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Federal Register

Tuesday
June 19, 1984

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Environmental Protection Agency

Animal Diseases
Animal and Plant Health Inspection Service

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General Services Administration

Common Carriers
Federal Communications Commission

Endangered and Threatened Species
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Occupational Safety and Health Administration

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Coast Guard

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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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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 84-326]

Plant Quarantine; Foreign; Cut Flowers; Chrysanthemums From the Dominican Republic

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the "Cut Flowers" regulations with respect to the importation of cut flowers of *Chrysanthemum* spp. from the Dominican Republic by deleting fumigation requirements because of the finding of agromyzids (insects of the family Agromyzidae) when such agromyzids are identified by an inspector to be only agromyzids of the species *Liriomyza trifolii* (Burgess). Fumigation would still be required if such cut flowers are found to be infested with other species of agromyzids. This action is warranted to delete unnecessary restrictions on the importation of cut flowers of *Chrysanthemum* spp. from the Dominican Republic.

EFFECTIVE DATE: June 19, 1984.

FOR FURTHER INFORMATION CONTACT: Frank Cooper, Staff Officer, Regulatory Services Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 637, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8248.

SUPPLEMENTARY INFORMATION:

Background

In a document published in the Federal Register on March 8, 1984 [49 FR 8619-8620], the Department proposed to amend the "Cut Flowers" regulations [7 CFR 319.74 through 319.74-7]. Specifically, the document of March 8, 1984, proposed to amend § 319.74-3 with respect to the importation of cut flowers of *Chrysanthemum* spp. imported from the Dominican Republic by deleting the fumigation requirements because of the finding of agromyzids when such agromyzids are identified by an inspector to be only agromyzids of the species *Liriomyza trifolii* (Burgess). Fumigation with methyl bromide would be required if such cut flowers were found to be infested with other species of agromyzids.

Comments were solicited for 30 days. Four comments were received. These comments have been grouped together by issue and are discussed below. Each comment generally raised the same concerns with the proposal, and all recommended that it not be adopted. However, based on the reasons set forth in this document and the document of March 8, 1984, § 319.74-3 is amended as proposed.

Comments

In each of the comments, concerns were raised about the Department's ability to effectively protect the cut flower industry in the United States from introduction of harmful agromyzids from the Dominican Republic if the proposal were implemented. These concerns are summarized below.

First, commenters asserted that agromyzids characteristically are very adaptable to their environment, and that some adult species of agromyzids have been known to develop an apparent resistance to certain chemical pesticides. Further, the commenters argue that since the use of chemical pesticides may be different in the Dominican Republic from the United States, it cannot be assumed that the species *Liriomyza trifolii* from the Dominican Republic is the same pest or will respond in the same manner in the United States as the species *Liriomyza trifolii* found in the United States. Therefore, it was asserted that *Liriomyza trifolii* from the Dominican Republic cannot be presumed to be harmless if introduced into the United States.

Second, the commenters noted the difficulty of identifying and differentiating between the various species of agromyzids which number as many as a thousand different species, and questioned the ability of an inspector to positively identify an agromyzid at the port as *Liriomyza trifolii*, particularly if the agromyzid is immature.

Third, the commenters noted that, although this proposal might reduce fumigation costs by around $5,500 for some cut flower importers from the Dominican Republic, approximately 4,500 domestic cut flower growers could face much greater costs if chrysanthemum crops become infested with agromyzids from the Dominican Republic. Specifically, the commenters noted that, in some instances, producers have been required to spend in excess of $1,000 per acre of greenhouse for agromyzid control, and could face much greater losses if chrysanthemum crops are lost due to an agromyzid infestation. Further, it was asserted that present efforts to control the agromyzids in the United States would be undermined by allowing into the United States agromyzids from the Dominican Republic.

The Department has considered these comments. However, no changes are made based on these comments.

There is no evidence nor any supporting data in the comments to indicate that the agromyzid *Liriomyza trifolii* found in the Dominican Republic would be resistant to the chemical pesticide treatment used in the United States or would be more injurious than the agromyzid *Liriomyza trifolii* presently found to be widespread in the United States. Further, pesticides used in the United States are frequently used successfully in the Dominican Republic. Under these circumstances, no change has been made in the proposal on the basis of this comment.

Second, the Department does not dispute the assertion that there are numerous species of agromyzids or that agromyzids in an immature stage are difficult to identify. However, it is possible through microscopic examination to positively identify *Liriomyza trifolii* even in an immature stage when found infesting *Chrysanthemum* spp. from the Dominican Republic. For this reason the Department has determined that the

fumigation requirement for cut flowers of *Chrysanthemum* spp. from the Dominican Republic can be relieved for agromyzids found on the cut flowers and positively identified as *Liriomyza trifolii*. Further, since this amendment does not relieve the fumigation requirement for cut flowers of *Chrysanthemum* spp. containing unidentified agromyzids or agromyzids of species other than *Liriomyza trifolii* from the Dominican Republic, all cut flowers found to be infested with agromyzids that cannot be positively identified as *Liriomyza trifolii* will be required to be fumigated regardless of the stage of development of the agromyzid. Accordingly, the Department believes that this amendment will not undermine the ability of the Department to protect against the introduction into the United States of harmful species of agromyzids. Therefore, no change has been made on the basis of this comment.

Third, *Liriomyza trifolii* is already widely prevalent and established in the United States. Therefore, its entry into the United States will not present a significant risk of causing economic damage to the cut flower industry in the United States which it does not presently face. Therefore, no change in the proposal has been made on the basis of this comment.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause 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.

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

Further, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This amendment deletes fumigation requirements concerning the importation of certain cut flowers of *Chrysanthemum* spp. from the Dominican Republic. Specifically, it is expected that this amendment will save $5,420 in fumigation and other costs of *Chrysanthemum* spp. cut flowers imported from the Dominican Republic per year. This savings will be spread among all importers of cut flowers for *Chrysanthemum* spp. from the Dominican Republic.

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Plant pests, Plants (Agriculture), Quarantine, Transportation, Flowers.

PART 319—FOREIGN QUARANTINE NOTICES

§ 319.74-3 [Amended]

Accordingly, the second sentence of paragraph (a) of § 319.74-3 of "Subpart—Cut Flowers" in 7 CFR Part 319 is amended by adding "or the Dominican Republic" immediately after "Colombia".

Authority: Secs. 5 and 9, 37 Stat. 316, 318, as amended, 7 U.S.C. 159, 162; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, D.C., this 13th day of June 1984.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84-16227 Filed 6-18-84; 8:45 am]

BILLING CODE 3410-34-M

CIVIL AERONAUTICS BOARD

14 CFR Part 382

Approval of Extension of Reporting Requirements by the Office of Management and Budget

AGENCY: Civil Aeronautics Board.

ACTION: Notice.

SUMMARY: The Office of Management and Budget has approved an extension of the reporting and recordkeeping requirements contained in §§ 382.21, 382.22 and 382.23 of Part 382 of the Board's Special Regulations through December 31, 1984, under OMB No. 3024-0056 for those carriers receiving subsidy directly or indirectly through another recipient under sections 406 or 419 of the Federal Aviation Act, as amended.

EFFECTIVE DATE: June 1, 1984.

FOR FURTHER INFORMATION CONTACT: Jack Calloway, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673-6042.

SUPPLEMENTARY INFORMATION:

List of Subjects in 14 CFR Part 382

Air carriers, Rules.

Dated: June 14, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-16360 Filed 6-18-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 83F-0311]

Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a source of gamma radiation to control insect infestation in garlic powder, onion powder, and dried spices. This action responds to a petition filed by Radiation Technology, Inc.

DATES: Effective June 19, 1984; objections by July 19, 1984.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Land, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Clyde A Takeguchi, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 4, 1983 (48 FR 45306), FDA announced that a food additive petition (FAP 3M3745) had been filed by Radiation Technology, Inc., Lake Denmark Rd., Rockaway, NJ 07866, proposing that § 179.22 (21 CFR 179.22) be amended to provide for the safe use of a source of gamma radiation to control insect infestation in garlic powder, onion powder, and dried spices.

Although a 10-kiloGray dose is effective for both insect disinfestation and microbial control of certain spices and vegetable seasonings, the earlier petition and the July 5, 1983 regulation approving that petition (48 FR 30613) were limited to microbial control. This amendment to that regulation permits

the use of gamma sources of radiation for treating certain spices and vegetable seasonings for insect disinfestation as well as for the control of microorganisms.

In the review of this petition, the agency has evaluated information submitted by the petitioner, as well as information already available in the agency files, and concludes that the proposed use of gamma radiation is safe and that the regulation should be amended as set forth below.

In the **Federal Register** of February 14, 1984 (49 FR 5714), the agency published a proposed regulation on food irradiation that would permit the use of sources of radiation to control insects and microbes in spices and vegetable seasonings at doses not to exceed 30 kiloGray (3 megarads). However, the agency is acting on this petition before publication of the final regulation on food irradiation, because the data are adequate to demonstrate that irradiating spices at this dose level is safe and accomplishes the intended effect.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the potential environmental effects of this regulation as announced in the notice of filing published in the **Federal Register**. No new information or comments have been received that would alter the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

List of Subjects in 21 CFR Part 179

Food additives, Food packaging, Irradiation of foods.

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING, AND HANDLING OF FOOD

§ 179.22 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (Sections 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), § 179.22 *Gamma radiation for the treatment of food* is amended in the table in paragraph (b) for the item "Garlic powder; Onion powder; Spices, dried: * * *" by revising the use "Control of microorganisms" to read "Control of insects and/or microorganisms."

Any person who will be adversely affected by the foregoing regulations may at any time on or before July 19, 1984 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective June 19, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: June 12, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-16256 Filed 6-18-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 202

[Docket No. R-84-1112; FR-1713]

Property Improvement and Manufactured Home Programs—Approval of Lending Institutions

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

ACTION: Final rule.

SUMMARY: This rule establishes a new part that sets out the requirements for HUD approval in granting a Contract of Insurance to eligible financial institutions to participate in the Title I (National Housing Act) program. The rule prescribes requirements for approval, enumerates eligible lenders, provides for "user" fees to participate in the program, and provides for the termination of the insurance contract and administrative actions.

EFFECTIVE DATE: September 10, 1984.

FOR FURTHER INFORMATION CONTACT: Andrew Zirneklis, Office of Program Compliance, Room 9154, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 755–6924. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 2 of Title I of the National Housing Act authorizes the Secretary of HUD, upon such terms and conditions as he may prescribe, to insure banks, trust companies, personal finance companies, mortgage companies, building and loan associations, installment lending companies, and other financial institutions which the Secretary finds to be qualified by experience or facilities and approves as eligible for credit insurance against losses which they may sustain as a result of loans and advances of credit made in connection with the financing of alterations, repairs, and improvements to real and personal property and the purchase of manufactured homes with or without lots.

On November 23, 1983, HUD published a proposed rule in the **Federal Register** (48 FR 52931) setting forth the requirements for Title I lender approval, including a provision for the setting of "user" fees to participate in the program, and for the termination of the Contract of Insurance and for the taking of administrative sanctions. Three organizations submitted comments which have been carefully considered by the Department. A discussion of the more significant comments and changes to this rule follows.

Approval Requirement

The last sentence in § 202.2 of the proposed rule has been deleted. The sentence stated that approval for eligibility did not grant separate rights in the applicant apart from the Contract of Insurance. This sentence was deleted because it is the Department's position that separate rights attach to restrictions on a lender's future eligibility to enter into a Contract of Insurance. A more

detailed explanation of this appears under the discussion relating to the termination of the Contract of Insurance and Administrative Actions.

One commenter suggested that HUD eliminate the proposed provision in §202.4(a)(9) which would exempt Government Institutions from paying "user" fees because these institutions compete with the private sector and should not be provided with a competitive advantage. The Department does not adopt this comment. Our experience has been that Government Institution generally obtain Title I lender approval in order to provide program benefits as a public service. A similar fee exemption is contained in the Department's regulations for approved Title II mortgagees at 24 CFR 203.2(a)(11).

The same commenter expressed concern that the provisions of proposed § 202.4(a)(7) requiring federally insured depository institutions to agree to submit to an examination of their consumer lending activities is overly broad. The commenter stated that HUD does not have the need or authority to require banks to submit to an examination of their consumer lending records not relevant to the Title I program, and such examinations may duplicate those performed by other Federal regulatory agencies. The Department agrees that the language in the cited section is too broad. We have clarified this provision to limit examinations only to a lender's Title I Program lending activities. The Department does not agree that its examination of Title I lenders duplicate the efforts of other Federal agencies and has determined to continue its longstanding policy of monitoring Title I lenders in order to prevent program violations and losses to the insurance fund.

One commenter expressed concern that the annual fee requirement may discourage Title I lenders from continuing their HUD–FHA approval because many lenders are small State banks in rural communities and the fee may be too burdensome to enable them to continue in the program, resulting in communities being denied home improvement capital. This commenter states that as a secondary market purchaser of Title I loans, it would face an administrative burden in verifying that the lenders from whom Title I loans are purchased have not been terminated for failure to pay the fee. It states that neither private insurers nor other FHA programs charge a fee. The Department has determined that it is necessary to establish minimal fees to assist in defraying the cost of approving, recertifying and monitoring Title I lenders. Similar fees were established in 1980 for mortgagees under the FHA Title II programs. We do not believe that this requirement will be a significant deterrent to active lenders participating in the Title I program.

We recognize that because the fee provision is a new requirement, some lenders may have their Contract of Insurance terminated for failure to pay the annual fee. The Department will provide lenders with sufficient advance notice of the date on which the fee payment is due to minimize this possibility. If a Contract of Insurance is terminated, the lender will have a 90-day period to pay the fee and have its contract reinstated by the Department. If the fee is not paid within this period, the lender will have to apply for a new contract. The administrative burden faced by secondary purchasers in verifying the approved status of other Title I lenders from whom loans are purchased is not a new requirement. Secondary purchasers currently must assure themselves that such lenders from whom loans are purchased hold valid Contracts of Insurance.

The failure of an approved Title I lender to pay the annual fee for a branch office will be treated by the Department as a voluntary request by the lender to terminate that branch office's authority to originate and report Title I loans for insurance registration.

Another commenter questioned whether lenders already holding Title I Contracts of Insurance must reapply for approval when the Department issues a final rule. The rule is prospective, and lenders currently holding valid Contracts of Insurance will not be required to reapply for approval nor pay the application fee contained in § 202.4(a)(9). All approved lenders, however, are required to pay annual fees to the Department to retain their Contract of Insurance.

Another commenter objected to § 202.4(a)(10), which provides for rejection of an application for lender approval based on an indictment or conviction of the lender (or of an officer, director, principal or employee) for an offense which adversely affects the lender's integrity. The commenter criticized the rule's failure to delineate the types of offenses that could lead to such rejections. The Department has not adopted this suggestion because it would not be possible to specify every offense which could result in rejection of an application. Such offense must reflect upon the integrity or ability of the lender to participate in HUD programs as a lender.

In addition, the same commenter suggested that where denial of approval is based upon suspension or debarment by another government agency, the regulations should provide that there must be a nexus between the denial and the suspension or debarment. The Department has determined that accepting this suggestion is inadvisable because the approval of lenders who are subject to administrative sanctions of other agencies would increase the risk of harm to the public in connection with the Title I Program. In our view, this feature of the rule is necessary to protect the public interest.

Termination of Insurance Contract and Administrative Actions

These regulations specifically incorporate the procedures of 24 CFR Part 25 (Mortgagee Review Board) with respect to administrative actions.

The Department has added as ground for an administrative action the transfer of Title I loans by an approved lender to a party that does not hold a valid Contract of Insurance. This reflects the prohibition on such transfers as set forth in 24 CFR Part 201.

One commenter suggested that the references to the Title I Contract of Insurance in these regulations obligated the Department to publish the contract for notice and comment. In addition to the fact that all Title I lenders execute and receive a copy of the contract and, therefore, have actual notice of its terms, all of the substantive provisions of the contract are set forth in regulations that have been adopted under notice and comment procedures. Accordingly, the Department sees no necessity to publish the Contract of Insurance for notice and comment.

One commenter urged the Department to revise the contract termination procedure from a summary action taken upon five days' written notice to an action giving rise to a full evidentiary hearing. The commenter felt the proposed procedure raised due process concerns. The Department believes this comment reflects a misunderstanding of the nature and effect of the termination action. Termination of a contract is not a sanction. It is merely the exercise of an existing contractual right expressly agreed to by the parties to the contract. The action does not affect a lender's right to apply for a new contract, nor does it affect insurance coverage on eligible loans originated before termination. (See § 202.5(c).) Each Contract of Insurance has its own insurance reserve (see 24 CFR 201.12)

which is contract-specific. By terminating the contract, the Department has capped the insurance reserve on a specific portfolio of loans. The only effect, therefore, is that a lender may not originate new Title I loans under a terminated contract. Consequently, the termination action has accounting and insurance risk ramifications which are not necessarily related to the lender's *future* participation in the Title I program.

A contract termination action contrasts with an administrative action which restricts *prospective* Title I program participation as set forth in § 202.6. The Department provides in the latter case for a full evidentiary, *de novo* hearing to be conducted in accordance with the procedural requirements contained in 24 CFR Part 26.

The Department believes that some of the confusion regarding contract termination and administrative actions arose from the inclusion of both actions in the same section in the proposed rule. The two categories of actions have been divided in the final rule into two sections: 202.5 and 202.6. Language clarifying the effects of each action has been added. The procedures for instituting such actions and the rights arising from those actions also have been more clearly stated.

One commenter was concerned that approval of a new contract application is not guaranteed. A previous termination will not affect consideration of a new application. See § 202.5(c)(3). Such an application will be approved as long as the lender is in compliance with the requirements at § 202.4. Any lender, including one whose contract has been terminated, may apply for a new contract at any time. Application should be made through the normal application procedures. Consequently, termination of a Contract of Insurance does not constitute debarment from future participation in the program.

Notwithstanding the limited effect of a contract termination and the Department's position that the termination procedure does not raise due process considerations, a change in the proposed rule has been made to accommodate concerns regarding an opportunity for the lender to be heard. The Department will provide an opportunity for an informal meeting between the lender and the Department official who took the action before the expiration of the 5-day notice period. The Department believes that such a meeting may provide useful management information as well as an opportunity for the lender to discuss its Title I program participation.

One commenter suggested that the summary termination action will create substantial uncertainty for Title I lenders and may result in discouraging lenders from entering into or continuing participation in the program. The contract termination procedures referenced in these rules have been a part of the Title I Contract of Insurance agreed to by all Title I Lenders since the inception of the program in 1934. We do not anticipate, therefore, the adverse effects suggested.

One commenter suggested the need to clarify the language of § 202.5(b) of the proposed rule (now § 202.6(a)). In addition to establishing a separate section for administrative actions, the language of this provision has been modified to make it clear that these actions may be taken against lenders currently participating in the Title I program. It also establishes, through reference to 24 CFR 25.5(d)(4), 25.7 and 25.8, that probation, suspension and withdrawal of approval actions give rise to hearing rights under 24 CFR Part 26. (See § 202.6(c).)

Finally, a commenter suggested that § 202.5(c)(5) of the proposed rule relating to the maintenance of a claims/loan ratio representing an unacceptable risk to the Department (now § 202.6(b)(5)) was too vague to be an adequate statement of a ground for imposing an administrative action. The provision involves using a lender's claims/loan ratio as a basis for administrative actions. It was also suggested that if this ground is retained, HUD publish a specific claims/loan ratio which it considers unacceptable. The Department believes that this index is an important management tool and, together with other information, may provide a useful insight into a lender's Title I program performance. However, it would not be practicable to establish an unacceptable claims/loan ratio to be used in every case. While the Department does not rule out the possibility of deciding on a ratio so high as to uniformly require the taking of an administrative action, many factors are involved in determining whether a specific ratio is unsatisfactory in a given case. Such factors might involve the socioeconomic condition of the lender's service area and the nature and type of lending activity involved. Consequently, this ground for the taking of an administrative action will be retained.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a major rule as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities because the majority of financial institutions participating in the Title I program are large depository institutions and none of the proposed changes pose undue burdens for small entities seeking HUD approval to become Title I lenders.

This rule was listed as item H–90–82 in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15902, 15917) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program numbers are: 14.110, Manufactured (Mobile) Home Insurance—Financing Purchases of Mobile Homes as Principal Residences of Borrowers; 14.142, Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures; and 14.162, Mortgage Insurance—Combination and Mobile Home Lot Loans.

List of Subjects in 24 CFR Part 202

Approval of lending institutions, Credit insurance, Administrative practice and procedure, Government contracts.

Accordingly, Part 202 is added to 24 CFR Chapter II to read as follows:

PART 202—APPROVAL OF LENDING INSTITUTIONS UNDER TITLE I

Sec.

202.1 Purpose.

Sec.

202.2 Approval of lending institutions.
202.3 Eligible lenders.
202.4 Approval requirements.
202.5 Termination of insurance contract.
202.6 Administrative actions.

Authority: Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)); Title I, Sec. 2, National Housing Act, 12 U.S.C. 1703.

§ 202.1 Purpose.

The purpose of this part is to establish uniform standards for the approval or disapproval of lending institutions which apply for or hold Contracts of Insurance under Title I of the National Housing Act and HUD regulations at 24 CFR Part 201.

§ 202.2 Approval of lending institutions.

A lender may be approved for participation in the programs under Title I of the National Housing Act upon filing a request for approval on a form prescribed by the Secretary. The granting of an insurance contract by the Secretary shall constitute an agreement between the lender and the Secretary which shall govern the lender's continued approval subject to the provisions of this part.

(Approved by the Office of Management and Budget under control number 2502–0017)

§ 202.3 Eligible lenders.

The following types of chartered institutions, permanent organizations having succession, or trusts, are eligible for approval:

(a) *Government Institutions and National Mortgage Associations.* A Federal, State or municipal governmental agency, a Federal Reserve Bank, a Federal Home Loan Bank, and a National Mortgage Association which is empowered to participate in a consumer installment lending operation;

(b) *Supervised institutions.* A member of the Federal Reserve System, a lender whose accounts are insured by the Federal Savings and Loan Insurance Corporation (FSLIC), the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA), or an institution which is subject to the inspection and supervision of a governmental agency which is required by law to make periodic examinations of its books and accounts;

(c) *Nonsupervised institutions.* An institution which has as its principal activity the lending or investment of funds in mortgages, consumer installment notes or similar advances of credit, or the purchase of consumer installment contracts, and which is not required by law to be subject to the periodic inspection and supervison of a governmental agency.

§ 202.4 Approval requirements.

(a) An eligible lender shall establish to the satisfaction of the Secretary that it meets and will continue to meet the following general requirements:

(1) It shall employ trained personnel competent to perform their assigned responsibilities in consumer lending activities and shall have adequate staff and facilities to originate and service Title I loans;

(2) It shall comply with Title VIII of the Civil Rights Act of 1968, Executive Order 11063, the Equal Credit Opportunity Act, and other Federal laws relating to consumer lending activities;

(3) It shall provide prompt notification, on a form prescribed by the Secretary, of all corporate changes, including, but not limited to: mergers, terminations, name, location, control, ownership, and character of business;

(4) It shall ensure that all employees who will sign applications for insurance on behalf of the lender shall be corporate officers or will otherwise be authorized to bind the lender in matters involving the origination of Title I loans;

(5) It shall not use escrow funds for any purpose other than that for which they were received;

(6) It shall file a yearly verification report on a form prescribed by the Secretary;

(7) Is shall, upon request, submit a copy of its latest financial statement or such other information as the Secretary may request, and submit to an examination of that portion of its records which relates to its Title I lending activities;

(8) It shall remain responsible to the Secretary for the actions of its lending and servicing branches;

(9) Except for those eligible lenders described in § 202.3(a), it shall pay an application and an annual fee, including additional fees for each branch office authorized to originate and report loans for insurance registration, in such amount as the Secretary may require to assist in defraying the cost of approving and supervising lenders for participation in the Title I Program;

(10) Neither the applicant lender nor any officer, director, principal or employee of the applicant lender shall:

(i) Be under suspension, debarment, or other restrictions, under Part 24 or Part 25 of this title or under similar procedures of any other Federal agency, or

(ii) Be or become indicted for, or convicted of, an offense which adversely affects the lender's integrity or its ability to participate in HUD programs as an approved lender.

(b) In addition to the general requirements applicable to all eligible lenders under paragraph (a) of this section, a supervised institution shall promptly notify the Secretary in the event of termination of its supervision by its supervising agency. Supervised institutions that are not members of the Federal Reserve System or whose accounts are not insured by the FSLIC, FDIC, or NCUA shall have and maintain a net worth of not less than $100,000 in assets acceptable to the Secretary.

