the regulations at 674.95(a) and 684.123(e) provide flexibility to the contracting officer to determine whether it is more appropriate for the individual center operator or the regional office to maintain such records.

Administrative Provisions

Because Job Corps utilizes contractors to operate its centers and does not use grants through service delivery areas for this purpose, the majority of the proposed regulations setting forth general provisions governing programs under the Act (20 CFR Part 629) do not

apply. Once the regulations are published in final form, 20 CFR Part 684 will be amended to delete references to CETA and to CETA regulations and to incorporate those provisions of 20 CFR Part 629 which apply to the Job Corps program.

Labor Market Information

Labor Market Information activity is authorized under Title IV, Part E and under Title V, Wagner Peyser. The Act authorizes activity at both the Federal and State levels.

LMI Legislative Changes

Concerning the comprehensive system of Labor Market Information (LMI) mandated, the new legislation offers discretion in terms of administrative mechanisms to be employed. It also offers new specificity in terms of what LMI is to be produced, and how the LMI system is to be coordinated.

LMI Regulatory Development Considerations

The proposed regulations combine LMI activities authorized under JTPA and the Wagner-Peyser amendments.

Rulemaking Certifications

These proposed regulations are procedural in character and give direction on the implementation of the programs under Title IV of the Job Training Partnership Act.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of \$100,000 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act

The information collection requirements set forth in these rules, as well as the forms necessary to implement them are being submitted to the Office of Management and Budget for its review and approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Regulatory Flexibility Act

The Department certifies that these rules will not have a "significant economic impact on a substantial number of small entities" within the meaning of Section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)). Although these rules apply to some organizations which are within the statutory definition of "small entity," they do not apply to a substantial number of such entities. Thus, a regulatory flexibility analysis is not required.

List of Subjects**20 CFR Part 632**

Administrative practice and procedure, Aged, Alaska, Aliens, Civil rights, Education, Employment, Equal employment opportunity, Fraud, Grant programs—labor, Handicapped, Indians, Labor, Political activities, Political affiliation discrimination, Public assistance programs, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Veterans, Vocational education, Wages, Women, Youth.

20 CFR Part 633

Agriculture, Education, Employment, Equal employment opportunity, Fraud, Grant programs—labor, Labor, Migrant labor, Relocation assistance, Reporting and recordkeeping requirements, Vocational education, Wages.

20 CFR Part 634

Grant programs—Labor, Manpower training programs.

20 CFR Part 684

Community development, Employment, Grant programs—labor, Job Corps, Labor, Manpower training programs, Religious discrimination, Reporting and recordkeeping requirements, Tort claims, Unemployment, Vocational rehabilitation, Youth.

Accordingly, the Department proposes to: Add 20 CFR Parts 632, 633 and 634 and amend 20 CFR Part 684 as follows:

PART 632—INDIAN AND NATIVE AMERICAN EMPLOYMENT AND TRAINING PROGRAMS**Subpart A—Introduction**

- Sec.
- 632.1 [Reserved]
 - 632.2 Scope and purpose.
 - 632.3 Format for these regulations.
 - 632.4 Definitions.

Subpart B—Designation Procedures for the Native American Grantees

- Sec.
- 632.10 Eligibility requirements for designation as a Native American grantee.
 - 632.11 Designation of Native American grantees.
 - 632.12 Alternative arrangements for the provision of Services, nondesignation.
 - 632.13 Review of denial of designation as a Native American grantee, or rejection of a comprehensive annual plan.

Subpart C—Program Planning, Application and Modification Procedures

- 632.17 Planning process.
- 632.18 Regional and national planning meetings.
- 632.19 Grant application content.
- 632.20 Submission of grant applications.
- 632.21 Application disapproval.
- 632.22 Modification of a Comprehensive Annual Plan (CAP) and/or Master Plan.
- 632.23 Termination and corrective action of a CAP and/or Master Plan.

Subpart D—Administrative Standards and Procedures

- 632.31 General.
- 632.32 Financial management systems.
- 632.33 Audits.
- 632.34 Program income.
- 632.35 Native American grantee contracts and subgrants.
- 632.36 Procurement standards.
- 632.37 Allowable costs.
- 632.38 Classification of costs.
- 632.39 Administrative cost plan.
- 632.40 Administrative staff and personnel standards.
- 632.41 Reporting requirements.
- 632.42 Grant closeout procedures.
- 632.43 Reallocation of funds.

Subpart E—Program Design and Management

- 632.75 General responsibilities of Native American grantees.
- 632.76 Program management systems.
- 632.77 Participant eligibility determination.
- 632.78 Training activities.
- 632.78-1 Classroom training.
- 632.78-2 On-the-job training.
- 632.78-3 Tryout employment.
- 632.78-4 Training services.
- 632.78-5 Combined activities.
- 632.79 Employment activities.
- 632.79-1 Community service employment.
- 632.79-2 Work experience.
- 632.80 Other activities.
- 632.80-1 General.
- 632.80-2 Supportive services.
- 632.81 Payments to participants.
- 632.81-1 General.
- 632.81-2 Maximum wage rates for CSE.
- 632.81-3 Payment of allowances.
- 632.81-4 Combined activities.
- 632.82 Benefits and working conditions for participants.
- 632.83 FICA.
- 632.84 Non-Federal status of participants.
- 632.85 Participant limitations.
- 632.86 Nondiscrimination and nonsectarian activities.

- Sec.
- 632.87 Equitable provision of services to the eligible population and significant segments.
 - 632.88 General responsibilities of the Department.
 - 632.89 Performance standards.

Subpart F—Prevention of Fraud and Program Abuse

- 632.115 General.
- 632.116 Conflict of interest.
- 632.117 Kickbacks.
- 632.118 Nepotism.
- 632.119 Political patronage.
- 632.120 Political activities.
- 632.121 Lobbying activities.
- 632.122 Unionization and antiunionization activities; work stoppages.
- 632.123 Maintenance of effort.
- 632.124 Theft or embezzlement from employment and training funds; improper inducement; obstruction of investigations and other criminal provisions.
- 632.125 Responsibilities of Native American grantees, subgrantees and contractors for preventing fraud and program abuse and for general program management.

Subpart G—Complaints, Investigations and Sanctions

- 632.146 Scope and purpose.
- 632.147 Protection of informants.
- 632.148 Complaint and hearing procedures at the recipient level.
- 632.149 Grievance or complaint procedures at employer level.
- 632.150 Exhaustion of recipient level procedure.
- 632.151 Complaints and investigations at the Federal level.
- 632.152 Subpoenas.
- 632.153 Initial and final determination; request for hearing at the Federal level.
- 632.154 Hearings before the Office of Administrative Law Judges.
- 632.155 Final action; judicial review.

Subpart H—Job Training Partnership Act Programs Under Title IV, Section 401

- 632.170 Eligibility for funds.
- 632.171 Allocation of funds.
- 632.172 Eligibility for participation in Title IV, Section 401.
- 632.173 Allowable program activities.
- 632.174 Administrative costs

Subpart I—Summer Youth Employment and Training Programs

- 632.250 General.
- 632.251 Eligibility for funds.
- 632.252 Allocation of funds.
- 632.253 Special operating provision.
- 632.254 Program startup.
- 632.255 Program planning.
- 632.256 Submission of applicants.
- 632.257 Eligibility for participation.
- 632.258 Allowable activities.
- 632.259 Vocational exploration program.
- 632.260 Worksite standards.
- 632.261 Reporting requirements.
- 632.262 Termination date for the summer program.
- 632.263 Administrative Costs

Authority: Job Training Partnership Act, Section 169, (29 U.S.C. 1501 *et seq.*, Pub. L. 97-300, 96 Stat. 1322), unless otherwise noted.

Subpart A—Introduction

§ 632.1 [Reserved]

§ 632.2 Scope and purpose.

It is the purpose of Native American programs to provide job training and employment activities consistent with the intent of Title IV, Part A, Section 401. Such programs shall be administered in such a manner as to maximize the Federal commitment to support growth and development as determined by representatives of the communities and groups serviced by this Section including furtherance of the policy of Indian Self-Determination.

§ 632.3 Format for these regulations.

Regulations promulgated by the Department of Labor to implement the provisions of Title IV, Section 401 and Indian programs under Title II-B of the Act are set forth in 20 CFR Part 632. This part contains all the regulations under the Act applicable to Indian and Native American programs.

§ 632.4 Definitions.

Act—means the Job Training Partnership Act (29 U.S.C. 1501 et. seq.).

Capital Improvement—means any modification, addition, restoration or other improvement:

(a) Which increases the usefulness, productivity, or serviceable life of an existing building, structure, or major item of equipment;

(b) Which is classified for accounting purposes as a "fixed asset;" and

(c) The cost of which increases the recorded value of the existing building, structure, or major item of equipment and is subject to depreciation.

Community Based Organization—means a private nonprofit organization which is representative of the Indian and Native American community or significant segments of the community and which provides employment and training services or activities.

Comprehensive Annual Plan (CAP)—means the annual update to the Master Plan. The CAP will identify the work plan and budget for the annual 401 and Title II, Part B funding allocations.

Construction—means the erection, installation, assembly or painting of a new structure or a major addition, expansion or extension of an existing structure and the related site preparation, excavation, filling and landscaping or other land improvements.

Contract—means a procurement instrument by which the Department, a Native American grantee or a subgrantee acquires and pays for property, services, supplies, materials or equipment.

Contractor—means any person, corporation, partnership, public agency, or other entity which enters into a contract with the DOL, a Native American grantee or subgrantee under the Act.

Department—means the United States Department of Labor (DOL) including its agencies and organizational units.

Dependent—means any person for whom, both currently and during the previous 12 months, the participant has assumed 50 percent of the person's support.

DINAP—means the Division of Indian and Native American Programs of the Department of Labor.

DOL—means the U.S. Department of Labor.

Economically Disadvantaged—means an individual who (a) receives, or is a member of a family which receives, cash welfare payments under a Federal, State, or local welfare program; (b) has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (1) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, or (2) 70 percent of the lower living standard income level; (c) is receiving food stamps pursuant to the Food Stamp Act of 1977; (d) is a foster child on behalf of whom State or local government payments are made; or (e) in cases permitted by regulations of the Secretary, is an adult handicapped individual whose own income meets the requirements of paragraph (a) or (b) of this definition, but who is a member of a family whose income does not meet such requirements.

Entered Employment—means the act of securing unsubsidized employment for or by a participant.

Entry Level—means the lowest position in any promotional line, as defined locally by collective bargaining agreements, past practice, or applicable personnel rules.

Family—(a) means one or more persons living in a single residence who are related to each other by blood, marriage, or adoption. A step-child or a step-parent is considered to be related by marriage.

(b) (1) For purposes of paragraph (a) of this definition, one or more persons not living in the single residence but who are claimed as a dependent on another person's Federal Income Tax return for the previous year is presumed,

unless otherwise demonstrated, to be part of the other person's family.

(2) A handicapped adult may be considered a family of one when applying for programs under the Act.

(3) An individual 18 years of age or older, except as provided in (b) (1) or (2) of this definition, who receives less than 50 percent of support from the family, and who is not the principal earner or the spouse of the principal earner shall not be considered a member of the family. Such an individual shall be considered a family of one.

Family Income—means all income actually received from all sources by all members of the family for the six-month period prior to application. Family size is the maximum number of family members during the six-month period prior to application. When computing family income, income of a spouse and other family members is counted for the portion of the six-month period prior to application that the person was actually a part of the family unit.

(a) For the purposes of determining participant eligibility (and not for grantee allocations), family income includes:

(1) Gross wages including CSE, Work Experience and OJT and salaries (before deductions);

(2) Net self-employment income (gross receipts minus operating expenses); and

(3) Other money income received from sources such as interest, net rents, OASI (Old Age and Survivors Insurance) social security benefits, pensions, alimony, and periodic income from insurance policy annuities, and other sources of income.

(b) Family income does not include:

(1) Non-cash income such as food stamps, or compensation received in the form of food or housing;

(2) Imputed value of owner-occupied property, i.e., rental value;

(3) Public assistance payments;

(4) Cash payments received pursuant to a State plan approved under Titles I, IV, X or XVI of the Social Security Act, or disability insurance payments received under Title II of the Social Security Act;

(5) Federal, State or local unemployment benefits;

(6) Capital gains and losses;

(7) One time unearned income, such as, but not limited to:

(i) Payments received for a limited fixed term under income maintenance programs and supplemental (private) unemployment benefits plans;

(ii) One-time or fixed-term scholarship and fellowship grants;

(iii) Accident, health, and casualty insurance proceeds;

(iv) Disability and death payments, including fixed term (but not lifetime) life insurance annuities and death benefits;

(v) One-time awards and gifts;

(vi) Inheritance, including fixed term annuities;

(vii) Fixed term workers' compensation awards;

(viii) Terminal leave pay;

(ix) Soil bank payments; and

(x) Agriculture crop stabilization payments;

(8) Pay or allowances which were previously received by any veteran while serving on active duty in the Armed Forces;

(9) Educational assistance and compensation payments to veterans and other eligible persons under Chapters 11, 13, 31, 34, 35, and 36 of Title 38, United States Code;

(10) Payments received under the Trade Act of 1974;

(11) Black Lung payments received under the Benefits Reform Act of 1977, Pub. L. 95-239, 30 U.S.C. 901; and

(12) Child support payments.

(13) Any income directly or indirectly derived from, or arising out of, any property held by the United States in trust for any Indian tribe, band or group or any individual; per capita payments; and services, compensation of funds provided by the United States in accordance with, or generated by, the exercise of any right guaranteed or protected by treaty; and any property distributed or income derived therefrom, or any amounts paid to or for any individual member, or distributed to or for the legatees or next of kin of any member, derived from or arising out of the settlement of an Indian claim.

Financial Assistance—means any grant, loan, or any other arrangement by which the Department or Native American grantee provides or otherwise makes available assistance in the form of:

(a) Funds;

(b) Services of Federal or Native American grantee personnel; or

(c) Real and personal property or any interest in or use of such property, including:

(1) Transfers or leases of such property for less than fair market value or for reduced consideration and

(2) Proceeds from a subsequent transfer or lease of such property if the Federal or Native American grantee share of its fair market value is not returned to the Federal Government or Native American grantee.

Governing Body—means a body consisting of duly elected or designated representatives, a body appointed by duly elected officials, or a body selected

in accordance with traditional tribal means which has the authority to provide services to, and to enter into contracts, agreements and grants under this part on behalf of the organization or individuals who elected or designated them, elected the appointing official, or recognize the body selected in accordance with traditional tribal means.

Governor—means the chief executive of any State.

Handicapped Individual—means any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment.

Hawaiian Native—means any individual, any of whose ancestors are natives, prior to 1778, of the area which now comprises the State of Hawaii (Sec. 3(12)).

JTPA—means the Job Training Partnership Act.

Local Educational Agency (LEA)—means such an agency as defined in Section 195(10) of the Vocational Educational Act of 1963. It shall further mean the governing bodies of any Bureau of Indian Affairs, tribal or reservation run agencies or school districts, or any nonprofit agency or tribally chartered entity providing educational services to Indian and Native American persons as determined by the Native American grantee.

Low Income Housing—means:

(a) For weatherization or winterization projects, those dwellings occupied by persons whose family income does not exceed 125 percent of the poverty level and which are:

(1) Owned by the occupant;

(2) Publicly owned;

(3) Owned by a private nonprofit organization;

(4) Cooperatively owned; or

(5) For projects funded and approved by the Federal Energy Administration, privately owned rental housing.

(b) For rehabilitation as part of community revitalization or stabilization, those dwellings occupied by persons whose family income does not exceed 80 percent of the median income for the area, in accordance with Section 8(f)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437f), and which are:

(1) Owned by the occupant;

(2) Publicly owned;

(3) Owned by a private nonprofit organization; or

(4) Cooperatively owned.

Lower Living Standard Income Level—means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the

Secretary based on the most recent "lower living family budget" issued by the Secretary.

Master Plan—means the basic long term agreement between the Department and the Native American grantee. The master plan contains all basic eligibility determination and administrative information.

Native American Community Benefit—means the outcome of allowable activities undertaken for the advancement of economic and social development in the Indian, Alaskan Native, and Hawaiian Native communities consistent with their goals and life styles as determined by representatives of the community.

Offender—means any adult or juvenile who is or has been subject to any stage of the criminal justice process for whom services under this part may be beneficial or who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

Older Worker—means a person who is 55 years of age or older.

Participant—means an individual who has:

(a) Been determined eligible for participation; and,

(b) Started receiving employment, training or services (except post-termination services) funded under the Act, within 45 days of such determination.

Poverty Level—means the annual income level at or below which families are considered to live in poverty, as annually determined by the Department of Health and Human Services.

Public Assistance—means Federal, State, tribal, or local government cash payments for which eligibility is determined by a need or income test.

Program Income—means gross income earned from grant or agreement supported activities. Such earnings include but are not limited to: income from service fees, sale of commodities, usage or rental fees, and royalties on patents or copyrights.

Program year—means that 12-month period of time during which job training activities and services are provided to participants. The first program year will begin July 1, 1984, and end June 30, 1985, to be followed by subsequent program years.

Secretary—means the Secretary of Labor.

Similarly Employed—means the status of a person who is working for the same employer as the JTPA participant, is doing the same type of work, and is similarly classified with respect to

employment status (e.g., full-time, permanent, or temporary).

State—means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Marianas Islands, American Samoa, and the Trust Territory of the Pacific Islands.

State Employment Security Agency (SESA)—means the State agency which exercises control over the Unemployment Insurance Service and the Employment Service.

Subgrantee—means any person, corporation, partnership, public agency, or other entity which enters into a grant with the Native American Grantee.

Underemployed Persons—means:

(a) Persons who are working part-time but seeking full-time work; or

(b) Persons who are working full-time but whose current annualized wage rate (for a family of one), or whose family's current annualized income, is not in excess of:

(1) The poverty level, or

(2) 70 percent of the lower living standard income level.

Unemployed Persons—means individuals who are without jobs and who want and are available for work. The determination of whether individuals are without jobs shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department of Labor in defining individuals as unemployed.

Subpart B—Designation Procedures for Native American Grantees

§ 632.10 Eligibility requirements for designation as a Native American Grantee.

(a) All funds specifically identified in the Act as reserved for the benefit of Indian and Native American participants shall be disbursed by the Department only to Native American grantees designated pursuant to this subpart. Except for FY 1984, designation will be for a period of two years.

(b) To be designated as a Native American grantee, an applicant must have:

(1) A governing body;

(2) For new grantees an Indian or Native American population within its designated service area of at least 1,000 persons;

(3) The capability to administer an Indian and Native American employment and training program. For purposes of this paragraph, "capability to administer" means that the applicant can demonstrate that it possesses, or can acquire the managerial, technical, or administrative staff with the ability to properly administer government funds, develop employment and training

opportunities, evaluate program performance and comply with the provisions of the Act and the regulations. In judging the applicant's request for designation, consideration shall be given to factors such as:

(i) Previous experience in operating an effective employment and training program serving Indians or Native Americans;

(ii) The number and kind of activities of similar magnitude and complexity that the applicant has successfully completed;

(iii) Information from other Federal agencies regarding program performance or financial and management capability.

(4) The Department will not designate an organization in cases where it is established that:

(i) The agency's efforts to recover debts (for which three demand letters have been sent) established by final agency action have been unsuccessful, or

(ii) Fraud or criminal activity has been proven to exist within the organization.

(5) An amount under the funding formulas that total at least \$120,000 in all JTPA funds for the first year of the two-year designation period. In the event that this amount cannot be determined at the time of the Department's decision on the request for designation, the amount shall be estimated in part by reference to the funding levels for Native American programs for the prior fiscal or program year.

(6) An applicant for designation shall be designated notwithstanding the limitation in paragraph (b)(5) of this section if it demonstrates that:

(i) It has or expects to receive a combined total of \$120,000 in funds or services for the first year of the 2-year designation period from JTPA and other human resource development programs, including but not limited to those providing for employment, education, vocational education, health, social or similar services; or

(ii) It is recognized and directly funded by Federal agencies, such as the Indian-serving agencies within the Departments of Interior, Health and Human Services or Education as the primary service delivery organization for the provision of human resource development services to Indians or Native Americans within the organization's customary service area. This provision shall be interpreted consistent with the Federal policy established in Pub. L. 93-638, the Indian Self-Determination Act; or

(iii) It has demonstrated successful operation of an employment and

training program at a level below \$120,000 within the previous two years. For this purpose, success is the ability to adequately meet planned goals and stay within the grants cost limits.

(7) For a consortium to be designated, it must submit the consortium agreement which meets the requirements of this subpart.

(c) Types of eligible Native American grantees:

(1) *Indian tribe, band or group.* The Department shall designate as a Native American grantee an Indian tribe, band or group which meets the requirements in paragraph (b) of this section.

(2) *Alaskan Native entity.* The Department shall designate as a Native American grantee an Alaskan Native entity as defined in the Alaskan Native Claims Settlement Act which meets the requirements in paragraph (b) of this section.

(3) *Hawaiian Native grantee.* The Department may designate as a Native American grantee any private nonprofit organization or public agency representative of the Native Hawaiian community which meets the requirements in paragraph (b) of this section and which the Department determines will best meet the needs of Native Hawaiians.

(4) *Public or private agencies.* The Department may designate as a Section 401 grantee a private nonprofit organizations or public agency which meets the requirements in paragraph (b) of this section to serve areas where there are significant numbers of Indians or Native Americans, but where there are no Indian tribes, bands or groups, Alaskan Native entities or Hawaiian sponsors or consortia of such sponsors eligible for designation.

(5) *Consortium grantees.* The Department may designate as a Native American grantee a consortium of any of the types of grantees described in paragraphs (c), (1), (2), (3), and (4) of this section which may or may not be independently eligible. All such consortia shall meet the following requirements, in addition to the requirements in paragraph (b) of this section:

(i) All the members shall be in geographic proximity to one another. A consortium may operate in more than one State.

(ii) An administrative unit shall be designated for operating the program, which may be a member of the consortium or an agency formed by the members. The administrative unit shall be delegated all powers necessary to administer the program effectively, including the power to enter into

contracts and subgrants and other necessary agreements, to receive and expend funds, to employ personnel, to organize and train staff, to develop procedures for program planning, to monitor financial and program performance, and to modify the grant agreement through agreement with the Secretary. The right of reallocating funds within the consortium area shall be reserved to the consortium's members.

(iii) The consortium shall be the Native American grantee. The consortium agreement shall specify that signatories thereto shall be liable jointly or separately for claims established against the grantee. Additional standardized requirements for consortium agreements will be communicated to grantees under separate order.

(d) In the situation where the Department does not designate Indian tribes, bands or groups or Alaska Native groups to serve such groups, the Department shall, to the maximum extent feasible, enter into arrangements for the provision of services to such groups with other types of Section 401 grantees which meet with the approval of the Indian tribes, bands, groups or Alaska Native groups to be served (Section 401(d)). In such cases, the Department shall consult with the governing body of such Indian tribes, bands, groups or Alaska Native groups prior to the designation of a Native American grantee.

(e) In designating Native American grantees to serve groups other than those in paragraph (d) of this section, such as nonreservation Indians and Native Hawaiians, the Department shall whenever feasible, designate grantees which are directly controlled by Indian or Native American people. (Where it is not feasible to designate such types of grantees, DINAP shall consult with Indian or Native American-controlled organizations in the area with respect to the designation of a Native American grantee. Where a private nonprofit organization is designated, DINAP shall require any such grantees not directly controlled by Indian or Native American people to establish a Native American Employment and Training Planning Council and to implement an Indian preference policy with respect to hiring of staff and contracting for services with regard to all funds provided pursuant to this Part (Sec. 7(b) of the Indian Self-Determination and Education Assistance Act)).

§ 632.11 Designation of Native American grantees.

(a) When designations are required and the potential grantee is not under a Master Plan agreement, an applicant for designation as a Native American grantee shall submit a notice of intent to apply for funds. Such notices of intent shall be postmarked by January 1 and be submitted to the Division of Indian and Native American Programs (DINAP), Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 2013. Notices of intent may also be delivered to that office in person not later than the close of business on January 2 or the first business day of the designation year. Such notices of intent to apply shall be submitted on Standard Form 424 as a preapplication for Federal assistance. For applicants not under an active Master Plan agreement or the Master Plan agreement is due to expire during the year of designation, the following information shall be included in the notice of intent:

(1) Evidence that the applicant meets the requirements for a Native American grantee contained in § 632.10.

(2) A description of the geographic area or areas which the applicant proposes to serve, together with the Indian and Native American population in such areas, to the extent known. The description must include a list of States (if more than one), in alphabetical order, and under each State, a list of counties in alphabetical order, followed by a list of tribes, bands or groups (if any) in alphabetical order and the total square mileage. If the applicant was a Native American grantee for the period prior to the one which is being applied for, the applicant must also list any counties and tribes, bands or groups which are being added to, or deleted from, the previous fiscal year's service area;

(3) A description of the applicant's organization, including the legal status of the applicant, the process of selection of the governing body, the duties and responsibilities of the governing body, and in the case of private nonprofit organizations, a copy of the articles of incorporation.

(4) Evidence of the applicant's capability to operate an Indian or Native American employment and training program, including a statement of the applicant's past successes in operating programs for Indians or other Native Americans and a statement of the applicant's experience in managing the types of programs and activities allowable under the Act;

(5) A description of the planning process including employer involvement

which the applicant proposes to undertake in developing a plan for the use of funds;

(6) Information related to a grantee's administrative responsibility. The DOI will conduct an independent review to determine whether each applicant is currently delinquent in repaying any DOI claims or has any outstanding administrative problems. Applicants are, therefore, encouraged to submit any documents related to these factors including documents and correspondence previously submitted to DOI. Submittal of such materials will be in the applicant's best interest and will enable DOI to move rapidly to complete the Notice of Intent and grantee designation review process.

(7) If the applicant is applying as a consortium, evidence that the consortium meets the requirements for a consortium in this Part.

(b) If the applicant for designation is a current grantee and under a master plan agreement, only the Standard Form 424 and a statement(s) indicating that to the best of the applicants knowledge, it meets the requirements of § 632.10(b)(4) will be necessary.

(c) *Responsibility Review.* Prior to finally designating or nondesignating the Department will conduct a review of the available records to determine whether or not the organization has responsibly administered Federal funds. This review is intended to establish overall responsibility. The following information will be taken into consideration in making the final decision:

(1) The agencies efforts to recover debts (for which three demand letters have been sent) established by final agency action have been unsuccessful, or failure to comply with an approved repayment plan.

(2) Serious administrative deficiencies have been identified in final findings and determination—such as failure to maintain a financial management system as required by Federal regulations.

(3) Established fraud or criminal activity exists within the organization.

(4) Willful obstruction of the audit process.

(5) Substantial failure to provide services to applicants as agreed to in a current or recent grant.

(6) Failure to correct deficiencies brought to the grantees attention in writing as a result of monitoring activities, reviews, assessments, etc.

(7) Failure to return a grant closeout package on outstanding advances within 90 days of expiration date or receipt of closeout package, whichever is later.

unless an extension has been requested and granted; final billings reflecting serious cost category or total budget cost overrun.

(8) Failure to submit required reports.

(9) Failure to properly report and dispose of government property as instructed by DOL.

(10) Failure to have maintained cost controls coverage resulting in excess cash on hand.

(11) Failure to procure or arrange for audit coverage for any two year period when required by DOL.

(12) Failure to audit subrecipient within the required period when applicable.

(13) Final disallowed costs in excess of five percent of the grant or contract award.

(14) Failure to establish a mechanism to resolve subrecipients audit within established time frames.

(d) On March 1 of each designation year, the Department shall designate or conditionally designate native American grantees for the coming two program years. Each applicant shall be notified in writing of the determination. Those applicants that are not designated as Native American grantees may appeal under the complaint procedures in this part. Conditional designation will include the nature of the conditions and the actions required to be finally designated.

§ 632.12 Alternative arrangements for the provision of services, nondesignation.

(a) If no application for Native American grantee designation for an area is filed, or if the Department has denied such application for that area, the department may designate and fund an entity to serve that area, pending the final resolution of any Petitions for Reconsideration or other actions taken pursuant to § 632.13. An organization not designated may also appeal to an ALJ under the provisions of § 632.154. This further appeal will not in any way interfere with the Department's designation and funding of another organization to serve the area in question. The available remedy under such an appeal will be the right to be designated in the future rather than a retroactive or immediately effective designation status. Therefore, in the event the ALJ rules that the organization should have been designated and the organization continues to meet minimum standards, the Department will designate the organization in the succeeding designation period. The alternate organization which loses its designation solely as a result of the application of this remedy may not appeal the nondesignation.

(b) If the grant officer finally disapproves a CAP pursuant to § 632.21 he/she may withdraw the Native American grantee's designation and immediately designate another entity to serve the area, pending the final resolution of any Petitions for Reconsideration or other actions taken pursuant to § 632.159.

(c) If a Native American grantee's CAP is terminated or suspended in whole or in part, the Department (after an opportunity for a hearing except in emergency situations as described in Section 164(f) of the Act) may designate another entity to serve the area.

(d) If it is not feasible for the Department to designate another entity to serve the area under the conditions described in paragraphs (a), (b), and (c) of this section, the funds involved may be distributed at the Secretary's discretion to Native American grantees serving other areas.

(e) Service areas covered by alternative arrangements as provided in this section may be made available to potential applicants for designation the following January 1, as described in § 632.11 for the remainder of the two-year designation period.

§ 632.13 Review of denial of designation as a Native American grantee, or rejection of a comprehensive annual plan.

(a) An applicant for designation as a Native American grantee which is refused such designation may file a Petition for Reconsideration with the Grant Officer within 14 days of receipt of a letter from the Department indicating its failure to be designated as a Native American grantee.

(1) A Petition for Reconsideration shall be in writing, shall be signed by a responsible official of the applicant entity, and shall enumerate the factors which the applicant entity asserts should be reviewed by the Grant Officer in reconsidering the denial of its application.

(2) Upon receipt of the Petition for Reconsideration, the Grant Officer shall, within 30 days, make one of the following determinations:

(i) That based on the available information from the original request for designation and information supplied in the Petition for Reconsideration, the applicant entity should be designated as a Native American grantee;

(ii) That the original determination made was correct; or

(iii) That an informal conference between representatives of the applicant entity and the Grant Officer shall be held at a specified time and place to discuss the Petition for Reconsideration.

(3) If an informal conference is held, the applicant entity shall have the opportunity to present any pertinent information which may further substantiate its petition. The Grant Officer shall notify the applicant entity of its final decision within 14 days after the informal conference is held.

(4) All final determinations of the Grant Officer, which deny a Petition for Reconsideration, shall be in writing, shall state the reasons for the denial, shall be sent to the applicant by certified mail, return receipt requested, and shall notify the applicant entity that, within 30 days of its receipt of the notice, it may request a hearing pursuant to § 632.154.

(b) A designated Native American grantee whose CAP has been rejected may file a Petition for Reconsideration pursuant to paragraph (a) of this section. Such petitions shall be handled under the procedures described in paragraph (a) of this section.

Subpart C—Program Planning, Application and Modification Procedures

§ 632.17 Planning process.

(a) Each Native American grantee shall establish a planning process for the development of its Master Plan and Comprehensive Annual Plan. This planning process shall involve consideration of the need for job training and employment services, appropriate means of providing needed services and methods of monitoring and assessing the services provided. Recognizing the importance of employer involvement in designing and implementing programs, each Native American grantee shall involve employers in program planning. This involvement may take a variety of forms including establishing a formal private industry council, involving employers in existing councils or boards or through other innovative methods designed by the grantee.

(b) (1) Each Native American grantee's planning process shall involve consultation with major employers or organizations representing employers inside the grantee's designated service or surrounding labor market area. Such consultation shall include consideration of the opportunities for placement of program participants and the design of training activities and related services.

(2) A description of the procedures used for this consultation shall be included in the grantee's Master Plan. The results of the consultation shall be described in the grantee's Comprehensive Annual Plan.

(3) Native American grantees are encouraged to establish or to use existing formal advisory councils, such as Private Industry Councils, as vehicles for such consultation. Grantees are also encouraged to use all appropriate mechanisms, including Tribal Employment Rights Offices (TEROs), to insure maximum opportunity for the placement of participants in unsubsidized employment.

(4) A Native American grantee will not be held responsible for the refusal of any employer or organization representing employers to engage in the consultation process described in this Section.

(c) In addition to the requirement in paragraph (b) of this Section, the planning process shall provide the opportunity for the involvement of the client community, service providers (such as appropriate community-based organizations) and educational agencies, tribal agencies or other Indian and Native American organizations whose programs are relevant to the provision of job training services within the grantee's service area.

§ 632.18 Regional and national planning meetings.

Grant funds may be used for holding regional and national planning meetings, subject to restrictions on allowable costs.

§ 632.19 Grant application content.

The basic document will be a four year Master Plan which will be supplemented each fiscal year by submission and approval of a Comprehensive Annual Plan (CAP). Standard Department of Labor grant procurement documents will be used for both the Master Plan and the CAP. The CAP will be the only document making funds available to a grantee. Modifications will also follow standard Department of Labor procurement policies. Each designated grantee will be informed of and provided the necessary documents and requirements in sufficient time to complete grant actions without interrupting services to participants.

§ 632.20 Submission of grant applications.

Starting with program year 1985, a completed CAP is to be submitted by registered mail to DINAP, by a date the Secretary shall announce, requesting Department of Labor approval.

§ 632.21 Application disapproval.

(a) A CAP shall be disapproved by the Grant Officer if it fails to meet the requirements of the Act or the regulations.

(b) No CAP shall be finally disapproved until the designated Native American is provided with a description by the Chief, DINAP in writing of the CAP's defects and has been provided with at least 30 days to remedy such defect(s), but has failed to do so.

(c) When a CAP is finally disapproved or conditionally approved, a notice of disapproval or conditional approval shall be transmitted by certified mail, return receipt requested, to the applicant, accompanied by a statement of the grounds of the disapproval of conditioned approval and a statement that the applicant may file a Petition for Reconsideration with respect to the disapproval or conditional approval.

§ 632.22 Modification of a Comprehensive Annual Plan (CAP) and/or Master Plan.

Modifications to both the CAP and Master Plan will conform to the requirements at Part 29-70. As necessary, the Secretary shall issue supplemental modification requirements. The Department will unilaterally modify a grant when a simple funding or performance period increase is required and it is consistent with the approved plan.

§ 632.23 Termination and corrective action of a CAP and/or Master Plan.

(a) *Emergency Termination.* The Department may terminate or suspend a CAP designation or Master Plan under emergency termination procedures in accordance with Section 164(f) of the Act. The provisions in Subpart G of this Part shall not apply in instances of emergency termination.

(1) Instances under which emergency termination can occur include but are not limited to: Audit reports identifying numerous adverse findings in the area of financial control and management; information gathered through onsite monitoring which substantiates serious management, fiscal and/or performance problems, information from the Inspector General or gained through incident reports of poor performance, serious administrative problems and/or inability to protect and account for Federal funds.

(2) Within 30 days of written termination notification to a grantee, the Department will secure applicable documents onsite, seize bank accounts relating to the program, arrange for the payment of legitimate bills and debts and arrange, to the degree feasible, for the continued provision of services to program enrollees.

(b) *Termination for Cause.* Termination for cause can occur whenever there is a violation of the governing rules and regulations, failure

to comply with the grant terms and conditions and in such cases as:

(1) Poor performance and inability to meet Federal standards related to such debt collection requirements as:

(i) Failure to respond to demand letters from DOL for repayment of debts within the stated timeframe;

(ii) Failure to comply with an approved repayment agreement revealed through monitoring or subsequent audit.

(iii) Failure to take necessary corrective action to improve underperformance and to plan for more effective subsequent operations.

(2) Nonperformance related to such requirements as:

(i) Failure to submit required quarterly financial reports for two successive periods within 45 days after they are due;

(ii) Failure to submit required quarterly performance reports for two successive periods within 45 days after they are due;

(iii) Failure to develop a plan of action to correct deficiencies identified in an audit report or by an onsite monitoring review.

(3) Nonperformance related to such requirements as:

(i) Failure to comply with formal corrective action after due notice;

(ii) Failure to comply with the requirements of the Act related to a grievance procedure and other requirements;

(iii) Failure to submit required modification within 10 days to adjust grant award due to reduction in available funds, reductions due to debt collection action, etc.

(c) In addition, the Department, by written notice, may terminate a grant in whole or in part in the event of reduction in the funds available or a change in provisions for JTPA Title IV, Section 401 programs by reason of congressional action.

Subpart D—Administrative Standards and Procedures

§ 632.31 General.

(a) This subpart describes requirements relating to the administration of grants by Native American grantees. Administrative requirements found in this subpart apply to all programs under the Act unless stated to the contrary for any specific program.

(b) As referenced in this subpart, the requirements set forth in 41 CFR Parts 29-70, "Administrative requirements governing all grants and agreements by which Department of Labor agencies

award funds to State and local governments, Indian and Native American entities, public and private institutions of higher education and hospitals, and other quasi-public and private nonprofit organizations," shall apply to grants under JTPA.

(1) The requirements in 41 CFR 29-70.1 set forth the policies which apply to all basic grants and agreements.

(2) The requirements in 41 CFR 29-70.2 implement OMB Circular Nos. A-102 and A-110, and apply to all JTPA grants and agreements unless otherwise indicated in these regulations.

§ 632.32 Financial management systems.

(a) Each Native American grantee, subgrantee and contractor shall maintain a financial management system which will provide accurate, current and complete disclosure of the financial transactions under each grant, subgrant or contract activity, and will enable each Native American grantee, subgrantee or contractor to evaluate the effectiveness of program activities and meet the reporting requirements of this Subpart.

(b) Each Native American grantee, subgrantee and contractor shall maintain its financial accounts so that the report required by the Department may be prepared therefrom.

(c) To be acceptable for audit under this subpart, a Financial Status Report shall be:

(1) Current as of the cut-off date of the audit.

(2) Taken directly from or linked by worksheet to the Native American grantee's books of original entry; and

(3) Traceable to source documentation of the unit transaction.

(d) In cases in which the Native American grantee's records are unauditible, the auditor shall submit a letter to the grant officer delineating the reason therefor and delineating the action required to place records in auditible conditions.

§ 632.33 Audits.

(a) *General.* The audit provisions of 41 CFR 29-70 shall apply to Native American grantees that are Indian tribal governments. The Office of the Inspector General shall be responsible for arranging and conducting audits of Native American grantees that are not Indian tribal governments.

§ 632.34 Program income.

General. The provisions of 41 CFR 29-70.205, program income and interest earned, shall apply to Native American grantee programs.

(a) Income generated under any program may be retained by the

recipient to continue to carry out the program, notwithstanding the expiration of DOL financial assistance for that program.

(b) *Special provisions.* Income earned as a result of activities of JTPA participants by an income generating enterprise, which is owned by an Indian tribe, band or group or an Alaskan native entity, and the profits of which are used exclusively for governmental, charitable, educational, civic, social or other similar purposes, may be retained by such enterprise and used in the same manner as other income of such enterprise.

§ 621.35 Native American grantee contracts and subgrants.

(a) Contracts may be entered into between the Native American grantee and any party, public or private, for purposes set forth in the JTPA.

(b) Subgrants may be entered into between the Native American grantee and units of State and local general government, Indian tribal government, public agencies or nonprofit organizations.

(c) The Native American grantee is responsible for the development, approval and operation of all contracts and subgrants and shall require that its contractors and subgrantees adhere to the requirements of the Act, the regulations under the Act, and other applicable law. It shall also require contractors and subgrantees to maintain effective control and accountability over all funds, property and other assets covered by the contract or subgrant.

(d) Each Native American grantee shall take action against its contractors and subgrantees to prevent or eliminate violations of the regulations, and to prevent misuse of JTPA funds.

(e) Subgrantees are entitled to funding for administrative costs. The amount of such funding will be determined during the development of subgrants subject to the overall administrative costs of the grant.

(f) If a contract or subgrant is cancelled in whole or in part, the Native American grantee shall develop procedures for ensuring continuity of service to affected participants to the extent feasible.

(g) The Native American grantee may enter into contracts or subgrants which extend past the expiration date of the CAP but such extension shall not exceed 6 months. In such cases, the grantee shall continue to be responsible for the administration of such contracts and subgrants.

(h) To the extent feasible, Native American Indian grantees shall give preference in the award of contracts and

subgrants to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). Any contract or subgrant made by a Native American grantee shall require that, to the greatest extent feasible, preference and opportunities for training and employment in connection with such contract or subgrant shall be given to qualified Indians regardless of age, religion or sex and that the contractor or subgrantee shall comply with any Indian preference requirements established by the Native American grantee. All grantees, subgrantees and contractors shall include the requirements of this paragraph in all subcontracts and subgrants made by them (Sec. 7(b) of the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638 (25 U.S.C. 450 et seq.)).

(i) The Native American grantee shall ensure that contractors and subgrantees maintain and make available for review by the grantee and the Department of Labor all records pertaining to the operations of programs under such contracts and subgrants consistent with the maintenance and retention of record requirements in 41 CFR Parts 29-70.

§ 632.36 Procurement standards.

(a) Native American grantees shall comply with the procurement systems and procedures found in 41 CFR 29-70.216, Procurement standards.

(b) Subject to the Indian preference provisions of § 632.35(h), small and minority-owned businesses, including small businesses owned by women, within the service area of the Native American grantee, shall be provided maximum reasonable opportunity to compete for contracts for supplies and services. One means to provide for this is the use of set-asides.

(c) No funds shall be paid by the Native American grantee to any organization for the conduct of programs under the Act unless:

(1) It has submitted an acceptable proposal;

(2) Selection is performed on a merit basis;

(3) It has not been seriously deficient in its conduct of, or participation in, any Department of Labor program in the past, or is not a successor organization to one that was seriously deficient in the past, unless the organization satisfactorily demonstrates that the deficiency has been or will be corrected and performance substantially improved; and

(4) It has the administrative capability to perform effectively.

§ 632.37 Allowable costs.

(a) *General.* To be allowable, a cost must be necessary and reasonable for proper and efficient administration of the grantee's program, be allocable thereto under these principles, and, except as provided herein, not be a general expense required to carry out the overall responsibilities of the grantee. Costs charged to the program shall be consistent with those normally allowed in like circumstances and, with applicable State and local law, rules or regulations as determined by the Native American grantee.

(b) Unless otherwise indicated below, direct and indirect costs shall be charged in accordance with 41 CFR 29-70.

(c) Costs associated with repairs, maintenance, and capital improvements of existing facilities used primarily for programs under the Act are allowable. Additionally, the costs of home repair, weatherization and rehabilitation are allowable when the work is performed:

(1) On dwellings of individuals whose family income is at or below 125 percent of the poverty level and which are privately owned and owner occupied, privately owned by a Native American grantee or a nonprofit organization, or are units of public housing; or

(2) In weatherization projects funded by the Department of Energy; or

(3) In rehabilitation projects of housing for lower income families as defined in Section 8(f)(1) of the United States Housing Act of 1937 as part of community revitalization projects.

(d) Section 401 funds may be used to pay the cost of incorporating a PIC, other planning body or consortium administrative entity for the purpose of carrying out programs under the Act. These costs are chargeable to administration.

(e) Costs which are billed as a single unit charge do not have to be allocated or prorated among the several cost categories but may be charged entirely to training when the agreement:

(1) Is for classroom training;

(2) Is fixed unit price; and

(3) Stipulates that full payment for the full unit price will be made only upon completion of training by a participant and placement of the participant into unsubsidized employment in the occupation trained for and at not less than the wage specified in the agreement.

§ 632.38 Classification of costs.

Allowable costs shall be charged against the following four cost categories: Administration; training; employment and other (including supportive services).

(a) Costs are allocable to a particular cost category to the extent that benefits are received by such category.

(b) The Native American grantee is required to plan, control and charge expenditures against the aforementioned cost categories.

(c) The Native American grantee is responsible for ensuring that, at a minimum, subgrant or subcontract recipients plan, control, and charge expenditures against the aforementioned cost categories.

(d) Administrative costs consist of all direct and indirect costs associated with the management of the grantee's program. Administrative costs shall be limited to those necessary to effectively plan and operate the grantee's program. These costs include but are not limited to: the salaries and fringe benefits of personnel engaged in executive, fiscal, data collection, personnel, legal, audit, procurement, data processing, communications, maintenance, and similar functions; and related materials, supplies, equipment, office space costs, and staff training.

Also included are salaries and fringe benefits of direct program administrative positions such as supervisors, program analysts, labor market analysts, and project directors. Additionally, all costs of clerical personnel, materials, supplies, equipment, space, utilities, and travel which are identifiable with these program administration positions are charged to administration.

(e) Training costs consist of goods and services which directly affect program participants in a training activity. Training costs include, but are not limited to, the following: the costs associated with on-the-job training, salaries, fringe benefits, equipment and supplies of personnel engaged in providing training; books and other teaching aids; equipment and materials used in providing training to participants; classroom space and utility costs; employability assessment; job related counseling for participants; job search assistance and labor market orientation; participant allowances, and tuition and entrance fees which represent instructional costs which have a direct and immediate impact on participants. In addition, 250 hours of youth try-out employment is considered an allowable training cost. Youth try-out employment is that which meets the requirements of § 632.73-3.

(f) The compensation of individuals who both instruct participants and supervise other instructors must be prorated among the training and administration cost categories on the basis of time records or other equitable

means. Similarly, tuition fees, and the costs of supplies used in the course of both participant instruction and other activities should be prorated among the benefitting uses.

(g) Employment costs consist of those costs associated with community service employment and work experience as described in § 632.79.

(h) Other costs include supportive services, services which are necessary to enable an individual to participate in training and assistance under this part, and those described in § 632.80.

(i) Costs which are not readily assignable to the Training or employment cost category should be charged to either the administration or other category as appropriate.

(j) Unemployment compensation costs are allowable for administrative staff hired in accordance with the administrative provisions of this part, and for CSE participants.

(k) *Travel costs.* (1) The cost of participant travel and staff travel necessary for the administration of programs under the Act are allowable costs, chargeable to the proper cost category, and must follow standard Federal travel requirements.

(2) Travel cost of Native American grantee officials, including staff, board members, an advisory council members are allowable if the travel and costs specifically relate to programs under the Act. These costs will be charged to administration. Travel costs for officials of tribes or organizations belonging to a consortium require advance written approval from the Chief, DINAP, unless they are also officials of the Native American grantee organization.

(3) Travel costs for participants using their personal vehicles in the performance of their jobs are allowable if the employing agency normally reimburses its other employees in this way. These costs shall be charged to supportive services.

(4) Travel costs to enable participants to obtain employment or to participate in programs under the Act are allowable as supportive services.

(l) *Allocation of fixed unit charge.* (1) When contractors or subgrantees bill the Native American grantee with a single unit charge containing costs which are chargeable to more than one cost category, the Native American grantee shall charge these costs to the cost categories in § 632.38. For unit charges such as tuition fees for which the necessary detail cannot be provided, a reasonable estimate of the breakdown of the single unit charge among cost categories in § 632.38 will be sufficient, including for audit purposes. When such

unit charges are normally billed as a single charge and the cumulative amount of such charges to a service provider does not exceed \$25,000 within the grant year, proration will not be required. These costs may be charged to the category receiving the most benefit.

(2) The provisions of this section shall not apply to vendors selling or leasing equipment and attendant service at a commercially established rate to Native American grantees or subgrantees.

(3) In the case of multiuse equipment there must be a proration of costs, or, if there is a predominant usage relating to one cost category, a charge shall be made to that category.

(4) Any single cost, such as staff salaries or fringe benefits, which is properly chargeable to more than one cost category shall be prorated among the affected categories.

(5) Any profit or loss may be prorated among all affected cost categories.

§ 632.39 Administrative cost plan.

(a) All administrative funds for all programs operated under separate Sections of the Act by a Native American grantee shall be accounted for separately and be allocated by title and program activity. An administrative cost pool allocation system will not be used.

(b) The administrative cost plan may be modified during the program year.

§ 632.40 Administrative staff and personnel standards.

(a) *Staffing.* Members of the population to be served shall be provided maximum employment opportunities at all levels of the JTPA grantee administration. Native American grantees shall establish systems to enhance the recruitment and hiring of qualified Indian and Native Americans and to provide opportunities for their further occupational training and career advancement.

(b) *Compensation.* Compensation for administrative staff shall be at levels consistent with generally accepted business practices in the area. Such administrative wages, salaries, and fringe benefits are allowable administrative costs under JTPA.

(c) *Basic personnel standards.* All grantee employees, including participants, engaged in the administration of programs under the Act shall be subject to the policies and methods of personnel administration as formally established by the Native American grantee.

(d) *Bonding.* Native American grantees shall comply with the bonding requirements at 41 CFR 29-70.202b.

§ 632.41 Reporting requirements.

Within 45 days of the end of each but the last quarter, a Native American grantee shall submit to the Chief, DINAP by registered mail, financial and program reports on each program. Within 90 days of the end of the program year, a Native American grantee shall submit by registered mail to the Chief, DINAP final financial and program reports on each program. This final report will constitute the fourth quarter report. Accuracy of all reports must be verified by the chief executive officer or financial officer. When estimates are used the verification statement will so state. The exact reports to be submitted will be announced to Native American grantees under separate order and will include the following data elements:

(a) Characteristics of Terminees (at time of enrollment)

Total
Male
Female

Age

14-15
16-21
22-32
33-44
45-54
55+

Educational Status

School Dropout
4th Grade or Less
5-8 Grade
9-12 (not Graduated)
Student H.S. or Less (In-School youth)
H.S. Graduate or Equivalent (No Post H.S.)
Post H.S. Attendee

Race/Ethnic Group

American Indian/Alaskan Native
Asian and Pacific Islander

Family Status

Single Parent
Parent in Two-Parent Family
Other

Other Barriers to Employment

Limited English Language Proficiency
Handicapped
Offender
Transiency-moved to delivery area within one month of application
Welfare Recipient

Employment Status

Employed
Unemployed: 1-14 weeks of prior 26
Unemployed: 15 or more of prior 26
Not in Labor Force

(b) Program Costs.

Total Federal Program Costs
Administrative Costs
Training Costs
OJT Costs
Classroom Training Costs
Other Training Costs
Employment Costs

CSE

Work Experience

Other Costs

(c) Program Outcomes.

Termination

Number Entered Employment—Total

Number Entered Employment—Indirect

From OJT

From Classroom Training

From Subsidized Employment

Number of Additional Positive Terminations

Entered Non-Title 401 Training

Returned to School Full-Time

Other Successful Activity Completion

Completed Major Level of Education

(Elementary, High School, Post High School)

Number of Other Terminations

Earnings

Average Hourly Wage at Placement for those with preapplication earnings

Number of Placed Individuals with

Preapplication Earnings

Average Hourly Wage at Placement for those with no Preapplication Earnings

Average Hourly Wage-Pre-program 13 weeks

Number of Terminees with Earnings During 6

months Prior to Application

Average Earnings in 6 months Prior to

Application

Other

Average Number of Weeks Participated in

Program

Current Participants (end of quarter)

(d) The annual reports for Fiscal Year 1983 will be due November 30, 1983, and shall be submitted to the Chief, DINAP by registered mail.

§ 632.42 Grant closeout procedures.

Grant closeout will conform to the requirements at 41 CFR Part 29-70. As necessary, the Secretary shall issue supplementary closeout requirements.

§ 632.43 Reallocation of funds.

(a) Funds obligated for any program year may be expended by each grantee during that program year and the two succeeding program years and no amount shall be deobligated so long as the rate of expenditure is consistent with the CAP.

(b) When the DINAP determines that reallocation is appropriate, it shall give the Native American grantee 30-day notice of proposed action to remove funds from the grant. Such notice shall include specific reasons for the action being taken, and shall give the Native American grantee the opportunity to submit comments on the proposed reallocation of funds. These comments shall be submitted to DINAP within 30 days from the date of the notice. DINAP shall notify affected Native American grantees on any decision to reallocate funds. The Grant Officer shall finally reallocate by modifying the CAP.

Subpart E—Program Design and Management

§ 632.75 General responsibilities of Native American grantees.

This subpart sets out program operation requirements for Native American grantees including program management, linkages, coordination and consultation, allowable activities, participant benefits and duration of participation provisions. It also sets forth the responsibilities of Native American grantees with respect to nondiscrimination and equitable provision of services.

§ 632.76 Program management systems.

(a) All Native American grantees shall establish management information systems to control and assess all programs. Native American grantees must institute and maintain effective systems for the overall management of all programs including:

(1) Eligibility verification systems as described in § 632.78

(2) Complaint and hearing procedures as described in Subpart G of this part; and

(3) Mechanisms for taking immediate corrective action where problems have been identified and for restitution of JTPA funds for improper expenditures.

(b) All Native American grantees shall establish and maintain financial management and participant tracking systems in accordance with § 632.32 and § 632.77. The principal objectives of such systems shall be to provide the Native American grantee with systems necessary to effectively manage its program and to provide information necessary to design program activities and delivery mechanisms and complete Federal required reports.

(c) Each Native American grantee shall establish and use procedures for the continuous, systematic assessment of program performance in relation to the performance standards and goals contained in its CAP.

(d) Native American grantees shall establish and use procedures whereby the information collected and assessments conducted shall be considered in subsequent program planning and in the selection of service deliverers.

§ 632.77 Participant eligibility determination.

(a) Each Native American grantee, and any subgrantees or contractors assigned responsibility for the determination of participant eligibility, shall be responsible for developing and maintaining a system which reasonably ensures an accurate determination and

subsequent verification of eligibility based on the information presented at the time of application.

(b) The ultimate responsibility for the selection of participants and the maintenance of participant records rests with the Native American grantee. However, the Native American grantee may assign the administration of this responsibility to subgrantees or contractors. The selected agency must provide adequate documentation of each participant's eligibility and retain in the participant's folder the information on which this determination is based.

(c) The eligibility determination shall be based upon a signed, completed, application form which records all information necessary to determine eligibility, which attests that the information on the application is true to the best of the applicant's knowledge and acknowledging that such information is subject to verification and that falsification of the application shall be grounds for the participant's termination and may subject the applicant to prosecution under law. In the case of an applicant who is a minor (except minors who are emancipated or heads of households), the signature of the parent, responsible adult or guardian is also required.