(c) In addition to the general requirements applicable to all eligible lenders under paragraph (a) of this section, a nonsupervised institution shall:

(1) Have and maintain a net worth of not less than $100,000 in assets acceptable to the Secretary;

(2) Have and maintain a reliable warehouse line of credit or other funding program acceptable to the Secretary in an amount of not less than $250,000 for use in Title I loan financing;

(3) Within 75 days of the close of its fiscal year, and at such other times as may be requested, file with the Secretary an audit report and financial statements in a form acceptable to the Secretary consisting of a balance sheet, a statement of operations and retained earnings, an analysis of the lender's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds, based on an audit performed by a Certified Public Accountant or by a qualified Independent Public Accountant (as defined by the Comptroller General of the United States) licensed by a State or other political subdivision of the United States.

(Approved by the Office of Management and Budget under control number 2502–0017.)

§ 202.5 Termination of insurance contract.

(a) *Notice.* A Contract of Insurance may be terminated in accordance with its terms by the Secretary or by the Secretary's designee upon giving the lender at least 5 days prior written notice.

(b) *Informal meeting.* If requested, a lender shall be entitled to an informal meeting with the Department official taking the action to terminate its Contract of Insurance before the expiration of the 5-day notice period.

(c) *Effects of termination.* Termination of a Contract of Insurance shall not affect:

(1) The Department's obligation to provide insurance coverage with respect to eligible loans originated before the termination, absent fraud or misrepresentation;

(2) A lender's obligation to continue to pay insurance premiums and meet all

other obligations associated with eligible loans originated before termination; or

(3) A lender's right to apply for and be granted a new Contract of Insurance provided that the requirements for approval at § 202.4 are met.

§ 202.6 Administrative actions.

(a) *General.* Administrative actions may be applied to a lender participating in the Title I program and may include one or more of the following:

(1) A letter of reprimand informing the lender of the existence or occurrence of a violation of any requirement of this part or Part 201 of this Title and directing the lender to bring and maintain its activities into conformity with all HUD requirements. Failure to comply with a directive in a letter of reprimand may result in other actions as set forth in this section;

(2) Probation for a specified period of time, for the purpose of evaluating the lender's compliance with HUD requirements. During a period of probation, additional requirements may be imposed on the lender as an aid in evaluating the lender. Such additional requirements may include supervision of the lender's activities by HUD, periodic reporting to HUD, or submission to HUD of internal audits, audits by an Independent Public Accountant, or other reviews;

(3) Suspension, which is based on adequate evidence that: (i) One of the grounds for an administrative action contained in paragraph (b) of this section exists and (ii) that continuation of approval pending completion of any audit, investigation, or other review, or pending such administrative or legal proceedings as may ensue, would not be in the public interest or in the best interest of the Department. During the period of suspension, a lender may not originate new Title I loans under its Title I Contract of Insurance or apply for a new Contract of Insurance;

(4) Withdrawal of approval of a lender to enter into a Contract of Insurance. Such withdrawal shall be for a specified period of time or, in cases involving egregious circumstances, for an indefinite period.

(b) *Grounds for administrative actions.* Administrative actions shall be based upon one or more of the following grounds:

(1) Failure to remain in compliance with the requirements for approval of lenders at 24 CFR 202.4;

(2) Submission of false information to HUD in connection with a loan;

(3) Failure properly to supervise and monitor dealers under the provisions of 24 CFR Part 201;

(4) Exhaustion of the general insurance reserve established under 24 CFR Part 201;

(5) Maintenance of a claims/loan ratio representing an unacceptable risk to the Department;

(6) Failure to cooperate with an audit, investigation or request by the Department's Office of Inspector General or with an inquiry by HUD into the conduct of the lender's HUD-insured business or any other failure to provide required information to HUD concerning the conduct of the lender's HUD-insured business;

(7) Transfer of a Title I loan to a party who does not have a valid Contract of Insurance; or

(8) Such other reason as the Mortgagee Review Board, Secretary, Under Secretary or Hearing Officer, as appropriate, determines to be justified. Such reasons include, but are not limited to: Failure to exercise prudent credit judgment; failure to observe proper business practices; failure to observe proper loan origination servicing procedures; failure to comply with HUD requirements or other requirements of law or regulation.

(c) *Notice, hearings and hearing requests.* In the case of a probation, suspension or withdrawal action, a lender is entitled to notice and to request a hearing before a Hearing Officer to challenge the action, in accordance with the procedures in 24 CFR 25.5(d)(4), 25.7 and 25.8. Hearings to challenge a probation, suspension or withdrawal action shall be conducted in accordance with the applicable rules of Part 26 of this Title.

(d) *Settlement Agreements.* The Department may at any time enter into a settlement agreement with a lender to resolve any outstanding grounds for any action provided for by this section. Such agreements may provide, among other requirements, for: cessation of any violation; correction or mitigation of the effects of any violation; repayment of sums of money wrongfully or incorrectly paid to the lender by a borrower or by HUD; actions to collect sums of money wrongfully or incorrectly paid by the lender to a third party; indemnification of HUD for insurance claims on Title I loans originated in violation of HUD requirements; or implementation of a Quality Control Plan or other corrective measures acceptable to HUD. Failure of a lender to comply with a settlement agreement may result in suspension or withdrawal of HUD approval.

Dated: June 13, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-16283 Filed 6-18-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations; Certain Persons in the United States Unblocked; Travel To, From, and Within the United States by Certain Foreign Nationals

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is making two changes in the Foreign Assets Control Regulations, which are currently applicable to North Korea, Vietnam, Kampuchea (Cambodia), and their nationals. Section 500.505 is being amended to reflect the changes in the Immigration and Nationality Act ("INA"), 8 U.S.C. 1101 *et seq.*, effected by the Refugee Act of 1980, Pub. L. 96-212, 94 Stat. 102 *et seq.* The amended section authorizes persons from North Korea, the Socialist Republic of Vietnam, and Kampuchea who are resident in the United States (other than on a transitory or visitor basis) to be treated as unblocked nationals.

Section 500.566 is being added to the regulations in order to authorize expenditures for basic living and travel expenses in the United States for those persons who are admitted to the United States on visas issued by the Department of State.

EFFECTIVE DATE: June 19, 1984.

FOR FURTHER INFORMATION CONTACT: Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, 202/376-0236.

SUPPLEMENTARY INFORMATION: With respect to amended § 500.505, the group of licensed individuals has been expanded under paragraph (a) to include any national from those countries who has a non-transitory, resident status and is physically present in this country. Accordingly, paragraph (a)(1) of amended § 500.505 is understood to include but not to be limited to: (1) Permanent resident aliens; (2) aliens admitted as refugees pursuant to section 207 of the INA (8 U.S.C. 1157); (3) aliens granted asylum in the United

States pursuant to section 208 of the INA (8 U.S.C. 1158); (4) aliens paroled into the United States pursuant to section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)); and (5) aliens admitted to the United States as conditional entrants pursuant to former section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)). The assets of a national of North Korea, the Socialist Republic of Vietnam, or Kampuchea who has entered the U.S. pursuant to any of the INA sections cited above, or to any comparable provision, will not be blocked, and such national will be licensed under the new regulation to engage in normal transactions within the United States. The provisions of this section will not apply, however, to any person who is a specially designated national.

Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Beacuse the amendments are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 19, 1981, dealing with Federal Regulations. This regulation is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subects in 31 CFR Part 500

Communist countries.

31 CFR Part 500 is amended as follows:

1. Section 500.505 is revised to read as follows:

§ 500.505 Certain Persons in the United States Unblocked.

(a) Except as provided in paragraph (b) of this section, the following are hereby licensed as unblocked nationals:

(1) Any individual who is resident in and physically present in the United States, except an individual who on or after the "effective date" has acted or purported to act directly or indirectly for the benefit of or on behalf of a designated country.

(2) Any partnership, association, corporation, or other organization which is a national of a designated foreign country solely by reason of the interest of persons licensed by this section.

(b) This section does not license as an unblocked national any person who is a specially designated national.

2. Section 500.566 is added as follows:

§ 500.566 Certain Transactions Incident to Travel to, from, and within the United States by Certain Foreign Nationals.

(a) Except as provided in paragraph (b), the following transactions are authorized by or on behalf of a national of North Korea, Vietnam or Kampuchea (Cambodia) who enters the United States on a visa issued by the Department of State:

(1) All transactions ordinarily incident to travel between the United States and points outside of North Korea, Vietnam or Kampuchea (Cambodia), including the importation into the United States of accompanied baggage for personal use:

(2) All transactions ordinarily incident to travel and maintenance within the United States, including payment of living expenses and the acquisition of goods in the United States for personal use; and

(3) Normal banking transactions involving foreign currency drafts, traveler's checks, or other instruments negotiated incident to personal travel in the United States,

(b) This section does not authorize any transfer of property to North Korea, Vietnam or Kampuchea (Cambodia) or any debit to a blocked account.

(Sec. 5, 40 Stat. 415, as amended, 50 U.S.C. App. 5(b); 75 Stat. 445, 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1065, 3 CFR, 1959–1963 Comp.; E.O. 9193, 7 FR 5205, 3 CFR, Cum. Supp., 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748)

Dated: June 1, 1984.

Dennis M. O'Connell,

Director, Foreign Assets Control.

Approved:

John M. Walker, Jr.,

Assistant Secretary (Enforcement & Operations).

[FR Doc. 84-16341 Filed 6-18-84; 8:45 am]

BILLING CODE 4810-25-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-53

Statement of Organization and Functions

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation reflects the current General Services Administration (GSA) organization and functions and is published in accordance with the Freedom of Information Act.

EFFECTIVE DATE: June 7, 1984.

FOR FURTHER INFORMATION CONTACT: Sylvester H. Kish, Director of Organization and Staff Utilization, (202-566-0086).

SUPPLEMENTARY INFORMATION:

List of Subjects in 41 CFR Part 105-53

Archives and records, Office of Information Resources Management, Computer technology, Federal buildings and facilities, Office of Federal Supply and Services, Government property, Government property management, National Archives and Records Service, Organization and functions (Government agencies), Public Buildings Service, Surplus Government property, Strategic materials.

PART 105-53—STATEMENT OF ORGANIZATION AND FUNCTIONS

1. The authority citation for Part 105-53 reads as follows:

Authority: 5 U.S.C. 552(a)(1), Pub. L. 90-23, 81 Stat. 54 sec. (a)(1); 40 U.S.C. 486(c), Pub. L. 81-152, 63 Stat. 390, sec. 205(c).

2. The table of contents for Part 105-53 is amended by revising two entries and removing and reserving five entries as follows:

Sec.

105-53.130-1 [Reserved]
105-53.130-5 [Reserved]
105-53.134 Office of the Associate Administrator for Administration.
105-53.139 Office of the Comptroller.
105-53.140 [Reserved]
105-53.141 [Reserved]
105-53.142 [Reserved]

3. Section 105-53.112 is revised to read as follows:

§ 105-53.112 General statement of functions.

The General Services Administration, as a major policy maker, provides guidance and direction to Federal agencies in a number of management fields. GSA formulates and prescribes a variety of Government-wide policies relating to procurement and contracting; real and personal property management; transportation, public utilities, and telecommunications management; automated data processing management; records management; the Nation's emergency defense supplies; the use and disposal of property; the information security program; and the creation, preservation, and disposal of records. In addition to its policy role, GSA also provides a variety of basic services in the aforementioned areas to other Government agencies. A summary description of these services is presented by organizational component in Subpart B.

4. Section 105–53.116 is revised as follows:

§ 105–53.116 General regulations.

Regulations of the General Services Administration and its components are codified in the Code of Federal Regulations in Title 1, Chapters I and II; Title 32, Chapter XX; Title 41, Chapters 1, 5, 101, 105, and 201; and Title 48, Chapters 1 and 5. Titles 1, 32, 41, and 48 of the Code of Federal Regulations are available for review at most legal and depository libraries and at the General Services Administration Central Office and regional offices. Copies may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

5. Section 105–53.118 is amended by revising paragraph (a) as follows:

§ 105–53.118 Location of material available for public inspection.

* * * * *

(a) General Services Administration, 18th & F Streets, NW., Library (Room 1033), Washington, DC 20405. Telephone 202–535–7788.

* * * * *

6. Section 105–53.120 is revised as follows:

§ 105–53.120 Addresses and telephone numbers.

The Office of the Administrator; Office of Inspector General; GSA Board of Contract Appeals; Information Security Oversight Office; the Office of the Associate Administrator for Administration; Office of Operations; Office of Policy and Management Systems; Office of Ethics; Office of the Executive Secretariat; Office of Small and Disadvantaged Business Utilization; Office of Program Control; Office of Acquisition Policy; Office of the Comptroller; Office of Information Resources Management; Federal Property Resources Service; and Public Buildings Service are located at 18th and F Streets, NW., Washington, DC 20405. The Office of Federal Supply and Services is located in Crystal Mall Building 4, 1941 Jefferson Davis Highway, Washington, DC 20406. The National Archives and Records Service is located in the Archives Building, Seventh and Pennsylvania Avenue, NW., Washington, DC 20408. The telephone number for the above addresses is 202–655–4000. The addresses of the eleven regional offices are provided in § 105–53.151.

7. Section 105–53.130–1 and 105–53.130–5 are removed and reserved as follows:

§ 105–53.130–1 [Reserved]

§ 105–53.130–5 [Reserved]

8. Section 105–53.134 is recaptioned and revised as follows:

§ 105–53.134 Office of the Associate Administrator for Administration.

The Office of the Associate Administrator for Administration, headed by the Associate Administrator for Administration, participates in the executive leadership of the agency; providing advice on major policies and procedures, particularly those of a critical or controversial nature, to the Administrator and Deputy Administrator. The office plans and administers programs in equal employment opportunity, organization and staff utilization, training, staffing, position classification and pay administration, employee relations, career development, congressional and public affairs, and communications. The office also coordinates and provides support to various committees engaged in enhancing the management of GSA, and provides positive leadership for GSA's commitment to excellence in management practices and techniques in interactions with the Congress, other Federal agencies, and the private sector.

9. Section 105–53.136 is revised as follows:

§ 105–53.136 Office of Policy and Management Systems.

The Office of Policy and Management Systems, headed by the Associate Administrator for Policy and Management Systems, participates in the executive leadership of the agency and in the formulation of agency policy. The Office is responsible for establishing, directing, and controlling the GSA policy formulation process; and for exercising broad control over all agencywide management systems to ensure their consistency with approved agency policy. The Office is also responsible for conducting independent reviews of agencywide programs within priorities set by the Administrator to determine the effectiveness, efficiency, and economy of GSA activities; overseeing agencywide implementation of OMB Circular A–123; serving as the central point of control for audit and inspection reports from the Inspector General and the Comptroller General of the United States; administering GSA's security programs; and directing an agencywide program of administrative services.

10. Section 105–53.137 is amended by revising paragraph (b) as follows:

§ 105–53.137 Office of Acquisition Policy.

* * * * *

(b) *Regulations.* Regulations pertaining to OAP programs are published in 41 CFR Chapter 1, Federal Procurement Regulations (FPR), 41 CFR Chapter 5, General Services Administration Procurement Regulations (GSPR), 48 CFR Chapter 1, Federal Acquisition Regulation (FAR), and in 48 CFR Chapter 5, General Services Acquisition Regulation (GSAR). Information on availability of the regulations is provided in § 105–53.116.

11. Section 105–53.139 is recaptioned and revised as follows:

§ 105–53.139 Office of the Comptroller.

(a) *Functions.* The Office of the Comptroller, headed by the Comptroller, is responsible for centralized agencywide budget and accounting functions; overall allocation and administrative control of agencywide resources and financial management programs; and for the audit of transportation bills paid by the Government and subsequent settlement of claims.

(b) *Regulations.* Regulations pertaining to the Office of the Comptroller's programs are published in 41 CFR Parts 101–2 and 101–41. Information on availability of the regulations is provided in § 105–53.116.

12. Sections 105–53.140, 105–53.141 and 105–53.142 are removed and reserved as follows:

§ 105–53.140 [Reserved]

§ 105–53.141 [Reserved]

§ 105–53.142 [Reserved]

13. Section 105–53.143 is amended by revising paragraph (c) as follows:

§ 105–53.143 Office of Information Resources Management.

* * * * *

(c) *Regulations.* Regulations pertaining to OIRM programs are published in 41 CFR Chapter 201, Federal Information Resources Management Regulations (FIRMR), and 48 CFR Chapters 1 and 5. Information on availability of the regulations is provided is § 105–53.116.

14. Section 105–53.144 is amended by revising paragraph (c) as follows:

§ 105–53.144 Federal Property Resources Service.

* * * * *

(c) *Regulations.* Regulations pertaining to FPRS programs are published in 41 CFR Chapter 1, 41 CFR Chapter 101, Subchapters C and H, and

48 CFR Chapter 1. Information on availability of the regulations is provided in § 105–53.116.

15. Section 105–53.145 is amended by revising paragraph (c) as follows:

§ 105–53.145 Office of Federal Supply and Services.

* * * * *

(c) *Regulations.* Regulations pertaining to FSS programs are published in 41 CFR Chapters 1 and 5; 41 CFR Chapter 101, Subchapters A, E, G, and H; and in 48 CFR Chapters 1 and 5. Information on availability of the regulations is provided in § 105–53.116.

16. Section 105–53.147 is amended by revising paragraph (c) as follows:

§ 105–53.147 Public Buildings Service.

* * * * *

(c) *Regulations.* Regulations pertaining to PBS programs are published in 41 CFR Chapter 1, 41 CFR Chapter 101, Subchapters D and H; and in 48 CFR Chapter 1. Information on availability of the regulations is provided in § 105–53.116.

Dated: June 7, 1984.

Patricia Q. Schoeni,

Associate Administrator for Administration.

[FR Doc. 84–16245 Filed 6–18–84; 8:45 am]

BILLING CODE 6820–BR–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[Gen. Docket No. 83–989; FCC 84–253]

Enforcement of Prohibitions Against the Use of Common Carriers for the Transmission of Obscene Materials

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In accordance with our statutory mandate, the Commission has adopted a regulation to restrict minors' access to obscene or indecent telephone messages. It is a defense to prosecution under 47 U.S.C. 223(b) (1983), that the defendant has taken either of the steps in our regulation to restrict access to communications prohibited thereunder.

DATES: Effective July 19, 1984.

FOR FURTHER INFORMATION CONTACT: Sharon Kelley or Holly Berland, Office of General Counsel, (202) 632–6990.

List of Subjects in 47 CFR Part 64

Miscellaneous common carrier.

Report and Order

In the matter of enforcement of prohibitions against the use of common carriers for the transmission of obscene materials; Gen. Docket No. 83–989.

Adopted: June 4, 1984.

Released: June 5, 1984.

By the Commission.

1. Before the Commission are comments and reply comments submitted in response to a *Notice of Inquiry* ("*NOI*"),[1] and *Further Notice of Inquiry and Notice of Proposed Rule Making* ("*Further Notice*" or "*NPRM*"),[2] principally concerned with the scope of the Commission's authority to take action against so-called "dial-a-porn" services pursuant to section 223 of the Communications Act of 1934, as amended, 47 U.S.C. 223 (1983).[3] Our *Further Notice* also solicited comment as to an appropriate regulation to restrict access to "dial-a-porn" services by persons under eighteen years of age.

I. Background

2. The Commission issued a *Notice of Inquiry* in order to resolve the issues raised by two matters before it: (1) A complaint filed by Peter F. Cohalan ("Cohalan") against New York Telephone Company[4] and (2) a Petition for a Declaratory Ruling filed by Multipoint Distribution Systems, Inc. ("MDSI").[5]

3. On March 17, 1983, Peter F. Cohalan, individually and as County Executive of Suffolk County, New York filed a complaint with the Commission. This complaint alleged that New York Telephone Company violated 47 U.S.C. 223 by allowing *High Society Magazine* to transmit obscene communications over its facilities.[6] United States Representative Thomas J. Bliley, Jr. of Virginia filed comments in support of this complaint.[7]

4. New York Telephone Company filed a reply denying that the pre-recorded messages provided by *High Society* were obscene or harassing. Moreover, as an affirmative defense, New York Telephone asserted that, in the absence of allegations that it made obscene calls or knowingly permitted a telephone under its control to be used to make such calls, it was not subject to sanctions under section 223 (now redesignated as section 223(a)).

5. Construing section 223(a) to be penal in nature, the Common Carrier Bureau dismissed the Cohalan complaint without prejudice,[8] and

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[1] *See* 48 FR 43348 (1983).

[2] *See* 49 FR 2124 (1984).

[3] A complete list of those filing formal comments in this proceeding appears as *Appendix A* attached hereto. A list of those informal commenters making specific suggestions with regard to methods to limit access to such services may be found in *Appendix B. Appendix C, inter alia,* contains a numerical breakdown of all informal comments filed in this proceeding according to geographic location. Although we have thoroughly reviewed the entire record of this proceeding and comments are generally discussed throughout the text of this *Order,* those comments relating specifically to approaches to restrict access by minors are discussed in detail in *Appendix D.*

[4] *See In the Matter of Peter F. Cohalan and the County of Suffolk, New York,* v. *New York Telephone Company,* FCC File No. E–83–14 (March 31, 1983).

[5] *See* Petition for Declaratory Ruling filed by Multipoint Distribution Systems, Inc., FCC File No. CCB DFD 83–2 (June 14, 1983).

[6] In our *NOI,* we described this service as follows: High Society Magazine, Inc. and Car-Bon Publishers obtained the Dial-It number in a lottery for Dial-It numbers conducted by New York Telephone in January, 1983. The number was thereafter advertised in "High Society Live!" magazine and, in February 1983, operation of the service commenced. When the number is dialed, the caller hears a description or depiction of actual or simulated sexual behavior. The messages, *which are changed at least once daily, are available to any caller, twenty-four hours a day, every day.* As the local common carrier, New York Telephone does not operate the message service but provides the Dial-It service capability pursuant to an intrastate tariff filed with the Public Service Commission of New York. That tariff, which applies to all New York Telephone Dial-It services, explicitly provides that the subscriber has exclusive control over the content and quality of the messages recorded and that the telephone company assumes no liability therefor.

The Dial-It number operated by High Society has apparently been widely disseminated and called. Sources calculate that the service receives up to 500,000 calls a day, yielding approximately $10,000 for High Society and $35,000 for New York Telephone per day before costs. (Citations omitted and emphasis added.)

As was further explained, Pursuant to the local tariff for Dial-It services, prior to May 1983 High Society received 2¢ for each local call while New York Telephone received 7¢ (of which 6.96¢ is estimated as New York Telephone's cost). As of May 1983, High Society continued to receive 2¢ per call, but New Telephone's revenue per local call increased to 13¢ (and its average cost to 11.4¢). *See* New York Telephone P.S.C. Tariff No. 900 Section 13 at 25. High Society also receives 2¢ for each long distance call. The long distance carriers and local carriers divide the remaining long distance revenues.

See NOI at 3–4 and note 7.

We note that while it is technically inaccurate to refer to this as a "dial-it" service, for purposes of consistency, the Commission has so referred to it, and many commenters refer to it, in this manner. To be precise, this service should be referred to as a Mass Announcement Network Service. It should be further noted that all Mass Announcement Services in the State of New York are on a 976 Exchange and can be accessed directly (locally) or by dialing the appropriate New York area code (long distance).

[7] In a related matter, on May 6, 1983, forty-six members of Congress, including Congressman Bliley, sent a letter to Chairman Fowler urging the Commission to act rapidly to prevent the proliferation of "dial-a-porn" services. As our *NOI* pointed out, "recorded message services depicting or describing sexual activities appear to be proliferating, thus heightening the concerns of parents and elected representatives." *See NOI* at 2.

[8] *See Memorandum Opinion and Order,* FCC File No. E–83–14 (May 16, 1983).

referred the matter to the United States Department of Justice for possible criminal prosecution. Cohalan filed an Application for Review of this action, and New York Telephone Company filed an Opposition.[9] Based on a determination that administrative action would be more appropriate in this instance, the Department of Justice declined to initiate criminal prosecution and turned the matter back over to the Commission.[10]

6. On September 16, 1983, the Commission issued a *Notice of Inquiry* initiating General Docket No. 83–989, to solicit comment from the public as to whether the transmission of allegedly obscene or indecent material could or should be prohibited, and, if so, whether the Commission is authorized to enforce such prohibitions against either common carriers or message providers, or both, under section 223 (unamended). In addition, the *NOI* asked whether common carriers may, after unilaterally determining that materials are obscene, terminate service or exclude obscene materials, when transmission of obscene materials is prohibited by statute, tariff or contract.

7. Congress subsequently amended section 223 of the Communications Act on November 18, 1983.[11] This amendment, *inter alia*, authorizes the Commission to impose civil fines, not to exceed $50,000 per day, upon those who, for commercial purposes, use their telephone or allow others to use telephone facilities under their control to transmit obscene or indecent messages to individuals under eighteen years of age. The Commission is under statutory mandate to issue a regulation by June 5, 1984, which, in effect, restricts access by minors to "dial-a-porn" services.[12]

8. On November 28, 1983, Congressman Bliley filed a Petition to Institute Forfeiture Proceedings against Drake Publishers, Inc. pursuant to 47 U.S.C. 503, alleging violation of section 223 (unamended).[13] Congressman Bliley filed a December 14, 1983 Supplement to his Petition, seeking retroactive application of the increased penalties under the recently amended statute.