(d) Native American grantees shall maintain documentation to insure the credibility of the eligibility determination, which shall consist at a minimum of the following:

(1) A completed application for participation; and

(2) Records of all actions taken to correct deficiencies in the eligibility determination procedures.

(3) Compliance with Section 504 of the Act.

(e) A participant determined to be ineligible shall immediately be terminated.

(f) A Native American grantee may enter into an agreement with a State employment security agency (SESA) or other independent agency or organization as may be approved by the Department, for the verification of applicant eligibility within 45 days of enrollment. The Native American grantee shall monitor such verification procedures to ensure that erroneous verifications are not made deliberately or with insufficient care.

(g) Participants may be transferred from one program to another, from one Native American grantee to another, from a Native American grantee to a SDA grant recipient, from a SDA grant recipient to a Native American grantee, or concurrently enrolled in programs sponsored by Native American grantees

or SDA grant recipients, provided, except for age requirements, they were eligible for the subsequent or concurrent program when they were first enrolled.

(h) Eligibility determinations for each program shall be made at the time of application. Applicants determined eligible may be enrolled as participants within 45 days of the date of the application without an update of the information on the application provided they did not obtain full-time permanent unsubsidized employment in the interim. This provision does not apply to the Title II-B Summer Indian program.

§ 632.78 Training activities.

Native American grantees shall design and operate programs funded under the Act which support growth and development as determined by representatives of the Indian and Native American communities and served (Sec. 401(a)). Training be only for occupations for which there is a demand in the area served or in another area to which the participant is willing to relocate, and consideration in the selection of training programs may be given to training in occupations determined to be in sectors of the economy which have a potential for sustained demand or growth. The CAP will provide evidence based on local labor market information that occupational demand exists for planned training. The basic types of training activities available to Native American grantees, subgrantees and contractors include, but are not limited, to the types of training activities listed in §§ 632.78-1 through 632.78-5.

§ 632.78-1 Classroom training.

This program activity is any training of the type normally conducted in an institutional setting, including vocational education, and designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. It may be coupled with other employment and training activities and may also include training designed to enhance the employability of individuals by upgrading basic skills, through the provision of courses such as remedial education, GED, training in the primary language of persons with limited English-speaking proficiency, or English-as-a-second-language training.

§ 632.78-2 On-the-job training.

(a) *General.* (1) On-the-job training (OJT) is training in the private or public sector given to a participant, who has been hired first by the employer, and which occurs while the participant is

engaged in productive work which provides knowledge or skills essential to the full and adequate performance of the job. This does not preclude a participant who has been hired by and received OJT from one employer from being ultimately placed with another employer. Innovative approaches to financing, particularly involving the sharing of training costs by the private sector are to be encouraged.

(2) OJT may be coupled with other JTPA employment and training activities. As needed, OJT participants may receive any of the employment and training services or supportive services through the system, through community resources, or through employer resources.

(b) *Reimbursement.* Payments to employers for OJT which shall not, during the period of such training, average more than 50 percent of the wages excluding fringe benefits paid by the employer to such participants, and payments in such amount shall be deemed to be in compensation for the extraordinary costs associated with the training costs and lower productivity of such participants. No direct wage payments will be made to OJT participants by the Native American Grantee.

(c) *OJT agreements.* Employers will be held responsible with respect to JTPA costs only in accordance with the provisions of their OJT agreements. At a minimum, the OJT agreement shall contain the elements listed below. Native American grantees may place additional provisions in the OJT agreement only after a careful assessment is made of the additional burdens imposed on participating employers. Agreements may be entered into only with employers which have not been seriously deficient in their conduct of or participation in any DOL program pursuant to § 632.41(o). Each OJT agreement shall contain:

- (1) A brief training outline, including the length of training and the nature of the training;
- (2) The method and maximum amount of reimbursement for OJT training costs;
- (3) The number of participants to be trained;
- (4) Job descriptions and specification of participant wage rates;
- (5) Reporting requirements;
- (6) An assurance that payroll records, time and attendance records, job duties and documentation of classroom training, employment and training services, or supportive services, costs for which the employer is being reimbursed will be subject to review;
- (7) A termination clause for nonperformance; and

(8) An assurance that the employer will comply with the Act and regulations.

§ 632.78-3 Tryout employment.

Tryout employment in private for-profit worksites may be conducted in accordance with Section 205(d)(3)(B) of the Act (Sec. 141(k)).

§ 632.78-4 Training services.

Such services include:

- (a) Orientation to the world of work;
- (b) Counseling. This includes employment and training related counseling and testing;
- (c) Job development;
- (d) Job search assistance. This includes transition services, such as job seeking skills instruction, individualized job search plan, labor market information, and other special activities for transition to unsubsidized employment;

- (e) Job referral and placement; and
- (f) Vocational Exploration Program (VEP). A Native American grantee may conduct a VEP program to expose participants to jobs available in the private sector through observation of such jobs, instruction, and, if appropriate, limited practical experience.

§ 632.78-5 Combined activities.

(a) A participant may be simultaneously or sequentially enrolled in two or more activities.

(b)(1) Reimbursement may be up to 100 percent to employers, including private-for-profit employers, for expenditures for the costs of classroom training, employment and training service or supportive services for participants in combined activities including the costs of participants' wages paid by the employer for time spent in these activities during working hours.

(2) Reimbursement may be made on a cost reimbursement of fixed cost basis and shall be supported by business receipts, payroll, or other normally kept by the employer.

(3) Nothing in this paragraph (b)(1) shall allow reimbursement to private-for-profit employers for costs of OJT to exceed the amounts allowable in § 632.78-2.

§ 632.79 Employment activities.

§ 632.79-1 Community service employment.

Community Service Employment is the type of work normally provided by government and includes, but is not limited to, work (including part-time work) in such fields as environmental quality, child care, health care,

education, crime prevention and control, prisoner rehabilitation, transportation, recreation, maintenance of parks, streets and other public facilities, solid waste removal, pollution control, housing and neighborhood improvement, rural development, conservation, beautification, veterans outreach, development of alternative energy technologies, and other fields of human betterment and community improvement. It includes work performed by tribally sponsored or owned income generating enterprises, owned by Indian tribes, bands, or groups, or Native Alaskan entities, provided the profits from such enterprises are used exclusively for functions normally performed by the governing body of such entities.

§ 632.79-2 Work experience.

(a) Work experience is a short-term or part-time work assignment with an employing agency or an organization authorized to employ CSE participants. It is otherwise prohibited in the private-for-profit sector.

(b) Participation in work experience shall be for a reasonable length of time, based on the needs of the participant, and subject to the restrictions set forth in § 632.85

§ 632.80 Other activities

§ 632.80-1 General.

Native American grantees may conduct employment and training activities not described in §§ 632.78-1 through 632.78-6. The CAP shall describe the basic design of activities undertaken as "other activities" and their objectives. These activities may include, but are not limited to:

- (a) Removal of artificial barriers to employment;
- (b) Job restructuring;
- (c) Revision or establishment of merit systems;
- (d) Development and implementation of affirmative action plans, including Indian preference plans and Tribal Employment Rights Office (TERO) programs.

(e) Post termination services in § 632.80-2 for up to 30 days following termination; and

(f) Employment generating services.

§ 632.80-2 Supportive services.

Supportive Services are those which are necessary to enable an individual eligible under this Part, but who cannot afford to pay for such services, participate in the program. Such supportive services may include but are not limited to transportation, health care, special services and materials for

the handicapped, child care, meals, temporary shelter, financial counseling, and other reasonable expenses required for participation in the training program and may be provided in-kind or through cash assistance.

§ 632.81 Payments to participants.

§ 632.81-1 General.

Each participant paid wages for employment activities, allowances for classroom training or reimbursed for OJT or tryout employment will be provided such benefits pursuant to Section 142 of the Act.

§ 632.81-2 Maximum wage rates for CSE

(a) The wages (including those received from overtime work and leave taken during the period of employment) paid to any CSE participant from funds under the Act shall be limited to a full-time rate of \$10,000 per year (or the hourly, weekly, or monthly rate which, if full-time and annualized, would equal a rate of \$10,000 per year). Currently approved rates above \$10,000 are fixed at the approved rate as of September 30, 1982, unless adjusted by the Secretary.

(b) Fringe benefits payable from funds under the Act to any CSE participants may not exceed those regularly afforded to similarly employed non-JTPA workers.

(c) *Davis-Bacon wages.* All laborers and mechanics employed by contractors or subcontractors in any construction, alteration, or repair, including painting and decorating, or projects, buildings, and works which are federally assisted under this Act, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary in accordance with the Act of March 3, 1931 (40 U.S.C. 276a-276a-5), popularly known as the Davis-Bacon Act. The Secretary shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 FR 3176; 64 Stat. 1267) and Section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, as amended; 40 U.S.C. 276(c)).

§ 632.81-3 Payment of allowances.

(a) A basic hourly allowance for regularly enrolled classroom training or services participants shall not exceed the higher of the State or Federal minimum hourly wage.

(b) Native American grantees are encouraged to submit allowance payment designs which are less than (a). Through innovative reimbursement systems the number of participants should be maximized. The allowance payment system will be described in the Master Plan.

(c) *Repayments.* Native American grantees shall require participants to repay the amount of any overpayment of allowances under this part, except if the overpayment was made in the absence of fault on the part of the participant. Where the Native American grantee requires repayment, any overpayment not repaid may be set off against any future allowance or other payments under the Act to which the participant may become entitled.

§ 632.81-4 Combined activities.

Primary activity. A primary activity is one in which a participant is enrolled for more than 50 percent of scheduled time. Participants enrolled in a primary activity for which wages are payable and simultaneously in an activity for which allowances are payable may, at the Native American grantee's option, be paid wages for all hours of participation. A participant enrolled in a primary activity for which allowances are payable may, at the Native American grantee's option, be paid allowances for all hours of participation, except when OJT is the non-primary component. However, in the latter case, before placing an individual in such an activity, the Native American grantee shall request a determination from the Internal Revenue Service as to whether income from the non-primary component is taxable.

§ 632.82 Benefits and working conditions for participants.

The provisions of Section 143 of the Act shall apply to benefits and working conditions.

§ 632.83 FICA.

Expenditures may be made from JTPA funds for taxes under the Federal Insurance Contribution Act (FICA), 26 USC 3101, et seq.

§ 632.84 Non-Federal status of participants.

Participants shall not be deemed Federal employees and shall not be subject to the provisions of law relating to Federal employment.

§ 632.85 Participant limitations.

(a) Except as provided in paragraph (c) of this section and for participants in programs that have other statutory limits, participation in work experience shall be limited to a maximum of 1,000 hours during any one year beginning with the day of enrollement in either CETA or JTPA.

(b) No participant may receive wages for CSE for more than 78 weeks during a 2-year period from the participant's initial enrollment in either JTPA or in a program supported by the

Comprehensive Employment and Training Act.

(c) The limitation on work experience participation in JTPA set forth in paragraph (a) of this section:

(1) Shall not apply to time spent by in-school youth or Title II-B participants enrolled in a work experience program under the Act, nor shall such time be included in determining if an individual has reached such limitations; and

(2) May be waived by the Chief, DINAP and the waiver justification described in the Master Plan.

§ 632.86 Nondiscrimination and nonsectarian activities.

Pursuant to Section 167(a) of the Act:

(a) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, will be governed by the provisions of 29 CFR Parts 31 and 32 and will be administered by the Office of Civil Rights.

(b) The employment or training of participants in sectarian activities is prohibited.

§ 632.87 Equitable provision of services to the eligible population and significant segments.

Native American grantees shall ensure and provide evidence in the Master Plan that a system is in place to afford all members of the eligible population within the service area for which the grantee was designated are afforded an equitable opportunity for employment and training activities and services.

§ 632.88 General responsibilities of the Department.

The Department of Labor shall be responsible for:

(a) Providing prompt notification to all Native American grantees of allocations of funds, proposed and final rules and program directives and procedures.

(b) The development, after consultation with Native American grantees, of regulations, performance standards and program policies governing Native American programs. Such regulations and program policies shall take into account the special circumstances under which Native American programs operate (Sec. 401(h)(1)).

(c) Providing Native American grantees with technical assistance, as the Secretary deems necessary, related to the administration and operation of JTPA programs (Sec. 401(i)).

(d) Taking appropriate action to establish administrative procedures and machinery within the Department, including the retention of personnel

having particular competence in the field of Indian and Native American employment and training programs, for the selection, administration, monitoring and evaluation of such programs (Sec. 401(e)).

§ 632.89 Performance standards.

The Department of Labor shall establish performance standards for all Native American grantees (Section 401(h)(1)). Performance results, as judged against these standards, will not be used for grantee designation purposes for the Program Years 1985-1986. Performance results will be a factor in grantee designations for Program Years 1987-1988, and beyond. Commencing with Program Year 1985, the Department may, after consultation with Native American groups, reserve up to 6 percent of all JTPA funds designated for Native American grantees under the Act. These funds may be used for bonuses for exceptional grantee performance.

Subpart F—Prevention of Fraud and Program Abuse

§ 632.115 General.

(a) To ensure the integrity of the JTPA programs special efforts by grantees are necessary to prevent fraud and other program abuses. While any violation of the Act or regulations may constitute fraud or program abuse, this Subpart F identifies and addresses those specific program problems which were of most concern to the Congress during the enactment of JTPA.

(b) This subpart sets forth specific responsibilities on Native American grantees, subgrantees and contractors and of the Secretary to prevent fraud and program abuse in JTPA programs.

§ 632.116 Conflict of interest.

(a) No member of any advisory, planning, private industry council or governing body under the Act shall cast a vote on any matter which has a direct bearing on services to be provided by that member or any organization which such member directly represents or on any matter which would financially benefit such member or any organization such member represents.

(b) Each Native American grantee, subgrantee or contractor shall avoid personal and organizational conflict of interest in awarding financial assistance and in the conduct of procurement activities involving funds under the Act in accordance with the code of conduct requirements set forth in 41 CFR 29-70.216-4.

(c) Neither the Secretary nor any Native American grantee, subgrantee or

contractor shall pay funds under the Act to any nongovernmental individual, institution or organization to conduct an evaluation of any program under the Act if such individual, institution or organization is associated with that program as a consultant or technical advisor.

§ 632.117 Kickbacks.

No officer, employee or agent of any Native American grantee, subgrantee or contractor shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential subgrantee, contractor or supplier.

§ 632.118 Nepotism.

(a) No Native American grantee, subgrantee, contractor or employing agency shall permit the hiring of any person in a staff position or as a participant if that person or a member of that person's immediate family is employed in an administrative capacity by the Native American grantee, subgrantee or contractor. The Native American grantee may waive this requirement if adequate justification is documented. The following are examples where the nepotism provision may be waived:

(1) If there are no other persons eligible and available for participation or employment by the Native American grantee;

(2) Where the Native American grantee's total service population is 2,000 or less, or where the geographical situation of an Indian or Native American community is rural and isolated from other communities within the designated service area; or

(3) Where the potential participant has a history of unemployment or dependence on public assistance.

(b) A Native American grantee may develop its own nepotism policy in lieu of the policy in paragraph (a) of this section. The Chief, DINAP, shall review any such policy before its implementation and shall approve or disapprove it. Any such policy shall be described and have adequate safeguards to prevent persons employed in an administrative capacity for the Native American grantee, its subgrantees or contractors from using such position to secure JTPA services or other benefits for a member of his or her immediate family. A satisfactory policy shall include the following minimum criteria:

(1) All formal personnel procedures shall be followed;

(2) There shall be full written disclosure to the governing body describing all advantages, conflicts and/

or disadvantages which may result from the specific personnel action; and

(3) No member of the immediate family of the applicant shall participate in the applicant's selection.

(c) For purposes of this section, the term "immediate family" means wife, husband, son, daughter, mother, father, brother, and sister. The term "staff position" includes all JTPA staff positions funded under the Act such as instructors, counselors, and other staff involved in administrative, training or service activities. The term "employed in an administrative capacity" includes those persons who have overall administratively responsibility for a program including: All elected and appointed officials who have any responsibility for the obtaining of or approval of any grant funded under this Part as well as other officials who have any influence or control over the administration of the program, such as the project director, deputy director and unit chiefs; and persons who have selection, hiring, placement or supervisory responsibilities for participants in a Native American employment and training program. The term excludes officials of entities belonging to a consortium who are not at the same time officials of the consortium. Persons serving on a Native American grantee's advisory councils or PIC shall not be considered to be in an administrative capacity.

§ 632.119 Political patronage.

(a) No Native American grantee, subgrantee or contractor may select, reject, or promote a participant based on that individual's political affiliation or beliefs. The selection or advance of employees as a reward for political services or as a form of political patronage, whether or not the political service or patronage is partisan in nature, is prohibited.

(b) There shall be no selection of subgrantees or contractors based on political affiliation.

§ 632.120 Political activities.

(a) No program under the Act may involve political activities.

(b) No participant may engage in partisan or nonpartisan political activities during hours for which the participant is paid with JTPA funds.

(c) No participant may, at any time, engage in partisan or nonpartisan political activities in which such participant represents himself or herself as a spokesperson for the JTPA program.

§ 632.121 Lobbying activities.

No funds provided under the Act may be used in any way:

- (a) To attempt to influence in any manner a member of Congress to favor or oppose any legislative or appropriation by Congress; or
- (b) To attempt to influence in any manner State or local legislators to favor or oppose any legislation or appropriation by such legislators.

§ 632.122 Unionization and antiunionization activities; work stoppages.

(a) No funds under the Act shall be used in any way to either promote or oppose unionization (Sec. 143(c)(1)).

(b) No participant in work experience or community service employment may be placed into, or remain working in, any position which is affected by labor disputes involving a work stoppage. If such a work stoppage occurs during the grant period, participants in affected positions must:

- (1) Be relocated to positions not affected by the dispute; or
- (2) Be suspended through administrative leave or other means; or
- (3) Where participants belong to the labor union involved in the work stoppage, they shall be treated in the same manner as other members of the union except that they may not remain in the affected positions. The grantee shall make every effort to relocate participants who wish to remain working into suitable positions unaffected by the work stoppage.

(c) No person shall be referred to or placed in an on-the-job training position affected by a labor dispute involving a work stoppage and no payments may be made to employers for the training and employment of participants in on-the-job training during the periods of work stoppage.

§ 632.123 Maintenance of effort.

(a) Funds provided under this Act shall only be used for activities which are in addition to those which would otherwise be available in the area in the absence of such funds.

(b) Funds provided under this Act shall not be used to duplicate facilities or services available in the area (with or without reimbursement) from Federal, State, or local sources, unless the plan establishes that alternative services or facilities would be more effective or more likely to achieve performance goals.

§ 632.124 Theft or embezzlement from employment and training funds; improper inducement; obstruction of investigations and other criminal provisions.

The criminal provision of 18 U.S.C. 665 states:

(a) Whoever, being an officer, director, agent or employee of, or connected in any capacity with, any agency receiving financial assistance under the JTPA knowingly hires an ineligible individual or individuals; embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of a grant or contract of assistance pursuant to such Act shall be fined not more than \$10,000 or imprisoned for not more than 2 years, or both; but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed \$100, such person shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

(b) Any person who willfully obstructs or impedes, or endeavors to obstruct or impede, an investigation or inquiry under the JTPA or the regulations thereunder, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or by both such fine and imprisonment.

(c) In addition to the criminal provisions set forth in paragraphs (a) (b) of this section, individuals may be held criminally liable under other Federal laws. For example, 18 U.S.C. Sections 600 and 601 hold them liable if they:

- (1) Directly or indirectly promise any employment position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by funds under the Act, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of, or opposition to, any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office (18 U.S.C. 600); or

- (2) Directly or indirectly knowingly cause or attempt to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation or the threat of the denial or deprivation, of any employment or benefits funded under the Act (18 U.S.C. 601).

§ 632.125 Responsibilities of Native American grantees, subgrantees and contractors for preventing fraud and program abuse and for general program management.

(a) Each Native American grantee shall establish and use internal program management procedures sufficient to

prevent fraud and program abuse including subgrantees and contractors. The procedures to be used shall be identified in the Native American grantee's Master Plan.

(b) Each Native American grantee, subgrantee and contractor shall ensure that sufficient, auditable, and otherwise adequate records are maintained which support the expenditure of all funds under the Act. Such records shall be sufficient to allow the Secretary to audit and monitor the Native American grantees', subgrantees' and contractors' programs and shall include the maintenance of a management information system in accordance with the requirements of § 623.32.

(c) Any person having knowledge of fraud, criminal activity or other abuse shall report such information directly and immediately to the Secretary. Similarly, all complaints involving such matters should also be reported to the Secretary directly and immediately.

Subpart G—Complaints, Investigations and Sanctions**§ 632.146 Scope and purpose.**

(a) *General.* This subpart establishes the procedures to receive, investigate and resolve complaints, and conduct hearings to adjudicate disputes under Section 401 of the Act. It governs grievance procedures at the recipient or subrecipient level, the receipt and investigation of complaints at the Federal level, the procedures for resolving audit disputes or resolving investigative findings, the rules of practice for adjudicative hearings, and the rendering of decisions pursuant to the Act. Judicial review of final action of the Department after opportunity for an administrative hearing has been exclusively established in the United States Courts of Appeals for the Circuits in which the affected parties reside or transact business.

(b) *Initiation of investigations.* JTPA investigations may be initiated upon the request of any person or organization or by the Department on its own initiative.

(c) *Non-JTPA remedies.* Whenever any person, organization or agency believes that a recipient or subrecipient has engaged in conduct that violates the Act and that such conduct also violates a Federal statute other than JTPA, or a State or local law, that person, organization or agency may, with respect to the non-JTPA cause of action, institute a civil action or pursue other remedies authorized under other Federal, State, or local law against the recipient or subrecipient without first exhausting the remedies in this subpart.

For example, if a subrecipient believes that a grantee has breached the subgrant agreement between the grantee and itself, the subrecipient may institute a civil action for breach of contract in a State court if so authorized by State law. Nothing in the Act or this paragraph, shall:

(1) Allow any person or organization to join or sue the Secretary with respect to his or her responsibilities under JTPA except after exhausting the remedies in this subpart.

(2) Allow any person or organization to file a suit which alleges a violation of JTPA or these regulations without first exhausting the administrative remedies described in this subpart, or

(3) Be construed to create a private right of action with respect to alleged violations of JTPA or the regulations.

(d) Complaints of discrimination pursuant to Section 167(a) of the Act will be handled under 29 CFR 31 and 32.

§ 632.147 Protection of informants.

(a) *Informants.* Where possible the identity of any person who has furnished information relating to, or assisted in an investigation of a possible violation of the Act will be held in confidence. Where disclosure of the person's identity is essential to assure a fair determination of the issues, or where necessary to effectively accomplish responsibilities under the Act, either the Inspector General, the Solicitor, the grant officer, Chief of DINAP, or the Administrative Law Judge presiding over a hearing in which the matter arises, may disclose such identity upon such conditions as will promote the continued receipt of confidential information by the Department and effectuate the protections and policies stated in paragraph (b) of this section.

(b) *Retaliation prohibited.* No person or agency may discharge, or in any other manner discriminate or retaliate against any person, or deny to any person a benefit to which that person is entitled under the provisions of the Act or the regulations because such person has filed any complaint, instituted or caused to be instituted any proceeding under or related to the Act, has testified or is about to testify in any such proceeding or investigation, or has provided information or assisted in an investigation.

§ 632.148 Complaint and hearing procedures at the recipient level.

(a) *Policy.* (1) Each recipient shall establish and maintain a procedure for resolving any complaint alleging a violation of the Act, regulations, grant or other agreements under the Act, including any complaint arising in

connection with the JTPA programs operated by the recipient or its subrecipients. Such complaint procedures must meet the requirements of this section. The complaint procedure shall provide for final resolution of complaints within 60 days after filing the complaint. Where existing complaints or grievance procedures include the elements set forth in this section, recipients may adopt such mechanism as, or as part of, their JTPA procedure.

(2) Participants shall be provided, upon enrollment into employment or training, with a written description of the complaint procedures including notification of their right to file a complaint and instructions on how to do so. Recipients should designate an individual to monitor the operation of the complaint procedures, to ensure that complaints and related correspondence are logged and filed, to ensure that assistance is available for properly filing complaints, and to ensure the availability, coordination, and promptness of all elements of the procedures. Upon filing a complaint, and at each stage thereafter, each complainant shall be notified in writing of the next step in the procedure.

(3) Complaints may be brought by any individual or organization including, but not limited to, program participants, subrecipients, contractors, staff of the recipient or subrecipient, applicants for participation or financial assistance, labor unions, and community-based organizations.

(4) With the exception of complaints alleging fraud or criminal activity, the filing of a complaint pursuant to this section must be made within one year of the alleged occurrence.

(5) The recipient may delegate the authority to operate and maintain the complaint and hearing procedure to its subrecipients except for complaints between the recipient and its subrecipients (e.g., audit disallowances), complaints involving more than one of its subrecipients, or complaints directly involving the operations or responsibilities of the recipient. Where the procedure is delegated, the recipient may provide for an appeal to itself from the decision of the subrecipient or the recipient may provide that the subrecipient's decision is the final decision of the recipient. Where the procedure is delegated, the recipient shall ensure that the procedures specified in this section are followed and a decision issued promptly within 60 days after a complaint is filed.

(6) When a participant is an employee of a recipient or subrecipient and alleges that an occurrence constitutes a

violation of the Act, regulations, grant, or other agreements under the Act, as well as a violation of the terms and conditions of employment under a State or local law or a collective bargaining agreement, the participant may pursue the complaint and hearing procedures under the State or local law or the collective bargaining agreement, pursuant to § 632.149. A participant who selects the procedures provided in this section is not precluded from filing a complaint under § 632.149, unless otherwise prohibited by State or local law, or applicable collective bargaining agreement.

(b) *Complaint procedures.* The complaint resolution procedure shall include:

(1) Opportunity to file a complaint. All complaints shall be in writing.

(2) Opportunity for informal resolution of the complaint.

(3) Written notification of an opportunity for a hearing when an informal resolution has not been accomplished. The notice shall state the procedures for requesting a hearing and shall describe the elements in the hearing procedures including those set forth in paragraph (c) of this section.

(4) Opportunity to amend the complaint prior to a hearing.

(5) Opportunity for a hearing pursuant to paragraph (c) of this section within 30 days of filing the complaint.

(6) A final written decision to the complainant which shall be made within 60 days of the filing of the complaint and shall include:

(i) The reason(s) for the decision.

(ii) A statement that the procedures delineated in this section have been completed.

(iii) Notice of the right to file a complaint with the Grant Officer pursuant to § 632.151 of this subpart where any party disagrees with the decision.

(c) *Hearing procedure.* A hearing shall be provided within 30 days after filing a complaint. The hearing procedure shall include:

(1) Written notice of the date, time and place of the hearing, the manner in which it will be conducted, and the issues to be decided. Other interested parties may apply for notice. Such other interested party is a person or organization potentially affected by the outcome. The notice to other interested parties shall include the same information furnished to the complainant and shall further state whether such interested parties may participate in the hearing and if applicable, the method by which they may request such participation.