9. The Commission issued a *Further Notice of Inquiry and Notice of Proposed Rule Making* on December 20, 1983, to afford interested parties an opportunity to comment on new issues raised by the statutory amendment, and to make suggestions as to "technically and economically feasible" methods to restrict minors' access to "dial-a-porn" services.

10. In a consolidated proceeding, the Commission disposed of the two complaints that were filed prior to the amendment of section 223 by Peter F. Cohalan and Congressman Bliley.[14] By *Memorandum Opinion and Order*, the Commission held that so-called "dial-a-porn" message services do not fall within the purview of former section 223 (now redesignated as section 223(a)).[15] This decision did not reach the effect of the new statutory amendment on either "dial-a-porn" message providers or telephone companies that allow their facilities to be used for such programming.

11. This *Report and Order* will terminate the instant proceeding with respect to the liability of carriers and message providers generally under amended section 223(b) and, specifically, with regard to an appropriate restriction on the accessibility of such services to those under the age of eighteen.[16]

II. Discussion

A. Applicability to Common Carriers

12. The first issue we need to address is whether section 223(b) is intended to apply to common carriers who permit the use of their facilities for "dial-a-porn" services.[17] On its face, the statute does not provide a clear answer.[18] The

[9] Applications For Review of the Cohalan complaint's dismissal were also submitted by Congressman Bliley (June 14, 1983) and Hubert H. Humphrey, III, Attorney General of Minnesota (September 8, 1983), the latter of which was untimely, but nonetheless reviewed and considered by our staff.

[10] *See* Letter from Richard Willard, Civil Division, Department of Justice, to Bruce E. Fein, General Counsel, Federal Communications Commission dated June 10, 1983.

Shortly thereafter, Multipoint Distribution Systems, Inc. (MDSI), filed a Petition for a Declaratory Ruling, seeking a Commission determination as to whether a multipoint distribution service licensee may refuse to carry obscene programming material that is prohibited by statute, tariff or contract. We expect to address MDSI's Petition and comments relating thereto in a forthcoming *Order*. *See also NOI* at 4.

[11] *See* Section 8 of the *Federal Communications Commission Authorization Act of 1983*, Pub. L. 98–214, effective December 8, 1983.

[12] *Id.* at 8(c). Section 223(b) also provides that compliance with our regulation by "dial-a-porn" service operators constitutes a defense to prosecution under this subsection. *See* 47 U.S.C. 223(b)(2).

[13] On December 28, 1983, Drake Publishers and Carlin Communications filed an Opposition.

[14] The Commission was under statutory mandate to resolve all complaints filed pursuant to unamended section 223, no later than March 7, 1984 (90 days after the effective date of the amendment). *See* section 8(d) of the *Federal Communications Commission Authorization Act of 1983* Pub. L. 98–214, effective December 8, 1983.

[15] *See In the Matter of Application for Review filed by Peter F. Cohalan and the County of Suffolk, New York Against New York Telephone Company and Petition to Institute Forfeiture Proceedings Filed by Congressmen Thomas J. Bliley, Jr. Against Drake Publishers, Inc.*, FCC 84–76 (March 7, 1984). Many comments responding to our initial *NOI* were thoroughly considered in the context of this *Memorandum Opinion and Order*.

[16] In response to our *Further Notice*, many commenters discussed the standards and procedures to be relied upon in enforcing our regulation to restrict minors' access to "dial-a-porn" services. We believe, however, that such matters can be dealt with more appropriately in an *ad hoc* basis. In the event that we need to address these issues, however, the docket in this proceeding will remain open so that we may refer to comments herein as necessary.

[17] Industry commenters overwhelmingly opposed placing the burden of preventing the transmission of obscene or indecent messages on common carriers. *See* Comments of American Telephone and Telegraph Company ("AT&T"), BellSouth Corporation ("BellSouth"), Bell Communications Research, Inc. ("BCR"), New York Telephone Company and New England Telephone and Telegraph Company ("NYNEX"), Continental Telecom, Inc. ("Contel") and United States Telephone Association ("USTA"), Teltec Savings Communications Co. ("Teltec") specified that such burden should be imposed "only directly on entities which offer offending services and not on other carriers whose facilities might be used by persons attempting to reach the offending services." *See also* Comments of MSPC, American Civil Liberties Union ("ACLU") and Time Incorporated and Viacom International, Inc. ("Time and Viacom"). Several parties suggested that carriers should engage in some form of joint enforcement with the Commission. *See generally* Comments of MPSC, Families Alert/Robert B. Hansen ("Families Alert"), Morality in Media, Inc. ("MIM") and Citizens for Decency Through Law, Inc. ("CDL"). According to MIM, New York Telephone "makes a substantial profit from the commercial use of Dial-It lines and actively promotes several of them through advertising; it is not simply carrying the telephone connection of one customer to another."

[18] Newly amended section 223 reads as follows:

(b)(i) Whoever knowingly—

(A) In the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any obscene or indecent communication for commercial purposes to any person under eighteen years of age or to any other person without that person's consent, regardless of whether the maker of such communication placed the call; or

(B) Permits any telephone facility under such person's control to be used for an activity prohibited by subparagraph (A), shall be fined not more than $50,000 or imprisoned not more than six months, or both.

(2) It is a defense to a prosecution under this subsection that the defendant restricted access to the prohibited communication to persons eighteen years of age or older in accordance with procedures which the Commission shall prescribe by regulation.

(3) In addition to the penalties under paragraph (1), whoever, in the District of Columbia or in interstate or foreign communication, intentionally violates paragraph (1)(A) or (1)(B) shall be subject to a fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(4)(A) In addition to the penalties under paragraphs (1) and (3), whoever, in the District of Columbia or in interstate or foreign communication, violates paragraph (1)(A) or (1)(B) shall be subject to a civil fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(B) A fine under this paragraph may be assessed either—

(i) By a court, pursuant to a civil action by the Commission or any attorney employed by the Commission who is designated by the Commission for such purposes, or

Continued

legislative history, however, makes it evident that Congress did not intend this statutory provision to be enforced against common carriers in the absence of active participation by carriers offering "dial-a-porn" services.

13. During the Senate debate on this legislation, one of its sponsors, Senator Paul S. Trible, confirmed this interpretation in the following manner:

For the record, *I wish to make perfectly clear that it is not the intent of Congress that a common carrier be prosecuted under this amendment when it is otherwise abiding by the law and FCC regulations* and when the telephone calls which are found to violate section 223 are at the initiative of a party which has no financial or other relationship with the common carrier other than that of carrier-customer. (Emphasis added.)[19]

14. Similarly, in the House debate, Congressman Bliley endorsed this construction.[20] The Congressional intent seems clear. In order to violate section 223(b), a common carrier must be actively involved with the "dial-a-porn" service or must itself be the message provider.[21]

15. Newly amended section 223 was recently examined by a federal district court in a case involving a pre-recorded "dial-a-porn" message service virtually identical to the service that generated this proceeding. Stressing the difficulty of proving that common carriers have actual "knowledge" of "dial-a-porn" messages being transmitted over their facilities when such messages are frequently changed, the Court held that no "reasonable possibility" exists that Pacific Bell "will be subject to liability, either criminal or civil, under the federal statute." [22] Our interpretation that the statute generally does not contemplate holding common carriers liable for these services should serve notice that complaints against common carriers will, in all likelihood, be routinely dismissed unless these carriers were actively involved in originating the service.

B. Restricting Access to Minors

16. In our *NPRM*, we proposed several possible regulatory measures to restrict minors' access to "dial-a-porn" services, including: requiring automated screening devices, such as access codes; blocking access from coin-operated telephones; limiting operational hours; and imposing restrictions on the advertisement of such services. After carefully analyzing the comments filed in response thereto, as well as alternative measures proposed by commenters, we have concluded that the most reasonable method of complying with our mandate under section 223(b) to restrict access to "dial-a-porn" services by minors is to require "dial-a-porn" services to either (i) operate only between 9:00 p.m. and 8:00 a.m. Eastern Time or (ii) require payment by credit card before transmission of the message(s).[23]

17. At the outset, it should be noted that there are two generic types of "dial-a-porn" services, live and recorded.[24] In the case of recorded services, the caller pays for the service as part of the toll charges for the call; the amount of the charge depends on the distance involved, as in the case of a long distance call. With respect to live services which generally require payment by a national credit card, however, the caller is not only charged the toll fee for accessing the number of the service provider but, in addition, for use of the message service itself. Since minors are not ordinarily issued credit cards, we believe that live "dial-a-porn" services are generally inaccessible to minors. Thus, those "dial-a-porn" services which require payment by credit card before access is obtained will be permitted to operate without other restriction. With respect to recorded services, however, it appears that requiring payment by credit card would be impractical, as those services allow multiple calls to access a message simultaneously. We believe a more appropriate approach would be to impose an operational hour restriction.[25]

18. In the discussion which follows, we will address and analyze the various proposals for limiting access to "dial-a-porn" services and explain our reasons for rejecting an approach or selecting it as a defense to prosecution under section 223(b).

1. Screening and Blocking

19. One approach suggested by commenters involves giving subscribers the option of blocking access to certain telephone numbers from their premises. This method is analogous to a scheme used by the postal service whereby individuals may request material that they consider "to be erotically arousing or sexually provocative" not be

(ii) By the Commission after appropriate administrative proceedings.

[19] 129 Cong. Rec. S. 16867 (Part II, daily ed. November 18, 1983) (statement of Sen. Trible). As a related matter, CDL attached to its comments a letter from Congressman Bliley dated June 29, 1983 to all members of the House Energy and Commerce Committee in which Congressman Bliley states that his amendment would not "place any responsibility on common carriers for violations of section 223 over their facilities." *See also* Comments of AT&T, Contemporary Communications Corporation ("CCC"), BCR, and Time and Viacom.

[20] Congressman Bliley stated that: Finally, I would again like to clarify that no common carrier is liable under this provision unless the carrier itself or a subsidiary or a related entity originates the obscene transmission. As long as a common carrier is following the law and FCC regulations, it could not have knowledge of any transmissions by other parties. Therefore, AT&T and other common carriers would not in any way be liable for merely transmitting obscene or offensive messages in the capacity as a common carrier.

129 Cong. Rec. H. 10559 (Part II, daily ed. November 18, 1983) (statement of Rep. Bliley). In concluding his remarks, Congressman Bliley further explained: *Section 223 does not aply to common carriers and the legislative history of the pending amendment reinforces that point as well.* A telephone leased from a common carrier would not be considered to be under its control for purposes of section 223. (Emphasis added.)

Id. at 10560.

[21] According to BCR, carriers are not liable under Section 223(b) "so long as they, or a subsidiary or related entity, do not originate the obscene transmission *and* they are acting in their capacity as a common carrier." CDL noted that "[o]nce a common carrier has received 'knowledge' of the use of facilities under its control [for such services] * * * the common carrier certainly cannot *ignore* its pivitol [sic] role in the 'chain of harm'."

See also Comments of AT&T, BCR, CCC and Time and Viacom. AT&T restates this issue as follows: Prior to the date for filing comments in response to the NOI, Congress amended 47 U.S.C. 223. That amendment resolved all of the significant questions raised in the NOI regarding the duties and responsibilities of a common carrier, by *affirming that common carriers are not liable for conveying obscenities when acting in conformity with their common carriage responsibilities.* (Footnote omitted and emphasis added.)

[22] *Pacific Bell* v. *Sable Communications of California, Inc.*, No. CV 84-469 AWT, slip op. at 5-6 (C.D. Cal. February 13, 1984). *See also* Reply Comments of Contel.

[23] *See* note 12, *supra.*

[24] As explained in our *NOI*, "it is the allegedly obscene nature of the recording" not the character of the service with which we are concerned. Thus, those "services which provide similar kinds of recordings are equally subject to section 223, so long as interstate calls are made." This proceeding clearly applies to live as well as recorded "dial-a-porn" services. *See NOI* at 5.

[25] It appears that the cost of implementing a credit card restriction would be prohibitive for recorded services. Under the regulation we are adopting herein, both live and recorded services may use an operational hour limitation as a defense to prosecution under section 223(b).

delivered.[26] Since neither the Government nor common carriers would be burdened with the responsibility of making obscenity determinations under this approach, First Amendment problems would be avoided.

20. Subscriber screening schemes may be accomplished either by: (1) The installation of appropriate capability within the local telephone company's central office, (*e.g.*, an appropriate program in a stored central office program or additional registers, relays and computational facilities in an electromechanical office capable of blocking calls to particular telephone numbers in accordance with the subscriber's request); or (2) the deployment of a screening function within terminal equipment at the customer's premises.[27]

21. With regard to the first method, which calls for a blocking capability to be installed within the central office, industry commenters indicate that implementation of this approach would require extensive modifications to existing equipment.[28] It appears that central office equipment currently in use is incapable of selective screening or blocking on an entire seven or ten digit basis, and therefore, any attempt to provide such a service would first require the development and implementation of special facilities for that purpose. Even assuming that such screening facilities within central offices could be developed, the adoption of such an approach, to be effective, would require "retrofitting" or redesigning all central offices.[29]

22. The second method, which calls for a blocking capability to be installed in telephone equipment at the customers' premises, also appears to require the development and installation of new equipment.[30] According to industry commenters, no existing commercial device has a screening capability that could be deployed within the subscriber's terminal equipment.[31]

23. A related proposal set forth in the *NPRM*, which received a favorable response from commenting parties, entails blocking access to "dial-a-porn" services from coin-operated telephones.[32] According to industry commenters, the capability of screening calls made from coin-operated telephones to particular recorded message services does not currently exist, and development and implementation of such a capability will engender difficulties similar to those discussed with respect to central office or premises blocking.[33]

24. If we decided to implement a blocking approach, the developmental and operational costs incurred would be enormous.[34] Further, a determination would have to be made as to who would bear the financial responsibility for this approach: Message service providers, subscribers to the particular local carrier, all public switched network subscribers or subscribers who opt to block access from their premises to particular "dial-a-porn" services.[35]

25. To impose costs of this magnitude on all subscribers would be, in our view, unjustified. The record developed in this proceeding reflects that approximately twenty percent of "dial-a-porn" calls are interstate.[36] The benefits to be achieved by implementing a blocking capability do not justify the considerable financial burden which all subscribers (either to a particular exchange carrier or to the entire public network) would have to bear in order to make this approach effective. Most importantly, if these costs were imposed solely on those who elect to employ the screening feature, the expense would be prohibitive for most subscribers.[37]

26. In sum, a blocking or screening scheme, whether implemented from the central office, subscriber premises or coin-operated telephones, would require time to develop and could entail costs which would outweigh the benefits to be obtained. From an economic, technical, as well as practical standpoint, blocking or screening schemes do not, at this time, represent viable regulatory options. Nevertheless, we will not exclude the possibility of implementing this approach at some time in the future, if it should prove to be technically feasible.

2. Access and Identification Codes

27. Some commenters suggested that access to "dial-a-porn" message services be restricted by requiring operators to intervene and take an identification or access code number.[38] In our *NPRM*, we expressed doubts as to the practicality of operator intervention in the case of recorded services.[39] Recognizing that these

[26] *See* 39 U.S.C. 3008; *see also* 39 U.S.C. 3010. *See generally* Comments of Alabama Public Service Commission ("APSC").

[27] *See* Transcript of the April 16, 1984, *Ex Parte* Contact with industry representatives from AT&T, BCR and NYNEX, discussion beginning at 9.

[28] *Id.*, discussion beginning at 2.

[29] *Id.*, discussion beginning at 3 and 5. In the case of electronic central offices, this approach would require only the development of new software, but in the case of the older electromechanical or mechanical central offices, more extensive, costly modifications would be required.

[30] *See* Transcript of the April 16, 1984, *Ex Parte* Contact with industry representatives from AT&T, BCR and NYNEX, discussion beginning at 8.

[31] *Id.*

[32] *See* Comments of Families Alert, APSC, American Legal Foundation ("ALF"), Mrs. Elizabeth Weddington, Paul Wulff and Mrs. Fred Wiggins. ALF suggests that blocking access from coin-operated telephones would facilitate an operational hour restriction since minors would be "hindered in their efforts to gain access to these services from outside the home during those hours when the services were in opertion."

[33] *See* Comments of BCR and BellSouth; *see also* Transcript of the April 16, 1984, *Ex Parte* Contact with industry representatives from AT&T BCR and NYNEX at 12. Moreover, BCR and Carlin and Drake suggest that such an approach would impermissibly restrict access to all dial-it services, thereby precluding access to constitutionally protected communications, such as time, sports and weather. *See also* Comments of ACLU. USTA maintains that such a measure would clearly be overbroad, would not substantially eliminate access by children and would necessitate involvement of both common carriers and the Commission.

[34] While precise figures are not available, approximately 70-80% of Class 5 central offices are electromechanical and 20-30% are electronic. Nevertheless, in excess of 50% of the population of the United States is serviced by electronic central offices. *See also* note 29, *supra*.

[35] This issue was addressed by the following commenters: BCR, Teltec, USTA, MPSC, Contel and Mr. William T. Zaumen. *See also* Memorandum dated April 23, 1984 regarding *Ex Parte* Contact with David Mason; Transcript of the April 16, 1984 *Ex Parte* Contact with industry representatives from AT&T, BCR and NYNEX, discussion beginning at 9.

[36] *See NOI* at 4.

[37] *See* Transcript of the April 16, 1984, *Ex Parte* Contact with industry representatives from AT&T, BCR and NYNEX, beginning at 9.

[38] *See* Comments of Families Alert, APSC, AT&T and MPSC. To eliminate the cost of operator assistance, Nancy Bigwood suggests requiring the use of telephone credit cards. USTA would favor this approach on a voluntary basis only. AT&T would require a credit card restriction in addition to an identification or access code.

Not only would requiring telephone company operators to screen calls to "dial-a-porn" services on an individual basis impose an enormous expense on the telephone companies, but it could also place common carriers in the position of actively participating in offering "dial-a-porn" services, thereby exposing them to liability under section 223(b). *See* discussion beginning at para. 12, *supra*. *See generally* Comments of Teltec, USTA and MPSC. In this regard, MPSC stated that "common carriers should clearly not be required to take the [credit card] account number information unless provided a special fee [by the message provider] * * * however, primary responsibility should reside with the provider."

[39] *See NPRM* at 4.

services function by allowing multiple callers virtually unlimited simultaneous access to pre-recorded messages, we suggested that requiring operator intervention would be economically impracticable, since such intervention on an individual call basis would involve substantial administrative burdens.[40] Our *NPRM* further questioned whether a fully automatic screening device involving an access or identification code, without the additional safeguard of operator assistance, would fulfill our statutory obligation to restrict minor's access to "dial-a-porn" services.

28. According to commenters American Legal Foundation ("ALF") and Carlin Communications and Drake Publishers, Inc. ("Carlin and Drake"), the interposition of an automated access or identification code system would be unpalatable administratively. Carlin and Drake also maintain that such a system would be financially prohibitive as well. From an administrative standpoint, each person who desired access to "dial-a-porn" services would probably be required to fill out some type of application form. This form would then be sent to the appropriate "dial-a-porn" message service provider who would have to rely on some system of age verification.[41] The inconvenience associated with this practice could discourage many adults from using these services, effectively limiting the pool of prospective callers, and thereby placing the financial viability of these services in jeopardy.[42] Commenters American Civil Liberties Union ("ACLU") and United States Telephone Association ("USTA") opposed the adoption of an access code system on the basis that such regulation would not only be ineffectual, but would discriminate against and impose burdens upon those adults who do not have access or identification codes but wish to patronize "dial-a-porn" services.[43]

29. As in the case of an operator intervention scheme, we believe that the imposition of an access or identification code restriction would place substantial economic and administrative burdens on recorded service providers. With regard to live services, the benefits to be derived from the imposition of an identification or access code requirement would prove inconsequential, since most of these services already rely on payment by credit card. We consequently reject this regulatory alternative.

3. Advertisements

30. Another approach presented in our *NPRM*, and supported by some commenters,[44] involves restricting advertisements for "dial-a-porn" service numbers to the inside pages of magazines available only to adults. While such course of action represents a minimally intrusive encroachment upon the dissemination of, and voluntary access to, "dial-a-porn" programming, we question the efficacy of such a regulation. "Dial-a-porn" services are currently advertised in magazines supposedly restricted to adults, yet it is obvious that minors are not substantially impeded from acquiring the telephone numbers for these services.[45] Moreover, it is unclear that Congress intended section 223(b) as authorization to impose advertising restrictions upon the print media.[46]

4. Disclaimers

31. Several commenters recommended that "dial-a-porn" service providers be required to preface their messages with a brief disclaimer.[47] We have serious reservations as to whether a disclaimer requirement would satisfy our statutory mandate to restrict access to obscene or indecent telephone messages by persons under eighteen years of age. Not only do we believe that the insertion of a disclaimer would fail to restrict transmission of obscene or indecent communications, but we suggest that such disclaimers might well prove an added enticement to minors.[48] For these reasons, we must also reject this approach.

5. Goal-Oriented Approach

32. Our *NPRM* also noted that the promulgation of specific regulatory measures might not be practical, constitutional or feasible, and thus explored the contingency of adopting a case-by-case, goal-oriented approach. Under this construct, "dial-a-porn" message providers would submit for Commission approval a plan designed to restrict access to adults only. Several commenters endorsed this concept on the basis that it would minimize the Government's censorial role and thus lessen the ensuing risk of constitutional challenge.[49] We believe, however, that this scheme suffers from several flaws, not the least of which is it would not, in all likelihood, lessen the Government's involvement in regulating "dial-a-porn" services.

33. As an initial matter, we believe that administrative review on a case-by-case basis of every proposal that would be submitted by "dial-a-porn" operators in compliance with this approach would impose a severe burden on the Commission's limited resources. Finally, we see no advantage to adopting such an approach, for review of the record in this proceeding indicates that only a limited number of viable regulatory options are available. In light of the foregoing, we fail to see the wisdom in adopting a case-by-case method.

6. Credit Card Restriction

34. Since credit cards are not routinely issued to minors without parental authorization, services that require the giving of a credit card [50] number in order

[40] *Id.*

[41] For instance, to require operators to verify the age of each of the approximately 500,000 persons per day who call the High Society "dial-a-porn" service in New York would entail costs so substantial that the net effect would be to curtail access of the service to adults as well as minors. *See NOI* at 3, note 3.

[42] According to Carlin and Drake, to remain operable, their service must receive and maintain a minimum number of calls per month. Thus, they argue that to require operator verification for each of these calls would be prohibitive.

[43] ACLU also stated that children intent upon using their parent's access cards or codes will find a way to gain access to them. Families Alert would also reject this option unless the access codes are changed frequently and operator assistance is required.

[44] *See NPRM* at 3; *see also* Comments of Carlin and Drake, Families Alert, MPSC and Mrs. Elizabeth Weddington.

[45] *See* our *NOI* at 4, wherein it states: Teenagers and pre-teenagers are evidently among those who have been dialing the number. This is of particular concern to parents because, except to the extent the calls are made from the house and are long-distance access is difficult to detect and control. Access to this service by children has similarly alarmed many congressmen. On May 6, 1983, forty-six congressmen sent a letter to Chairman Fowler expressing their concern and urging that the dial-a-porn service be stopped.

See also note 7, *supra; see generally* Comments filed by Dennis Dillon, Muncie, Indiana Residents Against Pornography, MPSC, CDL, Families Alert, ALF, United States Catholic Conference ("USCC"), APSC, Susan Rogers, Mrs. Elizabeth Weddington, Nancy Bigwood and Citizens Against Pornography ("CAP").

[46] *See e.g., GTE Service Corporation* v. *FCC*, 474 F.2d 724 (8th Cir. 1973). Commenters who question our authority in this regard include ACLU, ALF and Carlin and Drake.

[47] *See* Comments of AT&T, Carlin and Drake and MPSC. MPSC suggested a disclaimer to warn the listener that transmission of obscene or indecent communications to persons under eighteen years of age "is a federal violation subject to $50,000 civil fine." Carlin and Drake suggested a five second announcement to alert callers that the message which follows is intended for individuals over eighteen years of age and to instruct underage callers to hang up.

[48] *See* comments of Susan Rogers.

[49] *See* Comments of USTA, AT&T, BCR and APSC. CAP suggested that the message provider fashion "stringent" regulations "to enforce the planned limitations to access to minors, subject to approval by the F.C.C. and [a] panel of concerned citizens."