(2) Opportunity to withdraw the request for hearing in writing before the hearing.

(3) Opportunity to request rescheduling of the hearing for good cause.

(4) Opportunity to be represented by an attorney or other representative of the complainant's choice.

(5) Opportunity to bring witnesses and documentary evidence. Recipients or subrecipients shall cooperate in making available any persons under their control or employ to testify, if such persons are requested to testify by the complainant.

(6) Opportunity to have records or documents relevant to the issues produced by their custodian when such records or documents are kept by or for the recipient or its subrecipient in the ordinary course of business.

(7) Opportunity to question any witnesses or parties.

(8) The right to an impartial hearing officer.

(9) A verbatim record of the proceeding.

(10) A written decision from the hearing officer to the complainant(s) and any other interested parties within 60 days of the filing of the complaint. This period may be extended with the written consent of all of the parties for good cause. The written decision shall include a statement of facts, a statement of remedies to be applied.

(11) Where a complaint procedure provides for a recipient's review of the hearing officer's decision, the recipient shall provide a final written decision to the complainant(s), and any other parties, by certified or registered mail, return receipt requested, as provided in paragraph (c)(10) of this section within 60 days after the complaint is filed.

(12) Where local law or other personnel rules require procedures in addition to those specified above, similarly employed JTPA participants shall be notified of their right to use the same procedures.

§ 632.149 Grievance or complaint procedures at employer level.

(a) *Policy.* (1) Whenever the recipient or subrecipient is an employer, it shall continue to operate or shall establish and maintain for its participants a grievance procedure relating to the terms and conditions of JTPA employment. The employer who does not have a grievance procedure may use the complaint procedure of the recipient or subrecipient under § 632.148.

(2) A participant who elects the procedure in this section, unless otherwise prohibited by State or local law or applicable collective bargaining

agreement, is not precluded from filing a complaint under § 632.148.

(b) *Minimum requirements.* Those employers who do not utilize the complaint procedures in § 632.148 shall establish or maintain grievance procedures which shall provide at a minimum:

(1) Notice, upon enrollment into employment or training, of the scope and availability of such procedures.

(2) Notice, at the time the grievance is filed, of the procedures under which the grievance is being processed.

(3) Written notification of the disposition of the grievance and the reasons therefore, which shall be issued within 60 days of filing unless the grievance procedure or the collective bargaining agreement specifically provides other limits.

(4) Written notification of the right to file a complaint alleging violations of JTPA with the Chief, DINAP from the decision issued, pursuant to § 632.151.

(5) If no violation of the Act, regulations, grant, or other agreements under the Act is alleged, the complainant, upon receipt of written notification of the disposition of the grievance may pursue any other remedy authorized under other Federal, State or local law.

(c) *Equal benefits.* Where local law or other personnel rules require procedures, in addition to those specified in paragraph (b) of this section, for any adverse action including termination of employment, similarly employed JTPA participants shall be notified of their right to use the same procedures.

(d) *Private for profit employer grievance procedures.* Nothing in this section shall require a private for profit employer to establish a new grievance procedure or to modify an existing procedure as a condition of participating in programs for the training and hiring of participants under the Act.

§ 632.150 Exhaustion of recipient level procedure.

(a) *Exhaustion required.* No complainant subject to the procedures specified in either § 632.148 or § 632.149 may file a complaint with the Chief, DINAP until the recipient level procedures have been exhausted.

(b) *Exhaustion exceptions.* Complainants who have not exhausted the procedures at the recipient level may file the complaint at the Federal level, and the Chief, DINAP shall accept such complaint if he or she determines that:

(1) The recipient or subrecipient has not acted within the time frames specified in § 632.148 and § 632.149; or

(2) The recipient's or subrecipient's procedures are not in compliance with § 632.148 or § 632.149, whichever is applicable; or

(3) An emergency situation exists.

§ 632.151 Complaints and investigations at the Federal level.

(a)(1) *General; final determination of reliable and probative evidence.* Where local administrative remedies have been exhausted, Section 144(c) of the Act requires that a final determination of the complaint shall be made within 120 days after the Chief, DINAP receives the complaint. The Chief, DINAP's resolution pursuant to Section 144(c) of the Act constitutes the final determination required to be accomplished within the 120 days specified in Section 166(b) of the Act. The final determination process in non-criminal matters consists of the determination of reliable and probative evidence (either supporting or not supporting the allegations of the complaint or the belief that a recipient or subrecipient is failing to comply with the requirements of the Act or the regulations), and the procedures regarding notice, informal resolution, and notice of opportunity for hearing is established in § 632.153 below.

(2) *Final action distinguished.* Section 168 of the Act provides for judicial review of "final order" with respect to disapproval of financial assistance. Such "final order" is defined in § 632.156(f) and is different than "final determination" as defined in paragraph (a)(1) of this section because, except in the case of the Chief, DINAP's final determination dismissing the complaint in accordance with § 632.153(e) where there are no disputed questions of fact, the opportunity for a hearing is provided upon receipt of the final determination under § 632.153(e).

(b) *Complaints.* (1) Every complaint shall be filed in writing before the commencement of any investigation or corrective action shall be required. The complaints will be filed with the Chief, DINAP or, in the case of complaints alleging discrimination under Section 167, with the Regional Director, Office of Civil Rights (OCR). However, a complaint filed with either the Grant Officer or the Regional OCR Director shall be deemed properly filed and shall be referred (as Necessary) to the appropriate office. The complaint shall be filed only after local remedies have been exhausted and no later than 30 days from the date of receipt of the written decision or notice required by § 632.148 or § 632.149. The complaint should contain the following:

(i) The full name, telephone number (if any), and address of the person making the complaint.

(ii) The full name and address of the respondent (the recipient, or subrecipient or person against whom the complaint is made).

(iii) A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation.

(iv) Where known the provisions of the Act, regulations, grant or other agreements under the Act believed to have been violated.

(v) A statement disclosing whether proceedings involving the subject of the complaint have been commenced or concluded before any Federal, State or local authority, and, if so, the date of such commencement or conclusion, the name and address of the authority and the style of the case.

(vi) A copy of the final decision of the recipient or subrecipient issued pursuant to § 632.148 or § 632.149 of this subpart.

(2) A complaint will be considered to have been filed upon receipt in the Office of the Chief, DINAP. To be acceptable, the complainant must be a written statement sufficiently precise to both identify those against whom the allegations are made and to fairly afford the respondent and opportunity to prepare a defense. A complaint may be amended to cure defects or omissions, or to clarify and amplify allegations made therein, and such amendments relate back to the original filing date.

(3) A complaint once filed may be withdrawn only with the consent of the Chief, DINAP. If the complainant fails to cooperate or is unavailable, the complaint may be dismissed upon reasonable notice to the last known address of the complainant.

(c) *Investigation of complaints.* Whenever the Chief, DINAP receives a complaint filed in accordance with paragraphs (a) and (b) of this section, the complaint shall be investigated if it alleges that any person, recipient or subrecipient has failed to comply with the requirements of the Act, regulations, grant or other agreements under the Act. The Chief, DINAP shall promptly issue a notice to the recipient or subrecipient which shall include a copy or summary of the complaint and which shall direct the recipient or subrecipient to forward a copy of the complete administrative file, including a copy of the certified verbatim transcript of the hearing, with 15 days of receipt of such notice to the Chief, DINAP. Such investigation shall be completed and a conclusion made pursuant to § 632.153(e) within 120 of the filing of the complaint, except that the time may be extended with the written consent of all the parties.

(d) *Audit reports.* Upon receipt of a final audit report the Grant Officer will promptly transmit the audit report to the recipient and/or subrecipient for a comment period not to exceed 30 days, or for such additional time as the Grant Officer may allow. Within 30 days after the end of the comment period the Grant Officer shall make the initial determination pursuant to § 632.153(a).

(e) *Onsite review and other bases for investigation.* If after an onsite review, monitoring visit, review of reports, data or other information, the Chief, DINAP has reason to believe that a recipient or subrecipient is failing to comply with the requirements of the Act, regulations, grant or other agreements under the Act, Chief, DINAP, the Grant Officer or other designated authority shall inquire into the matter.

(f) *Other investigations.* (1) The Assistant Secretary for Employment and Training may, for purposes of making any investigation, assign a single complaint or class of complaints to the Office of Investigation and Compliance of the Employment and Training Administration, under such conditions as may be appropriate.

(2) The Assistant Secretary for Employment and Training may, by agreement with the Office of the Inspector General, or the Office of the Inspector General may pursuant to the Inspector General Act of 1978, Pub. L. 95-492, 92 Stat. 1101 assume responsibility for any investigation arising under JTPA.

(g) *Utilizing other services.* With the consent and cooperation of State agencies charged with the administration or enforcement of State laws, the Secretary may elect for the purpose of carrying out this subpart and, to utilize the services of State, local and Tribal agencies and their employees, and notwithstanding any other provision of law, may reimburse, in whole or in part, such State and local agencies and their employees for services rendered for such purposes.

(h) *Criminal investigation.* Notwithstanding any other provision of this subpart, investigation by the Department of any matter concerning a potential Federal criminal violation shall be conducted as the Inspector General shall direct pursuant to the powers granted by the Inspector General Act of 1978, Pub. L. 95-452, 92 Stat. 1101.

§ 632.152 Subpoenas.

(a) *ETA subpoenas in non-Inspector General investigations.* (1) The Assistant Secretary of Labor for Employment and Training may issue a subpoena directing the person named therein to appear before a designated

representative at a designated time and place to verify or to produce documentary evidence, or both, relating to any matter arising under the Act being investigated. The Solicitor or the Associate Solicitor for Employment and Training Legal Services, for good cause shown, may extend the time prescribed for compliance with such subpoenas.

(2) Any motion to limit or quash any investigational subpoena shall be filed with the Chief Administrative Law Judge within 10 days after service of the subpoena, or, if the return date is less than 10 days after service of the subpoena, within such other time as may be allowed by the assigned Administrative Law Judge.

(3) The timely filing of a motion to limit or quash any investigational subpoena shall stay the requirement of a return on the portion challenged. If the Administrative Law Judge rules subsequent to the return date, and the ruling denies the motion in whole or in part, the Administrative Law Judge shall specify a new return date.

(4) All motions to limit or quash subpoenas, and the responses thereto, shall be part of the public record of the Office of the Administrative Law Judges except as otherwise ordered or provided under these regulations.

(b) *Noncompliance.* (1) In cases of failure to comply with compulsory processes, appropriate action may be initiated including actions for enforcement, forfeiture, penalties or criminal actions.

(2) The Solicitor of Labor, with the consent of the Attorney General, may:

(i) Institute in the appropriate district court on behalf of the Secretary an enforcement proceeding in connection with the failure or refusal of a person, partnership, corporation, recipient or other entity to comply with or to obey a subpoena if the return date or any extension thereof has passed; or

(ii) Request on behalf of the Secretary the institution of civil actions, as appropriate, if the return date or any extension thereof has passed including seeking civil contempt in cases where a court order enforcing compulsory process has been violated.

§ 632.153 Initial and final determination; request for hearing at the Federal level.

(a) *Initial determination.* Upon the conclusion of a review of the entire administrative record of an investigation conducted pursuant to § 632.151 or after the conclusion of the comment period for audits provided in § 632.151 the Grant Officer shall make an initial determination of the matter in controversy including the allowability of

questioned costs or activities. Such determination shall be based upon the requirements of the Act, regulations, grants or other agreements, under the Act. The determination may conclude either:

(1) That based upon the entire record there is no violation of the Act, regulations, grants or other agreements under the Act.

(2) That there is evidence to support the allegation, or finding of questioned costs or activities.

(b) *Contents of initial determination.*

(1) In the event that the Grant Officer makes a finding that there is evidence to support the allegation of a violation the initial determination shall:

(i) Be in writing;

(ii) State the basis of the determination, including factual findings and conclusions;

(iii) Specify the costs or activities disallowed;

(iv) Specify the corrective actions and/or sanctions proposed (interest costs shall be assessed at the rate periodically set forth by the Assistant Secretary for Administration and Management and shall be computed from the date of violation for back pay awards, and from 30 days after final agency action establishing the debt for audit disallowances); and

(v) Give notice of an opportunity for informal resolution of the matters as necessary to the appropriate parties, which should include all interested parties specified by the Grant Officer.

(2) In the event that the Grant Officer makes a finding of no violation the initial determination shall:

(i) Be in writing;

(ii) State the basis of the determination (factual findings and conclusions); and

(iii) Give notice of the opportunity to present additional information within 30 days of receipt of the initial determination.

(3) The initial determination shall be mailed by certified mail return receipt requested to the parties and interested parties.

(c) *Allowability of certain questioned costs.* In any case in which the Grant Officer determines that the recipient meets the requirements of Section 164(e)(2)(A)-(D), the Grant Officer may waive the imposition of sanction (Sec. 164(e)(3)). It is the responsibility of the recipient to request such waiver by the Grant Officer and submit evidence to be used to make the funding.

(d) *Informal resolution.* The Grant Officer shall not revoke a recipient's grant, in whole or in part, nor institute corrective action or sanctions against a recipient without first providing the

recipient with a 30-day period to informally resolve those matters contained in the Grant Officer's initial determination. If the matters are informally resolved the Grant Officer shall notify the parties in writing of the nature of the resolution, and may close the file.

(e) *Final determination.* If all the parties and the Grant Office cannot informally resolve any matter pursuant to paragraph (d) of this section, the Grant Office shall, not later than 120 days (except the time may be extended with the written consent of all the parties) after the filing of the complaint or receipt of an investigation report in the absence of a complaint, or after the issuance of an initial audit determination in audit proceedings pursuant to § 632.151(d), provide each party with a final written notice in duplicate by certified mail, return receipt requested, that:

(1) Indicates that efforts to informally resolve matters contained in the initial determination pursuant to paragraph (a) of this section have been unsuccessful.

(2) Lists those matters upon which the parties continue to disagree.

(3) Lists any modifications to the factual findings and conclusions set forth in the initial determination.

(4) Lists any sanctions, and required corrective actions, including any other alteration or modification of the plan, grant, agreement or program intended by the Grant Officer.

(5) Informs the parties of their opportunity to request a hearing pursuant to these regulations. If it is determined in the final notice that the complaint does not state a violation of the Act, regulations, grants or other agreements under the Act, the Grant Officer shall dismiss the complaint. Such dismissal shall constitute final agency action unless the Grant Officer determines that there are disputed questions of fact, in which case a hearing before an Administrative Law Judge shall be afforded pursuant to § 632.153(f). In such case(s) the final determination shall notify the parties of the opportunity to request a hearing in accordance with § 632.153(f).

(f) *Request for hearing.* Within 10 days of receipt of the Grant Officer's final determination, except those determinations dismissing the complaint without an opportunity to request a hearing or on the expiration of 120 days of the filing of a complaint with the Grant Officer upon which no extensions have been mutually agreed, any affected recipient, subrecipient or complainant may mail a request for hearing to the Chief Administrative Law Judge, United States Department of Labor, Suite 700,

Vanguard Building, 1111 20th Street, NW., Washington, D.C. 20036, with a copy to the Grant Officer. The request for hearing shall be mailed by certified mail, return receipt requested, not later than 10 days after receipt of the Grant Officer's final determination and shall be considered filed upon receipt at the Office of the Administrative Law Judges. The request for hearing shall be accompanied by a copy of the Grant Officer's final determination, if issued, and shall specifically state those issues of the determination upon which review is requested. Those provisions of the determination not specified for review, or the entire determination when no hearing has been requested, shall be considered resolved and not subject to further review. Only alleged violations of the Act, regulations, grants or other agreements under the Act fairly raised in recipient level proceedings under § 632.148 or § 632.149, alleged violations of recipient level procedures fairly raised before the Grant Officer, or audits, are subject to review.

(g) *Notification of filing.* (1) Upon the receipt of a request for hearing the Chief Administrative Law Judge shall promptly notify the Chief, DINAP, the Grant Officer, the Associate Solicitor for Employment and Training Legal Services, and each party and party in interest named in the Grant Officer's final determination by certified mail, return receipt requested, that the request has been filed and the date of filing. Such notice shall include a copy of the Grant Officer's determination and the request for hearing.

(2) Within 30 days of receipt of such notice the Grant Officer shall submit to the Administrative Law Judge an administrative file consisting of all pertinent documents tabbed and containing an index listing the documents. The administrative file shall at least contain the Grant Officer's determinations, all pertinent correspondence, and copy of the record in any recipient level proceedings. The Grant Officer shall simultaneously transmit one copy of the administrative file to the appropriate Regional Solicitor, the complainant(s), and shall retain one copy.

(3) Within 30 days of receipt of the foregoing notice from the Office of Administrative Law Judges each party or party in interest shall file a notice of intent to participate with the Office of the Chief Administrative Law Judge upon such terms as the Administrative Law Judge assigned the case shall order.

(h) *Automatic participation.* The Grant Officer shall be party to all proceedings. The recipient (and

subrecipient if applicable) shall be a party to all proceedings involving its grants. Attorneys employed by the Solicitor of Labor shall be served with all papers and may appear on behalf of the Grant Officer.

(i) *Discretionary hearing.* An opportunity for a hearing may also be extended when the Assistant Secretary determines that fairness and the effective operation of JTPA programs would be furthered.

(j) *Emergency situations.* In emergency situations as determined by the Assistant Secretary, where it is necessary to protect the integrity of the funds, or insure the proper operation of the program the Assistant Secretary may immediately terminate or suspend a grantee's authority to obligate funds, in whole or in part, and withdraw unexpended funds and make alternative temporary arrangements to carry out the grant program. The grantee must be given prompt notice of the reason for the action and must be given the opportunity for a hearing within 30 days after the termination or suspension.

§ 632.154 Hearings before the Office of Administrative Law Judge.

(a) *Service and filing.* Copies of all papers required to be served on a party or filed with the Office of Administrative Law Judge shall be filed simultaneously with the Office of Administrative Law Judge and served upon the parties of record or their representatives, and shall contain proof of such service.

(b) *Time and place of hearings.* Hearings shall be held at a time and place ordered by the Administrative Law Judge upon reasonable notice to the parties. Due regard shall be given to the convenience of the parties and their Counsel, if any, and the witnesses in selecting a place for the hearing. Subpoenas necessary to secure the attendance of witnesses and the production of documents or things shall be obtained from the Office of the Administrative Law Judges.

(c) *Review.* In all cases arising under § 632.151(a) the Administrative Law Judge shall review the Administrative File submitted in accordance with § 632.151(a) and the request for hearing and shall determine whether there has been a full and fair hearing at the recipient level and whether there are any substantial factual issues unresolved. If the Administrative Law Judge determines that these two conditions are met, the case shall be decided upon the record and upon such briefs as the parties may submit. The Administrative Law Judge shall determine from the record whether there

exists reliable and probative evidence to uphold the decision of the Grant Officer. If the Administrative Law Judge determines that either of the two conditions is not met, he shall hold a hearing. Nothing in this subsection shall be construed to limit the right of the parties to seek a dismissal of the request for hearing or to seek summary judgment.

(d) *Rules of procedure.* The rules of practice and procedure promulgated by the Office of Administrative Law Judges shall govern the conduct of hearings under this section.

(e) *Prehearing procedures.* In all cases, the Office of Administrative Law Judges should encourage the use of prehearing procedures to simplify and clarify facts and issues.

(f) *Subpoenas.* Subpoenas necessary to secure the attendance of witnesses and the production of documents or things at hearings shall be obtained from the Office of Administrative Law Judges and shall be issued pursuant to the authority contained in Section 183(b) of the Act, incorporating 15 U.S.C. Section 49.

(g) *Timely submission of evidence.* The Office of Administrative Law Judges shall not permit the introduction at the hearing of documentation relating to the allowability of costs if such documentation has not been made available for review either at the time ordered for any prehearing conference, or, in the absence of such an order, at least three weeks prior to the hearing date.

(h) *Burden of production.* The Department shall have the burden of production to support the Secretary's decision. Thereafter, the party or parties seeking to overturn the Secretary's decision shall have the burden of persuasion.

(i) *Relief.* In ordering relief, the Office of Administrative Law Judges shall have the full authority of the Secretary under Section 184 of the Act, except with respect to the provisions of subsection (e) of that section.

(j) *Adjustments in payments.* Where it appears after a hearing pursuant to this subpart that program funds have been expended in violation of the Act, the regulations, grant, or other agreements under the Act, the Administrative Law Judge may direct, in order to prevent further unauthorized expenditures, that unexpended funds be returned or that funds otherwise payable under the Act be withheld in order to recover any amount expended for unauthorized purposes in any fiscal year. When funds are ordered withheld the recipient shall neither reduce program operations, reduce compensation to any participant,

nor otherwise expend less than those sums called for in the grant.

(k) *Termination of grant.* When the final decision terminates the grant in whole or in part after hearing pursuant to this subpart, the final decision shall specify the extent of termination and the date upon which such termination becomes effective. Upon receipt of this notice, the recipient shall:

(1) Discontinue further commitments or grant funds to the extent that they relate to the terminated portion of the grant.

(2) Promptly cancel all subgrants, agreements and contracts utilizing funds under this grant to the extent that they relate to the terminated portion of the grant.

(3) Settle, with the approval of the Secretary, all outstanding claims arising from such termination.

(4) Submit, within a reasonable period of time, after the receipt of the notice of termination, a termination settlement proposal which shall include a final statement of all unreimbursed costs related to the terminated portion of the grant.

(l) *Timing of decisions.* The Office of Administrative Law Judges should render a written decision not after than 90 days after the closing of the record.

(m) *Final decision.* The decision of the Administrative Law Judge shall become the final decision of the Secretary and final agency action unless, within 20 days, the Secretary files an order with the Office of Administrative Law Judges staying the decision pending a review on the merits. The decision by the Secretary on review shall be final agency action when filed with the Office of Administrative Law Judges.

(n) *Alternative provision of services.* If the final decision specifies suspension or termination of the grant the Grant Officer shall determine how services shall be maintained in the recipient's area. As part of the determination, the Grant Office shall determine whether any funds shall be reallocated to another recipient to serve the area formerly served by the terminated or suspended recipient. The Grant Officer may also consider the desirability of providing direct Federal services to the area through appropriate means.

§ 632.155 Final action; judicial review.

(a) *Final action.* The final decision of the Secretary, or the Grant Officer's final determination dismissing the complaint where no hearing is offered pursuant to § 632.153(e), constitutes final action within the meaning of the Act and the Administrative Procedure Act, 5 U.S.C. 704.

(b) *Judicial review.* Judicial review of final action must be filed not later than 30 days after receipt of the Grant Officer's dismissal or the decision of the Secretary in accordance with Section 168 of the Act.

(c) *Transmittal of record.* The Office of Administrative Law Judges shall maintain and transmit to the appropriate United States Court of Appeals the record of the proceedings, where an appeal is taken from final agency action, as directed by the Secretary and as required by the appropriate Federal rules, except for final determinations of the Grant Officer dismissing the complaint pursuant to § 632.153(e) in which case the Grant Officer, after review by the Regional Solicitor, shall transmit the record as provided above.

Subpart H—Job Training Partnership Act Programs under Title IV, Section 401

§ 632.170 Eligibility for funds.

The Department shall provide funds under Section 401 of the Act only to Native American grantees designated in accordance with § 632.10.

§ 632.171 Allocation of funds.

(a) The Secretary shall reserve from funds available for this title (other than part B) for any fiscal year an amount equal to 3.3 percent of the amount available for Part A of Title II of this Act for such fiscal year.

(b) One hundred percent, except as provided in § 632.17(c), of the amount available for Section 401 will be distributed by formula as follows:

(1) Twenty-five percent of the available funds shall be allocated on the basis of the relative number of unemployed Indians and other Native Americans within the Native American grantee's geographic service area compared to the total number of unemployed Indians and other Native Americans in the United States.

(2) Seventy-five percent of the available funds shall be allocated on the basis of the relative number of members of Indian and other Native Americans households, whose income is at or below the poverty level, within the Native American grantee's geographic service area compared to the total number of members of Indians and Native American households in poverty in the United States.

(c) Commencing with Program Year 1985 and after consultation with Indian groups, the Department may reserve up to 6 percent of Section 401 funds. These funds may be used as incentives based on performance and for other activities

to improve the program's overall performance.

§ 632.172 Eligibility for participation in Title IV, Section 401.

(a) An Indian, Native Alaskan, or Native Hawaiian, as determined by the Native American Grantee, who is economically disadvantaged, or unemployed or underemployed is eligible to participate in a program under this subpart. For income eligibility purposes, the NAG may use either 6 months annualized or 12 months actual income.

(b) Indians and other persons of Native American descent who meet the requirements of subsection (a) of this section and who are identified by the Federal or State government as "landless" or "terminated" or "non-federally recognized" are included among those eligible to participate. These terms shall be broadly construed for the specific purpose of including, among others, terminated, State-recognized, or other groups or individuals previously determined to be eligible for Indian services under the Comprehensive Employment and Training Act.

(c) A Native American grantee may enroll Indian and Native American participants in upgrading and retraining programs who are not unemployed, underemployed or economically disadvantaged where such participants meet the following eligibility requirements:

(1) For upgrading a person must be operating at less than full skill potential, and working for at least the prior 6 months with the same employer in either an entry level, unskilled or semiskilled position or a paid position with little or no advancement opportunity in a normal promotional line. Priority consideration shall be given to the workers who have been in entry level positions for the longest time.

(2) For retraining a person must have received a bona fide notice of impending layoff and have been determined by the grantee as having little opportunity to be reemployed in the same or equivalent occupation or skill level within the labor market area.

§ 632.173 Allowable program activities.

(a) Native American grantees may undertake programs and activities consistent with the purposes of the Act including, but not limited to, programs and activities described in §§ 632.78 and 632.81.

(b) Native American grantees are encouraged to develop innovative means of addressing the needs of unemployed, underemployed and

economically disadvantaged members of their communities and of contributing to the permanent economic self-sufficiency of such communities.

(c) Training and placement in the private sector will be emphasized. CSE and work experience are permitted when consistent over the long term with increasing earnings in unsubsidized employment. Expenditures for CSE are limited to 10 percent or the unemployment rate, based on data collected by an appropriate Federal or State agency including BIA, of a NAG's total Section 401 allocation. For nonreservation grantees, the official BLS unemployment rate or State job service rate for the area will be used.

(d) Wages and allowances are to be kept to a minimum to maximize funds to be used for training.

(e) Innovative approaches to the private sector are encouraged.

(f) Other activities described in § 632.80 should be no more than 25 percent. This guideline may be increased to accommodate the extraordinary costs associated with special training projects where it is clear the benefits support the additional cost. An example of this allowed increase is when rural participants need relocation to training and the costs of housing, transportation, etc., cannot be met within a 25 percent guideline.

§ 632.174 Administrative costs.

Fifteen percent of the funds allocated to a Native American grantee under this subpart shall be used for administrative costs. Administrative costs will be waived up to 20 percent by the Chief, DINAP, upon application and demonstration by the grantee that such waiver is necessary to the provision of services.

Subpart I—Summer Youth Employment and Training Programs

§ 632.250 General.

This subpart contains the policies, rules, and regulations of the Department in implementing and administering a Summer Youth Employment and Training Program for Indians and other Native Americans authorized by Title II, Part B of the Act.

§ 632.251 Eligibility for funds.

Only Native American grantees described in Section 401(c)(1) of the Act are eligible for summer youth program funds.

§ 632.252 Allocation of funds.

(a) The Secretary shall reserve under 3(b) of the Act for Section 401(c)(1) grantees the same percentage of funds

as were available in the fiscal year preceding the fiscal year for which the determination is made.

(b) Allocations shall be made to eligible Native American grantees on the basis of a formula using the best available data as determined by the Department in consultation with Native American groups and shall be published by the Secretary.

§ 632.253 Special operating provisions.

Native American grantees shall:

(a) Provide services to youths most in need;

(b) Develop outreach and recruitment techniques aimed at all segments of the economically disadvantaged youth population, especially school dropouts, youth not likely to return to school without assistance from the summer program, and youth who remain in school but are likely to be confronted with significant employment barriers relating to work attitude, aptitude, social adjustment, and other such factors;

(c) Provide labor market orientation to participants. This orientation may include, as appropriate: vocational exposure, counseling, testing, resume preparation, job interview preparation, providing labor market information, providing information about other training programs available in the area, including apprenticeship programs, and similar activities. It may be provided on a group or individual basis. In providing labor market orientation, skill training and remedial education, each grantee shall make maximum efforts to develop cooperative relationships with other community resources so that these activities are provided in the summer programs at no cost, or at minimum cost, to the summer program;

(d) Assure that adequate supervision from skilled supervisors is provided to participants at each worksite;

(e) Make appropriate efforts to encourage educational agencies and post-secondary institutions to award academic credit for the competencies participants gain from their participation in the summer program;

(f) Ensure that appropriate efforts are made to closely monitor the performance of the summer program and measure program results against established goals;

(g) Ensure that enrollee applications are widely available and that jobs are awarded among individuals most severely disadvantaged in an equitable fashion. Enrollment applications shall require the signature of the applicant or (in the case of minors) the parent or guardian attesting to the accuracy of the information, including income data, provided on the application; and

(h) Provide participants with an orientation to the program which shall include, but not be limited to: purposes of the program, the conditions and standards (including such items as hours of work, pay provisions and complaint procedures) for such activities in the program.

§ 632.254 Program startup.

During the planning and design phase of the program and prior to the close of the school year, only those activities outlined in § 632.255(b) are permissible. These activities shall be charged as administrative costs. Individuals may not begin participation in the program before the close of school.

§ 632.255 Program planning.

(a) (1) In developing the summer program, the Native American grantee shall coordinate the summer plan with its Title IV program.

(2) Native American grantees shall use the planning process described in § 632.17.

(b) The following planning and design activities shall be allowable beginning October 1 of each year.

(1) Hiring of staff (planners, worksite developers, intake specialists, etc.), provided, prior to the close of school all staff salaries and benefits shall be charged as administrative expenses, except that 45 days prior to the beginning of the summer program and 45 days after the summer program, all staff costs and other program development costs may be charged pursuant to § 632.38;

(2) Development of the summer plan;

(3) Worksite development;

(4) Recruitment, intake and selection of participants;

(5) Arrangements for supportive services;

(6) Dissemination of program information;

(7) Development of coordination between schools and other services;

(8) Staff training; and

(9) Other activities that may be characterized as planning and design but not program operation.

(c) Expenses incurred in such planning and design activities may, pursuant to § 632.38, be paid from administrative funds received under other titles of the Act.

§ 632.256 Submission of applications.

To the extent possible, Native American grantees will be notified of their summer youth allocation at the same time Section 401 allocations are announced. The summer plan will be a separate part of the CAP and follow the same format as the CAP.

§ 632.257 Eligibility for participation.

(a) An individual shall be eligible for participation if, at time of application, he or she is an Indian or Native American youth who is:

(1) At the time of application, economically disadvantaged; and

(2) At the time of enrollment, age 14 through 21 inclusive.

(3) For income eligibility purposes, the NAG may use either six months annualized or 12 months actual income.

(b) The nepotism provisions of this Part shall not apply to this program.

§ 632.258 Allowable activities.

Allowable activities are those listed in § 632.78-80 except that community service employment is not permitted.

§ 632.259 Vocational exploration program.

A Native American grantee may conduct a vocational exploration program for the purpose of exposing youth to the operation and types of jobs and instruction including, where appropriate, limited and short term practical experience.

§ 632.260 Worksite standards.

(a)(1) Each Native American grantee shall develop a written agreement with worksite employers which complies with Sections 142 and 143 of the Act and which assures:

(i) Adequate supervision of each participant;

(ii) Adequate accountability for participant time and attendance; and

(iii) Adherence to the rules and regulations governing the summer program.

(2) Such written agreements may be memoranda of understanding, simple work statements or other documents which indicate an estimate of the number of participants at the worksite and any operational conditions governing the program at the worksite.

(b) Each Native American grantee shall establish procedures for the monitoring and evaluation of each worksite to insure compliance with the worksite agreements and the terms and conditions of subgrants and contracts.

(c) No participant shall be required to work, or be compensated for work with JTPA funds, for more than 40 hours of work per week.

§ 632.261 Reporting requirements.

(a) Each Native American grantee shall submit an end of summer report which will include both financial and characteristics information. The report format will be issued to grantees under separate instructions.

(b) The report in this section is to be submitted to Chief, DINAP by registered mail no later than 90 days after the end of the summer program.

§ 632.262 Termination date for the summer program.

Participants may not be enrolled in the summer program beyond September 30, or beyond the date they resume school full-time, whichever occurs earlier. Allowable activities after September 30 include report and record preparation and submittal, completion of evaluations and assessments of worksite employers and the overall program or other elements of the summer program, and units.

§ 632.263 Administrative costs.

Costs for administration of the Title II-B summer program are limited to 15 percent of the summer program allocation.

PART 633—MIGRANT AND SEASONAL FARMWORKER PROGRAMS

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Authority: Job Training Partnership Act, Sec. 169 (29 USC 1501 *et seq.*, Pub. L. 97-300, 96 Stat. 1322), unless otherwise noted.

Subpart A—Introductory Provisions

§ 633.102 Scope and purpose of Title IV, Section 402 programs.

(a) It is the purpose of Title IV, Section 402, of the Act to provide job training, employment opportunities, and other services for those individuals who suffer chronic seasonal unemployment and underemployment in the agriculture industry. These conditions have been substantially aggravated by continual advancements in technology and mechanization resulting in displacement and contribute significantly to the Nation's rural employment problem. These factors substantially affect the entire national economy.

(b) Because of farmworker employment and training problems, such programs shall be centrally administered at the national level. Programs and activities supported under this section shall in accordance with Section 402(c)(3) of the Act:

- (1) Enable farmworkers and their dependents to obtain or retain employment;
- (2) Allow participation in other program activities leading to their eventual placement in unsubsidized agricultural or nonagricultural employment;
- (3) Allow activities leading to stabilization in agricultural employment; and
- (4) Include related assistance and supportive services.

§ 633.102 Format for these regulations.

(a) Regulations promulgated by the Department to implement the provisions of Title IV Section 402 of the Act are set

forth in 20 CFR Part 633. This part contains all the regulations under the Act applicable to migrant and other seasonally employed farmworker programs.

(b) Should the regulations at this Part conflict with regulations at other Parts of this title of the Code of Federal Regulations, the regulations at this Part shall prevail with respect to programs and activities governed by this Part.

§ 633.104 Definitions.

The following definitions are applicable to Section 402 programs.

Accrued expenditures means total costs incurred during the reporting period for: (a) goods and other tangible property received; (b) services performed by employees, contractor, subrecipients and other payees; and (c) other amounts becoming owed under programs for which no current services or performance is required such as annuities, insurance claims, and other benefit payment.

Act shall mean the Job Training Partnership Act (29 USC Section 1501 *et seq.*).

Allocation shall mean the amount of funds calculated in accordance with § 633.105(b)(1) for Section 402 programs in each State and distributed in accordance with the requirements of this Part.

Average earnings (pre-applications) means the amount of earnings, as defined herein, in the 52-week eligibility period prior to application, summed for all individuals who terminated during the report period, and for whom followup earnings have been obtained, divided by the number of such individuals.

Average earnings for the first ninety (90) days following termination means the amount of earnings in the 13 weeks immediately following termination summed for all terminatees for whom contact was made and divided by the number of such individuals.

Average hourly wage at termination (no pre-application hourly wage) means the hourly wage on the job obtained at time of termination summed for all individuals who entered employment at time of termination and who had no pre-application hourly wage, divided by the number of such individuals. Note: The number of individuals included in this measure, when added to the number of individuals used in obtaining average hourly wage at termination (with pre-application hourly wage) will equal the total number of individuals who entered employment at time of termination as reported above.

Average hourly wage in last job (pre-application) means the hourly wage earned on the last job held during the 52-week eligibility period prior to application, summed for all individuals who terminated during a reporting period and who entered employment at time for termination, divided by the number of such individuals.

Average hourly wage at termination (with pre-application hourly wage) means the hourly wage on the job obtained upon termination, summed for all individuals who entered employment at time of termination and who had some preapplication hourly wages divided by the number of such individuals. The individuals included in this measure and in the average hourly wage in last job (pre-application) are identical.

Chief, DFREP means the Chief of the Division of Farmworker and Rural Employment Programs in the Employment and Training Administration, Department of Labor.

Construction shall mean the erection, installation, assembly, or painting of a new structure or a major addition, expansion, or extension of an existing structure, and the related site preparation, excavation, filling and landscaping or other land improvements.

Contacts made means the number of contacts for which all required followup information has been obtained.

Department shall mean the United States Department of Labor (DOL), including its agencies and organizational units.

DOL shall mean the United States Department of Labor.

Earnings means (a) gross wages and salaries from unsubsidized employment (before deductions) including tips and commissions; (b) net self-employment income (gross receipts minus operating expenses); and (c) pay and allowances received while on active duty in the Armed Forces.

Education status includes:

(a) "school dropout"—An individual who is neither attending nor enrolled in any school and has not received a high school diploma or a GED Certificate.

(b) "student" (high school or less)—An individual who is enrolled in an elementary or secondary school (including elementary, junior and senior high school or equivalent), or is between school terms and intends to return to elementary or secondary school.

(c) "high school graduate or equivalent" (no post high school)—An individual who has received a high school diploma or GED Certificate, but has not attended any post secondary

vocational, technical, or academic school.

(d) "post-high school attendee"—An individual who is attending, or has attended, a post-secondary vocational, technical, or academic school.

Employment shall mean the situation wherein a person(s) provides work or services for an employer for wages or salary. This includes self-employment. The satisfaction of workfare requirements does not constitute employment.

Entered employment, direct shall mean unsubsidized employment secured for or by a participant after receiving direct placement services not associated with training or subsidized employment.

Entered employment, indirect shall mean unsubsidized employment secured for or by a participant after participation in training or subsidized employment.

Entered employment shall mean the act of securing unsubsidized employment for or by a participant.

Family (a) Shall mean one or more persons related by blood, marriage, or adoption. A step-child or a step-parent is considered to be related by marriage.

(b)(1) For purposes of paragraph (a) of this definition, a person claimed as a dependent on another person's Federal Income Tax return for the previous year is presumed to be part of the other person's family.

(2) A handicapped adult may be considered a family of one when applying for programs under the Act.

(3) An individual 18 years of age or older, except as provided in (1) and (2) above, who receives less than 50 percent of support from the family, and who is not the principal earner nor the spouse of the principal earner, is not considered a member of the family. Such an individual is considered a family of one.

Earned family income shall mean all income received from all sources for the 52-week period prior to eligibility determination by persons who are family members at the time of eligibility determination.

(a) For the purpose of determining eligibility (and not for allocations), family income includes:

(1) Gross wages and salaries (before deductions);

(2) Net self-employment income (gross receipts minus operating expenses); and

(3) Other money income received from sources such as net rents, Old Age and Survivors Insurance, social security benefits, pensions, alimony, periodic income from insurance policy annuities, and other sources of income.

(b) Earned family income does not include:

(1) Non-cash income such as food stamps, or compensation received in the form of food or housing;

(2) Rental value of owner-occupied property;

(3) Public assistance payments;

(4) Cash payments received pursuant to a State plan approved under Titles I, IV, X or XVI of the Social Security Act, or disability insurance payments received under Title II of the Social Security Act;

(5) Federal, State or local unemployment benefits;

(6) Payments made to participants in employment and training programs;

(7) Capital gains and losses;

(8) One-time unearned income, such as, but not limited to:

(i) Payments received for a limited fixed term under income maintenance programs and supplemental (private) unemployment benefits plans;

(ii) One-time or fixed-term scholarship and fellowship grants;

(iii) Accident, health, and casualty insurance proceeds;

(iv) Disability and death payments, including fixed term (but not lifetime) life insurance annuities and death benefits;

(v) One-time awards and gifts;

(vi) Inheritance, including fixed term annuities;

(vii) Fixed term workers' compensation awards;

(viii) Terminal leave pay;

(xi) Soil bank payments; and

(x) Agriculture crop stabilization payments;

(9) Pay or allowances received by any veteran while he/she was serving on active duty in the Armed Forces;

(10) Educational assistance and compensation payments to veterans and other eligible persons under Chapters, 11, 13, 31, 34, 35, and 36 of Title 38, United States Code;

(11) Payments received under the Trade Act of 1974 as amended;

(12) Black Lung payments received under the Benefits Reform Act of 1977, Pub. L. 95-239, 30 U.S.C. 901; and

(13) Child support payments.

Farmwork shall mean work performed for wages in agricultural production or agricultural services as defined in the most recent edition of the Standard Industrial Classification (SIC) Code definitions included in industries 01—Agricultural Production-Crops; 02—Agricultural Production-Livestock excluding 027—Animal Specialties; 07—Agricultural Services excluding 074—Veterinary Services, 0752—Animal Specialty Services, and 078—Landscape and Horticultural Services.

Followup period means for employment status and earnings measures, the first 13 weeks following termination.

Grantee shall mean any person, organization or other entity which receives JTPA funds from the Department.

Individuals with earnings means the number of individuals who had earnings in the 52-week eligibility period prior to application.

Individuals entering employment with pre-application hourly wage means a count of those individuals who entered employment at time of termination and who had a pre-application hourly wage.

JTPA shall mean the Job Training Partnership Act.

The term *direct placement services* shall mean job development, job placement, counseling and referral services related to obtaining unsubsidized employment for a participant who is not training or subsidized employment.

The term *limited English proficiency* shall mean the inability of an applicant (whose native language is not English) to communicate in English, resulting in a job handicap.

Migrant farmworker shall mean a seasonal farmworker who performs or has performed farmwork during the preceding 12 months which requires travel such that the worker is unable to return to his/her domicile (permanent place of residence) within the same day.

Participant shall mean an individual who is:

- (a) Eligible for participation; and
- (b) Enrolled within 45 days of eligibility determination; and
- (c) Enrolled and receiving employment, training or services (except post-termination services) funded under the Act.

Planning estimates shall mean the preliminary allocations announced for the purpose of providing target funding levels for each State.

Program income shall mean gross income earned from grant or agreement supported activities. Such earnings include, but are not limited to: income for service fees, sale of commodities, usage or rental fees, and royalties on patents or copyrights.

Poverty level shall mean the annual income level at, or below which families are considered to live in poverty, as annually determined by HHS.

Welfare Recipient shall mean an individual who receives or whose family receives cash payments under AFDC (SSA, Title IV), General Assistance (State or local government), or the Refugee Assistance Act of 1980 (Pub. L. 96-212).

Race/ethnic group shall mean the basic racial and ethnic categories for all ETA programs as defined below:

(a) "White, not Hispanic"—A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

(b) "Black, not Hispanic"—A person having origins in any of the black racial groups of Africa.

(c) "Hispanic"—A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

(d) "American Indian or Alaskan Native"—A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition. (Hawaiian Natives are included herein.)

(e) "Asian or Pacific Islander"—A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

Seasonal farmworker shall mean a person who during the 52 weeks preceding application was employed at least 25 days in farmwork or earned at least \$400 in farmwork; and who has been primarily employed in farmwork on a seasonal basis, without a constant year round salary (one employer).

Section 402 programs shall mean the Migrant and Seasonal Farmworker Programs, under Section 402 of Title IV of the Job Training Partnership Act.

The term *subsidized employment* shall mean employment created in the private or public sector and in private nonprofit agencies financed by the recipient's program funds or by other DOL funded programs, e.g., work experience and tryout employment.

Supplemental funds shall mean any funds allocated in excess of that amount announced as a "planning estimate."

Target area shall mean a geographic area to be served by a Section 402 grantee. Such an area may be a county, multicounty area; a State, or a multistate area.

Target population shall mean farmworkers and their dependents who meet the requirements of § 633.107.

Total employed 13 weeks following termination means the number of individuals who terminated from JTPA who were in unsubsidized employment 90 days after their termination from the program.

Underemployed persons—means:

(a) Persons who are working part-time but seeking full-time work; or

(b) Persons who are working full-time but whose current annualized wage rate (for a family of one), or whose family's current annualized income, is not in excess of:

- (1) The poverty level, or
- (2) 70 percent of the lower living standard income level.

Unemployed individuals—means individuals who are without jobs and who want and are available for work. The determination of whether individuals are without jobs shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department in defining individuals as unemployed.

§ 633.105 Allocation of funds.

(a) *National Account.* (1) Up to 6 percent of the statutory reserves for Section 402 activities may be set aside for the National Account to be used for technical assistance and for special projects funded at the discretion of the Department.

(2) Funds from the National Account may be obligated by the Department by means of either contracts or grants to private nonprofit agencies, to private profitmaking organizations, to States and local units of government, or public agencies.

(b) *State allocations (allocable funds).*

(1) No less than 94 percent of the funds received for Section 402 activities shall be allocated for farmworker programs in individual States in an equitable manner using the best data available as to the farmworker population as determined by the Department. The formula used to determine State allocations will be published in the Solicitation for Grants Application (SGA).

(2) *Allocation Exceptions.* (i) The Department reserves the right not to allocate any funds for use in a State whose allocation is less than \$120,000.

(ii) Those formula funds not allocated will be available for technical assistance and special projects funds at the discretion of the Department.

(iii) Current grantees which are unsuccessful applicants for new grant funds shall be given notice that funds will expire and that a reasonable period will be given to phase out their operations. Such notice will not bind the Department to obligate additional funds. The notification of nonselection shall be the notice of termination of funds and departmental closeout requirements are to be followed.

(3) *Funding cycle.* Projects will be funded in accordance with a schedule to be specified by the Department in the Federal Register:

(i) Announcement of State planning estimates and an invitation to submit applications for State(s) or area(s) open for competition as provided in the Solicitation for Grant Application (SGA).

(ii) Deadline for submission of Preapplication Forms for Federal Assistance Forms.

(iii) Deadline for submission of applications.

§ 633.106 Eligibility for allocable funds.

The following organizations and units of government shall be eligible to receive funds under Section 402.

(a) A public agency;

(b) A private nonprofit organization authorized by its charter or articles of incorporation to provide employment and training or such other services as are permitted by this subpart.

§ 633.107 Eligibility for participation in Section 402 programs.

(a) Eligibility for participation in Section 402 programs is limited to those individuals who have, during a consecutive 12-month period preceding their application for enrollment:

(1) Been a seasonal farmworker or migrant farmworker as defined in § 633.104; and,

(2) Received at least 50 percent of their total earned income or been employed at least 50 percent of their total work time in farmwork; and,

(3) Been identified as a member of a family which receives public assistance or whose annual family income does not exceed the higher of either the poverty level or 70 percent of the lower living standard income level.

(4) Dependents of the above individuals are also eligible.

(b) The period for determining eligibility, i.e., 52 weeks prior to application, shall be extended for persons who have been in the armed forces, incarcerated, hospitalized, or physically or mentally disabled. The extended period of time shall be not more than 12 months plus the amount of time the person was in the armed forces, incarcerated, detained at any Federal or state facility, hospitalized, or physically or mentally disabled. Such conditions shall be positively demonstrated by the applicant. This can be done by producing documentary evidence satisfactory to the grantee.

(c) To be eligible for participation, individuals shall meet the requirements of Sections 167(a)(5) and 504 of the Act.

(d) A participant in another program or title under JTPA who met the eligibility criteria for Section 402 at the time of enrollment into such other program or title may be transferred into,

or enrolled concurrently, in the Section 402 program. A Section 402 participant who met the eligibility criteria for another program or title under JTPA at the time of enrollment into the Section 402 program may also be transferred into or enrolled concurrently in such other program or title.

(e) The grantee shall establish the necessary procedures for identifying and selecting participants and for eligibility determination and verification.

Subpart B—Grant Planning and Application Procedures

§ 633.201 Grant planning and application procedures in general.

Precondition for grant application: The Department will not consider an application for funding from any applicant in cases where it is established that:

(a) The agency's efforts to recover debts (for which three demand letters have been sent) established by final agency action have been unsuccessful; or

(b) Fraud or criminal activity has been proven to exist within the organization.

§ 633.202 Announcement of State planning estimates and invitation to submit a grant application.

(a) *Announcements.* The Department, through a notice in the *Federal Register*, will announce State Planning estimates of Section 402 funds and will publish an SGA for all areas open to competition. The SGA will contain all information needed by an applicant to apply for funding; i.e., general program description, rating criteria, and dates for submission of applications.

(b) *Intention to apply.* Any eligible applicant intending to apply for funds shall submit a Preapplication for Federal Assistance to DOL by a specified date as announced in the *Federal Register*.

(c) Applications for statewide programs are encouraged; however, the Department reserves the right to award grant funds to less than statewide areas.

§ 633.203 Review of funding request.

The SGA will identify all review standards including:

(a) An understanding of the problems of migrant and seasonal farmworkers;

(b) A familiarity with the area to be served;

(c) A previously demonstrated capability to administer effectively a diversified employability development program for migrant and seasonal farmworkers.

(d) General administrative and financial management capability.

(e) Prior performance with respect to financial management, audit and program outcomes.

§ 633.204 Responsibility review.

(a) Prior to final selection as a potential grantee the Department will conduct a review of the available records to determine whether or not the organization has responsibly administered Federal funds. This review is intended to establish overall responsibility. The following information will be taken into consideration in making the final decision:

(1) The agency's efforts to recover debts (for which three demand letters have been sent) established by final agency action have been unsuccessful, or failure to comply with an approved repayment plan;

(2) Serious administrative deficiencies identified in final findings and determinations—such as failure to maintain a financial management system as required by Federal regulations.

(3) Established fraud or criminal activity within the organization.

(4) Willful obstruction of the audit process.

(5) Substantial failure to provide services to applicants as agreed to in a current or recent grant.

(6) Failure to correct deficiencies brought to the grantees attention in writing as a result of monitoring activities, reviews, assessments, etc.

(7) Failure to return a grant closeout package or outstanding advances within 90 days of expiration date or receipt of closeout package, whichever is later, unless an extension has been requested and granted; final billings reflecting serious cost category or total budget cost overrun.

(8) Failure to submit required reports.

(9) Failure to properly report and dispose of government property as instructed by DOL.

(10) Failure to have maintained cost controls resulting in excess cash on hand.

(11) Failure to procure or arrange for audit coverage for any two year period when required by DOL.

(12) Failure to audit subrecipient within the required period when applicable.

(13) Final disallowed costs in excess of five percent of the grant or contract award.

(14) Failure to establish a mechanism to resolve subrecipient's audit within established time frames.

(b) This responsibility review is independent of the competitive process.

Applicants failing to meet the requirements of this section will not be selected as potential grantees irrespective of their standing in the competition.

§ 633.205 Notification of selection.

(a) Respondents to the SGA which are selected as potential grantees shall be so notified by the Department. The notification shall invite each potential grantee to negotiate the final terms and conditions of the grant, shall establish a reasonable time and place for the negotiation, and shall indicate the State or area to be covered by the grant. Funds may be awarded for two program years.

(b) In the event that no grant applications are received for a specific State or area or that those received are deemed to be unacceptable, or where a grant agreement is not successfully negotiated, the Department may give the Governor first right to submit an acceptable application pursuant to § 633.201. Should the Governor not accept the offer within fifteen days, the Department may then (1) designate another organization or organizations, (2) reopen the area for competitive bidding, or (3) use the funds for national account activities.

(c) An applicant whose grant application is not selected by the Department to receive Section 402 funds shall be notified in writing.

(b) Applicants who submit grant applications which have been rejected may not resubmit a new grant application for the State(s) or area(s) in which they are interested in providing services until the area(s) is announced by the Department as reopened for competition.

(e) Any applicant whose grant application is denied in whole or in part by the Department may request an administrative review as provided in § 633.409, with respect to whether there is a basis in the record to support the Department's decision. This appeal will not in any way interfere with the Department's designation and funding of another organization to service the area in question. The available remedy under such an appeal will be the right to be designated in the future rather than a retroactive or immediately effective selection status. Therefore, in the event the ALJ rules that the organization should have been selected and the organization continues to meet minimum standards, the Department will select the organization in the succeeding period.

Subpart C—Program Design and Administrative Procedures

§ 633.301 General responsibilities.

(a) This subpart sets forth the program operation requirements for grantees under Section 402, including program and fiscal management, coordination and consultation, allowable activities, participant benefits, and duration of participation. Unless otherwise indicated, grantees shall follow procedures as prescribed in DOL administrative regulations, 41 CFR 29-70.

(b) *Basic program design responsibilities of grantees.* A grantee shall be responsible for:

(1) Designing training which, to the maximum extent feasible, is consistent with every participant's fullest capabilities and will lead to employment opportunities enabling every participant to become economically self-sufficient.

(2) Designing program activities which will, to the maximum extent feasible, contribute to the occupational development and upward mobility of every participant;

(3) Providing training only to participants who are legally able to accept gainful employment in the occupation for which training is being provided; and

(4) Making maximum efforts to achieve the goals and the performance standards set forth in the grant.

§ 633.302 Training activities and services.

(a) A grantee may provide assistance to eligible individuals to obtain or retain employment, to participate in other program activities leading to their eventual placement in unsubsidized agricultural or nonagricultural employment, and to participate in activities leading to stabilization in agricultural employment through training and supportive services which may include, but are not limited to:

(1) Job search assistance, including job clubs;

(2) Job development;

(3) Training, such as classroom, on-the-job, work experience, and tryout employment, in jobs skills for which demand exceeds supply;

(4) Training related and non-training related supportive services, including commuting assistance and financial and personal counseling;

(5) Relocation assistance; and

(6) Programs conducted in cooperation with employers or labor organizations to provide early intervention in the event of the disruption of employment opportunities.

(b) Public service employment is not an allowable activity under Section 402 programs.

(c) Tryout employment shall conform to Section 205(d)(3)(B).

(d) Work experience programs shall be combined with classroom or other training. The work experience portion shall not exceed 1,000 hours in a one year period.

§ 633.303 Allowable costs.

(a) *General.* To be allowable, a cost must be necessary and reasonable for proper and efficient administration of the program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of the recipient.

(b) Unless otherwise indicated below, direct and indirect costs shall be charged in accordance with 41 CFR 29-70.