[50] Typical credit cards include Visa, American Express, Mastercard, and Diner's Club.

to gain access are generally available to adults only.[51] Along with the many commenters favoring this approach,[52] we believe that imposition of a credit card restriction upon "dial-a-porn" providers will effectively ensure that minors are denied access to such services. The age requirement for obtaining a credit card combined with the fact that minors who are issued credit cards are usually subject to parental supervision as to use of the card, should effectively prevent access by underage callers.[53] We will therefore allow those message services that require payment by credit card to operate on a twenty-four hour basis.

7. Limiting Operational Hours

35. Another possible restriction proposed in our *NPRM* involves limiting operation of "dial-a-porn" services. Specifically, we considered the feasibility or allowing "dial-a-porn" operations only between the hours of 9:00 p.m. and 8:00 a.m. Eastern Time,[54] which would encompass the period of 6:00 p.m. to 8:00 a.m. in all Continental United States time zones, a time period during which we believed a majority of parents would be available to supervise the actions of their children. Moreover, we suggested allowing the operation of these services between 6:00 p.m. and 8:00 a.m. local time in Hawaii and Alaska, respectively.[55] Many commenters supported this approach. We think it noteworthy that among the commenters supporting this proposal is Peter F. Cohalan, whose complaint against New York Telephone Company for allowing High Society Magazine to transmit "dial-a-porn" communications over its facilities initiated our inquiry into "dial-a-porn" services. Mr. Cohalan endorses our proposed operational hour restriction as "a reasonable attempt to implement the clear intent of Congress, as expressed in 47 U.S.C. 223, to protect persons under eighteen years of age from "dial-a-porn".[56] After weighing the various competing considerations before us, we have concluded that, in the absence of an economically feasible screening or blocking technique, an operational hour restriction would effectively restrict access by minors without presenting any serious constitutional concerns,[57] and without imposing any undue financial burden on service providers,[58] Subscribers, carriers, or the Government.

36. Accordingly, we have concluded that we will allow operation of "dial-a-porn" services only between the hours of 9:00 p.m. and 8:00 a.m. Eastern Time, a time during which parents are most likely to be in a position to supervise their children's activities. We chose this period in order to encompass the period from 8:00 a.m. to 6:00 p.m. as the prohibited time period in all zones of the Continental United States.[59] In our

[51] *See NPRM* at 2. Under this type of payment system, the caller is required to give a credit card number before gaining access to the message in question.

[52] *See Comments* of AT&T, Families Alert, MPSC, Suellen Wilson, Kathleen Romanos, Helen Hamelton, Mr. or Mrs. Husack, Michael Hirsch, Jill Draper, Daniel Weisswasser, Bruce L. Read, Eileen Wright and Mrs. Fred Wiggins. To minimize the chances of minors' gaining access to those services, AT&T recommends the use of an individual access or identification code in conjunction with a credit card restriction. *See* note 38, *supra*.

[53] As with an access code system, commenters Carlin and Drake, ACLU and USTA question the efficacy of a credit card restriction and suggest such a measure would discriminate against adults who do not have credit cards. According to USTA, if this "otherwise constitutionally impermissible" restriction were required by the Commission on a voluntary basis, it would support it as well as an operational hour limitation. With respect to the constitutionality of this credit card restriction, *see* our discussion beginning at para. 38, *infra*.

[54] The term Eastern Time encompasses daylight saving time. Thus, Eastern Time "means eastern standard time during that part of the year (last Sunday in October to last Sunday in April) when *it* is in effect, and eastern daylight saving time during that part of the year (last Sunday in April to last Sunday in October) when *it* is in effect." *See* Letter from Robert I. Ross, Office of Regulation and Enforcement, United States Department of Transportation dated May 23, 1984.

[55] As background to this discussion, under the Uniform Time Act of 1966, 15 U.S.C. 260 *et seq.*, the United States and its possessions are divided into eight time zones. The Continental United States is divided into the following four time zones: Eastern Standard Time ("EST"), Central Standard Time ("CST"), Mountain Standard Time ("MST") and Pacific Standard Time ("PST"). It should also be noted that Puerto Rico and the Virgin Islands observe Atlantic Standard Time ("AST") Alaska observes Alaska Standard Time ("ALST"). Hawaii observes Hawaii-Aleutian Standard Time ("HST") and Samoa follows Samoa Standard Time ("SST"). *See* Table in *Appendix F*. For purposes of comparison, when it is 7:00 p.m. AST, it is 6:00 p.m. EST, 5:00 p.m. CST, 4:00 p.m. MST, 3:00 p.m. PST, 2:00 p.m. ALST, 1:00 p.m. HST and 12:00 noon SST; at maximum, a four hour time difference between the Continental United States, and Puerto Rico and the Virgin Islands. In contrast, there is a significant time difference between the Continental United States and Alaska, Hawaii and Samoa. We observe, however, that few comments were received in this proceeding from areas outside the Continental United States. *See Appendix C*.

It should also be taken into consideration that certain counties in the states of Arizona and Indiana are exempt from observance of daylight saving time by law. Although these counties are one hour behind the standard time of their respective zones during certain times of the year, they still fall within the 6:00 p.m. to 8:00 a.m. period that we envisioned would encompass all Continental United States time zones. *See NPRM* at 3; *see also* discussion in note 59, *infra*.

[56] *See* Comments of Mr. Peter Cohalan. As Mr. Cohalan elaborates: As an early advocate of judicial or legislative action in response to this new medium for pornographers, my position has always been that children must be protected from the obscene and sexually suggestive telephone messages that are now available on a 24-hour basis, each and every day. Correspondence and telephone calls that we have received from parents throughout the nation unanimously support any action that would either ban "dail-a-porn" or restrict its availability to children.

See also Comments of Families Alert (only allow operation between 10:00 p.m. and 6:)0 a.m.), ALF, APSC, USCC, Mrs. Elizabeth Weddington, Bonne Selby, Mrs. John Armendariz, Helen Hamelton, Mr. or Ms. Husack, Patricia N. Colbert and Suellen H. Wilson. USTA supports the voluntary adoption of this approach. *See also NPRM* at 2; discussion beginning at para. 2, *supra*. ALF similarly suggests that an operational hour restriction "is consistent with the tradition established in broadcasting of limiting mature subject matter to those hours when parents are likely to be home and able to supervise their children."

[57] Indeed, we note that the Supreme Court in *FCC* v. *Pacifica Foundation*, 438 U.S. 726 (1978), upheld a Commission finding tht certain words used in a radio monologue were indecent under 18 U.S.C. § 1464 when those words "were broadcast at a time when children were undoubtedly in the audience (*i.e.*, in the early afternoon)." As explained in our *NPRM*.

In *FCC* v. *Pacifica Foundation*, the Supreme Court suggested that time of day could affect whether certain conduct was prohibited by the obscenity laws. (Citation omitted.)

See NPRM at 3; *NOI* at 8. *See also* Reply Comments of USCC. At least in the broadcast context, the Court implied that although certain conduct may be unacceptable during the day, such conduct may be acceptable during the evening hours when children are less likely to be in the audience. *See* 438 U.S. at 750, note 28.

[58] According to Carlin and Drake, a majority of the telephone calls received by its "service are received between the hours of 8:00 a.m. and 9:00 p.m. Eastern Time, the hours during which the Commission suggests restricting access entirely." They contend that such a prohibition could prevent it from "fulfilling the minimum financial prerequisites" to continue operating its service. Moreover, Carlin and Drake note that during most of the prohibited time period, children "are presumably at school and unable to access" their service.

On the basis of the record in this proceeding, we find these assertions to be unsupported. There is no evidence that adults who currently patronize these services during the daytime would refrain from using these services althogether, rather than shifting their use to late evening hours. As a general matter, commenters favoring an operational hour restriction endorsed the 8:00 a.m. to 9:00 p.m. time restriction set forth in our *NPRM*. If, however, we are presented with evidence at some point in the future demonstrating that our operational hour restriction serves as a bar to adults' access to these services by causing them to cease operation altogether, we will reconsider whether our regulation has reduced the adult population to experiencing only that which is fit for minors in contravention of the Supreme Court's holding in *Butler* v. *Michigan*, 352 U.S. 380, 383 (1957).

[59] It was necessary to select a uniform time for the entire United States since, as stated by BCR, the capability for selective blocking of seven or ten digit telephone numbers for various parts of the country on a time of day basis does not currently exist. *See NPRM* at 3; *see also* discussion of blocking generally at paras. 19 through 26, *supra*. For this reason, we have determined that we cannot prohibit these operations between 6:00 a.m. and 8:00 p.m. local time in Alaska and Hawaii, respectively. If we were to expand the hours of prohibition to include Alaska and Hawaii, there would be such a small window of accessible time available to these services, that we would effectively prohibit access

Continued

judgment, it is reasonable to conclude that during this core period of 6:00 p.m. to 8:00 a.m. parents will be in a position to monitor their children's activities. Moreover, we do not believe that this restriction will unreasonably infringe on adults' access to "dial-a-porn" message services.

37. Implementation of an hour restriction appears to present a most effective method of limiting the availability of recorded "dial-a-porn" services to minors, without, as in the case of access or blocking requirements, rendering operation of these services financially prohibitive.[60] Moreover, such a restriction better enables parents to supervise their children's use of the telephone, a result consonant with the purpose of Congress in enacting section 223(b).[61]

38. While some commenters raised questions as to the constitutionality of an operational hour restriction,[62] we believe that our regulation will withstand constitutional challenge. In effect, our regulation allows "dial-a-porn" services to operate on a twenty-four hour basis on condition that such services require payment exclusively by credit card. Although an hour restriction may curtail, to some extent, the operation of those services who do not accept credit cards we believe this to be unavoidable insofar as it is necessary to restrict access by minors to these services.

39. ACLU argues that an individual's constitutional right to privacy forestalls the Government from restricting access to "dial-a-porn" services.[63] While the Supreme Court has recognized a right to possess obscene materials in the privacy of one's home,[64] it has also held that those same materials lose their protection outside the privacy of one's domicile. The Court has further delineated that an individual has no right to import [65] or to utilize interstate common carriage to transport obscene materials,[66] irrespective of whether the material is intended to be used for private or commercial purposes. Although the law is less clear with respect to the protection accorded to indecent materials, it has been held that indecent speech may be regulated if minors are likely to hear it.[67]

40. It could also be argued that obscene speech is not entitled to First Amendment protection, and that regulation of such speech is permissible even to the extent of outlawing it altogether.[68] However, we need not resolve that issue in the context of this proceeding. For even if "dial-a-porn" services are intitled to First Amendment protection under the *Stanley* v. *Georgia* analysis,[69] it is well-established that protected speech may be subject to reasonable "time, place and manner" limitations.[70] The regulation we are adopting is specifically tailored to restrict minors' access to "dial-a-porn" message services. Insofar as it incidentally restricts adults' access to these services, we believe it is only to the extent necessary to restrict access by minors.[71] In our view, this regulation represents a reasonable "time, place and manner" limitation.

41. Nor is the regulation we are adopting infirm under the Supreme Court's holding in *Butler* v. *Michigan*, which provided that the adult population cannot be reduced to experiencing only that which is fit for minors.[72] Under our regulation, adults may have access to "dial-a-porn" services during specified evening hours when parents are generally in a position to supervise their children's telephone activities, or at any time if the service in question restricts method of payment to credit cards.[73] Based on the foregoing discussion, we believe that this measure is fully consistent with the First Amendment.

III. Final Regulatory Flexibility Analysis

42. Pursuant to relevant provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, we have reviewed this action to determine if there will be a significant impact on a substantial number of small businesses. Although no comments were received that directly addressed our initial regulatory flexibility analysis, we believe that our regulation will have some impact on those small business entities Congress had in mind when recently amending section 223 of the Communications Act. We find, however, that any possible impact on these entities is far outweighed by the fulfillment of our statutory mandate to restrict the accessibility of "dial-a-porn" services to those under the age of eighteen.

IV. Conclusion

43. In accordance with our statutory mandate, we are hereby issuing a regulation which we believe reasonably restricts access by minors to "dial-a-porn" services. Compliance with this regulation by "dial-a-porn" message service providers constitutes a defense to prosecution under section 223(b).

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to these services by adults, thereby possibly violating *Butler* v. *Michigan*, 352 U.S. 380 (1957). In *Butler*, the Supreme Court found a statute unconstitutional that had the effect of preventing adults from having access to materials that were judged to have a potentially deleterious influence on children. *Id.* at 382–83. In accord with the *Butler* rationale, our *NPRM* noted that if we could not find a regulation that would restrict access to all children, all of the time, "then less specific measures will have to suffice." *See NPRM* at 4.

Such an approach would also be consistent with the legislative intent as explained by Congressman Kastenmeier as follows: We leave it to the FCC to prescribe the specific regulations that permit adult access while limiting children's access. If, however, no such regulations are feasible, then less restrictive measures rather than broader restrictions will have to suffice to avoid any constitutional infirmity. (Citation omitted.)

[60] *See* paras. 24 and 27.

[61] As reflected by Congressman Kastenmeier in his remarks: While time zone differences theoretically make it possible for a child in Alaska or Hawaii to call a dial-a-porn number in New York, it seems to me that parental responsibility must play a role here. If a family's telephone bill shows long distance calls—including any to a dial-a-porn number—it should be up to the parents, not the Congress or the FCC, to set rules which limit access by children to these messages.

See 105 Cong. Rec. E5966 (Extension of Remarks December 14, 1983) (remarks of Rep. Kastenmeier).

Commenting parties who emphasized the significance of parental supervision included: Denis Dillon, ACLU, ALF, Susan Rogers, Carlin and Drake.

[62] *See generally* Comments of ACLU, USTA, Susan Rogers and Carlin and Drake.

[63] *See also* Comments of Carlin and Drake, Time and Viacom and BCR.

[64] *Stanley* v. *Georgia*, 394 U.S. 557 (1969). For a later discussion of the case, *see United States* v. *12 200-ft Reels of Film*, 413 U.S. 123, 126–127 (1973); *Paris Adult Theatre I* v. *Station*, 413 U.S. 49, 65–66 (1973). *See also* Comments of MIM, ACLU, USCC, CDL, and Susan Rogers.

[65] *United States* v. *12 200-ft. Reels of Film*, note 64, *supra*.

[66] *United States* v. *Orito*, 413 U.S. 139 (1973). *See also* Comments of Families Alert and CDL.

[67] *FCC* v. *Pacifica Foundation*, 438 U.S. 726 (1978). *See generally*, Comments of ALF, USCC, CDL, Susan Rogers, USTA and MIM. According to Time and Viacom "[t]he limited holding in *Pacifica* is not applicable to be circumstances involved in this proceeding, however, because communications transmitted by common carriers from a particular sender to a particular receiver or group of receivers cannot be analogized to communications broadcast over the air by radio for all the world to hear." *See also* Comments of Carlin and Drake and ACLU.

[68] *See Miller* v. *California*, 413 U.S. 15 (1972). *See generally* Comments of ALF, USCC, CDL, Susan Rogers, USTA, Time and Viacom and ALCU.

[69] *See* notes 64 and 65, *supra* and accompanying text.

[70] *See Cox* v. *New Hampshire*, 312 U.S. 569, 575 (1941). *See also* Comments of APSC and ALF.

[71] The government's interest in protecting the well-being of minors is compelling. *See New York* v. *Ferber*, 458 U.S. 747 (1982). *See generally* Comments of Denis Dillon, APSC, CDL, Susan Rogers, Time and Viacom and Peter F. Cohalan; Reply Comments of USCC. Nevertheless, USTA cautions that "even minors have First Amendment freedoms and it is unclear to what extent" access by children can be banded.

[72] 352 U.S. 380, 383 (1957) (state statute which prohibited the distribution of material having a "potentially deleterious influence upon youth" struck down as over inclusive in that "the incidence of this enactment is to reduce the adult population . . . to reading only which is fit for children"). *See also* Comments of APSC.

[73] *See generally* Comments of ALF, MIM and APSC; *NOI* at 8; *NPRM* at 3.

44. Accordingly, it is ordered, that Part 64 of the Commission's Rules and Regulations is amended to provide for a new Subpart B as set forth in *Appendix E* attached hereto, effective July 19, 1984.

45. It is further ordered, that the Secretary shall cause a copy of this *Report and Order* to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604.

46. It is further ordered, that this proceeding is terminated to the extent that a regulation has been promulgated.[74]

47. Authority for this action is contained in section 8(c) of the Federal Communications Commission Authorization Act of 1983,[75] and sections 4(i), 303(r) and 223(b)(2) of the Communications Act of 1934, as amended.

48. For general information regarding this proceeding, contact Sharon Kelley or Holly Berland, Office of General Counsel, Federal Communications Commission, Washington, D.C. 20554, (202) 632-6990.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Note.— Appendices A, B, C, D, and F, containing information on commenters and comments and a map of the standard time zones of the U.S., will not be printed herein to minimize publishing costs. However, they may be viewed in the FCC Dockets Branch, Rm. 239, and the FCC Library, Rm. 639, both located at 1919 M St., NW., Washington, D.C. 20554. Appendices A, B, C, and D are filed with the original.

Appendix E

Part 64, of Chapter I of Title 47 of the Code of Federal Regulations is amended to provide for a new Subpart B, § 64.201 as follows:

PART 64—[AMENDED]

Subpart B—Restrictions on Obscene or Indecent Telephone Message Services

§ 64.201 Restrictions on obscene or indecent telephone message services.

It is a defense to prosecution under section 223(b) of the Communications Act of 1934, as amended, 47 U.S.C. 223(b) (1983), that the defendant has taken either of the following steps to restrict access to communications prohibited thereunder:

(a) Operating only between the hours of 9:00 p.m. and 8:00 a.m. Eastern Time, or

(b) Requiring payment by credit card before transmission of the message(s).

[FR Doc. 84-15792 Filed 6-18-84; 8:45 am]

BILLING CODE 6712-01-M

[74] The Petition for a Declaratory Ruling filed by Multipoint Distribution Systems, Inc. will be considered separately in a subsequent *Order*. *See also* note 10, *supra*.

[75] Pub. L. 98-214, effective December 8, 1983.

Proposed Rules

Federal Register
Vol. 49, No. 119
Tuesday, June 19, 1984

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

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

Proposed Revision of the U.S. Standards for Corn, U.S. Standards for Sorghum, and U.S. Standards for Soybeans

Correction

In FR Doc. 84–15190, beginning on page 23651, in the issue of Thursday, June 7, 1984, make the following corrections:

1. On page 23652, in the first column, in the third complete paragraph, in the second line, "810.350–" should read "810.351–".

2. On page 23652, in the third coloumn, in § 810.353(a), in the table, in the column headed "heat damaged kernels (percent)", ".2" and ".5" should read "0.2" and "0.5", respectively.

3. Also on page 23652, in the third column, in §810.557, in the table, in the column headed "Heat damaged (percent)", ".2" and ".5" should read "0.2" and "0.5", respectively in the same table in paragraph (b), in the last line "1,000" should read "per 1,000".

4. On page 23653, in §810.603, in the table, in the column headed "Heat damaged (percent)", ".5" should read "0.5".

BILLING CODE 1505-01-M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 84-019]

Change in Disease Status of France Because of African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations concerning the importation into the United States of pork and pork products by removing France from the list of countries regulated because of African swine fever (ASF). It has been determined that ASF no longer exists in France. The effect of the adoption of this proposal would be to remove certain restrictions on the importation of pork and pork products from France because of ASF. However, France is not included in the lists of countries declared to be free of rinderpest and foot-and-mouth disease, hog cholera, and swine vesicular disease. Therefore, even if the proposal is adopted, the importation of pork and pork products into the United States from France would remain subject to restrictions imposed because of these diseases.

DATE: Written comments must be received on or before August 20, 1984.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. M. R. Crane, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436 8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR 94 (the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including African swine fever (ASF).

Section 94.8 of the regulations restricts the importation into the United States of pork and pork products from listed countries in which ASF exists or the Administrator of the Animal and Plant Health Inspection Service has reason to believe the disease exists because of the following factors:

1. When a country allows the importation of host animals, pork or pork products or vectors of the disease from a country affected with African swine fever under conditions less stringent than those prescribed for importing host animals, pork or pork products or vectors of the disease into the United States from a country affected with African swine fever; or

2. When a country allows the movement or use of African swine fever virus or cultures under conditions less stringent than those prescribed for similar movements or use into or within the United States; or

3. The proximity of a country to another country or countries with known outbreaks of African swine fever; or

4. A country's lack of a disease detection, control or reporting system capable of detecting or controlling the disease and reporting it to the United States in time to allow this country to take appropriate action to prevent the introduction of African swine fever into this country; or

5. Any other factor or circumstance found to exist which constitutes a risk of introduction of the disease into the United States.

The restrictions in § 94.8 on the importation of pork and pork products from listed countries are designed to ensure that the pork or pork products are cooked or heated sufficiently to destroy organisms capable of spreading ASF.

Because of an outbreak of ASF reported to have occurred on January 15, 1974, France was added on March 21, 1974 (39 FR 11176) to the list of countries regulated because of ASF. That same year the government of France began an eradication program which included slaughter of swine confirmed or suspected of having ASF, and cleaning and disinfection of the farms and buildings housing such swine. Based on surveys conducted by the Government of France, it has been determined that the last case of ASF in France was diagnosed in 1974.

The Department recently received a request from the Ministry of Agriculture of France that the regulations be amended by removing France from the list of countries regulated because of ASF based on the assertion that ASF no longer exists in France. Based on information furnished by France and an evaluation of the factors referred to above, it has been determined that there is no reason to believe that ASF exists in France. Therefore, this document proposes to remove France from the list of countries in which ASF exists or is reasonably believed to exist.

Effect of Adoption of This Proposal

The regulations in § 94.8 currently provide in part, that:

(a) No pork or pork product will be permitted entry into the United States from any listed country where ASF exists or the Administrator has reason to believe it exists unless:

(1) Such pork or pork product has been fully cooked by a commercial method in a container hermetically sealed promptly after filling but before such cooking, so that such cooking and sealing produced a fully-sterilized product which is shelf-stable without refrigeration; or

(2) Such pork or pork product is not otherwise prohibited importation under this part and is consigned directly from the port of entry in the United States to a meat processing establishment operating under Federal meat inspection, approved by the Deputy Administrator, Veterinary Services for further processing of such pork or pork product by heat.

(b) Pork or pork products consigned from the port of entry to an approved establishment under the provisions of paragraph (a)(2) of this section shall be moved from the port of entry to the approved establishment under Customs seals or seals of the Deputy Administrator, Veterinary Services and shall be otherwise handled as the Deputy Administrator, Veterinary Services may direct in order to guard against the introduction and dissemination of the contagion of African swine fever. Seals applied under this section shall not be broken except by persons authorized to do so by the Deputy Administrator, Veterinary Services.

Pork or pork products from France would no longer be subject to these provisions if the proposal were adopted. However, pork or pork products from France would remain subject to the provisions in Part 94 because of rinderpest and foot-and-mouth disease, hog cholera, and swine vesicular disease. These provisions, among other things, require that pork or pork products from France be heat treated or cured as a condition of importation.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule would not have an annual effect on the econony of $100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would have no 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.

It is anticipated that insignificant quantities of pork or pork products would be imported into the United States from France as a result of the adoption of this proposal.

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

Under the circumstances explained above, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Rinderpest, Swine vesicular disease.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

§ 94.8 [AMENDED]

Accordingly, it is proposed to amend 9 CFR Part 94 by removing "France" form the introductory material in § 94.8.

Authority: Sec. 2, 32 Stat. 792, as amended; secs. 2, 3, 4, and 11, 76 Stat. 129, 130, 132; 21 U.S.C. 111, 134a, 134b, 134c, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, DC, this 13th day of June 1984.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-16311 Filed 6-18-84; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

Material Control and Accounting Requirements; Facilities Possessing Formula Quantities of Strategic Special Nuclear Material; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On February 2, 1984, a Notice of Proposed Rulemaking entitled Material Control and Accounting Requirements; Facilities Possessing Formula Quantities of Strategic Special Nuclear Material, was published in the Federal Register (49 FR 4091). Comments were requested on or before June 5, 1984. Since several parties have commented that insufficient time was provided to review the technically complex, performance-oriented rule, the NRC is issuing this notice extending the comment period.

DATE: New comment period expires September 5, 1984. Comments received after this date will be considered if it is practical to do so but assurance of consideration cannot be given except as to comments received before this date.

ADDRESS: Send comments to U.S. Nuclear Regulatory Commission, 1717 H St., NW., Washington, D.C. 20550 (Attention: Docketing and Services Branch).

FOR FURTHER INFORMATION CONTACT: Mr. C. W. Emeigh, Fuel Facility Safeguards Licensing Branch, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, (202) 427-4040.

Dated at Washington, D.C., this 13th day of June 1984.

For the Nuclear Regulatory Commission.

Robert F. Burnett,

Director, Division of Safeguards.

[FR Doc. 84-16331 Filed 6-18-84; 8:45 am]

BILLING CODE 7590-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1032

Commission Involvement in Voluntary Standards Activities

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed amendment.