(c) Funds may be used for construction activities only to:

(1) Provide compensation to participants employed by public or private nonprofit agencies;

(2) Reimburse OJT costs to private for profit employers;

(3) Purchase equipment, materials, and supplies for use in the training of such participants; and

(4) Cover costs of a training program in a construction occupation, including costs such as instructors' salaries, training tools, books, and needs-based payments and compensation to participants.

(d) Costs associated with building repairs, maintenance, and capital improvements of existing facilities used primarily for programs under the Act are allowable with prior approval of the Department.

(e) Unemployment compensation costs are allowable for administrative staff hired in accordance with the administrative provisions of the regulations, and for participants required by State law to be covered for unemployment compensation purposes.

(f) Costs which are billed as a single unit charge do not have to be allocated or prorated among the several costs categories by may be charged entirely to training when the agreement:

(1) Is for classroom training;

(2) Is fixed unit price; and

(3) Stipulates that full payment for the full unit price will be made only upon completion of training by a participant and placement of the participant into unsubsidized employment in the occupation trained for and at not less

than the wage specified in the agreement.

(g) *Travel costs.* (1) The cost of participant and staff travel necessary for the operation or administration of programs under the Act is allowable as provided herein.

(2) Travel costs of section 402 administrative staff or members of governing boards of grantee organizations are allowable without the prior approval of the Department if the travel specifically relates to programs under Section 402. All other travel to be charged to JTPA Section 402 grants shall require the prior approval of the Department. These costs shall be charged to administration.

(3) Travel costs of other grantee officials of multifunded programs charged with overall grantee responsibilities are allowable only if costs specifically relate to programs under Section 402.

(4) Travel costs to enable participants to obtain or retain employment, access other services or to participate in programs under this Act are allowable as direct costs but shall be limited to the grantee's jurisdiction or within daily commuting distance, unless part of an approved component of the grantee's program. These costs shall be charged to training related supportive services.

(5) Travel costs for participants in administrative or programmatic positions using their personal or other forms of transportation in the performance of their jobs are allowable and shall be charged appropriately.

(6) Travel policies of all grantees, subgrantees and contractors shall be generally consistent with those set forth in the Department Travel and Transportation Manual.

(h) *Associate membership.* Grantees are permitted to use grant funds to join those associations which provide technical and administrative services in support of Section 402 program efforts. The activities of such associations must be designed to contribute to the enhancement of professional and technical program knowledge. No financial assistance in the form of membership dues or other membership related costs can involve political or lobbying activities.

(1) The cost shall be for a Section 402 grantee's membership rather than an individual person's membership.

(2) The cost of a membership shall be reasonably related to the value of the services or benefits received and shall not exceed \$850 annually.

(3) Association-related costs shall be incorporated in the grantee's Section 402 grant budget, charged to the administrative category, and as such,

shall be subject to the overall administrative cost ceiling.

(i) *Allowances and reimbursements for board and advisory council members.* (1) *General.* A reasonable allowance to members who attend meetings of any board, council, or committee for Section 402 program purposes, and reimbursement of actual expenses connected with those meetings, are allowable costs, and may be paid for attendance at no more than six meeting days per grantee per quarter.

(2) *Allowances and loss of wages.* Any farmworker or family member who is a member of a private nonprofit grantee or subgrantee policymaking body or of a public agency grantee or subgrantee farmworker advisory council is eligible to be paid an allowance provided:

(i) Such farmworker's family income does not exceed either 70 percent of the lower living standard income level or the poverty level as established by HHS.

(ii) Allowances may be paid for attendance not in excess of ten dollars per meeting, unless approved in advance by the Department.

(3) *Reimbursement for expenses.* (i) All board members shall be eligible for receiving reimbursement for actual expenses of travel, meals, and lodging incurred in attending board meetings, or a per diem in lieu of actual expenses.

(ii) Any farmworker or family member where family income does not exceed 70 percent of the lower living standard income level and who is a member of a private nonprofit grantee or subgrantee policymaking body or of a public agency grantee or subgrantee farmworker advisory council shall also be eligible for reimbursement of actual wages lost, if supported by a statement from the employer.

(iii) The grantee shall define which expenses may be reimbursed, whether incurred as the result of actual meeting attendances or in performance of other official duties and responsibilities in connection with the program, and shall establish procedures for the reimbursement of such expenses.

(j) *Restrictions on use of funds.* (1) Funds made available through one grant may not be used to support costs properly chargeable to another grant.

(2) Program expenditures shall not be made prior to the effective date of the grant period as set forth in OMB Circulars A-102, 110 and 122.

(3) If a grantee incurs expenditures in excess of the total amount of the grant funds, the over expenditure may not be charged to the grant.

§ 633.304 Section 402 cost allocation.

(a) *General.* Allowable costs for Section 402 programs shall be charged against the following four cost categories: Administration; training; training-related supportive services; and nontraining-related supportive services.

(1) Costs are allocable to a particular cost category to the extent that benefits are received by such category.

(2) All grantees are required to plan, control, and report expenditures against the aforementioned cost categories.

(3) All grantees are responsible for ensuring that subgrantees and contractors plan, control, and report expenditures against the aforementioned cost categories.

(b) *Limitation on certain costs.* (1) Fifteen percent of the funds allocated to a Section 402 grantee under this subpart shall be used for administrative costs. Administrative costs will be waived up to 20 percent by the chief, DFREP, upon application and demonstration by the grantee that such waiver is necessary to the provision of services.

(2) Costs for nontraining-related supportive services shall not exceed 15 percent of the total amount of the grant.

(3) Cost for training-related supportive services shall not exceed 15 percent of the total amount of the grant.

(4) Costs for training shall be no less than 50 percent of the total amount of the grant.

(c) *Classification of costs by category.* All grant costs shall be charged to the four cost categories listed above. Within each category costs shall be assigned and accounted for as follows:

(1) *Administration.* Administration costs consist of all direct and indirect costs associated with the management of the program. Administrative costs shall be limited to those necessary to effectively operate the program. These costs include but are not limited to: the salaries and fringe benefits of personnel engaged in executive, fiscal, data collection, personnel, legal, audit, procurement, data processing, communications, maintenance, and similar functions; and related materials, supplies, equipment, office space costs, and staff training.

(i) Also included are salaries and fringe benefits of direct program administrative positions such as supervisors, program analysts, labor market analysts, and project directors. Additionally, all costs of clerical personnel, materials, supplies, equipment, space, utilities, and travel that are identifiable with these program administration positions are charged to administration.

(ii) Allowances and reimbursement costs for governing boards and advisory councils shall be prorated wherever applicable as administrative costs among all the grants, from whatever source, administered by the grantee.

(2) *Training.* (i) Instruction and related costs consist of goods and services which affect those program participants who are in either a work environment, or classroom setting (including classroom training in conjunction with Vocational Exploration or Job Readiness or tryout employment) and shall be charged to training, i.e., salaries, fringe benefits, space, utility, travel and equipment. Training costs include, but are not limited to, the following: The costs associated with on-the-job training services; employer outreach necessary to obtain job listings or job training opportunities, salaries; fringe benefits; equipment and supplies of personnel engaged in providing training, including remedial education; job related counseling for participants; employability assessment and job development; job related counseling; tuition fees; books and other teaching aids; equipment and materials used in providing training to participants, classroom space and utility costs; job search assistance, labor market orientation, and job referral costs. In addition:

(ii) Wages and fringe benefits for participants in work experience, tryout employment, classroom training, shall be charged to training. Cost-of-living increases are considered wages.

(iii) Allowances shall be charged to training.

(iv) Any single cost which is properly chargeable to training and to one or more other categories shall be prorated among training and other appropriate cost categories.

(3) *Training-related supportive services.* Costs of services which are necessary to enable an eligible individual to participate in training or subsidized employment under section 402 and to obtain subsequent unsubsidized employment shall be charged to training-related supportive services. Such supportive services may include but are not limited to transportation, health care, special services and materials for the handicapped, child care, meals, temporary shelter, financial counseling, and other reasonable expenses required for participation in the program and may be provided in-kind or through cash assistance. Training-related supportive services costs and related costs shall be charged to this cost category.

(4) *Nontraining-related supportive services.* (i) "Services only" are the

costs of the goods and services provided to participants who are not engaged in work experience, tryout employment or training activities, including, but not limited to such goods and services as: transportation, health care, temporary shelter, meals and other nutritional assistance, legal or services as: transportation, health care, temporary shelter, meals and other nutritional assistance, legal or paralegal assistance and emergency assistance.

(ii) Direct placement services are services such as job development, job counseling, job preparation, job placement and job referral services provided to participants who are not engaged in work experience, tryout employment or training activities. These nontraining-related supportive services costs and those costs associated with providing these services (i.e., salaries, fringe benefits, space, utility, transportation, equipment, etc.) shall be charged to this cost category.

(d) *Cost categories assignable to program activities* (1) Classroom training. Cost categories are: administration, training, and training-related supportive services.

(2) On-the-job training. Cost categories are: administration, training, and training-related supportive services.

(3) Work Experience: Cost categories are: administration, training, and training-related supportive services.

(4) Tryout employment: Cost categories are: administration, training, and training-related supportive services.

§ 633.305 General benefits and working conditions for program participants.

(a) Payments for on-the-job training (OJT) shall be made in accordance with Sections 141(g) and 142(a)(2) of the Act.

(b) Subject to provisions of Section 108 of the Act, participants employed in work experience activities shall be paid wages in accordance with Section 142(a)(3) of the Act.

(c) Payments to individuals participating in programs under Section 402 shall conform to the provisions of Section 142(b) of the Act.

(d) Section 402 grantees shall not assist any activity under the Act unless the activity conforms to provisions of Sections 142 and 143 of the Act.

(e) A basic hourly allowance for regularly enrolled classroom training or services participants shall not exceed the higher of the State or Federal minimum hourly wage.

§ 633.305-1 Retirement benefits.

No funds available under this act may be used for contributions on behalf of any participant to retirement systems or plans (Sec. 143(a)(5)).

§ 633.305-2 Packages of benefits.

(a) Where non-JTPA, similarly employed employees are covered under a benefits package which includes retirement, JTPA participants shall receive the non-retirement benefits (e.g., health, death, and disability benefit coverage), at the same level and to the same extent as other employees. JTPA funds may be used to pay for those benefits.

(b) JTPA funds may be used to purchase a package of benefits including retirement, provided the retirement portion of the package can be factored out of the package and adjusted accordingly.

§ 633.305-3 Non-Federal status of participants.

Except where specifically provided to the contrary, participants in a program under the Act shall not be deemed Federal employees and shall not be subject to the provisions of law relating to Federal employment, including those related to hours of work, rates of compensation, leave, unemployment compensation, and Federal employment benefits.

§ 633.305-4 Termination conditions.

A grantee or subgrantee which has not successfully placed a participant in unsubsidized employment or training within 45 days of enrollment shall provide the participant with written notice of the impending termination from their particular program activities or from the total JTPA program and a contact person for questions and further information at least two (2) weeks prior to the effective date. A dated copy of the notice shall be maintained in the participant's file.

§ 633.306 Recordkeeping requirements.

(a) Each grantee shall ensure maintenance of systems whose financial management and participant data components provide federally required records and reports that are accurate, uniform in definition, accessible to authorized Federal staff, and verifiable for monitoring, reporting, and evaluation purposes.

(b) The grantee shall ensure that systems:

(1) Maintain data elements used in required Federal reports in accordance with established program definitions contained in the Act and these regulations;

(2) Follow consistent rules for aggregation of detailed data to summary levels;

(3) Are able to track data from detailed records to summary reports;

(4) Maintain procedures to ensure that information is current, complete, consistent, and accurate;

(5) Meet generally accepted accounting principles as prescribed in 29 CFR 41.29-70.

(6) Provide for adequate control of Federal funds and other assets;

(7) Trace the funds to a level of expenditures adequate to demonstrate that funds have been spent lawfully;

(8) Maintain internal controls to avoid conflict-of-interest situations and prevent irregular transactions or activities;

(9) Support accounting records with source documentation such as cancelled checks, paid bills, contracts, grants, and agreements; and

(10) Establish procedures that will minimize the time elapsing between the receipt of advanced funds and their disbursement.

§ 633.307 Bonding.

The grantee and all subgrantees shall ensure that every officer, director, agent, or employee authorized to act on their behalf in receiving or depositing funds into program accounts or in issuing financial documents, checks, or other instruments of payment for program costs shall be bonded to provide protection against loss. Those costs are chargeable to administration.

§ 633.308 Management information systems.

All grantees shall establish and maintain a program and financial management system which meets Departmental standards and the requirements of § 633.311(a).

§ 633.309. Grantees contracts and subgrants.

(a) *Grantee responsibility.* (1) The grantee is responsible for development, approval and operation of all contracts and subgrants and shall require that its contractors and subgrantees adhere to the requirements of the Act, regulations promulgated under the Act, and other applicable laws as required by DOL.

(2) The grantee shall require contractors and subgrantees to maintain effective control and accountability over all funds, property and other assets covered by the contract or subgrant.

(3) Each grantee and subgrantee recipient shall establish and use internal program management procedures sufficient to prevent fraud and abuse.

(4) The grantee shall ensure that contractors and subgrantees maintain and make available for review by the grantee and the Department of Labor all records pertaining to the operations of programs under such contracts and

subgrants, consistent with the maintenance and retention of record requirements.

(5) Subgrantees are entitled to funding for administrative costs. The amount of such funding will be determined during the development of subgrants.

(b) In the event an agreement or subgrant is cancelled, in whole or in part, the grantee may be required to develop procedures for ensuring continuity of service to participants.

(c) Grantees are authorized to enter into classroom training or on-the-job training contracts or subgrants which extend past the expiration date of the grant, but such extension shall not exceed six months. In such cases, the grantee shall continue to be responsible for the administration of such contracts and subgrants, unless, should the grant be terminated, such contract or subgrant is transferred to a successor grantee.

§ 633.310 Administrative staff and personnel standards.

The following provisions shall be applicable only to private nonprofit grantees and to private nonprofit subgrantees receiving Section 402 funds:

(a) Personnel policies of grantees and subrecipients shall be stated in written form and available to the Department upon request.

(b) Each grantee and subrecipient shall insure that its staff recruiting procedures afford adequate opportunity for the hiring and promotion of persons in the target population.

(c) Grantees and subrecipients shall include the following provisions in their published personnel policies relating to outside employment of their employees in Section 402 programs.

(1) Such employment shall not interfere with the efficient performance of the employee's duties in the DOL-assisted programs;

(2) Such employment shall not involve conflict of interest or conflict with the employee's duties in the DOL-assisted program;

(3) Such employment shall not involve the performance of duties which the employee should perform as part of employment in the DOL-assisted program; and

(4) Such employment shall not occur during the employee's regular or assigned working hours in the DOL-assisted program, unless the employee during the entire day on which such employment occurs is on annual leave, compensatory leave, or leave without pay.

(d) *Salaries and wages.* (1) Administrative and staff employees in Section 402 programs shall be paid at a rate no lower than the applicable

Federal, State, or local minimum wage rate, whichever is highest. The salary for each position shall be justified and documented by the grantee to the satisfaction of the Department.

(2) Notwithstanding paragraph (d)(1) at this section, where a grantee or subgrantee has an established system, it may compensate its Section 402 program employees at existing rates in effect for comparable positions under such merit system. However, in order to use this methodology, the Section 402 program employees must be filling positions or types of positions in existence before the grantee or subgrantee received financial assistance under the Section 402 program, and the salary scale must not have been changed as a result of such financial assistance.

(e) *Prorating salaries.* Where an individual performs functions under several grants, his or her time shall be prorated among the different grants and the portion of the salary charged to the Section 402 grant shall not exceed the percentage of time spent performing Section 402 functions.

(f) *Employee benefits.* Employee benefits shall be at the same level and to the same extent as those positions in public or private nonprofit agencies in the area where the program is carried out.

(g) *Position responsibilities.* (1) Each grantee and subgrantee shall maintain a written detailed job description identifying job functions and responsibilities for each administrative and staff position under its Section 402 program.

(2) Each position shall have specific hiring qualifications. Positions requiring higher salaries or wages shall include higher level of responsibilities commensurate with the salary.

(h) *Personnel procedures.* (1) Each grantee and subgrantee shall maintain a personnel manual containing detailed procedures for hiring new employees, promoting present employees and granting salary increases.

(2) Each grantee and subgrantee shall maintain documentation as to any personnel action (including hiring, promotion, and salary increases) involving its Section 402 program employees.

§ 633.311 Reports required.

(a) Grantees shall report pursuant to instructions issued by the Department. Reports shall be submitted quarterly within 45 days after the end of the report period (Sec. 165(a)(2)). Accuracy of all reports must be verified by the chief executive officer or financial officer.

When estimates are used, the verification statement will so state.

(b) The data elements to be reported by each grantee shall consist of the following:

(1) *Characteristics of Terminees (at time of enrollment)*

Total
Male
Female
Migrant Farmworker
Age
14-15
16-21
22-44
45 and over

Educational Status

School Dropout:
4th Grade or Less
4-8th Grade
9-12th Grade (Not Graduated)
Student, H.S. or Less (In School Youth)
H.S. Graduate or Equivalent (No Post H.S.)
Post H.S. Attendee

Race/Ethnic Group

White (Not Hispanic)
Black (Not Hispanic)
Hispanic
American Indian/Alaskan Native
Asian and Pacific Islander

Other Barriers to Employment

Limited English Language Proficiency
Handicapped
Offender
Welfare Recipient

Labor Force Status

Employed, Including Underemployed
Unemployed: 1-14 weeks of prior 26 weeks
Unemployed: Long-term—15 or more weeks of prior 26 weeks
Not in Labor Force

(2) *Program Outcomes.*

Number of Terminees Entered Unsubsidized Employment

Direct
Indirect: From Classroom Training From
OJT From Subsidized Employment
Youth Employability Enhancements:
Entered Non-Section 402 Training
Returned to Full Time School
Age 14-15 Completed Program Objectives
Completed Major Level of Education
Other Terminations
Attained Employment Competencies and Enhancement

Attained employment Competencies Only
Terminations After Receipt of Services Only
(no entry or referral to employment)
Average Weeks Participated in Program.

(3) *Program Costs*

Total Program Costs
Classroom Training
Administrative
Training
Training-Related Supportive Services
Allowances
OJT
Administrative
Training
Training-Related Supportive Services
Work Experience

Administrative
Training
Training-Related Supportive Services
Wages and Fringes
Other Services Costs
Direct employment Referrals
Services Only (non-referrals to employment)
(4) *Wage Data.*
Number of Terminees with Hourly Wage (13 weeks preprogram)
Average Hourly Wage in Last Job (13 Weeks preprogram)
Number of Terminees Entered Unsubsidized Employment (with preprogram hourly wage)
Average Hourly Wage at Termination (for terminees with preprogram hourly wage)
Average Hourly Wage at Termination (for terminees without preprogram hourly wage)
(5) *Followup Data.*
Potential Contacts
Potential Sample Contacts
Responses
Total Employed (13 weeks after termination)
Total employed (sometime during the first 13 weeks after termination)
Average Hourly Wage Rate (13 weeks after termination)
Average Hourly wage (13 weeks preprogram)
Average Earnings (13 weeks after termination)
Average Earnings (52 weeks preprogram)
Number With Earnings (52 weeks preprogram)

§ 633.312 Replacement, corrective action, termination.

(a) The Department may replace any grantee who during the grant period has been terminated by first offering the Governor the opportunity to submit an acceptable application. When such an offer is made and should the Governor decline, within 15 days, of should the Governor or his agent have been the terminated grantee, the Department may replace the grantee by (1) designating another organization or organizations, or (2) opening the area for competitive bidding.

(b) The Department may also require appropriate corrective action as a condition of continued funding of a grantee whose performance has been found deficient, but not sufficient to warrant termination for cause or emergency treatment. Such appropriate corrective actions may include but are not limited to termination of subrecipient agreements; development of and compliance with corrective action plans, etc.

(c) In cases where deficiencies are identified and efforts at corrective action have failed, the Department may apply sanctions, e.g., suspension of Letter of Credit, incremental funding, etc.

(d) Termination for cause can occur whenever there is a violation of the governing rules and regulations, failure

to comply with the grant terms and conditions and in such cases as:

(1) Inability to meet Federal standards related to such debt collection requirements as:

(i) Failure to respond to demand letters from DOL for repayment of debts within the stated timeframe;

(ii) Failure to comply with approved-repayment agreement.

(2) Nonperformance related to such requirements as:

(i) Failure to submit required quarterly financial reports for two successive periods within 30 days after they are due;

(ii) Failure to submit required quarterly performance report for two successive periods within 30 days after they are due;

(iii) Failure to develop a plan of action to correct deficiencies identified in a final audit finding and determining or by an onsite monitoring review;

(3) Nonperformance related to such requirements as:

(i) Failure to comply with formal corrective action after due notice;

(iii) Failure to comply with the requirements of the Act related to a grievance procedure and other requirements;

(e) In addition, the Department, by written notice, may terminate a grant in whole or in part in the event of reduction in the funds available for JTPA Title IV, Section 402 programs by reason of Congressional action, whether by authorization, appropriation, deferral, rescission or otherwise, or by reason of other legislative action, such as changes in service deliverers, program content or services to be provided, which makes it impracticable to continue the agreement under its original terms. In the event of a Congressional reduction in funds, the reduction shall be apportioned on an equitable basis among Section 402 recipients. In the case of termination pursuant to this provision, the Department shall be liable for payment, in accordance with the payment provisions of this agreement, for services rendered and noncancellable obligations properly incurred prior to the effective date of termination.

(f) Notwithstanding the provisions of Subpart D the Department may terminate a grantee under emergency termination procedures in accordance with Section 164(f) of the Act.

(i) Instances under which emergency termination can occur include but are not limited to: Final audit findings and determinations identifying numerous adverse findings in the area of financial management; information gathered

through onsite monitoring which substantiates serious management, fiscal and/or performance problems, documented information from the Inspector General or gained through incident reports of poor performance, serious administrative problems and/or inability to protect and account for Federal funds.

(ii) Within 30 days of written termination notification to a grantee, the Department will secure applicable documents onsite, seize bank accounts relating to the program, arrange for the payment of legitimate bills and debts and arrange, to the degree feasible, for the continued provision of services to program enrollees.

§ 633.313 Closeout procedures.

Grant closeout will conform to the requirements at 41 CFR Part 29-70. As necessary, the Secretary shall issue supplementary closeout requirements.

§ 633.314 Reallocation of funds.

In a limited number of circumstances, the Department may reduce a portion of a grant because planned versus actual expenditures are significantly behind schedule. Such reduction of funds is not appealable and will only be undertaken after 30 days advance notice to the grantee.

Funds recaptured as a result of these grant reductions will be available for technical assistance or special projects funded at the discretion of the Department.

§ 633.315 Nondiscrimination and nonsectarian activities.

Pursuant to Section 167(a) of the Act:

(a) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, will be governed by the provisions of 29 CFR Parts 31 and 32 and will be administered by the Office of Civil Rights.

(b) The employment or training of participant in sectarian activities is prohibited.

§ 633.316 Lobbying activities.

No funds provided under the Act may be used in any way:

(a) To attempt to influence in any manner a member of Congress to favor or oppose any legislative or appropriation by Congress.

(b) To attempt to influence in any manner State or local legislators to favor or oppose any legislation or appropriation by such legislators.

§ 633.317 Nepotism.

(a) Restriction. No grantee, subgrantee, or employing agency may hire a person in an administrative

capacity, staff position, or on-the-job training position funded under the Act if a member of that person's immediate family is engaged in an administrative capacity for that grantee, subgrantee, or employing agency.

(b) No subgrantee or employing agency may hire a person in an administrative capacity, staff position or on-the-job training position funded under the Act, if a member of that person's immediate family is engaged in an administrative capacity for the recipient or program agent from which that subgrantee or employing agency obtains its funds. To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, such State or local requirement shall be followed (Sec. 123(g)).

(c) For purposes of this section: (1) The term "immediate family" means wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, and stepchild.

§ 633.318 Performance standards for Section 402 programs.

(a) The Secretary shall issue performance standards for Section 402 programs for the first program year.

(b) To issue performance standards, the Secretary shall:

(1) Select the measures against which the standards will be set.

(2) Prescribe the pre- and post-program measurement periods.

(3) Determine standards for each of the measures, from which specific grantee standards can be determined in accordance with the parameters established by the Secretary.

(c) No grantee shall be penalized for not meeting performance standards for the program years 1984-1986.

Subpart D—Complaints, Investigations and Sanctions

§ 633.401 Scope and purpose.

(a) *General.* This subpart establishes the procedures to receive, investigate and resolve complaints, and conduct hearings to adjudicate disputes under Section 402 of the Act. It governs grievance procedures at the recipient or subrecipient level, the receipt and investigation of complaints at the Federal level, the procedures for resolving audit disputes or resolving investigative findings, the rules of practice for adjudicative hearings, and the rendering of decisions pursuant to the Act. Judicial review of final action of the Department after opportunity for an

administrative hearing has been exclusively established in the United States Courts of Appeals for the Circuits in which the affected parties reside or transact business.

(b) *Initiation of investigations.* JTPA investigations may be initiated upon the request of any person or organization or by the Department on its own initiative.

(c) *Non-JTPA remedies.* Whenever any person, organization or agency believes that a grantee or subrecipient has engaged in conduct that violates the Act and that such conduct also violates a Federal statute other than JTPA, or a State or local law, that person, organization or agency may, with respect to the non-JTPA cause of action, institute a civil action or pursue other remedies authorized under other Federal, State, or local law against the recipient or subrecipient without first exhausting the remedies in this subpart. For example, if a subrecipient believes that a grantee has breached the subgrant agreement between the grantee and itself, the subrecipient may institute a civil action for breach of contract in a State court if so authorized by State law. Nothing the Act, or this paragraph, shall:

(1) Allow any person or organization to join or sue the Department with respect to his or the responsibilities under JTPA except after exhausting the remedies in this subpart.

(2) Allow any person or organization to file a suit which alleges a violation of JTPA or these regulations without first exhausting the administrative remedies described in this subpart, or

(3) Be construed to create a private right of action with respect to alleged violations of JTPA or the regulations.

(d) Complaints of discrimination pursuant to Section 167(a) of the Act will be handled under CFR Parts 31 and 32.

§ 633.402 Protection of informants.

(a) *Informants.* Where possible the identity of any person who has furnished information relating to, or assisted in an investigation of a possible violation of the Act will be held in confidence. Where disclosure of the person's identity is essential to assure a fair determination of the issues, or where necessary to effectively accomplish responsibilities under the Act, either the Inspector General, the Solicitor, the grant officer, Chief of DFREP, or the Administrative Law Judge presiding over a hearing in which the matter arises, may disclose such identity upon such conditions as will promote the continued receipt of confidential information by the Department and

effectuate the protections and policies stated in paragraph (b) of this section.

(b) *Retaliation prohibited.* No person or agency may discharge, or in any other manner discriminate or retaliate against any person, or deny to any person a benefit to which that person is entitled under the provisions of the Act or the regulations because such person has filed any complaint, instituted or caused to be instituted any proceeding under or related to the Act, has testified or is about to testify in any such proceeding or investigation, or has provided information or assisted in an investigation.

§ 633.403 Complaint and hearing procedures at the grantee level.