SUMMARY: The Commission has regulations on its involvement in voluntary standards activities. The Commission is proposing to amend those regulations by adding a new section that focuses on possible recognition of some voluntary standards by the Commission.

ADDRESS: Comments should be submitted, preferably with four copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

DATES: Comments should be submitted by August 20, 1984. The amendment is proposed to become effective 30 days after it is published in the Federal Register in final form. A public hearing will be held on July 18, 1984.

FOR FURTHER INFORMATION CONTACT: Douglas L. Noble, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION:

A. Background

During its ten-year existence, the Consumer Product Safety Commission (CPSC) has been interested in and involved in voluntary standards that address risks of injury presented by consumer products. The Commission both monitors and participates in the development of such voluntary standards, according to its regulations. 16 CFR Part 1032—Commission Involvement in Voluntary Standards Activities.

The regulations also address, to a lesser extent, the Commission's role in the support of some voluntary standards that have been adopted and implemented. For example, the regulations state that the Commission's support of the voluntary standards programs "may include * * * [p]roviding assistance on methods of disseminating information and education about the voluntary standard or its use * * * [and] * * * [e]ncouraging state and local governments to reference or incorporate the provisions of a voluntary standard in regulations or ordinances * * *." 16 CFR 1032.4.

Nevertheless, the Commission has decided to focus on its involvement with voluntary standards. This focused attention has been spurred, at least in part, by discussions on this subject among members of the American National Standards Institute/Consumer Product Safety Commission Coordinating Committee along with CPSC staff in reviewing new ways to look at voluntary standards in the future. Those discussions have involved a number of issues, possible benefits, possible disadvantages, and specific ideas on how the Commission could help to support voluntary product safety standards that it finds to be effective. Copies of some documents generated by the Committee on this topic are available from the Commission's Office of the Secretary (address provided above).

B. Definitions

For the purposes of this proposed amendment a clear understanding of terms is essential as they apply to the Commission's position on a particular voluntary standard. The Commission has identified three levels of support that it could provide to voluntary standards development. These levels of support are defined below in descending order of magnitude:

Adoption

Adoption of a particular voluntary standard means its establishment as a mandatory standard by the Commission. (However, the Commission cannot issue a mandatory standard without making the statutory findings, including the finding that it is unlikely that there will be substantial compliance with the voluntary standard.) As such, this would be the most far-reaching of any Commission action in approving a voluntary standard.

Endorsement

Endorsement of a voluntary standard means a formal Commission approval of the standard to the exclusion of any other voluntary standard that may address the same product. Manufacturers whose products are certified to meet the standard could take full advantage of this Commission endorsement in their attempts to market their product as widely as possible.

Recognition

Recognition of a voluntary standard means that the Commission acknowledges the existence of a particular voluntary standard and, where appropriate, may urge manufacturers to comply with the voluntary standard and would take the necessary steps to make consumers aware of the existence of any safety benefits provided by the standard.

C. Proposed Amendment

Because of the importance of the recognition issue, the Commission is proposing to address it in a new and separate section of its regulations. While some of the existing sections may overlap slightly with the proposed new section, none of them is at all inconsistent with the section proposed below.

The proposal explains that the Commission's high level of activity in the developing of voluntary standards has not been matched by the same level of activity in support of successful voluntary standards development efforts. The major purposes of such recognition would be to enhance consumer selection of safer consumer products and encourage industry to adhere to effective voluntary standards.

Under the proposal, the Commission would select for recognition a limited number of voluntary standards that were developed with significant CPSC staff involvement. Possible Commission efforts regarding such standards might include public statements encouraging industry to adopt and use them, as well as information and education statements directed at consumers.

D. Effect on Small Business

The regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.* (requires that whenever an agency of the federal government publishes a proposal under the Administrative Procedure Act (5 U.S.C. 553), it should endeavors to give particular consideration to small businesses, small non-profit organizations, and small local governments (collectively called "small entities") that may be subject to the agency's requirements.

In accordance with section 605(b) of the RFA, the Commission has certified that the proposed amendment on recognition of voluntary standards, if issued in final form, would not have a significant economic impact on a substantial number of small entities. Certain support activities of the Commission could well have an economic impact—either positive or negative—on small entities. For example, the competitive stance of various companies in an industry could be effected by such activities. However, this proposed amendment is procedural in nature and would not have any direct economic impact on any small (or large) "entity." Therefore the Commission has not prepared an initial regulatory flexibility analysis of the probable effect of the proposal on small entities, in accordance with section 603 of the RFA.

E. Environmental Considerations

The amendment proposed below has little or no potential for affecting the human environement. *See* 16 CFR 1021.5. Therefore, neither an environmental assessement nor an environmental impact statement is required.

F. List of Subjects in 16 CFR Part 1032

Business and industry, Consumer protection, Voluntary standards.

G. Conclusion

Pursuant to provisions of the Consumer Product Safety Act (Pub. L. No. 92–573, 86 Stat. 1207 *et seq.*; 15 U.S.C. 2051 *et seq.*), as amended, the Commission proposes to amend Title 16, Chapter II, Subchapter A by adding a new §1032.8 to Part 1032 as follows:

§ 1032.8 Recognition of voluntary standards.

(a) *Background.* The Commission, since its inception, has been involved with trade associations, voluntary standards organizations, and manufacturers in developing voluntary

standards and other cooperative activities aimed at reducing injuries and deaths associated with consumer products. The Commission's involvement, for example, has included participation with voluntary groups in the development of standards; encouraging the development of new standards or revision of existing ones; monitoring voluntary standards activities; contributing technical and injury data to aid development efforts; and occasionally encouraging consumers to buy products conforming to voluntary standards. On numerous occasions, when voluntary standards seemed to address the risk of injury and death effectively, the Commission has discontinued or deferred regulatory action in favor of a voluntary standard. However, the Commission's high level of activity in the developmental process of voluntary standards has not been matched by the same level of activity in the recognition of successful voluntary standards development efforts.

(b) *Purpose.* (1) The purpose of this section is to explain how and when the Commission may decide to recognize certain voluntary product safety standards.

(2) The purpose of such recognition is to enhance consumer selection of safer consumer products and encourage industry to adhere to specific voluntary safety standards which have been favorably evaluated by the Commission. More specifically, such recognition could provide an incentive for initiation of voluntary standards and related activities; provide manufacturers and trade associations the opportunity to take advantage of safety-related marketing benefits for products that are in conformance with effective voluntary standards; and provide encouragement to manufacturers to implement and comply with effective voluntary standards. Ultimately, the recognition of voluntary efforts should benefit the consumer by encouraging safer product design, installation, operation and maintenance. More importantly, however, recognition of voluntary standards could provide the consumer with information for selecting safer products, thus reducing injuries and deaths.

(3) The Commission believes recognition of specific voluntary standards could have a multiplier effect on safety efforts and achieve results that would be difficult to obtain by either the Commission or manufacturers working independently.

(c) *Process.* The Commission will select the standards to be recognized. Typically, such standards will have been developed in full cooperation with CPSC staff on Commission priorities, emerging safety concerns and other non-priority Operating Plan projects having significant CPSC involvement. The standards will be evaluated by the Commission and its staff prior to initiating any activities which tend to advance such standards. Where appropriate, the Commission will decide under what circumstances activities will be undertaken for encouraging the implementation of an effective voluntary safety standard.

(d) *Possible recognition efforts.* The Commission could issue a public statement encouraging industry to adopt and use a specific voluntary standard, stating that the adoption of such a standard would more likely enhance product safety of the product covered by the standard, with respect to one or more risks of injury it addresses. The Commission could assist the public in the selection of safer products by identifying the specific voluntary standards through various information/educational efforts. The Commission may, where appropriate, encourage states to adopt a voluntary standard in lieu of mandating a different state or local regulation.

(Consumer Product Safety Act, Pub. L. 92-573, 86 Stat. 1207 *et seq.*; 15 U.S.C. 2051 *et seq.*)

All comments on this proposal should be submitted, preferably with four copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, no later than August 20, 1984.

The Commission will also hold a public hearing on this proposed amendment as well as on the general issue of Commission support for voluntary standards development. This hearing shall take place on July 18, 1984 at 10:00 a.m. in the third floor conference room at 1111 18th Street NW., Washington, D.C. The Commission invites testimony not only on the proposal set forth in this document but also on the general subject of Commission support to voluntary standards and alternatives that the Commission may address. Of particular interest to the Commission would be testimony on the various levels of support, as defined at Section B of the preamble, that the Commission could provide for voluntary standards.

Anyone interested in providing testimony before the Commission should contact Mr. Sheldon Butts in the Office of the Secretary no later than July 11, 1984, and provide him with four (4) copies of a typewritten outline of such testimony before the hearing. Mr. Butts may be contacted in writing, at the address provided above, or by telephone by dialing 301-492-6800.

Dated: June 14, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-16270 Filed 6-18-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 155

[Docket No. 84N-0094]

Pickled Cucumbers; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

Correction

In FR Doc. 84-10472 beginning on page 17519 in the issue of Tuesday, April 24, 1984, make the following corrections:

On page 17520, second column, in the first table, middle column, third line from the bottom, "non-" should have read "nor".

BILLING CODE 1505-01-M

21 CFR Part 155 and 158

[Docket No. 84N-0086]

Edible Fungi and Fungus Products; Advance Notice of Proposed Rulemaking on the Possible Establishment of Standards

Correction

In FR Doc. 84-10458 beginning on page 15568 in the issue of Thursday, April 19, 1984, make the following corrections:

1. On page 15569, second column, six lines from the bottom, "FRA" should have read "FDA".

2. On page 15570, first column, second complete paragraph from the bottom, entry "2.14" should have read "2.1.14".

3. On the same page, second column, in entry 2.4, second and third lines from the bottom, the word "edible" should have read "inedible".

4. On page 15571, first column, in the table, insert the word "fungi" after "Freeze-dried" in the first line.

5. On the same page, same column, in entry 3.3.1.2, twelfth line, insert "m/m" after "1%".

BILLING CODE 1505-01-M

21 CFR Part 886

[Docket No. 82N-0179]

Reclassification of Daily Wear Optically Spherical Hydrogel (Soft) Contact Lenses; Withdrawal of Proposed Rule

Correction

In FR Doc. 84-10892 beginning on page 17523 in the issue of Tuesday, April 24, 1984, make the following corrections:

1. On page 17534, second column, ninth line, "expension" should have read "expansion".

2. On the same page, third column, first complete paragraph, last line, "ere" should have read "were".

3. On page 17538, first column, second complete paragraph, third line, "210" should have read "201".

4. On page 17541, second column, sixth line, "III and III" should have read "II and III".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-170-82]

Treatment of the Credit for Tax Withheld on Interest, Dividends, and Patronage Dividends Earned by an Estate or Trust; Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to the treatment of the credit for tax withheld on interest, dividends, and patronage dividends earned by an estate or trust that appeared in the **Federal Register** on Thursday, April 14, 1983 (48 FR 16071).

FOR FURTHER INFORMATION CONTACT: Cynthia L. Clark 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 (202-566-3288), not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document withdraws the notice of proposed rulemaking that appeared in the **Federal Register** on Thursday, April 14, 1983 (48 FR 16071). That notice contained proposed amendments to the regulations under section 643(d) of the Internal Revenue Code of 1954. If adopted, the amendments would have provided guidance relating to the treatment of the credit for tax withheld on interest, dividends, and patronage dividends received by an estate or trust. However, after the notice of proposed rulemaking was issued, section 643(d) was repealed by section 102(a) of the Interest and Dividend Tax Compliance Act of 1983. Because of the repeal, the Internal Revenue Service has decided to withdraw the proposed regulations.

Drafting Information

The principal author of this document is Cynthia L. Clark of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this document, both on matters of substance and style.

List of Subjects in 26 CFR 1.641-1.692-1

Income taxes, Estates, Trusts and trustees, Beneficiaries.

Withdrawal of Notice of Proposed Rulemaking

The proposed amendments to 26 CFR Part 1 relating to the treatment of the credit for tax withheld on interest, dividends, and patronage dividends earned by an estate or trust published in the **Federal Register** (48 FR 16071) on April 14, 1983, are hereby withdrawn.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-16349 Filed 6-18-84; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 81

[OAR-FRL 2611-1]

Approval and Promulgation of Implemrentation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The EPA announces proposed rulemaking on a revision to the ozone portion of the Ohio State Implementation Plan (SIP) to control Volatile Organic Compounds (VOC). This revision will provide an alternative emission control program (bubble) for VOC emissions from a gasoline and aviation fuel loading rack located at Standard Oil Company in Trumbull County, Ohio. EPA's proposed approval is based upon a request which was submitted by the State.

DATE: Comments on this revision and on the proposed EPA action must be received by July 19, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Uylaine E. McMahan, at (312) 353-0396, before visiting the Region V office).

Environmental Protection Agency Region V, Air and Radiation Branch 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control 361 East Broad Street, Columbus, Ohio 43216.

Comments on this proposed rule should be addressed to: (Please submit an original and 13 copies if possible) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26) USEPA, Region V, 230 South Dearborn Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 353-0396.

SUPPLEMENTARY INFORMATION: On April 7, 1982 (47 FR 150756), the Environmental Protection Agency issued a proposed Emissions Trading Policy Statement (ETPS) entitled "General Principles for Creation, Banking, and Use of Emission Reduction Credits". This statement indicated that it is the policy of EPA to encourage use of emission trades to achieve more flexible, rapid and efficient attainment of national ambient air quality standards (NAAQS). This policy statement describes emissions trading, sets out general principles EPA will use to evaluate emissions trades under the Clean Air Act, and expands opportunities for States and industry to use these less costly control approaches. The April 7, 1982, notice indicates that, until EPA takes final action on its policy statement, State actions involving emission trades would be evaluated under the provisions set forth in the proposed policy statement.

On September 13, 1983, the Ohio Environmental Protection Agency (OEPA) submitted a revision to its ozone SIP for Standard Oil Company. The revision request contains an alternative emission control program (bubble) which is in the form of a variance for VOC emissions from a gasoline and aviation fuel loading rack located at Standard Oil Company in Trumbull County, Ohio. Under the existing federally approved SIP, each gasoline and aviation fuel loading rack is subject to the control requirements contained in Ohio Administrative Code Rule 3745-21-09(Q).

In lieu of the limitations contained in the SIP, the State is proposing a bubble for two gasoline and aviation fuel loading racks. Under the proposed bubble, Standard Oil Company would reduce the allowable VOC emissions from a gasoline loading rack and, at the same time, would allow an increase in VOC emissions from an aviation fuel loading rack. The throughput at the aviation fuel loading rack is much smaller than the throughput at the gasoline loading rack. The reduction in the allowable VOC emissions from the gasoline rack (from 0.67 pounds per 1000 gallons of gasoline loaded to 0.66 pounds per 1000 gallons of gasoline loaded) is expected to more than offset the increase in allowable VOC emissions from the aviation loading racks. The SIP revision would affect the VOC emissions at the aviation fuel loading rack by removing the 0.67 pounds per 1000 gallons of gasoline loaded limitation, requiring no vapor control, but imposing an annual throughout limitation of 225,000 gallons of gasoline loaded. The expected VOC reduction from the gasoline loading rack is 0.7 tons per year (T/yr) and the increase in allowable VOC emissions from the aviation loading rack is 0.3 T/yr, leading to an overall decrease in VOC emission of 0.4 T/yr.

The Standard Oil Company is located in Trumbull County, Ohio, which is part of the Youngstown area; this area is currently designated nonattainment area for ozone. EPA approved the Part D ozone SIP for this area on October 31, 1980 (45 FR 72122) and June 29, 1982 (47 FR 28097). EPA's February 3, 1983 (48 FR 4972), **Federal Register** identified this area as likely to have attained the ozone NAAQS by December 31, 1982.

EPA has determined that the proposed bubble is consistent with EPA's proposed Emissions Trading Policy Statement. The proposed bubble consists of enforceable emission limitations, and there will be no net increase in the baseline allowable emissions. Therefore, EPA is proposing to approve the Standard Oil Company "bubble".

EPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before July 19, 1984 will be considered in EPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office as indicated at the front of this notice.

Under 5 U.S.C. 605(b), I have certified that the SIP approval does not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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 81

Air pollution control, National parks, Wilderness areas.

(Secs. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a))

Dated: March 23, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-16300 Filed 6-18-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 773

[OPTS-42055 TSH 2571-4]

Dichloromethane; Decision To Withdraw a Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; withdrawal.

SUMMARY: In the **Federal Register** of June 5, 1981 (46 FR 30300), EPA proposed the testing of dichloromethane, nitrobenzene, and 1,1,1-trichloroethane under section 4(a) of the Toxic Substances Control Act for certain health and environmental effects. A notice on nitrobenzene appears elsewhere in this issue of the **Federal Register;** 1,1,1-trichloroethane will be addressed at a later time in another **Federal Register** document. The Agency has decided not to proceed with rulemaking for dichloraomethane. Data received subsequent to the proposal are sufficient to reasonably determine or predict human dermal sensitization, and testing initiated subsequent to the proposal is expected to provide sufficient data to reasonably determine or predict the effects on human reproduction. Data received subsequent to the proposal on cardiovascular effects indicate the such effects are unlikely and do not support a finding of "may present an unreasonable risk." Also, evaluation of the comments submitted and re-evaluation of the available data and the reasoning behind the proposal have caused the Agency to conclude that there is a sufficient basis to reasonably determine or predict that the current manufacture, processing, distribution in commerce, use, or disposal of this substance does not present an unreasonable risk of adverse effects to the environment.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(a) (Pub. L. 94-469, 90 Stat. 2003 *et seq.;* 15 U.S.C. 2601 *et seq.*) of the Toxic Substances Control Act (TSCA) authorizes the Administrator of EPA to promulgate rules which require manufacturers and processors to test chemical substances and mixtures. Data developed through these test programs are used by EPA in assessing the risks that the chemicals may present to health and the environment.

Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to recommend chemical substances or mixtures for priority testing consideration by EPA under section 4(a) of the Act. The ITC designated dichloromethane (DCM) for priority testing consideration in April 1978. The ITC recommended testing of DCM, on the basis of substantial exposure, for carcinogenicity, mutagenicity, teratogenicity, other chronic effects testing, environmental effects testing, and for epidemiology studies. The ITC designation was published in the **Federal Register** of April 19, 1978 (43 FR 16684).

EPA's response to this designation was published in the **Federal Register** of June 5, 1981 (46 FR 30300) as a proposed rule on dichloromethane, nitrobenzene, and 1,1,1-trichloroethane. Nitrobenzene is addressed elsewhere in this issue of the **Federal Register,** 1,1,1-trichloroethane will be addressed in a future **Federal Register** document. EPA proposed that the following tests be performed on dichloromethane by industry and the Agency.

PROPOSED TESTING

	Industry-required	EPA-sponsored
Health Effects		
Reproductive effects	X	
Dermal sensitization	X	
Mutagenicity		X
Subchronic cardiovascular	X	
ENVIRONMENTAL EFFECTS		
Aquatic vertebrate, chronic:		
Freshwater, coldwater	X	
Freshwater, warmwater	X	
Marine, coldwater		X
Marine, warmwater	X	
Aquatic invertebrate, chronic:		
Freshwater	X	
Marine	X	
Birds, acute:		
Terrestrial	X	
Waterfowl	X	

PROPOSED TESTING—Continued

	Industry-required	EPA-sponsored
Birds, chronic:		
Terrestrial	X	
Waterfowl	X	
Terrestrial invertebrates		X
Aquatic plants, vascular:		
Freshwater		X
Marine		X
Terrestrial plants:		
Early seedling growth	X	
Life-cycle		X
Bioconcentration:		
Aquatic vertebrate	X	
Terrestrial plant	X	
Alteration of microorganism function.	X	
Ecosystem effects		X

The industry-conducted tests were proposed on the basis of a TSCA section 4(a)(1)(B) finding of substantial production and substantial or significant human exposure or substantial environmental release, except for the subchronic cardiovascular testing which was proposed under TSCA section 4(a)(1)(A) on the basis that DCM may present an unreasonable risk to health. In addition, EPA stated in the proposal that it intended to sponsor a number of mutagenicity and environmental effects tests on DCM. EPA planned to sponsor these tests because standards for environmental and mutagenicity testing and the criteria for sequencing mutagenicity testing had not yet been developed at the time of the proposal. EPA did not propose oncogenicity testing of DCM because it believed that inhalation and gavage studies being performed by the National Toxicology Program (NTP) were sufficient to reasonably determine or predict the oncogenicity of DCM.

II. EPA's Response to Public Comments

The Agency received comments from six sources: The Halogenated Solvents Industry Alliance (HSIA), Dow Chemical Company, Celanese Corporation, Vulcan Materials Company, Procter and Gamble Company and Atlantic Richfield Company. These comments questioned the Agency's basis for proposing dermal sensitization, subchronic cardiovascular, and environmental testing. The comments in general supported the Agency's proposal to test for reproductive effects.

Comments on dermal sensitization were made by all six commentors. Atlantic Richfield Company and Celanese Corporation objected to the testing because of the lack of historical evidence for the effect and the limited potential for dermal exposure due to dichloromethane's rapid evaporation from skin. Procter and Gamble and Celanese Corporation objected to the proposed test protocol. HSIA, Vulcan Materials Company, Procter and Gamble, and Dow Chemical Company took exception to the testing because they believed that existing unpublished data were sufficient to evaluate dermal sensitization. The unpublished data were submitted to the Agency by Dow Chemical Company (Ref. 15). The Agency has reviewed these data and agrees with the commentors that the data are sufficient to evaluate dichloromethane's potential for dermal sensitization and is therefore withdrawing the proposal to test for this effect.

Comments on subchronic cardiovascular testing were received from all the commentors except Procter and Gamble, stating that the Agency had failed to demonstrate the need for such testing in evaluating the hazards of dichloromethane. Further, industry disapproved of the proposed test protocols stating that they were not expected to produce meaningful data. The Agency, upon the receipt of additional data on the cardiovascular effects of dichloromethane (see Unit III.A), is withdrawing the proposal for cardiovascular testing.

Comments of environmental testing were received from all six commentors. Celanese Corporation commented that since environmental testing protocols were not well established, the Agency would not be warranted in requiring these tests. The other five commentors questioned the Agency's decision to require environmental testing solely on the basis of substantial release. The commentors stated that they believed that the Agency had sufficient data to reasonably determine that releases of dichloromethane are not expected to present an unreasonable risk. The Agency has re-examined the available data, and on the basis of the rationale given in Unit III.B, agrees with the commentors and is withdrawing the proposal for environmental testing.

The comments received on reproductive effects testing acknowledged, with some reservations, the need for such testing. Dow Chemical Company, HSIA, and Vulcan Materials Company commented that there was no history of reproductive effects from the use of dichloromethane but agreed testing was necessary. Celanese Corporation commented that based upon the metabolism of dischloromethane it did not expect it to cause reproductive effects but also agreed with the need for testing. Following the Agency's testing proposal, HSIA informed EPA that it was sponsoring a 2-generation reproduction study (see Unit III.A).

III. Decision Not To Require Testing

EPA has decided not to promulgate a rule to require the testing proposed for this substance, for the reasons stated below.

A. Health Effects

Subsequent to the proposed rule, HSIA initiated a 2-generation reproductive study in rats on dichloromethane. EPA reviewed the protocol and concluded that the study would be adequate to determine the reproductive effects of dichloromethane (Refs. 2 through 6). The study was initiated in the first quarter of 1983 and exposures will be completed during the second quarter of 1984 with a final report issued by June 1985 (Ref. 11). The Agency expects to receive the final report by that date.

Although this testing is not part of a negotiated testing agreement, the HSIA agreed to adhere to the Good Laboratory Practice Standards issued by the U.S. Food and Drug Administration as published in the **Federal Register** of December 22, 1978 (43 FR 59986). The HSIA agreed to permit laboratory inspections and study audits in accordance with the provisions outlined in TSCA section 11 at the request of authorized representatives of EPA. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evalutions thereof, and that the studies are being conducted according to Good Laboratory Practice provisions.

The HSIA further agreed that all raw data, documentation, records, protocols, specimens, and reports generated as a result of each study will be retained for at least 10 years from the date of publication of this notice, and made available during an inspection or submitted to EPA if requested by EPA or its designated representative. Documentation which will be retained includes correspondence and other documents relating to the general conduct of the testing and the interpretation or evaluation of data other than that included in the final report. The HSIA understands that the Agency plans to publish quarterly in the Federal Register a notice of the receipt of any test data submitted for this study. Subject to TSCA section 14, the notice will provide information similar to that described in TSCA section 4(d). Except as otherwise provided in TSCA section

14, any data submitted will be made available by EPA for examination by any person.

Finally, the HSIA understands that failure to conduct the testing according to the specified protocols or failure to follow Good Laboratory Practice procedures may invalidate the tests. In such cases, a data gap may still exist, and the Agency may decide to require further testing.

Dow Chemical Company has submitted to EPA the results of a human skin sensitization study of dichloromethane which provide sufficient information to reasonably predict that that dichloromethane does not cause dermal sensitization (Ref. 15).

The cardiovascular effects of acute exposure to dichloromethane have been adequately characterized (Ref. 27). EPA has re-evaluated the need for subchronic cardiovascular testing on dichloromethane. The Agency's basis for proposing subchronic cardiovascular testing was the reported observation of increased arterial pressure and myocardial contractility in dogs exposed to 500 ppm dichloromethane for 2 hours. The report was contained in an abstract of a doctoral dissertation (Ref. 1). The full text of the dissertation was unavailable for the Agency's analysis until after the publication of the proposed rule. Upon evalution of the full report, Agency scientists concluded that while a statistically significant cardiovascular effect was seen at 500 ppm, the effect was not observed at 1,000, 2,000 or 5,000 ppm (Ref. 17). The lack of a dose response leads the Agency to question the significance of this finding.

In contrast to the above study, other animal studies and occupational epidemiology studies have not reported cardiovascular effects. Chronic and subchronic animal tests have shown that long term exposure to concentrations of dichloromethane greater than 1,000 ppm produces effects in the liver and kidney but not in the cardiovascular system (Refs. 18 and 19). Epidemiologic studies of workers exposed to approximately 100 ppm dichloromethane have found no increase of cardiovascular effects over age-matched controls (Refs. 10 and 12). One of the studies (Ref. 10) investigated 29 subjects and, based upon clinical histories and electrocardiogram examinations, did not find evidence of exposure-related cardiovascular toxicity. Further, industrial hygiene studies with long-term exposure of workers to 300 to 600 ppm dichloromethane have not reported cardiovascular effects (Refs. 7, 8, 14). EPA now believes that the weight of the evidence does not support a finding that anticipated human exposures to dichloromethane "may present an unreasonable risk" of long term cardiovascular effects that would be identifiable through a subchronic study. Furthermore, the Agency believes that it can reasonably predict the cardiovascular effects of dichloromethane on the basis of the above occupational and animal studies. Therefore, EPA has decided not to proceed with rulemaking to require subchronic cardiovascular effects testing of dichloromethane.

EPA decided not to propose oncogenicity testing because it believed at the time that the NTP studies should be sufficient to characterize the oncogenic hazards of dichloromethane. The NTP studies consist of two sets of bioassays, one by gavage and one by inhalation. The two bioassays were conducted by different laboratories under different schedules. The NTP announced that cancellation of publication of the final report on the gavage assay in the **Federal Register** of August 4, 1983 (48 FR 35508) due to problems in recordkeeping. The inhalation study is unaffected by this announcement. The inhalation study is expected to be completed by late 1984, with peer review tentatively scheduled for the first quarter of 1985. EPA believes at this time that the remaining inhalation test should be sufficient to characterize the oncogenic hazards of dichloromethane. The majority of human exposure to dichloromethane occurs by air, which suggests that inhalation is the preferred route of exposure for testing. Further, the pharmacokinetics of dichloromethane are largely independent of the route of exposure (Ref. 24). The Agency reserves the right to propose an oncogenicity testing requirement if at some future date the inhalation study is found inadequate.

In the proposed rule EPA stated that it was not requiring epidemiology studies because the Agency wished to review the results of a then ongoing industry study. This study has been completed and published (Refs. 19 through 22). The Agency is currently reviewing the study and will propose further epidemiology studies in the future if it believes that they are necessary.

B. Environmental Effects

EPA is withdrawing the proposal to require environmental studies for dichloromethane. The Agency has decided after further considering the data that neither a section 4(a)(1)(B) nor a section 4(a)(1)(A) finding is supportable for this substance. EPA acknowledges that dichloromethane enters the environment in substantial quantities, 451 million pounds estimated for 1980 (Ref. 23), but finds that there are sufficient data to reasonably determine or predict the distribution and effects of these releases in the environment. Therefore, further testing is not necessary. This conclusion by the Agency is based upon a re-evaluation of available information on the environmental fate, actual environmental levels, acute toxicity, and bioaccumulation.

The environmental fate of dichloromethane is fairly well characterized, and is discussed in detail in the dichloromethane support document (Ref. 23). Releases to air degrade fairly rapidly, and releases to water tend to partition to the atmosphere where they, too, degrade. Dichloromethane is not believed to bioaccumulate. Actual measurements of dichloromethane are reported to be 30 to 100 parts per trillion in air and less than 30 ppb in water (Ref. 24). These data indicate the dichloromethane does not accumulate in the environment. Production levels are not anticipated to increase drastically, and in 1983, in fact, production decreased (Ref. 25). The Agency thus concludes that environmental concentrations are not likely to increase.

Some acute toxicity information on aquatic organisms is available for vertebrates, invertebrates, and algae. Effects are seen at concentrations of several hundred ppm (Ref. 23). Because of the thousand-fold difference between effect concentrations and levels in the environment, and because it seems unlikely that environmental levels will increase, EPA believes that dichloromethane is not likely to present an unreasonable risk to aquatic life (Ref. 13). Therefore, EPA is withdrawing the proposed requirements for chronic aquatic toxicity testing of dichloromethane on aquatic vertebrates and invertebrates.

Information on bioconcentration of dichloromethane in aquatic vertebrates and terrestrial plants has not been reported; however, a bioconcentration factor (BCF), a measure of a chemical's potential for bioconcentration, can be estimated for dichloromethane. Based upon its reported octanol/water partition coefficient the BCF for dichloromethane is 5.2. Generally, chemicals with BCFs less than 1000 are not recommended for testing (Refs. 24 and 26). Because the estimated BCF for dichloromethane is very small, the Agency believes that dichloromethane has little or no potential for bioconcentration and, therefore, is

withdrawing the proposed requirement for bioconcentration testing.

Exposure to dichloromethane in air has caused acute effects in terrestrial mammals at several thousand ppm (Ref. 23) and in terrestrial plants at much higher levels (Ref. 16). However, the terrestrial toxicity testing proposed for dichloromethane was based upon exposure to dichloromethane through surface or ground water rather than through the air. It was believed that organisms might ingest dichloromethane either in the water or through the food chain (as a result of original exposure through the water). However, based on low reported concentrations of dichloromethane in water and the low estimate of bioaccumulation (Ref. 24), EPA believes that dichloromethane is not likely to present an unreasonable risk to terrestrial life. Therefore, EPA is withdrawing the requirement for terrestrial environmental effects testing.

IV. Proposed Agency-Sponsored Testing

EPA stated in the proposed rule that it intended to sponsor mutagenicity and environmental effects tests on dichloromethane. The mutagenicity testing is now ongoing and the results are expected by September 1984. The Agency may propose further mutagenicity testing if it believes it to be necessary. The environmental tests will not be performed by the Agency, for the reasons discussed in Unit III.B.

V. Public Record

EPA has established a public record for this decision not to pursue testing under section 4 [docket number OPTS-42023]. This record includes:

(1) **Federal Register** notice designating dichloromethane to the priority list.

(2) Communications before industry consisting of letters, contact reports of telephone conversations, and meeting summaries.

(3) Testing proposals and protocols.

(4) Published and unpublished data.

(5) **Federal Register** notice requesting comment on the proposed test rule and comments received in response thereto.

(6) **Federal Register** notice announcing the final decision not to require testing.

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This record, which includes the basic information considered by the Agency in developing this decision, is available for inspection from 8:00 a.m. to 4:00 p.m. Monday through Friday except legal holidays in Room E-107, 401 M St., SW., Washington, D.C. 20460. The Agency will supplement the record with additional relevent information as it is received.

The proposal to add 40 CFR 773.1500 to Chapter I of 40 CFR Subpart B, published at 46 FR 30300 June 5, 1981.

(Sec. 4, 90 Stat. 2003; (15 U.S.C. 2601))

Dated: June 11, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-16292 Filed 6-18-84; 8:45 am]

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40 CFR Part 773

[OPTS-47004E TSH-FRL 2571-3]

Nitrobenzene; Decision To Withdraw a Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; withdrawal.

SUMMARY: In the **Federal Register** of June 5, 1981 (46 FR 30300), EPA proposed the testing of dichloromethane, nitrobenzene, and 1,1,1-trichloroethane under section 4(a) of the Toxic Substances Control Act for certain health and environmental effects. A notice on dichlorobenzene appears elsewhere in this issue of the **Federal Register**; 1,1,1-trichloroethane will be addressed at a later time in another **Federal Register** document. The Agency has decided not to proceed with rulemaking for nitrobenzene. This withdrawal results from the Agency's evalution of additional Agency and industry data and also from EPA's knowledge that the manufacturers of nitrobenzene are conducting health and environmental tests that, in conjunction with ongoing government testing programs, are expected to meet all testing data needs currently identified by the Agency. The ongoing tests, along with existing information, are expected to provide sufficent data and experience to reasonably determine or predict the effects that manufacture, processing, distribution, use and disposal of nitrobenzene will have on human health, or in the case of mutagenic effects, to provide a clear basis for determining if there is any need for further testing. With respect to environmental effects, EPA's reevaluation of the environmental releases and expected environmental concentrations of nitrobenzene based on additional data that have become available since the proposal have led the Agency to conclude that the current data do not support the findings necessary to require testing under TSCA section 4(a).

FOR FURTHER INFORMATION CONTACT:

Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm E-543, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator 202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Introduction

This notice is part of the overall implementation of section 4 of the Toxic Substances Control Act (TSCA), (Pub. L. 94-469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*) which contains authority for EPA to require development of adequate data with respect to the effects of chemical substances and mixtures on health and the environment in appropriate circumstances.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health and environmental data if the Agency finds that:

> (A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,
>
> (ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
>
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or
>
> (B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,
>
> (ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
>
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

For a more complete understanding of the statutory section 4 findings, the reader is directed to the Agency's first proposed test rule package (chloromethane and chlorinated benzenes, published July 18, 1980; 45 FR 48510) and to the second package (dichloromethane, nitrobenzene, and 1,1,1-trichloroethane, published June 5, 1981; 46 FR 30300) for in-depth discussions of the general issues applicable to this action.

II. ITC Recommendations

Section 4(e) of TSCA established the Interagency Testing Committee (ITC) to recommend to EPA chemicals to be considered for priority testing under TSCA. Nitrobenzene was designated by the ITC in its Initial Report to the EPA Administrator on October 12, 1977 (42 FR 55026). The ITC recommended that nitrobenzene be tested for carcinogenicity, mutagenicity, and environmental effects. The ITC estimated the annual release of nitrobenzene to the environment to be twenty million pounds and was concerned that general population exposure could arise from environmental release and from various despersive uses.

III. Background

This notice discusses the major issues and comments arising from the publication of the proposed test rule on dichloromethane, nitrobenzene, and 1,1,1-trichloroethane on June 5, 1981 (46 FR 30300), and presents the Agency's rationale for now terminating rulemaking on nitrobenzene. Dichloromethane is addressed elsewhere in this issue of the **Federal Register**; 1,1,1-trichloroethane will be addressed in a future **Federal Register** document.

The June 5, 1981, proposed rule requested that interested parties submit written comments on or before August 30, 1981. Because EPA had included certain environmental tests in the proposed rule, on August 13, 1981, (46 FR 40898), the Agency extended the deadline of the original comment period

to November 30, 1981, to allow for proposal of the relevant environmental test standards and comment on their application to nitrobenzene. These standards were intended to provide industry with the requirements for conducting each of the environmental effects tests listed in the nitrobenzene proposed rule. On November 30, 1981 (46 FR 58108), the comment period was extended a second time, to February 1, 1982. EPA was in the process of changing its approach to adopting test standards for test rules and procedures for the development of test rules, and on March 26, 1982 (47 FR 13012), the Agency announced this change in policy. In a companion notice that same day, the Agency announced it was implementing the changes in policy and procedure for the nitrobenzene proposed test rule (March 26, 1982, 47 FR 13012).

A. Health Effects Findings

In the proposed rule, EPA based its health effects testing requirements for nitrobenzene on the authority of section 4(a)(1)(A) of TSCA. In proposing the finding, the Agency stated that the manufacture, processing, distribution in commerce, use, and disposal of nitrobenzene may present an unreasonable risk of injury to human health due to reproductive and teratogenic activity because: (1) There were existing data and experience that indicate a potential human health hazard from nitobenzene with respect to these effects; (2) EPA believed that persons were exposed to nitrobenzene in the workplace, as consumers, and as a result or release of nitrobenzene into the environment. Although testing for structural teratogenic effects and reproductive effects was not recommended by the ITC, EPA believed that these areas were of concern and should be evaluated.

In its review of nitrobenzene exposure and toxicity conducted for the proposed rule, the Agency determined that two health effects cited by the ITC, oncogenicity and mutagenicity, may present an unreasonable risk of injury to human health; however, testing was not proposed for these effects. Oncogenicity testing was not proposed because a two-year bioassay was being performed by the National Toxicology Program (NTP), which assumed responsibility for managing the National Cancer Institute's bioassay studies. EPA believed that the NTP study should be sufficient for the Agency's needs for oncogenicity, subchronic effects, and chronic effects testing; therefore, it concluded that no additional testing for these effects should be required.

Independent of the NTP effort, the Chemical Industry Institute of Toxicology initiated a separate nitrobenzene two-year bioassay and completed a prerequisite 90-day subchronic inhalation study. The NTP, having completed the subchronic phase of its nitrobenzene bioassay, decided on November 3, 1983 not to proceed with chronic testing of nitrobenzene because the CIIT was to commence its chronic testing of the chemical on November 28, 1983. The CIIT is to have its final report on the chronic study available for Agency review on December 1, 1986.

In the proposed nitrobenzene rule, the Agency stated that although mutagenicity testing according to a testing sequence was necessary, EPA would perform the initial testing because criteria for progressing from initial mutagenicity tests to higher tier mutagenicity tests were not available at that time and because EPA had not yet developed test standards for certain mutagencity tests. This was to be an exception to the general policy prescribed in section 2 of TSCA that industry should develop necessary test data. The Agency reasoned that (1) EPA's sponsorship of those tests would contribute to the Agency's development of test standards in those areas; (2) information on the effects would be important to the risk assessment of nitrobenzene, and testing should not be delayed; and (3) the cost of the testing would be relatively low.

The proposal noted that when the Agency had completed the lower tier mutagenicity testing, EPA would assess the need for additional higher tier mutagenicity testing. If, based on the analysis of lower tier results, the Agency determined the need for higher tier testing, this would be announced in a subsequent proposed rule, including an appropriate comment period.

EPA has continued its evaluation of mutagenicity test sequencing for chemicals presenting mutagenic concerns. The Agency has also continued its review of the available nitrobenzene mutagenicity data. Recently the National Toxicology Program has reported that nitrobenzene had been tested for the ability to induce gene mutations in bacteria (*Salmonella typhimurium*) and for its ability to induce chromosomal aberrations and sister chromatid exchanges in mammalian cells *in vitro*. Nitrobenzene was negative in all three tests. The Agency is proceeding with further testing which will include a determination of nitrobenzene's ability to induce sex-lined recessive lethal (SLRL) mutations in *Drosophila melanogaster* and dominant lethal effects in rats. The results of these tests will be available in summer, 1984. Further testing will depend on the outcome of these studies.

B. Environmental Effects Findings

The ITC recommended environmental effects testing for nitrobenzene. The Agency determined that environmental effects testing was needed to determine the effects resulting from the manufacture, processing, distribution in commerce, use or disposal of nitrobenzene. In the proposed rule, EPA based its environmental effects testing requirements on the authority of section 4(a)(1)(B) of TSCA. In proposing the finding, the Agency stated its belief that: (1) Nitrobenzene was produced in substantial quantities (575 million pounds in 1978), and (2) there was substantial release to the environment. Of the nitrobenzene produced in the U.S., EPA estimated that approximately 12.75 million pounds would be expected to reach the atmosphere (1978), and rainout would carry a substantial quantity of this emission to soil and to the aquatic environment. The Agency also stated that a substantial quantity of nitrobenzene might be released from manufacturing activities to surrounding aquatic areas.

EPA proposed testing for: Aquatic vertebrates (acute toxicity, chronic toxicity); aquatic invertebrates (chronic toxicity); birds (acute toxicity, chronic toxicity); terrestrial plants (root elongation/seed germination, early seedling growth); bioconcentration (plant uptake/translocation); and chemical fate (soil adsorption). In the proposed rule, the Agency also indicated that EPA would perform several chemical fate and environmental effects tests: freshwater and saltwater vascular aquatic plants; terrestrial invertebrates; full life cycle tests on terrestrial plants; chemical persistence, and acute and chronic testing of coldwater, saltwater vertebrates. The Agency stated that it would perform these tests because TSCA section 4 test standards were not available for directing such studies at that time.

However, as a result of the Agency's review of additional environmental reslease and waste treatment data, EPA now believes that the releases of nitrobenzene to the environment are not substantial. Furthermore, the Agency does not believe that the current data on nitrobenzene environmental effects justify testing for environmental fate or effects under section 4(a)(1)(A). Therefore, EPA is terminating its rulemaking to require environmental fate and effects testing and the Agency will not conduct the chemical fate and

environmental effects testing that was indicated in the proposed rule.

IV. Major Comments

The comments received in response to the proposed rule were exclusively from industry sources, with most being submitted by the Nitrobenzene Association, a consortium of nitrobenzene producers formed in May of 1981. Most of the comments regarding worker exposure and environmental release were supplied by the Nitrobenzene Association and were based on a survey (Ref. 2) of nitrobenzene manufacturers and customers conducted by the Synthetic Organic Chemical Manufacturers Association (SOCMA). According to SOCMA, the survey was designed to gather worker exposure and environmental release data from manufacturers and information concerning customers' use of nitrobenzene as a chemical intermediate, a solvent, and as an additive to consumer products.

The major issues identified during the comment period are detailed below. The scientific analyses upon which the section 4 findings were based in the proposed rule were presented in the Nitrobenzene Support Document, which is available from the Office of Toxic Substances' TSCA Assistance Office.

A. Worker Exposure

The Nitrobenzene Association challenged the Agency's estimate that 13,547 workers were exposed to nitrobenzene yearly. Relying on the survey by SOCMA, they reported the number of exposed workers to be 832. The Association indicated that this included workers exposed to nitrobenzene during its manufacture, during the manufacture of aniline, while using the chemical in other industrial processes, and nitrobenzene usage by customers in other manufacturing processes.

Based on the National Occupational Hazard Survey (NOHS) compiled by the National Institute for Occupational Safety and Health (NIOSH), the Agency continues to believe that the number of workplace exposures to nitrobenzene are or may be significantly higher than reported in the Association's survey. The NOHS survey, reanalyzed by NIOSH in April of 1982, reported 13,641 worker exposures (NIOSH, 1982). Of this total, 40 percent were workers actually observed working around nitrobenzene while another 43 percent were workers exposed to trade name products later identified as containing nitrobenzene.

B. Release to Air

In the proposed rule, EPA estimated that 275,000 pounds of nitrobenzene were released to the atmosphere through production and use in aniline manufacture and 12.75 million pounds through the solvent uses (Anderson et. al. 1980) of nitrobenzene in petroleum refinery operations and in cellulose ether manufacture. The Agency based this latter figure on a trade publication's citation of solvent uses of nitrobenzene (for cellulose ethers and in the petroleum industry) and a survey or chemical release quantities (Ref. 1) that estimated that the total quantity of nitrobenzene employed in solvent applications was eventually lost to the atmosphere. The Agency believed that much of this material would be carried back into aqueous environments or to soil by rainout.

Subsequent to the proposal of the nitrobenzene rule, the Nitrobenzene Association informed the Agency that their survey of producers and users revealed no use of nitrobenzene in either cellulose ether or refinery operations. In investigating this inconsistency, the Agency found that neither the trade citation (Ref. 4) nor the basis for the release estimate could be confirmed.

The Nitrobenzene Association reported the total nitrobenzene release to air, as reported by customers, to be 18,700 pounds and also reported that only 28,200 pound of nitrobenzene were released to the air by manufacturers during production and use.

EPA has also received relevant data through the Preliminary Assessment Information Rule, issued under section 8(a) of TSCA (47 FR 26992). This rule required manufacturers of subject chemicals resulting from manufacturing and other activities. EPA has reviewed the nitrobenzene data (reported here as an aggregate range to protect individual corporate confidential business information) and reports the total loss to air and water collectively to be 66,000–110,000 pounds annually. Under the 8(a) rule, losses are reported as total losses to the environment, not as separate losses to air and to water. EPA finds these figures to be reasonably close to those reported by the Nitrobenzene Association and has conducted the rest of its analysis based upon the somewhat more detailed figures reported by the Nitrobenzene Association.

After considering the inaccuracy of the use estimate figures cited in the proposed rule, the newly received 8(a) data, and because the Agency has no other nitrobenzene air release information that would indicate higher release levels, EPA has concluded that the release to air is significantly less than it had previously estimated.

EPA does not view the release to the atmosphere of 28,200 pounds and 18,700 pounds of nitrobenzene by manufacturing operations and customer use, respectively, as substantial. In addition, EPA has concluded that organisms in the various environmental compartments are not expected to be exposed to nitrobenzene at any significant levels as a result of these releases and would not be expected to be at risk.

C. Release to Water

In the proposed rule, EPA estimated that approximately 8.3 million pounds of nitrobenzene might be lost to ambient waters yearly. This figure was based on estimates that 8.3 million pounds of nitrobenzene were lost from the production process each year and that the vast majority of this production loss occurred through effluent waste water. The Nitrobenzene Association reported, based on their survey, that release after treatment was only 46,000 pounds annually.

Because of the tremendous disparity between these two release levels, the Agency conducted further analyses in an attempt to confirm or refute the Nitrobenzene Association's release figure. To this end, the EPA Office of Toxic Substances compiled additional data from EPA's Office of Water Regulations and Standards concerning measured industry product/process effluent concentrations, plant flow and stream flow data, stream dilution factors and information concerning waste treatment techniques and efficacy. The Agency has also evaluated and incorporated into this analysis industry survey data concerning treatment methods and efficiency, production levels, and monitoring information and the newly received TSCA section 8(a) data. (Much of this information is TSCA Confidential Business Information (CBI) and will be on file in the CBI portion of the administrative record for this notice). From this analysis, EPA does not now believe there is substantial release of nitrobenzene to the aquatic environment, and the Agency currently estimates that the annual release of nitrobenzene to ambient waters from manufacturing is 54,000 pounds. The concentrations in receiving waters, at release points, probably range from 0.0 to 10.0 ppb (10 μg/l) (Ref. 6). Because these estimated concentrations are significantly below toxic concentrations (48-Hr. LC_{50} of 27,000 μg/l) reported in tests involving what appears to be the most sensitive aquatic organism (*Daphnia*), (Ref. 5) there is no basis for

believing that nitrobenzene may present an unreasonable risk to aquatic organisms and therefore no need to require additional aquatic testing.

V. Ongoing Industry Testing Activities

The nitrobenzene industry is conducting a mysid shrimp chronic toxicity test that will provide additional environmental data on a species sensitive to nitrobenzene. The results will provide useful information to compare with the Agency's conclusions concerning anticipated ambient concentrations of nitrobenzene. Any additional requirements for environmental effects testing must await the receipt of and evaluation of this study.

As stated earlier, the Chemical Industry Institute of Toxicology is conducting a two-year chronic study of nitrobenzene and the Agency has reviewed the testing protocol adopted by the CIIT and finds it to be adequate. A final report on this study is to be available to the Agency in December, 1986.

The industry has also initiated the testing of nitrobenzene for reproductive and teratogenic effects. The industry has supplied the Agency with the study plans for these studies and, after reviewing the protocols, EPA believes that the data derived from these studies will provide sufficient information to reasonably determine the potential for nitrobenzene to produce teratogenic or reproductive effects. The industry has indicated that the results of the teratology studies in rabbits and rats will be reported to the Agency in July, 1984 and November, 1984 respectively. The results of the reproductive/fertility study will be reported to the Agency in January, 1985.

EPA has also received assurances from industry that both the health and environmental effects tests will be conducted according to the Food and Drug Administration's Good Laboratory Practices Regulations (December 22, 1978, 43 FR 59986). It is understood by all parties that the studies must be performed according to the quality standards that would apply were this testing to be conducted under final TSCA section 4 rulemaking. Deviation will result in a reexamination of the section 4 testing needs for nitrobenzene. As is required in EPA's TSCA Good Laboratory Practice Standards (48 FR 53922, November 29, 1983), industry has agreed that all raw data and specimens pertaining to the reproductive effects and teratogenic effects and mysid shrimp tests being conducted by industry, will be retained for 10 years from the date of publication of this notice.