(a) *Policy.* (1) Each grantee shall establish and maintain a procedure for resolving any complaint alleging a violation of the Act, regulations, grant or other agreements under the Act, including any complaint arising in connection with the JTPA programs operated by the recipient or its subrecipients. Such complaint procedures must meet the requirements of this section. The complaint procedure shall provide for final resolution of complaints within 60 days after filing the complaint. Where existing complaints or grievance procedures include the elements set forth in this section, grantees may adopt such mechanism as, or as part of, their JTPA procedure.

(2) Participants shall be provided, upon enrollment into employment or training, with a written description of the complaint procedures including notification of their right to file a complaint and instructions on how to do so. Grantees should designate an individual to monitor the operation of the complaint procedures, to ensure that complaints and related correspondence are logged and filed, to ensure that assistance is available for properly filing complaints, and to ensure the availability, coordination, and promptness of all elements of the procedures. Upon filing a complaint, and at each stage thereafter, each complainant shall be notified in writing of the next step in the procedure.

(3) Complaints may be brought by any individual or organization including, but not limited to, program participants, subrecipients, contractors, staff of the recipient or subrecipient, applicants for participation or financial assistance, labor unions, and community-based organizations.

(4) With the exception of complaints alleging fraud or criminal activity, the filing of a complaint pursuant to this

section must be made within one year of the alleged occurrence.

(5) The grantee may delegate the authority to operate and maintain the complaint and hearing procedure to its subrecipients except for complaints between the recipient and its subrecipients (e.g., audit disallowances), complaints involving more than one of its subrecipients, or complaints directly involving the operations or responsibilities of the recipient. Where the procedure is delegated, the recipient may provide for an appeal to itself from the decision of the subrecipient of the recipient may provide that the subrecipient's decision is the final decision of the recipient. Where the procedure is delegated, the grantee shall ensure that the procedures specified in this section are followed and a decision issued promptly within 60 days after a complaint is filed.

(6) When a participant is an employee of a grantee or subrecipient and alleges that an occurrence constitutes a violation of the Act, regulations, grant, or other agreements under the Act, as well as a violation of the terms and conditions of employment under a State or local law or a collective bargaining agreement, the participant may pursue the complaint and hearing procedures under the State or local law or the collective bargaining agreement, pursuant to § 633.404. A participant who selects the procedures provided in this section is not precluded from filing a complaint under § 633.404, unless otherwise prohibited by State or local law, or applicable collective bargaining agreement.

(b) *Complaint procedures.* The complaint resolution procedure shall include:

(1) Opportunity to file a complaint. All complaints shall be in writing.

(2) Opportunity for informal resolution of the complaint.

(3) Written notification of an opportunity for a hearing when an informal resolution has not been accomplished. The notice shall state the procedures for requesting a hearing and shall describe the elements in the hearing procedures including those set forth in paragraph (c) of this section.

(4) Opportunity to amend the complaint prior to a hearing.

(5) Opportunity for a hearing pursuant to paragraph (c) of this section within 30 days of filing the complaint.

(6) A final written decision to the complainant which shall be made within 60 days of the filing of the complaint and shall include:

(i) The reason(s) for the decision.

(ii) A statement that the procedures delineated in this section have been completed.

(iii) Notice of the right to file a complaint with the Grant Officer pursuant to § 633.406 of this subpart where any party disagrees with the decision.

(c) *Hearing procedure.* A hearing shall be provided within 30 days after filing a complaint. The hearing procedure shall include:

(1) Written notice of the date, time and place of the hearing, the manner in which it will be conducted, and the issues to be decided. Other interested parties may apply for notice. Such other interested party is a person or organization potentially affected by the outcome. The notice to other interested parties shall include the same information furnished to the complainant and shall further state whether such interested parties may participate in the hearing and if applicable, the method by which they may request such participation.

(2) Opportunity to withdraw the request for hearing in writing before the hearing.

(3) Opportunity to request rescheduling of the hearing for good cause.

(4) Opportunity to be represented by an attorney or other representative of the complainant's choice.

(5) Opportunity to bring witnesses and documentary evidence. Recipients or subrecipients shall cooperate in making available any persons under their control or employ to testify, if such persons are requested to testify by the complainant.

(6) Opportunity to have records or documents relevant to the issues produced by their custodian when such records or documents are kept by or for the recipient or its subrecipient in the ordinary course of business.

(7) Opportunity to question any witnesses or parties.

(8) The right to an impartial hearing officer.

(9) A verbatim record of the proceeding.

(10) A written decision from the hearing officer to the complainant(s) and any other interested parties within 60 days of the filing of the complaint. This period may be extended with the written consent of all of the parties for good cause. The written decision shall include a statement of facts, a statement of reasons for the decision and statement of remedies to be applied.

(11) Where a complaint procedure provides for a recipient's review of the hearing officer's decision, the recipient

shall provide a final written decision to the complaint(s), and any other parties, by certified or registered mail, return receipt requested, as provided in paragraph (c)(10) of this section within 60 days after the complaint is filed.

(12) Where local law or other personnel rules require procedures in addition to those specified above, similarly employed JTPA participants shall be notified of their right to use the same procedures.

§ 633.404 Grievance or complaint procedures at employer level.

(a) *Policy.* (1) Whenever the grantee or subrecipient is an employer, it shall continue to operate or shall establish and maintain for its participants a grievance procedure relating to the terms and conditions of JTPA employment. The employer who does not have a grievance procedure may use the complaint procedure of the grantee or subrecipient under § 633.403.

(2) A participant who elects the procedure in this section, unless otherwise prohibited by State or local law or applicable collective bargaining agreement, is not precluded from filing a complaint under § 633.403.

(b) *Minimum requirements.* Those employers who do not utilize the complaint procedures in § 633.403 shall establish or maintain grievance procedures which shall provide at a minimum:

(1) Notice, upon enrollment into employment or training, of the scope and availability of such procedures.

(2) Notice, at the time the grievance is filed, of the procedures under which the grievance is being processed.

(3) Written notification of the disposition of the grievance and the reasons therefore, which shall be issued within 60 days of filing unless the grievance procedure or the collective bargaining agreement specifically provides other limits.

(4) Written notification of the right to file a complaint alleging violations of JTPA with the Chief, DFREP from the decision issued, pursuant to § 633.406.

(5) If no violation of the Act, regulations, grant, or other agreements under the Act is alleged, the complainant, upon receipt of written notification of the disposition of the grievance may pursue any other remedy authorized under other Federal, State or local law.

(c) *Equal benefits.* Where local law or other personnel rules require procedures, in addition to those specified in paragraph (b) of this section, for any adverse action including termination of employment, similarly employed JTPA participants shall be

notified of their right to use the same procedures.

(d) *Private for profit employer grievance procedures.* Nothing in this section shall require a private for profit employer to establish a new grievance procedure or to modify an existing procedure as a condition of participating in programs for the training and hiring of participants under the Act.

§ 633.405 Exhaustion of recipient level procedure.

(a) *Exhaustion required.* No complainant subject to the procedures specified in either § 633.403 or § 633.404 may file a complaint with the Chief, DFREP until the recipient level procedures have been exhausted.

(b) *Exhaustion exceptions.* Complainants who have not exhausted the procedures at the recipient level may file the complaint at the Federal level, and the Chief, DFREP shall accept such complaint if he or she determines that:

(1) The grantee or subrecipient has not acted within the time frames specified in § 633.403 and § 633.404; or

(2) The grantee's or subrecipient's procedures are not in compliance with § 633.403 or § 633.404, whichever is applicable; or

(3) An emergency situation exists.

§ 633.406 Complaints and investigations at the Federal level.

(a) (1) *General; final determination of reliable and probative evidence.* Where local administrative remedies have been exhausted, Section 144(c) of the Act requires that a final determination of the complaint shall be made within 120 days after the Chief, DFREP receives the complaint. The Chief, DFREP's resolution pursuant to Section 144(c) of the Act constitutes the final determination required to be accomplished within the 120 days. The final determination process in non-criminal matters consists of the determination of reliable and probative evidence (either supporting or not supporting the allegations of the complaint or the belief that a recipient or subrecipient is failing to comply with the requirements of the Act or the regulations), and the procedures regarding notice, informal resolution, and notice of opportunity for hearing is established in § 633.408 below.

(2) *Final action distinguished.* Section 168 of the Act provides for judicial review of "final order" with respect to disapproval of financial assistance. Such "final order" is different than "final determination" as defined in paragraph (a)(1) of this section because, except in the case of the Chief, DFREP's final determination dismissing the

complaint in accordance with § 633.408(e) where there are no disputed questions of fact, the opportunity for a hearing is provided upon receipt of the final determination under § 633.408(e).

(b) *Complaints.* (1) Every complaint shall be filed in writing before the commencement of any investigation or corrective action shall be required. The complaints will be filed with the Chief, DFREP or, in the case of complaints alleging discrimination under Section 167, with the Regional Director, Office of Civil Rights (OCR). However, a complaint filed with either the Grant Officer or the Regional OCR Director shall be deemed properly filed and shall be referred (as necessary) to the appropriate office. The complaint shall be filed only after local remedies have been exhausted and no later than 30 days from the date of receipt of the written decision or notice required by § 633.403 or § 633.404. The complaint should contain the following:

(i) The full name, telephone number (if any), and address of the person making the complaint.

(ii) The full name and address of the respondent (the grantee, or subrecipient or person against whom the complaint is made.)

(iii) A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation.

(iv) Where known, the provisions of the Act, regulations, grant or other agreements under the Act believed to have been violated.

(v) A statement disclosing whether proceedings involving the subject of the complaint have been commenced or concluded before any Federal, State or local authority, and, if so, the date of such commencement or conclusion, the name and address of the authority and the style of the case.

(vi) A copy of the final decision of the recipient or subrecipient issued pursuant to § 633.403 or § 633.404 of this subpart.

(2) A complaint will be considered to have been filed upon receipt in the Office of the Chief, DFREP. To be acceptable, the complainant must be a written statement sufficiently precise to both identify those against whom the allegations are made and to fairly afford the respondent and opportunity to prepare a defense. A complaint may be amended to cure defects or omissions, or to clarify and amplify allegations made therein, and such amendments relate back to the original filing date.

(3) A complaint once filed may be withdrawn only with the consent of the Chief, DFREP. If the complainant fails to cooperate or is unavailable, the complaint may be dismissed upon

reasonable notice to the last known address of the complainant.

(c) *Investigation of complaints.* Whenever the Chief, DFREP receives a complaint filed in accordance with paragraphs (a) and (b) of this section, the complaint shall be investigated if it alleges that any person, recipient or subrecipient has failed to comply with the requirements of the Act, regulations, grant or other agreements under the Act. The Chief, DFREP shall promptly issue a notice to the grantee or subrecipient which shall include a copy or summary of the complaint and which shall direct the grantee or subrecipient to forward a copy of the complete administrative file, including a copy of the certified verbatim transcript of the hearing, within 15 days of receipt of such notice of the Chief, DFREP. Such investigation shall be completed and a conclusion made pursuant to § 633.408(e) within 120 days of the filing of the complaint, except that the time may be extended with the written consent of all the parties.

(d) *Audit reports.* Upon receipt of a final audit report the Grant Officer will promptly transmit the audit report to the recipient and/or subrecipient for a comment period not to exceed 30 days, or for such additional time as the Grant Office may allow. Within 30 days after the end of the comment period the Grant Officer shall make the initial determination pursuant to § 633.408(a).

(e) *Onsite review and other bases for investigation.* If after an onsite review, monitoring visit, review of reports, data or other information, the Chief, DFREP has reason to believe that a grantee or subrecipient is failing to comply with the requirements of the Act, regulations, grant or other agreements under the Act, Chief, DFREP, the Grant Officer or other designated authority shall investigate the matter.

(f) *Other investigations.* (1) The Assistant Secretary for Employment and Training may, for purposes of making any investigation, assign a single complaint or class of complaints to the Office of Investigation and Compliance of the Employment and Training Administration, under such conditions as may be appropriate.

(2) The Assistant Secretary for Employment and Training may, by agreement with the Office of the Inspector General, or the Office of the Inspector General may pursuant to the Inspector General Act of 1978, Pub. L. 95-492, 92 Stat. 1101 assume responsibility for any investigation arising under JTPA.

(g) *Utilizing other services.* With the consent and cooperation of State agencies charged with the

administration or enforcement of State laws, the Secretary may elect for the purpose of carrying out this subpart and, to utilize the services of State and local agencies and their employees, and notwithstanding any other provision of law, may reimburse, in whole or in part, such State and local agencies and their employees for services rendered for such purposes.

(h) *Criminal investigation.* Notwithstanding any other provision of this subpart, investigation by the Department of any matter concerning a potential Federal criminal violation shall be conducted as the Inspector General shall direct pursuant to the powers granted by the Inspector General Act of 1978, Pub. L. 95-452, 92 Stat. 1101.

§ 633.407 Subpoenas.

(a) *ETA subpoenas in non-Inspector General investigations.* (1) The Assistant Secretary for Labor for Employment and Training may issue a subpoena directing the person named therein to appear before a designated representative at a designated time and place to verify or to produce documentary evidence, or both, relating to any matter arising under the Act being investigated. The Solicitor or the Associate Solicitor for Employment and Training Legal Services, for good cause shown, may extend the time prescribed for compliance with such subpoenas.

(2) Any motion to limit or quash any investigational subpoena shall be filed with the Chief Administrative Law Judge within 10 days after service of the subpoena, or, if the return date is less than 10 days after service of the subpoena, within such other time as may be allowed by the assigned Administrative Law Judge.

(3) The timely filing of a motion to limit or quash any investigational subpoena shall stay the requirement of a return on the portion challenged. If the Administrative Law Judge rules subsequent to the return date, and the ruling denies the motion in whole or in part, the Administrative Law Judge shall specify a new return date.

(4) All motions to limit or quash subpoenas, and the responses thereto, shall be part of the public record of the Office of the Administrative Law Judges except as otherwise ordered or provided under these regulations.

(b) *Noncompliance.* (1) In cases of failure to comply with compulsory processes, appropriate action may be initiated including actions for enforcement, forfeiture, penalties or criminal actions.

(2) The Solicitor of Labor, with the consent of the Attorney General, may:

(i) Institute in the appropriate district court on behalf of the Secretary an enforcement proceeding in connection with the failure or refusal of a person, partnership, corporation, grantee or other entity to comply with or to obey a subpoena if the return date or any extension thereof has passed; or

(ii) Request on behalf of the Secretary the institution of civil actions, as appropriate, if the return date or any extension thereof has passed including seeking civil contempt in cases where a court order enforcing compulsory process has been violated.

§ 633.408 Initial and final determination; request for hearing at the Federal level.

(a) *Initial determination.* Upon the conclusion of a review of the entire administrative record of an investigation conducted pursuant to § 633.406 or after the conclusion of the comment period for audits provided in § 633.406 the Grant Officer shall make an initial determination of the matter in controversy including the allowability of questioned costs or activities. Such determination shall be based upon the requirements of the Act, regulations, grants or other agreements, under the Act. The determination may conclude either:

(1) That based upon the entire record there is no violation of the Act, regulations, grants or other agreements under the Act.

(2) That there is evidence to support the allegation, or finding of questioned costs or activities.

(b) *Contents of initial determination.*

(1) In the event that the Grant Officer makes a finding that there is evidence to support the allegation of a violation the initial determination shall:

(i) Be in writing;

(ii) State the basis of the determination, including factual findings and conclusions;

(iii) Specify the costs or activities disallowed;

(iv) Specify the corrective actions and/or sanctions proposed (interest costs shall be assessed at the rate periodically set forth by the Assistant Secretary for Administration and Management and shall be computed from the date of violation for back pay awards, and from 30 days after final agency action establishing the debt for audit disallowances), and

(v) Give notice of an opportunity for informal resolution of the matters as necessary to the appropriate parties, which should include all interested parties specified by the Grant Officer.

(2) In the event that the Grant Officer makes a finding of no violation the initial determination shall:

- (i) Be in writing;
- (ii) State the bases of the determination (factual findings and conclusions); and
- (iii) Give notice of the opportunity to present additional information within 30 days of receipt of the initial determination.

(3) The initial determination shall be mailed by certified mail return receipt requested to the parties and interested parties.

(c) *Allowability of certain questioned costs.* In any case in which the Grant Officer determines that the recipient meets the requirements of Section 164(e)(2)(A)-(D), the Grant Officer may waive the imposition of sanctions (Sec. 164(e)(3)). It is the responsibility of the recipient to request such waiver by the Grant Officer and submit the evidence to be used to make this finding.

(d) *Informal resolution.* The Grant Officer shall not revoke a grantee's grant, in whole or in part, nor institute corrective action or sanctions against a recipient without first providing the recipient with a 30-day opportunity to informally resolve those matters contained in the Grant Officer's initial determination. If the matters are informally resolved, the Grant Officer shall notify the parties in writing of the nature of the resolution, and may close the file.

(e) *Final determination.* If all the parties and the Grant Officer cannot informally resolve any matter pursuant to paragraph (d), the Grant Officer shall, not later than 120 days (except the time may be extended with the written consent of all the parties) after the filing of the complaint or receipt of an investigation report in the absence of a complaint, or after the issuance of an initial audit determination in audit proceedings pursuant to § 633.406(d), provide each party with a final written notice in duplicate by certified mail, return receipt requested, that

- (1) Indicates that efforts to informally resolve matters contained in the initial determination pursuant to paragraph (a) have been unsuccessful;
- (2) Lists those matters upon which the parties continue to disagree;
- (3) Lists any modifications to the factual findings and conclusions set forth in the initial determination;
- (4) Lists any sanctions, and required corrective actions, including any other alternation or modification of the plan, grant, agreement or program intended by the Grant Officer; and
- (5) Informs the parties of their opportunity to request a hearing

pursuant to these regulations. If it is determined in the final notice that the complaint does not state a violation of the Act, regulations, grants or other agreements under the Act, the Grant Officer shall dismiss the complaint. Such dismissal shall constitute final agency action unless the Grant Officer determines that there are disputed questions of fact, in which case a hearing before an Administrative Law Judge shall be afforded pursuant to § 633.408(f). In such case(s) the final determination shall notify the parties of the opportunity to request a hearing in accordance with § 633.408(f).

(f) *Request for hearing.* Within 10 days of receipt of the Grant Officer's final determination, except those determinations dismissing the complaint without an opportunity to request a hearing or on the expiration of 120 days of the filing of a complaint with the Grant Officer upon which no extensions have been mutually agreed, any affected recipient, subrecipient or complainant may mail a request for hearing to the Chief Administrative Law Judge, United States Department of Labor, Suite 700, Vanguard Building, 1111 20th Street, NW., Washington, D.C. 20036, with a copy to the Grant Officer. The request for hearing shall be mailed by certified mail, return receipt requested, not later than 10 days after receipt of the Grant Officer's final determination and shall be considered filed upon receipt at the Office of the Administrative Law Judges. The request for hearing shall be accompanied by a copy of the Grant Officer's final determination, if issued, and shall specifically state those issues of the determination upon which review is requested. Those provisions of the determination not specified for review, or the entire determination when no hearing has been requested, shall be considered resolved and not subject to further review. Only alleged violations of the Act, regulations, grants or other agreements under the Act fairly raised in recipient level proceedings under § 633.403 or § 633.404, alleged violations of recipient level procedures fairly raised before the Grant Officer, or audits, are subject to review.

(g) *Notification of filing.* (1) Upon the receipt of a request for hearing the Chief Administrative Law Judge shall promptly notify the Chief, DFREP, the Grant Officer, the Associate Solicitor for Employment and Training Legal Services, and each party and party in interest named in the Grant Officer's final determination by certified mail, return receipt requested, that the request has been filed and the date of filing. Such notice shall include a copy of the

Grant Officer's determination and the request for hearing.

(2) Within 30 days of receipt of such notice the Grant Officer shall submit to the Administrative Law Judge an administrative file consisting of all pertinent documents tabbed and containing an index listing the documents. The administrative file shall at least contain the Grant Officer's determinations, all pertinent correspondence, and copy of the record in any recipient level proceedings. The Grant Officer shall simultaneously transmit one copy of the administrative file to the appropriate Regional Solicitor, the complainant(s), and shall retain one copy.

(3) Within 30 days of receipt of the foregoing notice from the Office of Administrative Law Judges each party or party in interest shall file a notice of intent to participate with the Office of the Chief Administrative Law Judge upon such terms as the Administrative Law Judge assigned the case shall order.

(h) *Automatic participation.* The Grant Officer shall be party to all proceedings. The recipient (and subrecipient if applicable) shall be a party to all proceedings involving its grants. Attorneys employed by the Solicitor of Labor shall be served with all papers and may appear on behalf of the Grant Officer.

(i) *Discretionary hearing.* An opportunity for a hearing may also be extended when the Assistant Secretary determines that fairness and the effective operation of JTPA programs would be furthered.

(j) *Emergency situations.* In emergency situations as determined by the Assistant Secretary, where it is necessary to protect the integrity of the funds, or insure the proper operation of the program the Assistant Secretary may immediately terminate or suspend a grantee's authority to obligate funds, in whole or in part, and withdraw unexpended funds and make alternative temporary arrangements to carry out the grant program. The grantee must be given prompt notice of the reason for the action and must be given the opportunity for a hearing within 30 days after the termination or suspension.

§ 633.409 Hearings before the Office of Administrative Law Judge.

(a) *Service and filing.* Copies of all papers required to be served on a party or filed with the Office of Administrative Law Judge shall be filed simultaneously with the Office of Administrative Law Judge and served upon the parties of record or their

representatives, and shall contain proof of such service.

(b) *Time and place of hearings.* Hearings shall be held at a time and place ordered by the Administrative Law Judge upon reasonable notice to the parties. Due regard shall be given to the convenience of the parties and their Counsel, if any, and the witnesses in selecting a place for the hearing. Subpoenas necessary to secure the attendance of witnesses and the production of documents or things shall be obtained from the Office of the Administrative Law Judges.

(c) *Review.* In all cases arising under § 633.406(a) the Administrative Law Judge shall review the Administrative File submitted in accordance with § 633.406(a) and the request for hearing and shall determine whether there has been a full and fair hearing at the recipient level and whether there are any substantial factual issues unresolved. If the Administrative Law Judge determines that these two conditions are met, the case shall be decided upon the record and upon such briefs as the parties may submit. The Administrative Law Judge shall determine from the record whether there exists reliable and probative evidence to uphold the decision of the Grant Officer. If the Administrative Law Judge determines that either of the two conditions is not met, he shall hold a hearing. Nothing in this subsection shall be construed to limit the right of the parties to seek a dismissal of the request for hearing or to seek summary judgment.

(d) *Rules of procedure.* The rules of practice and procedure promulgated by the Office of Administrative Law Judges shall govern the conduct of hearings under this section.

(e) *Prehearing procedures.* In all cases, the Office of Administrative Law Judges should encourage the use of prehearing procedures to simplify and clarify facts and issues.

(f) *Subpoenas.* Subpoenas necessary to secure the attendance of witnesses and the production of documents or things at hearings shall be obtained from the Office of Administrative Law Judges and shall be issued pursuant to the authority contained in Section 163(b) of the Act, incorporating 15 U.S.C. 49.

(g) *Timely submission of evidence.* The Office of Administrative Law Judges shall not permit the introduction at the hearing of documentation relating to the allowability of costs if such documentation has not been made available for review either at the time ordered for any prehearing conference, or, in the absence of such an order, at

least three weeks prior to the hearing date.

(h) *Burden of production.* The Department shall have the burden of production to support the Secretary's decision. Thereafter, the party or parties seeking to overturn the Secretary's decision shall have the burden of persuasion.

(i) *Relief.* In ordering relief, the Office of Administrative Law Judges shall have the full authority of the Secretary under Section 164 of the Act, except with respect to the provisions of subsection (e) of that section.

(j) *Adjustments in payments.* Where it appears after a hearing pursuant to this subpart that program funds have been expended in violation of the Act, the regulations, grant, or other agreements under the Act, the Administrative Law Judge may direct, in order to prevent further unauthorized expenditures, that unexpended funds be returned or that funds otherwise payable under the Act be withheld in order to recover any amount expended for unauthorized purposes in any fiscal year. When funds are ordered withheld the recipient shall neither reduce program operations, reduce compensation to any participant, nor otherwise expand less than those sums called for in the grant.

(k) *Termination of grant.* When the final decision terminates the grant in whole or in part after hearing pursuant to this subpart, the final decision shall specify the extent of termination and the date upon which such termination becomes effective. Upon receipt of this notice, the recipient shall:

(1) Discontinue further commitments of grant funds to the extent that they relate to the terminated portion of the grant.

(2) Promptly cancel all subgrants, agreements and contracts utilizing funds under this grant to the extent that they relate to the terminated portion of the grant.

(3) Settle, with the approval of the Secretary, all outstanding claims arising from such termination.

(4) Submit, within a reasonable period of time, after the receipt of the notice of termination, a termination settlement proposal which shall include a final statement of all unreimbursed costs related to the terminated portion of the grant.

(l) *Timing of decisions.* The Office of Administrative Law Judges should render a written decision not later than 90 days after the closing of the record.

(m) *Final decision.* The decision of the Administrative Law Judge shall become the final decision of the Secretary and final agency action unless, within 20 days, the Secretary files an order with

the Office of Administrative Law Judges staying the decision pending a review on the merits. The decision by the Secretary on review shall be final agency action when filed with the Office of Administrative Law Judges.

(n) *Alternative provision of services.* If the final decision specifies suspension or termination of the grant the Grant Officer shall determine how services shall be maintained in the recipient's area. As part of the determination, the Grant Officer shall determine whether any funds shall be reallocated to the State or to another recipient to serve the area formerly served by the terminated or suspended recipient. The Grant Officer may also consider the desirability of providing direct Federal services to the area through appropriate means.

§ 633.410 Final action; Judicial review.

(a) *Final action.* The final decision of the Secretary, or the Grant Officer's final determination dismissing the complaint where no hearing is offered pursuant to § 633.408(e), constitutes final action within the meaning of the Act and the Administrative Procedure Act, 5 U.S.C. 704.

(b) *Judicial review.* Judicial review of final action must be filed not later than 30 days after receipt of the Grant Officer's dismissal or the decision of the Secretary in accordance with Section 168 of the Act.

(c) *Transmittal of record.* The Office of Administrative Law Judges shall maintain and transmit to the appropriate United States Court of Appeals the record of the proceedings, where an appeal is taken from final agency action, as directed by the Secretary and as required by the appropriate Federal rules, except for final determinations of the Grant Officer dismissing the complaint pursuant to § 633.408(e) in which case the Grant Officer, after review by the Regional Solicitor, shall transmit the record as provided above.

PART 634—LABOR MARKET INFORMATION PROGRAMS UNDER TITLE IV, PART E OF THE JOB TRAINING PARTNERSHIP ACT

Comprehensive Labor Market Information System

Sec.	
634.1	General.
634.2	Availability of funds.
634.3	Eligible recipients.
634.4	Application for funding.
634.5	Statistical standards.
634.6	Federal oversight.

Authority: Job Training Partnership Act, Sec. 169, (29 U.S.C. 1501 et seq., Pub. L. 97-300, 96 Stat. 1322), unless otherwise noted.

Comprehensive Labor Market Information System

§ 634.1 General.