VI. Rationale for Decision To Terminate Rulemaking

This notice documents EPA's decision not to proceed with rulemaking to require testing of nitrobenzene under section 4 of TSCA at this time. With respect to environmental testing, as explained earlier, after reviewing information concerning production/process methods and expected effluents, industry-submitted process and use data, and the limited existing monitoring data, the Agency has determined that the releases of nitrobenzene to air and water appear to be limited. Therefore, the Agency does not believe that there is a sufficient basis to find that the current manufacture, distribution, processing, use, and disposal of nitrobenzene will result in substantial release of nitrobenzene to the environment or that these activities may present an unreasonable risk to the environment. Therefore, EPA has concluded that additional testing of nitrobenzene for environmental effects is not justified under section 4(a) of TSCA at this time.

With regard to human health effects, the Agency still has concerns regarding the toxicological characteristics of nitrobenzene. However, industry and Federal testing efforts are producing data that the agency believes will be sufficient to reasonably determine or predict the potential for nitrobenzene to produce oncogenic, mutagenic, teratogenic or reproductive effects. Thus, the Agency is not issuing a final Section 4 test rule requiring health effects testing of nitrobenzene.

VII. Public Record

EPA has established a public record for this rulemaking (docket number OPTS-47004E) which is available for inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays, in Rm. E-107, 401 M St. SW, Washington, DC. This record includes the basic information the Agency considered in developing this Notice, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received. This record includes the following information:

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice of proposed rule on nitrobenzene [46 FR 30300, June 5, 1981].

(b) Notice containing the ITC designation of nitrobenzene to the Priority List [42 FR 55026, October 12, 1977].

(c) Notices relating to EPA's health effects test guidelines [44 FR 27337, May 9, 1979; 44 FR 44054, July 26, 1979; 45 FR 77332, November 21, 1980) and EPA Good Laboratory Practice Standards. [44 FR 27334, May 9, 1979; 44 FR 44054, July 26, 1979; 44 FR 77357, November 21, 1989; 48 FR 53922, November 29, 1983). The TSCA guidelines are published by the National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161 (703-487-4650), for health effects (PB-82-232984), and environmental effects (PB-82-232992).

(d) Notice of proposed rule on exemption policy and procedures (45 FR 48512, July 18, 1980).

(e) Final Rule on reimbursement policy and procedures (48 FR 31786, July 11, 1983).

(2) Support Documents: consisting of:

(a) Nitrobenzene support document.

(b) Nitrobenzene economic analysis support document.

(3) Communications, consisting of:

(a) Written public and intra-agency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Meeting summaries.

(d) Reports—published and unpublished factual materials.

VIII. References

(1) Anderson GE, et al. 1980. A summary of data on nitrobenzene from Systems Applications Incorporated. Final Report: Human exposure to atmospheric concentrations of selected chemicals. U.S. Environmental Protection Agency (EPA) Contract 68-02-3066, March 5, 1980.

(2) Nitrobenzene Association. 1982. Comments of the Nitrobenzene Association on Proposed Nitrobenzene Test Rule (containing as Appendix A, the Synthetic Organic Chemical Manufacturers Association Survey of Industry Uses and Environmental Releases). January 27, 1982.

(3) NIOSH. 1982. National Institute for Occupational Safety and Health. National Occupational Hazards Survey Data Base (NOHS). Washington, D.C. U.S. Department of Health, Education and Welfare. April, 1982. Computer update of 1976 figures.

(4) SRI. 1981. Aniline and Nitrobenzene. Chemical Economics Handbook, Stanford Research Institute, Menlo Park, CA.

(5) USEPA. 1978. In-depth studies on health and environmental impacts of selected water pollutants. Contract No. 68-01-4646. EG and G Bionomics.

(6) USEPA. 1983. U.S. Environmental Protection Agency. Office of Toxic Substances. Memorandum, January 31, 1983: Nitrobenzene Release to Water; from William Burch, Chemical Engineering Branch to Steve Newburg-Rinn, Test Rules Development Branch (not in public docket because of Confidential Business Information contained therein). Washington, D.C.: U.S. Environmental Protection Agency.

The proposal to add 40 CFR 773.3050 to Chapter I of 40 CFR Subpart B,

published at 46 FR 30300, June 5, 1981, is hereby withdrawn.

(Sec. 4, 90 Stat. 2003; (15 U.S.C. 2601))

Dated: June 11, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-16293 Filed 6-18-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Ch. II

[Docket No. 40670-4070]

Request for Comments; U.S. Standards for Grades of Crab Meat and Oysters

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

ACTION: Request for comment.

SUMMARY: This notice requests comments on the desirability and scope for two new voluntary U.S. Standards for Grades of carb meat and oysters. Two industry organizations have petitioned this agency for the development of such standards. This agency is now requesting written comments from other industry members, users of these commodities, and the general public to evaluate the national level of interest and the scope of these standards.

DATE: Written comments accepted until August 3, 1984.

FOR FURTHER INFORMATION CONTACT: Rita A. Creitz, National Standards Coordinator, National Seafood Inspection Program, Office of Utilization Research, National Marine Fisheries Service, Washington, D.C. 20235. Phone 202-634-7458.

SUPPLEMENTARY INFORMATION: This agency has received petitions under 5 U.S.C. 553(e), the Administrative Procedure Act, from the National Blue Crab Industry Association and The Shellfish Institute of North America requesting the development of U.S. Standards for Grades of blue crab meat and oysters, respectively. The purpose of this notice is to invite written comments on these requests from other industry members, the users of these commodities, and the general public to evaluate the level of interest, whether the agency should proceed to develop such a standard, and if so the appropriate scope of the document.

Since the initial industry request was specific to blue crab meat, this agency is asking whether there is interest in standards for crab meat from other species and what market forms it should encompass (e.g., fresh, fresh and frozen, canned). This agency is also asking what markets forms should be encompassed by the standard for oysters, which was requested to address the issues of size, count, and free liquor (i.e., the excess tissue fluid following shucking and processing).

This agency's decision regardng the development of these new standards and an approximate drafting schedule, if appropriate, will be stated in a followup **Federal Register** notice. Should the responses be in favor of such standards, the industry members as well as users of the commodity will be solicited to provide technical information about the products as part of the development process.

Dated: June 14, 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology

[FR Doc. 84-16333 Filed 6-18-84; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 222

Endangered Fish or Wildlife; Cochito

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Extension of comment period.

SUMMARY: The National Marine Fisheries Service (NMFS) published proposed regulations on April 25, 1984 (49 FR 17781), to list the cochito or Gulf of Calaifornia harbor porpoise (*Phocoena sinus*) as an endangered species under the Endangered Species Act of 1973, and requested that comments and information be submitted by June 25, 1984. The NMFS hereby extends the comment period for an additional 30 days.

DATE: Comments on the proposal must be received by July 25, 1984.

ADDRESS: Richard B. Roe, Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Karnella, Protected Species Division, NMFS (202/634-7471).

List of Subjects in 50 CFR Part 222

Administrative practice and procedure, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Report and record keeping requirements.

Dated: June 12, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-16313 Filed 6-18-84; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 119
Tuesday, June 19, 1984

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking, Committee on Adjudication; Public Meetings

Committee on Adjudication

Date: Thursday, June 28, 1984. Time: 10:00 a.m. to 12 noon. Location: 2120 L Street, NW, Wash., D.C., Suite 500. Agenda: Discussion of proposed ALJ Corps legislation. Contact: Richard K. Berg, 202–254–7065.

Committee on Rulemaking

Date: Thursday, June 28, 1984. Time: 10:00 a.m. Location: Offices of Hughes, Hubbard and Reed, 1201 Pennsylvania Avenue, NW., Suite 300, Wash., D.C. Agenda: Discussion of Professor Thomas O. McGarity's study of the regulatory impact analysis process. Contact: Michael W. Bowers, 202–254–7065.

Public Participation:

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present appropriate oral statements at the meeting. Any member of the public may file a written statement with a committee before, during, or after the meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, D.C. 20037. These meetings are subject to the Federal Advisory Committee Act (Pub. L. 92–463).

Dated: June 14, 1984.

Richard K. Berg,

General Counsel.

[FR Doc. 84–16306 Filed 6–18–84; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Southwest Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and REA Environmental Policies and Procedures, 7 CFR Part 1794, has made a Finding of No Significant Impact with respect to a request for financing assistance from Southwestern Electric Cooperative, Inc. (SWEC), for construction of 69 kV transmission facilities in Union County, New Mexico.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact (FONSI) and Environmental Assessment (EA) and SWEC's Borrower's Environmental Report (BER) may be reviewed in the office of the Chief, Distribution and Transmission Engineering Branch, Southwest Area-Electric, Room 0009, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, telephone (202) 382–1915, or at the office of Southwestern Electric Cooperative, Inc. (D.E. Carter, Manager), 216 Main Street, P.O. Box 369, Clayton, New Mexico 88415, telephone (505) 374–2451, during regular business hours.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request for financing assistance from SWEC, has reviewed the BER submitted by SWEC and has determined that it represents an accurate assessment of the environmental impact of the proposed project. SWEC's project consists of a 69 kV transmission line about 43 km (27 mi) long between the existing Clapham Substation owned by Plains Electric Generation and Transmission Cooperative, Inc. (Plains), and SWEC's proposed Amistad Substation near the intersection of Highways 62 and 18, about 6 km (4 mi) south of Amistad, New Mexico.

REA determined that the proposed project will have no effect on cultural resources, imortant farmland, floodplains, wetlands and threatened and endangered species.

Alternatives examined for the SWEC 69 kV facilities included no action and alternative routes and substation sites in Union County. REA determined that the proposed 69 kV facilities is an acceptable alternative to provide SWEC's needs.

Based upon the BER and support documents, REA prepared an EA concerning the proposed project and its impact. REA has independently evaluated the proposed project and has concluded that approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the human environment.

In accordance with REA Environmental Policies and Procedures, 7 CFR Part 1794, which was published in the **Federal Register** on March 13, 1984 (49 FR 9544–9558), SWEC advertised and requested comments on the environmental aspects of the proposed project in local newspapers. There were no comments.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850-Rural Electrification Loans and Loan Guarantees.

Dated: June 12, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84–16272 Filed 6–18–84; 8:45 am]

BILLING CODE 3410–15–M

Valley Electric Membership Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and REA Environmental Policies and Procedures, 7 CFR Part 1794, has made a Finding of No Significant Impact

(FONSI) with respect to a request for financing assistance from Valley Electric Membership Corporation (VEMCO) for construction of 69 kV transmission facilities in Natchitoches and Sabine Parishes, Louisiana.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA) and VEMCO's Borrower's Environmental Report (BER) may be reviewed in the office of the Chief, Distribution and Transmission Engineering Branch, Southwest Area-Electric, Room 0009, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, telephone (202) 382–1915, or at the office of Valley Electric Membership Corporation, (Homer Cox, Manager), 1725 Texas Street, P.O. Box 659, Natchitoches, Louisiana 71457, telephone (318) 382–3601, during regular business hours.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request for financing assistance from VEMCO, has reviewed the BER submitted by VEMCO and has determined that it represents an accurate assessment of the environmental impact of the proposed project. VEMCO's project consists of three 69 kV transmission lines as follows: (1) Many to Noble, 30 km (19 mi), (2) Many to Belmont to Marthaville, 29 km (18 mi), and (3) Many to Negreet, 19 km (12 mi). New substations are proposed at Noble, Belmont and Marthaville.

REA determined that the proposed project will have no effect on cultural resources, wetlands and threatened and endangered species.

The following floodplains will be crossed: San Miguel Creek, San Miguel Bayou, Scie Bayou, Whitlock Creek, Harpoon Bayou, Philips Creek, Blackwell Creek, and San Jose Creek. REA determined that there is no practical alternative which avoids these floodplains. REA has also determined that the single-pole and H-frame structures will not adversely affect the floodplains.

Important farmland may be crossed along some stream bottoms, but REA determined that there should be no significant effect. REA determined that there is a demonstrated significant need for the project and there is no practicable alternative that would avoid conversion of these lands or reduce the number of acres to be converted.

Alternatives examined for the VEMCO 69 kV facilities included no action and alternative routes and substation sites in Natchitoches and Sabine Parishes. REA determined that the proposed 69 kV facilities is an acceptable alternative to provide VEMCO's needs.

Based upon the BER and support documents, REA prepared an EA concerning the proposed project and its impact. REA has independently evaluated the proposed project and has concluded that approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the human environment.

In accordance with REA Environmental Policies and Procedures, 7 CFR Part 1794, which was published in the **Federal Register** on March 13, 1984 (49 FR 9544–9558), VEMCO advertised and requested comments on the environmental aspects of the proposed project in local newspapers. There were no comments.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850-Rural Electrification Loans and Loan Guarantees.

Dated: June 12, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84–16271 Filed 6–18–84; 8:45 am]

BILLING CODE 3410–15–M

CIVIL AERONAUTICS BOARD

Proposed Collection of Information Under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35)

AGENCY: Civil Aeronautics Board.

ACTION: Notice.

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval of the extension of the collection information in Part 320 of the Board's Procedural Regulations. This part governs the allocation of charter flights to Japan by United States direct air carriers.

DATED: June 12, 1982.

FOR FURTHER INFORMATION CONTACT: Jack Calloway, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, (202) 673–6042.

SUPPLEMENTARY INFORMATION:

Agency Clearance Officer from Whom a Copy of the Collection of Information and Supporting Documents is Available: Robin A. Caldwell (202) 673–5922

How Often the Collection of Information Must Be Filed: Occasionally and Annually

Who is Asked or Required to Report: U.S. Certificated (section 401) Air Carriers

Estimate of Number of Annual Responses: 93

Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 93.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–16361 Filed 6–18–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket 42243]

Air Niagara; Continuing Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on June 26, 1984, at 9:30 a.m. (local time) in Room 1012, 1825 Connecticut Avenue NW., Washington, D.C. before the undersigned Administrative Law Judge.

Dated at Washington, D.C., June 12, 1984.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 84–16359 Filed 6–18–84; 8:45 am]

BILLING CODE 6320–01–M

Fitness Determination of N. M. Mitchell, Inc. d.b.a. Wise Airlines

AGENCY: Civil Aeronautics Board.

ACTION: Notice of computer air carrier fitness determination—Order 84–6–28, order to show cause.

SUMMARY: The Board is proposing to find that N.M. Mitchell, Inc. d/b/a/ Wise Airlines is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards.

Responses:

All interested persons wishing to respond to the Board's tentative fitness determination shall file their responses with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than July 16, 1984.

FOR FURTHER INFORMATION CONTACT: Nicholas Collins, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428 (202) 673–5216.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–6–28 is available from the Distribution Section,

Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84–6–28 to that address.

By the Civil Aeronautics Board: June 14, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–16357 Filed 6–18–84; 8:45 am]

BILLING CODE 6320–01–M

Order Establishing Standard Foreign Fare Level

The International Air Transportation Competition Act (IATCA), Pub. L. 96–192, requires that the Board establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. The SFFL thus computed becomes the benchmark for measuring the statutory nonsuspend zone similar to the zone of reasonableness established by the Airline Deregulation Act and set forth in section 1002(d) of the Federal Aviation Act of 1958, as amended. Order 80–2–69 established the first interim SFFL and subsequent Order 84–3–88 established the currently effective two-month SFFL applicable through May 31, 1984.

In establishing the SFFL for the two-month period starting June 1, 1984, we have projected nonfuel costs based on the year ended December 31, 1983 and have determined fuel prices on the basis of experienced monthly fuel cost levels as reported to the Board.

By Order 84–6–27 fares may be increased by the following adjustment factors over the October 1, 1979, level:

Atlantic	1.1366
Western Hemisphere	1.2106
Pacific	1.1764
Canada	1.2472

Copies of the Board's order are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request.

For Further Information Contact: Robert I. Stein, (202) 673–5116.

By the Civil Aeronautics Board: June 13, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–16358 Filed 6–18–84; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

High Power Microwave Amplifiers and Components Thereof From Japan; Preliminary Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on high power microwave amplifiers and components thereof from Japan. The review covers the one known exporter of this merchandise to the United States and the period July 1, 1982 through June 30, 1983. The review indicates the existence of *de minimis* dumping margins for the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties for that firm equal to the calculated differences between United States price and foreign market value on each of its sales during the period of review.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 19, 1984.

FOR FURTHER INFORMATION CONTACT: Elizabeth L. Wright or David R. Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–5255/2923.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 55153) the final results of its last administrative review of the antidumping duty order on high power microwave amplifiers and components thereof from Japan (47 FR 31413–4, July 20, 1982) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 (" the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of high power microwave amplifers and components thereof. High power microwave amplifiers are radio-frequency power amplifier assemblies and components thereof, specifically designed for uplink transmission in C, X, and Ku bands from fixed earth stations to communications satellites and having a power output of one kilowatt or more. High power microwave amplifiers may be imported in subassembly form, as complete amplifiers, or as a component of higher level assemblies (generally earth stations). This merchandise is currently classifiable under item 685.29 of the Tariff Schedules of the United States.

The review covers the one known exporter of Japanese high power microwave amplifiers and components thereof to the United States, NEC Corporation, and the period July 1, 1982 through June 30, 1983. During the period NEC Corporation shipped only components.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the f.o.b. Japan price with deductions, where applicable, for inland freight and f.o.b. charges. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used constructed value, as defined in section 773(e) of the Tariff Act, since there were no sales in the home market or to purchasers in third countries during the period of review. Constructed value was calculated as the sum of materials, fabrication costs, general expenses, profit, and the cost of packing.

For general expenses the Department used the actual general expenses because they were higher than the statutory minimum of ten percent of the sum of materials and fabrication costs. Because the actual profit was greater than eight percent of the sum of materials, fabrication costs, and general expenses, the Department added the actual profit.

Preliminary Results of the Review

As a result of our comparison of the United States price to foreign market value, we preliminarily determine that the weighted-average margin for the period July 1, 1982 through June 30, 1983, is 0.3 percent.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the

first workday thereafter. Any request for an administrative protective order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, since the margin for NEC is less than 0.5 percent and therefore *de minimis* for deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties, as provided for in § 353.48(b) of the Commerce Regulations, on shipments of Japanese high power microwave amplifiers and components thereof entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this 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).

Dated: June 12, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-16297 Filed 6-18-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Fishery Conservation and Management; Receipt of Foreign Fishing Permit Applications

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235; or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617-231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 300 South New Street, Dover, DE 19901, 302-674-2331

David H. G. Gould, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803-571-1366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00818, 809-753-6910

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813-228-2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201, 503-221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, 605 W. Fourth Avenue, Anchroage, AK 99510, 907-271-4064

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 164 Bishop Street, Room 1608, Honolulu, Hawaii 98613, 808-523-1368

For further information contact Shirley Whitted or John D. Kelly (Fees, Permits and Regulations Division, 202-634-7432).

The Magnuson Act also requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1984 have been received between May 9, 1984, and June 7, 1984, from the Government(s), shown below.

Dated: June 13, 1984.

Roland Finch,

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

Code	Fishery	Regional Fishery Management Councils
ABS	Atlantic billfishes and sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands.	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SMT	Seamount Groundfish.	Western Pacific.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS	Pacific billfishes and sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
4	"Joint venture" in support of U.S. vessels.

Nation, vessel name, and vessel type	Application No.	Fishery	Activity
Government of Japan			
Daito Maru No. 68, medium stern trawler	JA-84-1565	BSA	1
Government of Portugal			
Elisabeth, large stern trawler	PO-84-0015	NWA	2
Government of Poland			
Amarel, large stern trawler	PL-84-0046	BSA, GOA, WOC	1
Antares, large stern trawler	PL-84-0037	BSA, GOA, WOC	1
Aquila, large stern trawler	PL-84-0097	BSA, GOA, NWA, WOC	1
Arcturus, large stern trawler	PL-84-0036	BSA, GOA, WOC	1
Awior, large stern trawler	PL-84-0060	BSA, GOA, WOC	1
Bogar, large stern trawler	PL-84-0085	BSA, GOA, WOC	1
Bonito, large stern trawler	PL-84-0096	BSA, GOA, WOC	1
Buran, cargo transport	PL-84-0033	BSA, GOA, NWA, WOC	3
Cassiopeia, large stern trawler	PL-84-0099	BSA, GOA, WOC	1
Garnela, large stern trawler	PL-84-0008	BSA, GOA, WOC	1
Garnini, large stern trawler	PL-84-0048	BSA, GOA, WOC	1
Grinwal, large stern trawler	PL-84-0007	BSA, GOA, WOC	1
Gryf Pomorski, large stern trawler	PL-84-0049	BSA, GOA, NWA, WOC	1
Halniak, cargo/transport	PL-84-0029	BSA, GOA, NWA, WOC	3
Humbak, large stern trawler	PL-84-0019	BSA, GOA, WOC	1
Indus, large stern trawler	PL-84-0094	BSA, WOC	1
Kaszuby 2, cargo/transport	PL-84-0027	BSA, GOA, NWA, WOC	3
Kolias, large stern trawler	PL-84-0050	BSA, GOA, WOC	1
Lipus, large stern trawler	PL-84-0001	BSA, GOA, WOC	1
Lewanter, cargo/transport	PL-84-0030	BSA, GOA, NWA, WOC	3
Marlin, large stern trawler	PL-84-0034	BSA, GOA, WOC	1
Mazury, cargo/transport	PL-84-0098	BSA, GOA, NWA, WOC	3

Nation, vessel name, and vessel type	Application No.	Fishery	Activity
Mors, large stern trawler	PL-84-0063	BSA, GOA, WOC	1
Mustel, large stern trawler	PL-84-0012	BSA, GOA, WOC	1
Orlen, large stern trawler	PL-84-0078	BSA, GOA, WOC	1
Otol, large stern trawler	PL-84-0011	BSA, GOA, WOC	1
Parma, large stern trawler	PL-84-0084	BSA, GOA, WOC	1
Perseus, large stern trawler	PL-84-0004	BSA, GOA, WOC	1
Pollux, large stern trawler	PL-84-0006	BSA, GOA, WOC	1
Pomorze, large stern trawler	PL-84-0031	BSA, GOA, WOC	1
Regulus, large stern trawler	PL-84-0095	BSA, GOA, WOC	1
Pekin , large stern trawler	PL-84-0080	BSA, GOA, WOC	1
Sagitta, large stern trawler	PL-84-0040	BSA, GOA, WOC	1
Saturn, large stern trawler	PL-84-0056	BSA, GOA, WOC	1
Taurus, large stern trawler	PL-84-0082	BSA, GOA, WOC	1
Tazar, large stern trawler	PL-84-0054	BSA, GOA, WOC	1
Terral, large stern trawler	PL-84-0086	BSA, GOA, WOC	1
Tunek, large stern trawler	PL-84-0045	BSA, GOA, WOC	1
Vega, large stern trawler	PL-84-0055	BSA, GOA, WOC	1
Walen, large stern trawler	PL-84-0009	BSA, GOA, WOC	1
Wineta, cargo/transport	PL-84-0061	BSA, GOA, NWA, WOC	3
Zulawy, cargo/transport	PL-84-0041	BSA, GOA, NWA, WOC	3
Government of the U.S.S.R.			
Viktor Vasnetsov, cargo/transport	UR-84-0769	BSA, GOA	3

Poland

Joint Venture—In addition to the Polish vessels listed above, a notice of receipt of permit applications for the *Vega* and the *Gemini* was published April 23, 1984, at FR 17063. This notice published the Government of Poland's request that two or three Polish processing vessels be authorized for joint venture activities in the following fisheries:

—Washington, Oregon, California (WOC) for 7,000 mt of Pacific whiting with the American partner, Quest Export Trading Company, 790 North 4th Court, Coos Bay, Oregon 97420, and

—Bering Sea and Aleutian Islands (BSA) for 15,000 mt of Alaska Pollock with the American partner, Alaska Contact, Ltd., 750 W. Second Avenue, Suite 203, Anchorage, Alaska 99501.

The Polish partner in both operations is the Rybex Company, Ltd., ul. Odrowaza 1, 71–420 Szczecin, Poland.

[FR Doc. 84–16239 Filed 6–18–84; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Receipt of Application for Permit; Dr. Donald B. Siniff

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Dr. Donald B. Siniff (P5F).

b. Address: Department of Ecology and Behavioral Biology, University of Minnesota, Minneapolis, Minnesota 55455.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals:

Weddell seal (*Leptonchotes weddelli*) 1,000/yr, 3,000 total.

Leopard seal (*Hydruga leptonyx*) 30/yr, Ross seal (*Ommatophoca rossii*), 30/yr, Crabeater seal (*Lobodon carcinophaga*) 30/yr, Southern Elephant seal (*Mirounga leonina*) 30/yr, Southern Fur seal (*Arctocephalus gazella*), 30/yr, 120 total unspecified.

4. Type of Take: 1,000 Weddell seals of both sexes and all ages will be captured, tagged, sampled and released each year. Some animals will be radio-tagged, some will be transported to experimental colonies, and some will be weighed weekly. Weekly censuses will be taken and observed tab numbers recorded. 5 Weddell seals will be killed each for special studies. 30 per year of other listed spoecies combined will be captured, tagged and released. An unspecified number of specimen materials will be imported.