Pursuant to Title IV, Part E of the Job Training Partnership Act, the Secretary, in cooperation with the States, shall maintain a comprehensive system of Labor Market Information (LMI). This Subpart contains regulations governing the comprehensive LMI system.

§ 634.2 Availability of funds.

(a) The Secretary shall make available, from the amounts appropriated pursuant to Section 461 (a) of the Act and Sections 3(a) and (14) of the Wagner-Peyser Act, funds to support LMI activities and Federal-State cooperative statistical programs.

(b) LMI programs may be funded through reimbursable agreements between the Secretary and the States.

§ 634.3 Eligible recipients.

Eligible recipients shall be the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. Organizations other than the State may be eligible if a satisfactory agreement cannot be negotiated with a State.

§ 634.4 Application for funding.

The Secretary shall invite eligible recipients to submit a preapplication to indicate their interest to apply for funds. The Secretary shall issue application instructions identifying specific LMI deliverables, general program emphases, and minimum standards of performance.

§ 634.5 Statistical standards.

Recipients shall agree to provide required data following the statistical standards prescribed by the Bureau of Labor Statistics for cooperative statistical programs.

§ 634.6 Federal oversight.

The Secretary shall take such action as necessary to ensure satisfactory recipient performance.

PART 684—JOB CORPS PROGRAM UNDER TITLE IVB OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

20 CFR Part 684 is amended as follows:

1. The authority citation for Part 684 is revised to read as follows:

Authority: Job Training Partnership Act, Sec. 169, Pub. L. 97-300, 96 Stat. 1322 (29 U.S.C. 1501 et. seq.) unless otherwise noted.

2. Part 684 is amended by removing the words "Comprehensive Employment and Training Act" and inserted in their places, "Job Training Partnership Act" in the heading of the Part, the heading is revised to read as follows:

PART 684—JOB CORPS PROGRAMS UNDER TITLE IVB OF THE JOB TRAINING PARTNERSHIP ACT

3. Section 684.22 is amended by removing paragraph (b)(11) and by revising paragraphs (b)(2) and (b)(5) through (b)(10) to read as follows:

§ 684.22 Funding procedures.

- (b)
- (2) The quality of proposed outreach/screening and placement support, and direct placement;
- (5) The quality of proposed corpsmember support;
- (6) The quality of proposed health services;
- (7) The quality of proposed residential living and support;
- (8) The quality of proposed administration and financial management;
- (9) Past program and financial performance; and
- (10) Reasonableness of cost.

4. Section 684.34 is revised to read as follows:

§ 682.34 Extensions of enrollment.

(a) The Center Director shall see that the total length of enrollment of a corpsmember does not exceed 2 years (Section 426(a)) except that the Regional Office may approve an extension:

(1) When a course of instruction to qualify a corpsmember for placement, including one provided through an extension program, can be completed in 4 months or less, or

(2) For a period not to exceed one additional year when required to allow a corpsmember who is progressing

satisfactorily to complete an advanced career training program.

(b) In extraordinary circumstances, the Regional Office may request approval of a longer extension from the National Office:

(1) For such time as a corpsmember is under pending criminal charges; or

(2) For such time as it takes to stabilize a health condition pending medical termination and referral.

(c) The Center Director shall note the date and reason for approval of such extensions in writing and make the written approval a part of the corpsmember's personnel record.

5. Section 684.95 is amended by revising paragraph (a) to read as follows:

§ 684.95 Disclosure of information.

(a) The Center Director shall respond to all requests for information or records during a corpsmember's enrollment. After termination, the Center Director or the Regional Office, whichever is the custodian of the corpsmember's personnel record, shall respond. These results shall be treated as requests under the Freedom of Information Act and the Privacy Act of 1974, and shall be handled according to the regulations at 29 CFR Part 70 and 70a.

6. Section 684.123 is amended by revising paragraph (e) to read as follows:

§ 684.123 Corpsmember records management.

(e) Except in the event of a corpsmember's death, when the entire terminated Corpsmember Personnel Record shall be sent to the national health office within 10 days, the Center Director shall be the custodian of the official records unless otherwise notified by the Regional Director.

Signed at Washington, D.C., this 13th day of July 1983.

Raymond J. Donovan,
Secretary of Labor.

[FR Doc. 83-19477 Filed 7-19-83; 8:45 am]
BILLING CODE 4510-30-M

Federal Register

**Wednesday
July 20, 1983**

Part IV

Department of Energy

Federal Energy Regulatory Commission

**Natural Gas Policy Act; Jurisdictional
Agency Determinations**

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Volume No. 933]

Determinations by Jurisdictional
Agencies Under the Natural Gas Policy
Act of 1978

Issued: July 14, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the

extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a project with the Commission within fifteen days after publication of notice in the **Federal Register**.

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487-4808, 5285 Port Royal Rd., Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease
102-2: New well (2.5 Mile rule)
102-3: New well (1000 Ft rule)
102-4: New onshore reservoir
102-5: New reservoir on old OCS lease

Section 107-DP: 15,000 feet or deeper
107-CB: Geopressed brine
107-CS: Coal Seams
107-DV: Devonian Shale
107-PE: Production enhancement
107-TF: New tight formation
107-RT: Recompletion tight formation

Section 108: Stripper well
108-SA: Seasonally affected
108-ER: Enhanced recovery
108-PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS
Issued July 14, 1983

VOLUME 933

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER

MICHIGAN DEPARTMENT OF NATURAL RESOURCES								

-WEST BAY EXPLORATION CO						NIAGARA REEF	43.8	MICHIGAN CONSOLID
8343476		2110100000	103		RECEIVED: 06/28/83 JA: MI BOWLING #2-35			

OKLAHOMA CORPORATION COMMISSION								

-AMOCO PRODUCTION CO						FAIR VALLEY (RED FORK)	365.0	PRODUCERS GAS CO
8343346	22509	3515121272	103		RECEIVED: 06/24/83 JA: OK SNAPP UNIT "A" #2			
-B J HOWELL						HILL TOP	5.5	HILL TOP INVESTME
8343333	20837	3506300000	108		RECEIVED: 06/24/83 JA: OK HIGHFILL #1			
-BERRY PETROLEUM CORP						CRINER	58.0	WARREN PETROLEUM
8343338	22445	3508700000	103		RECEIVED: 06/24/83 JA: OK BUCHANAN #1-22			
-BOLLINGER OIL CO						NORTHEAST TALALA AREA	7.5	DIAMOND "S" GAS S
8343337	22074	3513122570	108		RECEIVED: 06/24/83 JA: OK REESE (NORTH) #1			
-CHAMPLIN PETROLEUM COMPANY						ENID	16.0	CHAMPLIN PETROLEU
8343359	22561	3504700000	108		RECEIVED: 06/24/83 JA: OK A H WEGENER #1			
8343348	22560	3500300000	108		C E SPRAGUE #2	E CHANEY DELL	8.0	CHAMPLIN PETROLEU
8343347	22558	3504700000	108		GLADYS D HAYDEN #1			
8343350	22562	3504720117	108		STORY-DAVIS UNIT #1	ENID	13.0	CHAMPLIN PETROLEU
-DUNSON CORP-FULTON PETROLEUM INC								
8343353	24559	3504721138	102-4		RECEIVED: 06/24/83 JA: OK DORIS #1	NW/SE SECTION 22-20N-	144.0	AMINOIL USA INC
-EL PASO NATURAL GAS COMPANY								
8343331	20782	3503920697	102-2		RECEIVED: 06/24/83 JA: OK YOUNG STATE #1	CARPENTER N E REDFORK	657.0	EL PASO NATURAL G
-ELDER & VAUGHN								
8343336	22413	3505921120	103		RECEIVED: 06/24/83 JA: OK RILEY #1	LAVERNE-MORROW POOL #	37.0	NORTHERN NATURAL
-HARPER OIL COMPANY								
8343339	22471	3504723170	103		RECEIVED: 06/24/83 JA: OK BOLENBAUGH #4	SOONER TREND	110.0	CHAMPLIN PETROLEU
8343340	22472	3504723169	103		LIEDHART #4			
-HARRISON OIL & GAS						N DRUMMOND	183.0	ARKANSAS LOUISIAN
8343326	18921	3514322085	102-2	103	RECEIVED: 06/24/83 JA: OK GIBSON #1			
-HAWKINS OIL & GAS INC						SOUTHWEST BRADLEY	2.5	WARREN PETROLEUM
8343330	20779	3512920819	102-2		RECEIVED: 06/24/83 JA: OK TOWN OF HAMMON #1-1			
-HILL TOP INVESTMENTS INC						HILL TOP	6.5	HILL TOP INVESTME
8343334	20838	3506300000	108		RECEIVED: 06/24/83 JA: OK PAGE #1			
8343335	20840	3506320460	108		RICHARDSON #1	HILL TOP	7.9	HILL TOP INVESTME
-MARSHALL OIL CORP								
8343352	23040	3505121282	107-DP		RECEIVED: 06/24/83 JA: OK CLEARY #1-A	SOUTHWEST BRADLEY	2.5	WARREN PETROLEUM
-MDRAM EXPLORATION INC								
8343328	20285	3505120102	108		RECEIVED: 06/24/83 JA: OK LANCE #1	N E MT VERNON	183.0	SUN EXPLORATION &
-P F BEELER								
8343345	22505	3508121872	103		RECEIVED: 06/24/83 JA: OK P F BEELER HAZEL #1	ALTONA	0.0	ONG WESTERN INC
-PHILLIPS PETROLEUM COMPANY								
8343344	22501	3507323717	103		RECEIVED: 06/24/83 JA: OK BUCKNER #1	N E CAPRON	15.0	RAW ENERGY INC
-RED EAGLE OIL CO								
8343341	22482	3500320811	103		RECEIVED: 06/24/83 JA: OK QUIGLEY #1	BALCO N	5.2	NORTHERN NATURAL
-RICKS EXPLORATION CO								
8343351	22583	3500721253	108		RECEIVED: 06/24/83 JA: OK FISH #7-A			

BILLING CODE 6717-01-M

JO NO	JA DKT	API NO	D SEC(1) SEC(2) WELL NAME	FIELD NAME	PROD	PURCHASER
SAMSON RESOURCES COMPANY						
8343343	22492	3506120384	RECEIVED: 06/24/83 JA: OK			
8343329	20618	3507920474	108 BEENE UNIT NO 1	KINTA	14.6	ARKANSAS LOUISIAN
			102-4 103 FOUTS #1	NORTH SPIRO	186.2	ARKANSAS LOUISIAN
TXO PRODUCTION CORP						
8343342	22491	3509321438	RECEIVED: 06/24/83 JA: OK			
8343327	19227	3513921638	103 ABBOTT #1	S E BADO	0.8	UNITED GAS PIPELI
8343332	20783	3503920698	103 ST CLAIR #1	DOMBEY	681.0	PANHANDLE EASTERN
			102-2 TRAYWICK #1	N STAFFORD	299.0	ARKANSAS LOUISIAN
WEST VIRGINIA DEPARTMENT OF MINES						
ANCHOR HOCKING CORP						
8343374		4705300273	RECEIVED: 06/24/83 JA: WV			
8343379		4705300286	107-DV ALBERT T ROUSH 1-82-027	GRAHAM	23.0	GAS TRANSPORT INC
8343378		4705300284	107-DV DAVID WOOD 1-82-036	GRAHAM	8.0	GAS TRANSPORT INC
8343375		4705300280	107-DV DEAN W SMITH 2-82-039	GRAHAM	6.0	GAS TRANSPORT INC
8343377		4705300282	107-DV FANNIE ROUSH 2-82-035	GRAHAM	4.0	GAS TRANSPORT INC
8343373		4705300272	107-DV GERALD ROOD 1-82-034	GRAHAM	9.0	GAS TRANSPORT INC
8343376		4705300281	107-DV ROBERT HOFFMAN 1-82-024	GRAHAM	26.0	GAS TRANSPORT INC
APPALACHIAN EXPLORATION & DEVEL INC						
8343354		4710760775	RECEIVED: 06/23/83 JA: WV			
			108 W I CALE #3	WALKER	3.5	CABOT CORP
8343372		4702102144	RECEIVED: 06/24/83 JA: WV			
			108 VANHORN-MOSS #1	GLENVILLE SOUTH	3.0	CONSOLIDATED GAS
ASHLAND EXPLORATION INC						
8343356		4704700550	RECEIVED: 06/24/83 JA: WV			
			108-PB LON B ROGERS #18 - 030520	VIRGINIA	14.0	CONSOLIDATED GAS
8343381		4700121627	RECEIVED: 06/24/83 JA: WV			
			108 D GOODWIN #1	BARKER	14.6	CONSOLIDATED GAS
BISON INC						
8343468		4707301420	RECEIVED: 06/27/83 JA: WV			
			107-DV DENZIL LAMP #1	ST MARYS	21.0	
CAROL OIL & GAS CORP						
8343471		4703501006	RECEIVED: 06/27/83 JA: WV			
			107-DV G W VANCE #1	RIPLEY	20.0	TENNESSEE GAS PIP
DORAN & ASSOCIATES INC						
8343365		4703302195	RECEIVED: 06/24/83 JA: WV			
8343370		4704920654	108 M LOVE #1 KL-263	EAGLE DISTRICT	30.0	CARNEGIE NATURAL
8343366		4703302060	108 J E BRENNAN (454) KL-117	LINCOLN	20.0	CARNEGIE NATURAL
8343369		4703302008	108 JOHN BRENNAN #1 KL-256	CLAY DISTRICT	30.0	CONSOLIDATED GAS
8343368		4703302002	108 W BRAMER #3 KL-180	TENMILE	20.0	EQUITABLE GAS CO
8343367		4703302007	108 MADE BRAMER #1 KL-178	TENMILE DISTRICT	30.0	EQUITABLE GAS CO
			108 MADE BRAMER #2 KL-179	TENMILE DISTRICT	30.0	EQUITABLE GAS CO
FRANKLIN ADKINS						
8343473		4704302544	RECEIVED: 06/27/83 JA: WV			
8343472		4704322519	107-DV SMITH #1	SHERIDAN	7.9	COLUMBIA GAS TRAN
			107-DV WRIGHT #2	SHERIDAN	7.2	COLUMBIA GAS TRAN
GLENN L HAUGHT & SONS						
8343464		4709500701	RECEIVED: 06/27/83 JA: WV			
			107-DV CARL NOLAN H-767	CENTERVILLE DISTRICT	15.0	CARNEGIE NATURAL
HAUGHT INC						
8343463		4707300915	RECEIVED: 06/27/83 JA: WV			
			107-DV D J MARTIN H-1063	JEFFERSON DISTRICT	15.0	COLUMBIA GAS TRAN
J SCOTT TALBOTT						
8343380		4704302316	RECEIVED: 06/24/83 JA: WV			
			103 COLUMBIA MINERAL W-7	SHERIDAN	5.0	COLUMBIA GAS TRAN
JAMES F SCOTT						
8343465		4701703119	RECEIVED: 06/27/83 JA: WV			
			107-DV ALLEN HEIRS #1 S-396	MCCLELLAN	15.0	COLUMBIA GAS TRAN
8343466		4701703118	107-DV ALLEN HEIRS #2 S-426	MCCLELLAN	0.3	COLUMBIA GAS TRAN
8343467		4701703116	107-DV WILLIAM BATES S-414	MCCLELLAN	0.1	COLUMBIA GAS TRAN
JERRY OIL CO						
8343470		4710500966	RECEIVED: 06/27/83 JA: WV			
			107-DV JOHN DE PUE #1	BURNING SPRINGS	30.0	ROARING FORK GAS
KOBOR OIL INC						
8343475		4708505571	RECEIVED: 06/27/83 JA: WV			
			107-DV MASOM #28	ELLENBORO	9.1	COLUMBIA GAS TRAN
LINCOLN PRODUCTION CO						
8343469		4704302542	RECEIVED: 06/27/83 JA: WV			
			107-DV CARTWRIGHT #1	CARROLL DISTRICT	18.3	COLUMBIA GAS TRAN
NEXT DEVELOPMENT INC						
8343460		4701702569	RECEIVED: 06/27/83 JA: WV			
			108 JONES #1	WEST UNION	35.0	CONSOLIDATED GAS
MOORE D K						
8343358		4706100012	RECEIVED: 06/24/83 JA: WV			
8343361		4706100062	108 ENOS MOORE FARM SN 5387	CLAY	0.0	PENNZOIL CO
8343362		4706100022	108 GILBERT T MOORE SN 5363	CLAY	0.0	PENNZOIL CO
8343360		4706100074	108 J J MOORE FARM SN 5394	CLAY	0.0	PENNZOIL CO
8343359		4706100099	108 J J MOORE FARM SN 5407	CLAY	0.0	PENNZOIL CO
8343364		4706100015	108 JACOB A SHANES FARM SN 5408	CLAY	0.0	PENNZOIL CO
8343363		4706100016	108 STEPHEN TENNANT FARM SN 5410	CLAY	0.0	PENNZOIL CO
			108 UGENUS MOORE FARM SN 5380	CLAY	0.0	PENNZOIL CO
MURVIN OIL CORP						
8343357		4706720450	RECEIVED: 06/24/83 JA: WV			
8343371		4701721898	108 ERELL #20	SUMMERSVILLE	18.0	EQUITABLE GAS CO
			108 W BRENT MAXWELL #7	SOUTHWEST	20.0	EQUITABLE GAS CO
STERLING DRILLING AND PROD CO INC						
8343462		4708703372	RECEIVED: 06/27/83 JA: WV			
			108 MOSS #296	GEARY DISTRICT	5.9	COLUMBIA GAS TRAN
TRIO PETROLEUM CORP						
8343474		4702103938	RECEIVED: 06/27/83 JA: WV			
			107-DV REED #1	GLENVILLE - NORTH	30.0	COLUMBIA GAS TRAN
WARREN R HAUGHT AGENT						
8343461		4708504889	RECEIVED: 06/27/83 JA: WV			
			108 J A COFFIELD H-953	UNION DISTRICT	20.0	CONSOLIDATED GAS
DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, DENVER, CO						
ARCO OIL AND GAS COMPANY						
8343467	CD-0091-83	0506706487	RECEIVED: 06/27/83 JA: CO 1			
8343466	CD-0090-83	0506706487	103 SOUTHERN UTE 13-5 32-0	IGNACIO BLANCO	42.0	WESTERN SLOPE GAS
8343437	CD-0045-83	0506706411	103 SOUTHERN UTE 13-5 32-0	IGNACIO BLANCO	30.0	WESTERN SLOPE GAS
			107-TF SOUTHERN UTE 22-2 33-10 (TF)	IGNACIO BLANCO	170.0	WESTERN SLOPE GAS
CALVERT WESTERN EXPLORATION CO						
8343438	CD-0330-82	0510308817	RECEIVED: 06/27/83 JA: CO 1			
			107-TF GOVERNMENT 397-3-1	WILDCAT	270.0	PENDING
COSEKA RESOURCES (USA) LIMITED						
8343441	CD-0083-83	0510308000	RECEIVED: 06/27/83 JA: CO 1			
			102-2 FEDERAL 11-14-4-104	COLUMBINE SPRING	136.0	NORTHWEST PIPELIN
EL PASO EXPLORATION CO						
8343445	CD-0095-83PB	0506705302	RECEIVED: 06/27/83 JA: CO 1			
			108-PB IGNACIO 33-8 30 #11	IGNACIO BLANCO	0.0	EL PASO EXPLORATI
8343440	CD-0081-83PB	0506705573	RECEIVED: 06/27/83 JA: CO 1			
			108-PB LONG MOUNTAIN #1-27	IGNACIO BLANCO MV	0.0	EL PASO NATURAL G
NORTHWEST EXPLORATION COMPANY						
8343458	CD-0342-82	0510307704	RECEIVED: 06/27/83 JA: CO 1			
8343457	CD-0062-83	0510308370	108 PHILADELPHIA CREEK #1	PHILADELPHIA CREEK MA	0.0	NORTHWEST PIPELIN
8343456	CD-0063-83	0510308370	103 PHILADELPHIA CREEK #29	PHILADELPHIA CREEK MA	6.7	NORTHWEST PIPELIN
8343459	CD-0061-83	0510308379	107-TF PHILADELPHIA CREEK #35	PHILADELPHIA CREEK MA	6.7	NORTHWEST PIPELIN
8343454	CD-0077-83	0510308514	103 PHILADELPHIA CREEK #40	PHILADELPHIA CREEK MA	35.0	NORTHWEST PIPELIN
8343453	CD-0078-83	0510308514	107-TF PHILADELPHIA CREEK #40	PHILADELPHIA CREEK MA	4.7	NORTHWEST PIPELIN
8343443	CD-0080-83	0510308525	107-TF PHILADELPHIA CREEK #42	PHILADELPHIA CREEK MA	4.7	NORTHWEST PIPELIN
8343442	CD-0079-83	0510308525	103 PHILADELPHIA CREEK #42	PHILADELPHIA CREEK MA	6.6	NORTHWEST PIPELIN
8343452	CD-0340-82	0510307523	108 PHILADELPHIA CREEK #7	PHILADELPHIA CREEK	6.6	NORTHWEST PIPELIN
NORTHWEST PIPELINE CORPORATION						
8343451	CD-0097-83PB	0506705719	RECEIVED: 06/27/83 JA: CO 1			
8343450	CD-0089-83PB	0506705719	108-PB IGNACIO 33-7 #10	IGNACIO BLANCO	0.0	NORTHWEST PIPELIN
8343450	CD-0087-83PB	0506705420	108-PB IGNACIO 33-7 #10	IGNACIO BLANCO	0.0	NORTHWEST PIPELIN
			108-PB IGNACIO 33-7 #11	IGNACIO BLANCO	0.0	NORTHWEST PIPELIN

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8343449	CD-0088-83PB	0506705111	108-PB		NORTHWEST CEDAR HILLS 32-10 #13	IGNACIO BLANCO MESAVE	0.0	NORTHWEST PIPELIN
8343444	CD-0096-83PB	0506705310	108-PB		SUNICAL #7D (76293)	IGNACIO BLANCO DK	0.0	NORTHWEST PIPELIN
8343455	CD-0064-83PB	0506705806	108-PB		UTE A #3 (88195)	IGNACIO BLANCO	0.0	NORTHWEST PIPELIN
-PETROLEUM INTERNATIONAL INC			RECEIVED:	06/27/83	JAI CO 1		182.5	
8343436	CD 0049-83	0510307797	102-4		EQUITY FEDERAL #3-7 C-028490	RANGELY WEDER		
-VECO DRILLING INC			RECEIVED:	06/27/83	JAI CO 1		651.0	NORTHWEST PIPELIN
8343439	CD 0588-82	0507708478	102-4		FEDERAL #4	BAR X		

** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, LOS ANGELES, CA								

-SANTA FE ENERGY PRODUCTS CO			RECEIVED:	06/24/83	JAI CA 2		4.0	SHELL OIL CO
8343355	CA-13-83	0411120977	103		SHALE RIDGE-TAR CREEK 84-29	SESPE		

** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, METAIRIE, LA								

-CHEVRON U S A INC			RECEIVED:	06/27/83	JAI LA 3		183.0	TRUNKLINE GAS CO
8343399	G2-2878	1771540324	102-5		OC5-G-1240 #9-A	SOUTH TIMBALIER	2100.0	NATURAL GAS PIPEL
8343400	G2-2864	1770240516	102-5		OC5-G-2014 #5	WEST CAMERON	912.5	NATURAL GAS PIPEL
8343420	G2-3227	1770240384	102-5		OC5-G-2551 #2	WEST CAMERON		
-EUGENE SHOAL OIL CO			RECEIVED:	06/27/83	JAI LA 3		274.0	TRANSCONTINENTAL
8343393		1771240284	102-5		OC5-G-1031 #E-12	SHIP SHOAL		
-GULF OIL CORPORATION			RECEIVED:	06/27/83	JAI LA 3		78.0	TEXAS EASTERN TRA
8343408	G2-3176	1772140209	102-5		OC5-G-2177 WELL A-21 S/P BLK 49	SOUTH PASS	538.0	TEXAS EASTERN TRA
8343387	G3-3516	1772140177	102-5		OC5-G-2177 WELL A-3 S/P BLK 49	SOUTH PASS	613.0	TEXAS EASTERN TRA
8343428	G3-3433	1772140238	102-5		OC5-G-2177 WELL A-4 S/P BLK 49	SOUTH PASS	206.0	TEXAS EASTERN TRA
8343406	G2-3305	1772140224	102-5		OC5-G-2177 WELL A20 S/P BLK 49	SOUTH PASS	621.0	TEXAS EASTERN TRA
8343394	G3-3569	1772140254	102-5		OC5-G-2939 WELL A-19 S/P BLK 49	SOUTH PASS		
-KERR-MCGEE CORPORATION			RECEIVED:	06/27/83	JAI LA 3		657.0	TEXAS EASTERN TRA
8343402	G2-3005	1770240511	102-5		OC5-G-2009 #A-2A	WEST CAMERON	55.0	TEXAS EASTERN TRA
8343433	G2-3006	1770240551	102-5		OC5-G-2009 #A-6A	WEST CAMERON		
-MCMORAN OFFSHORE EXPLORATION CO			RECEIVED:	06/27/83	JAI LA 3		110.0	
8343430	G3-3662	1770840589	102-1		OC5-G-5221 #A-19	SOUTH MARSH ISLAND	1825.0	
8343390	G3-3663	1770840592	102-1		OC5-G-5221 #A-20	SOUTH MARSH ISLAND	22.0	
8343432	G3-3664	1770840598	102-1		OC5-G-5221 #A-22	SOUTH MARSH ISLAND	11.0	
8343388	G3-3665	1770840598	102-1		OC5-G-5221 #A-22A	SOUTH MARSH ISLAND		
-MOBIL OIL EXPLORATION & PROD S E			RECEIVED:	06/27/83	JAI LA 3		475.0	
8343392	G3-3655	1771740143	102-1		OC5-G-3596 #A-2A GRAND ISLE 20	GRAND ISLE	66.0	
8343429	G3-3656	1771840039	102-1		OC5-G-4003 #1 S/T GRAND ISLE 90	GRAND ISLE	0.0	
8343389	G3-3654	1771140660	102-1		SHIP SHOAL 182 #5	SHIP SHOAL		
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-TENNECO OIL COMPANY			RECEIVED:	06/27/83	JAI LA 3		0.0	TENNESSEE GAS PIP
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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.) Documents normally scheduled for publication

on a day that will be a Federal holiday will be published the next work day following the holiday.

Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Note: The Office of the Federal Register proposes to terminate the formal program of agency publication on assigned days of the week. See 40 FR 19283, April 28, 1983.

List of Public Laws

Last Listing July 19, 1983

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the *Federal Register* but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202-275-3030).

H. R. 2065/Pub. L. 98-52 National Aeronautics and Space Administration Authorization Act, 1984. (July 15, 1983; 97 Stat. 281) Price: \$1.75

H. R. 1271/Pub. L. 98-53 With regard to Presidential certifications on conditions in El Salvador. (July 15, 1983; 97 Stat. 287) Price: \$1.50

S. J. Res. 68/Pub. L. 98-54 To authorize and request the President to designate July 16, 1983, as "National Atomic Veterans' Day". (July 15, 1983; 97 Stat. 288) Price: \$1.50