5. Location of Activity: McMurdo Sound, Antarctica.

6. Period of Activity: 3 Years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Services, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Dated: June 12, 1984.

Richard B. Roe,

Ofice of Protected Species and Habitat Conservation National Marine Fisheries Service.

[FR Doc. 84–16314 Filed 6–18–84; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting to discuss reports of the swordfish, groundfish, and foreign fishing oversight committees; reports on the Mid-Atlantic Fishery Management Council's meeting and the public hearings on the groundfish amendment, as well as discuss other fishery management and administrative matters. The public meeting will convene on June 26, 1984, at approximately 10 a.m., and adjourn on June 27, 1984, at approximately 4 p.m., and will take place at the Kings Grant Inn, Danvers, MA. The meeting may be lengthened or shortened or agenda items rearranged depending upon progress on the agenda. For further information on seating arrangements, changes to the agenda, and or written comments, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, MA 01906; telephone: (617)–231–0422.

Dated: June 14, 1984.

Roland Finch,

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

[FR Doc. 84–16332 Filed 6–18–84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Import Limit for Certain Wool Apparel Produced or Manufactured in Colombia

June 14, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 20, 1984. For further information contact William Boyd, International Trade Specialist (202) 377–4212.

Background

The Governments of the United States and Colombia have agreed to amend their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and August 11, 1982 to establish a new specific limit for wool coats in Category 435, produced or manufactured in Colombia and exported to the United States. For goods exported during the agreement year which began on July 1, 1983 and extends through June 30, 1984 the limit for Category 435 will be 6,500 dozen.

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), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

SUPPLEMENTARY INFORMATION: On July 1, 1983 a letter dated June 28, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements was published in the **Federal Register** (48 FR 30423) which established limits for certain categories of cotton, wool and man-made fiber textile products, including Category 435, produced or manufactured in Colombia and exported during the year which began on July 1, 1983. The letter published below amends the letter of June 28, 1983 to include a new specific limit of 6,500 dozen for wool apparel in Category 435.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 14, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of June 28, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established import restraint limits for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Colombia and exported during the year which began on July 1, 1983.

Effective on June 20, 1984, the directive of June 28, 1983 is hereby amended to include an adjusted restraint limit of 6,500 dozen for wool textile products in Category 435.[1]

The action taken with respect to the Government of Colombia and with respect to imports of wool textile products from Colombia 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,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-16294 Filed 6-18-84; 8:45 am]

BILLING CODE 3510-DR-M

Announcing an Import Restraint Limit for Certain Man-Made Fiber Textiles Produced or Manufactured in Spain

June 14, 1984.

On March 9, 1984 a notice was published in the **Federal Register** (49 FR 8989) announcing that, on February 29, 1984, the United States Government, under section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), had requested the Government of Spain to enter into consultations concerning exports to the United States of other man-made fiber yarn, wholly of noncontinuous filament, in Category 604, produced or manufactured in Spain.

The purpose of this notice is to advise the public that consultations have been held concerning this category, but no mutually satisfactory agreement was reached. The United States Government has decided, therefore, pending further consultations with the Government of Spain, to control imports of man-made fiber yarns in Category 604, produced or manufactured in Spain and exported during the twelve-month period which began on March 1, 1984 and extends through February 28, 1985 at a level of 857,396 pounds.

Accordingly, 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 man-made fiber textiles in Category 604 exported during the period which began on March 1, 1984 and extends through February 28, 1985 in excess of the designated restraint limit.

EFFECTIVE DATE: June 20, 1984.

FOR FURTHER INFORMATION CONTACT: Gordana Slijepcevic, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377–4212).

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), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 14, 1984.

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 in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 20, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textiles in Category 604, produced or manufactured in Spain and exported during the twelve-month period which began on March 1, 1984, in excess of 857,396 pounds.[1]

Textile products in Category 604 which have been exported to the United States prior to March 1, 1984 shall not be subject to this directive.

Man-made fiber textile products in Category 604 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under 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), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

[1] The restraint limit has not been adjusted to reflect any imports exported after June 30, 1983.

[1] The level of restraint has not been adjusted to reflect any imports exported after February 29, 1984.

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 action taken with respect to the Government of Spain and with respect to imports of man-make fiber textile products from Spain 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 Commissoner 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. 533. This letter will be published in the **Federal Register.**

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-16295 Filed 6-18-84; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Age Labeling of Toys; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission has scheduled a public meeting with manufacturers and importers of toys to discuss age labeling. Participation by all interested manufacturers and importers is invited.

DATES: (1) The meeting will begin at 10:00 a.m. on July 19, 1984. (2) Requests from manufacturers and importers to participate, and copies of their presentations, should be received by the Office of the Secretary no later than July 12, 1984.

ADDRESS: The meeting will be in the third floor conference room at 1111 18th Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: (1) For information about the subjects to be discussed at the meeting, Elaine Tyrrell, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6554. (2) To request the opportunity to participate in the meeting, Sheldon Butts, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6800.

SUPPLEMENTARY INFORMATION: The Commission has always been interested in how toys are labeled to recommend that they be used or not used by children of particular ages. Safety and other considerations are involved in such informational age labeling.

The Commission will discuss age labeling with interested manufacturers and importers of toys at a public meeting on July 19, 1984, at 10:00 a.m. in the third floor conference room at 1111 18th Street NW., Washington, D.C.

Representatives of toy manufacturers and importers who want to participate in the July 19, 1984 meeting should write or telephone Mr. Sheldon Butts at the address or telephone number provided above, no later than July 12, 1984. Copies of the participants' presentations are requested to be provided to Mr. Butts by the same date. The Commission reserves the right to impose time limitations on the presentations of the industry participants and to limit duplicative or irrelevant comments. The format for the meeting will be presentations by the industry participants, followed by questions by the Commissioners.

Dated: June 14, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-16350 Filed 6-18-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Office of the Secretary of Defense (OSD) Performance Review Board

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Notice of membership of the Office of the Secretary of Defense Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense. The OSD PRB's jurisdiction includes: OSD, OSD field activities, the Organization of the Joint Chiefs of Staff (OJCS), the Office of the Inspector General (IG), the Defense Investigative Service (DIS), the U.S. Court of Military Appeals (USCMA), and the U.S. Mission to NATO. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Secretary of Defense.

EFFECTIVE DATE: June 1, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Bobb Brown, Chief, Senior Executive Service & Classification Division, Directorate for Personnel & Security, WHS, Office of the Secretary of Defense, Department of Defense, The Pentagon, (202) 697-3305 or 697-8304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names of the executives who have been appointed to serve as members of the Performance Review Board. They will serve a one-year renewable term, effective on June 1, 1983.

Dated: June 14, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

OSD PRB Members

Adams, Benson D.
Adams, Mac C.
Agnew, Ann C.
Alderman, Craig (NMN)
Alderman, Karen A.
Alewine, Ralph W., III
Alterman, Stanley
Alvarado, Donna M.
Anderson, David L.
Anderson, Maynard C.
Atkins, Allen R.
Bader, George W.
Bain, James D.
Barringer, Philip E.
Barry, Albert P.
Batjer, Marybel
Beach, John W.
Becker, Karl F.
Berenson, Paul J.
Berg, Roland E.
Bergmann, Walter B., II
Bernard, Charles W.
Bertapelle, Arthur H.
Bialick, Irving
Blaker, James R.
Bloom, Harold (NMN)
Brandenstein, Albert E.
Brannan, James T.
Briskin, Manuel (NMN)
Bruh, Brian M.
Bryen, Stephen D.
Buck, Kathleen A.
Buffalano, August C.
Buzalski, Ernest A.
Calais, Mary J.
Calaway, Paul R.
Calhoun, Jerry Lee
Campbell, Leonard G.
Campen, Alan D.
Carabello, John M.
Cavaney, William T.
Cevasco, Francis M., Jr.
Chapman, Ray E.
Christie, Deborah
Christie, Thomas P.
Christle, Gaylord E.
Chu, David S. C.
Cipolla, Charles L.
Cipolla, Frank P.

Cittadino, John C.
Coakley, William F.
Colocotronis, Gregory L.
Compton, James M.
Conroy, Matthew J.
Conte, Albert V.
Conway, Lynn A.
Cooke, David O.
Cooper, Robert S.
Cratch, Geoffrey A.
Crehan, John T.
Crossman, George R.
Croteau, Robert J.
Crouch, Horace J.
Culosi, Salvatore J.
Curry, James H.
Daniel, Robert W., Jr.
Dashiell, Thomas R.
Dausin, Lawrence R.
Davidson, Ronald A.
Delaney, Robert P.
Dix, Donald M.
Donnelly, John F.
Donnelly, Richard E.
Donovan, Paul (NMN)
Douglas, Terrence Richard
Dube, Lawrence P.
Earich, Douglas R.
Eaton, Nelson W.
Eberhardt, Michael C.
Ehlers, Arthur H., Jr.
Engel, Roger K.
Entzminger, John N., Jr.
Facey, Albert G., Jr.
Farbrother, Douglas D.
Fawsett, John
Feith, Douglas J.
Feld, Benjamin
Fields, Craig T.
Finsterle, James C.
Fisher, Herbert L.
Fites, Jeanne B.
Frederick, William G.D.
Freeman, Claire E.
Funk, Kennerly W.
Gaffney, Frank J., Jr.
Gaffney, Henry H., Jr.
Garcia, Ernest E.
Gardner, John L.
Garnett, Thomas F.
Genalis, Paris
Gentzel, Charles R.
Gilleece, Mary Ann
Gilliat, Robert L.
Glaister, Clyde O.
Goldberg, Alfred (NMN)
Goldstein, Donald J.
Gontarek, Stanley J.
Goodwyn, James C.
Granahan, Thomas F.
Gray, Anthony W., Jr.
Greenlee, Donald R.
Groover, Charles W.
Hamilton, Dale L.
Hanmer, Stephen R.
Hansen, John W.
Haughton, Clairborne D., Jr.
Hawkins, Charles A., Jr.
Heaston, Robert J.
Hessler, David J.
Hinman, Kenneth R.
Hoffman, George
Holaday, Duncan A.
Horton, Cyril F.
Howe, Richard G.
Ioffredo, Michael L.
Jefferson, Ralph H.
Johnson, Darel S.
Jones, Thomas K.
Kahn, Robert E.
Kammerer, Joseph T.
Kapper, Francis B.
Kauvar, Gerald Bluestone
Keesee, William K.
Kelly, Clinton W., III
Kelly, James A.
Kelly, Merrill T.
Kendall, Cynthia
Kendig, John L.
Killin, Edward C.
Knowles, Cyrus P.
Koch, Noel C.
Kopscak, George C.
Kraft, Herbert H., Jr.
Kugler, Richard L.
Lanoue, Robert J.
Latham, Donald C.
Lauder, Ronald S.
Leary, William H., III
Lebo, Jerry A.
Leedom, Dennis K.
Leftwich, Norma B.
Legere, Laurence J.
Lehman, Ronald F., II
Lelli, Thomas J.
Leonard, Michael (NMN)
Lese, William G., Jr.
Leyden, Donovan K.
Lieberman, Richard D.
Lieberman, Robert J.
Lieblein, Edward
Lindstrom, Talbot S.
Lipp, Robert E.
Lomacky, Oles
Lose, Graydon I.
Loveland, Trafton J.
Lubarsky, Albert R.
Lynch, John E.
Lynn, Verne L.
Lyons, Robert E.
MacCallum, John M., Jr.
Major, Philip L.
Maldonado, Joe P.
Mangano, Joseph A.
Margolis, Milton A.
Marquet, Louis C.
Marquis, Dennis C.
Marquitz, William J.
Marshall, Andrew W.
Martin, Edith M.
Martin, John D.
Maynard, Egbert
McCarthy, Herbert W.
McCarty, Thomas F.
McDonald, William M.
McKenzie, Vernon
McLaughlin, Frank I.
McNeill, John
McNicol, David L.
Meehan, Patrick J.
Melburn, Michael J.
Melchner, John W.
Meling, Merle A.
Michael, Louis G.
Michel, Werner E.
Minichiello, Lee P.
Minneman, Milton J.
Mintz, Jeanne S.
Mittino, John A.
Mobbs, Michael H.
Moesser, Alba I.
Montgomery, Jack L.
Moore, Robert H.
Moore, Robert J.
Morgan, John D.
Morris, Herbert K.
Morrion, James W.
Murrell, Billy C.
Nelson, Wayne S.
Nicholas, George
Niederlehner, Leonard (NMN)
Pallas, Spiros G.
Pennington, Arthur W.
Persh, Jerome
Phillips, Gary R.
Porter, John M.
Quetsch, John R.
Quinn, Thomas P.
Rauner, Robert M.
Reay, James H.
Reynolds, Richard A.
Richardson, William A.
Rizer, Jordan E.
Robertson, William B.
Roll, Charles, R., Jr.
Rona, Thomas P.
Rosen, E.
Ross, Dennis B.
Rudd, Glen A.
Ruffine, Richard S.
Russ, John M.
Russ, Richard T.
Sanchez, Nestor D.
Saylor, James W.
Schmidt, Raymond E.
Scott, Robert S.
Sharkey, William J., Jr.
Shaw, Dennis R.
Sheils, Marylou
Shilling, David M.
Shorey, Russell R.
Shortley, Mary D.
Shriber, Maurice N.
Shulsky, Abram N.
Sicilia, Thomas G.
Siewert, Raymond F., Jr.
Smiley, Orville L.
Smith, Homer D., Jr,
Smith, John E.
Snider, Britt L.
Springett, John P.
St. John, Adrian II
Stephens, W. Beth
Stilwell, Richard G.
Stimson, Richard A.
Stivers, Ronald H.

Stone, Robert A.
Sullivan, Alden P.
Sullivan, Gerald D.
Sungenis, Joseph R.
Tanter, Raymond
Tapparo, Frank A.
Tegnelia, James A.
Tether, Anthony J.
Thomas, Reymonld (NMN), Jr.
Thomas, Ronald D.
Thomas, William F.
Tillson, John C.
Timperlake, Edward
Toulme, Clarence V.
Townley, Richard W.
Trodden, Stephen A.
Troia, Kathleen
Trosch, Dennis H.
Tucker, Alvin
Turner, Robert D.
Tyler, John T.
Vander Schaaf, Derek J.
Wade, James P., Jr.
Warren, Raymond A.
Watt, Charles K.
Whitman, Edward C.
Wienberg, Harold F.
Wierzynski, Gregory H.
Wilcox, Benjamin A.
Wolthuis, Robert K.
Wood, Theodore D.
Woods, James L.
Woods, James R.
Woodworth, John A.
Young, Leo (NMN)
Yurcisin, Peter
Zakheim, Dov S.
Whealen, John T.
Starrett, Charles O., Jr.
Brown, James R.
Quill, John J.
Maclin, James F.
Kabeiseman, Karl W.
Atkins, Marvin C.
O'Brien, Thomas J.
Dinan, Daniel J.
Reusch, Roanld E.

[FR Doc. 84-16273 Filed 6-18-84; 8:45 am]
BILLING CODE 3810-01-M,

DELAWARE RIVER BASIN COMMISSION

Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, June 27, 1984, beginning at 1:30 p.m. in the Rembrandt Peale Room of Holiday Inn Center City at 1800 Market Street, Philadelphia, Pennsylvania. The hearing will be a part of the Commission's regular business meeting, which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Colonial Greene Property Owners Association D–73–20 CP (Revised).* A ground water withdrawal project to supply additional water to the applicant's residential development in Doylestown Township, Bucks, County, Pennsylvania. Well Nos. 1 and 2 were previously approved by the Commission and have recently been purchased from the Colonial Greene Water Company. The applicant proposes to increase the combined withdrawal rate from Well Nos. 1 and 2 by an additional 20,000 gallons per day (gpd) to supply 62 townhouse units which remain to be constructed. Accordingly, the applicant requests that the permitted withdrawal rate be increased from 1.83 million gallons (mg) to 2.43 mg/30 days. The wells are located in the Southeastern Pennsylvania Ground Water Protected Area.

2. *Joseph Jackewicz, Sr. D–74–53.* An application for Commission approval of existing surface and ground water withdrawals to supply the applicant's potato farm near the Town of Magnolia in Kent County, Delaware. Seven wells penetrating the Frederica Aquifer and two surface water intakes on Tidbury Creek supply a total of 11.6 million gallons per day (mgd) to the applicant's 1175 acre farm.

3. *Merck, Sharp and Dohme D–79–23 RENEWAL.* An application for renewal of a ground water withdrawal from Well No. 8 of the Merck, Sharp and Dohme Division of Merch Company, Inc. The well is located off of Garfield Avenue in Upper Gwynedd Township, Montgomery County, Pennsylvania, and is in the Southeasterm Pennsylvania Ground Water Protected Area. Commission approval was limited to five years and will expire unless renewed. The applicant has requested approval to continue operation of Well No. 8 in accordance with existing approval limitations. The applicant proposes no increase in the total combined withdrawal from all wells supplying the facility.

4. *Evesham Municipal Utilities Authority D–82–39 CP.* A revised application for a ground water withdrawal project to supply the applicant's public water system in Evesham Township, Burlington County, New Jersey. Well No. 7, which has previously been placed in service, and new Well No. 8 replace Well Nos. 1, 2, and 3 which have been abandoned and sealed. The total average proposed withrawal from Well Nos. 7 and 8 is 1.9 mgd. Additionally, the applicant requests that the allocation for all system wells be increased from 85 mg to 115 mg/30 days.

5. *Edith D. Raughley D–83–4.* A ground water withdawal project to supply water for the irrigation of 482 acres of vegatable crops located west of the City of Dover in Kent County, Delaware. Two wells, designated as Nos. 1 and 2, are each proposed to withdraw an average of 0.63 mgd (total withdrawal of 1.26 mgd) during the growing season.

6. *Holt Hauling and Warehousing Systems D–84–8.* Extension of a marginal wharf at the applicant's marine terminal in Gloucester City, Camden Connty, New Jersey. The project consists of extending the downstream end of the wharf 373 feet. The project includes the placement of 131,000 cubic yards of fill over a 3.4 acre area, and dredging of 4,650 cubic yards of material in fornt of the wharf to provide 40 foot depth for ship access. In order to mitigate the effects of fill placement in the Delaware River, the applicant proposes to expand the Pennsauken wetland mitigation site previously approved by the Commission, and adjacent to the Betsy Ross Bridge in Pennsauken Township, Camden County, New Jersey.

7. *Delaware Department of Natural Resources and Environmental Control (DNREC) D–84–10 CP.* An application to amend the Commission's Comprehensive Plan to include recommendations of a water supply facility plan for Northern New Castle County, Delaware. The recommendations have been adopted by the DNREC as a component of the Statewide Comprehensive Water Plan. The major recommendation is to install additional interconnections and made maximum use of facilities to transfer water from areas of surplus to areas of demand. The planning area is that portion of New Castle County located north of the Chesapeake and Delaware Canal.

8. *Ciba-Geigy Corporation D–84–12.* A surface water withrawal and industrial waste discharge at the applicant's production facility in Newport, New Castle County, Delaware. The manufacturing facility has been operated by the duPont Company since 1935 and will be purchased by the applicant. An average of approximately 0.40 mgd of water will be withrawn from the Christina River for non-contact cooling and process use. Evaporative losses of up to 15 percent of the water

withdrawn are expected. Effluent, consisting of non-contact cooling water, water softener backwash and storm water will be discharged to the Chistina River. Effluent concentrations of TSS and BDD, will meet existing NPDES permit limits for the discharge.

9. *Country Pride Foods Company D–84–15.* A ground water withdrawal project at the applicant's poultry processing plant in the City of Milford, Kent County, Delaware. The applicant has proposed to increase the total withdrawal rate from existing Well Nos. 1 and 2 from 18 to 27 mg/30 days. The wells and processing plant were previously owned by Bayshore Foods, Inc.

10. *BCM Plantop I D–84–19 CP.* A sewage treatment project to serve Limerick Township in Montgomery County, Pennsylvania. The treatment plant is designed to remove 87 percent BOD and 89 percent suspended solids from a sewage flow of 0.5 mgd. Treated effluent will discharge to an unnamed tributary to the Schuylkill River in Limerick Township.

Documents relating to these projects may be examined at the Commission's offices and preliminary dockets are available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

* * * * *

Notice of Availability

Notice is hereby given of completion and public release of the Final Environmental Impact Statement for the Proposed Merrill Creek Reservoir Project on Merrill Creek in Harmony Township, Warren County, New Jersey.

This Final EIS describes the preferred location for a reservoir to provide required supplementary water storage for electric generating facilities during periods of low river flows. It evaluates the probable environmental impact of the project and reasonable alternatives; provides responses to comments on the Draft EIS; and includes an update and errata for the Draft EIS. The Draft EIS is incorporated into the Final EIS as an unattached reference. A limited number of copies are available from DRBC. Arrangements have been made for copies of the Final EIS and the Draft EIS to be available for inspection at the following locations:

Township Clerk's Office, Greenwich Township Hall, Greenwich Street, Stewartsville, New Jersey, (201) 859–0909

Warren County Library, Court House Annex, Belvidere, New Jersey, (201) 475–5361

Library, Army Corps of Engineers, Custom House, Third Floor, Second and Chestnut Streets, Philadelphia, Pennsylvania, (215) 587–3610

Merrill Creek Project Office, Lopat Plaza, Route 57, Lopatcong, New Jersey, (201) 454–1213

Warren County Planning Department, Cummings Building, 202 Mansfield Street Belvidere, New Jersey, (201) 475–5361

Bucks County Planning Commission, 22 South Main Street, Doylestown, Pennsylvania, (215) 348–2911

Library, Delaware River Basin Commission, P.O. Box 7360, 25 State Police Drive, West Trenton, New Jersey, (609) 883–9500

Phillipsburg Public Library, 200 Frost Avenue, Phillipsburg, New Jersey, (201) 454–3712

New Jersey Reference Services, New Jersey State Library, 185 West State Street, Trenton, New Jersey, (201) 292–6294

Susan M. Weisman,

Secretary.

June 12, 1984.

[FR Doc. 84–16246 Filed 6–18–84; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; European Atomic Energy Community (EURATOM)

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended and the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above mentioned agreements for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: From Switzerland to France (Compagnie Generale des Matieres Nucleaires) for the purpose of reprocessing 64 irradiated fuel assemblies, containing 11,292 kilograms of uranium, enriched to 0.96% in U-235, and 93 kilograms of plutonium from the Muhleberg Power Station. This subsequent arrangement is designated at RTD/EU(SD)–51.

The Department of Energy has received letters of assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in France, and will not be transferred from France, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: June 14, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84–16363 Filed 6–18–84; 8:45 am]

BILLING CODE 6450–01–M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangements; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

These subsequent arrangements would give approval, which must be

obtained under the above mentioned agreements, for the transfer of special nuclear material of United States origin from Japan to France and to the United Kingdom for the purpose of reprocessing.

The proposed transfers are as follows:

(1) 136 irradiated fuel assemblies containing 24,930 kilograms of uranium, enriched to 1.32 percent in U–235, and 328 kilograms of plutonium from the Hamaoka Units 1 and 2 of the Chubu Electric Power Co., Inc. to France.

(2) 56 irradiated fuel assemblies containing 22,080 kilograms of uranium, enriched to 1.23 percent in U–235, and 190 kilograms of plutonium from Ikata Unit 1 of the Shikoku Electric Power Co., Inc., to the United Kingdom;

(3) 252 irradiated fuel assemblies containing 47,500 kilograms of uranium, enriched to 1.44 percent in U–235, and 380 kilograms of plutonium from the Tsuruga and Tokai No. 2 Power Stations of the Japan Atomic Power Co. to the United Kingdom; and

(4) 60 irradiated fuel assemblies containing 23,289 kilograms of uranium, enriched to 1.25% in U–235, and 221 kilograms of plutonium from the Genkai Units 1 and 2 of the Kyushu Electric Power Co., Inc., to France.

The foregoing proposed transfers are designated as RTD/EU(JA)–68, 69, 70, and 71.

The Department of Energy has received a letter of assurance from the Government of Japan that the recovered uranium and plutonium will not be transferred from the reprocessing sites, nor put to any use, without the prior approval of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approval of these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen (15) days after the date of publication of this notice, and after fifteen (15) days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: June 14, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84–16362 Filed 6–18–84; 8:45 am]

BILLING CODE 6450–01–M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangements; Japan, et al.

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended, the Agreement of Cooperation Between the Government of the United States of America and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy, as amended, the Agreement for Cooperation Between the Government of the United States of America and the International Atomic Energy Agency (IAEA) Concerning Peaceful Application of Atomic Energy, as amended, the Agreement for Cooperation Between the Government of the United States of America and the Government of Spain Concerning Civil Uses of Atomic Energy, as amended and as authorized by the Taiwan Relations Act of 1979 (Pub. L. 96–8).

The subsequent arrangements to be carried out under the above mentioned agreements and authority involve approval for the conversion of uranium enriching services agreements to the new utility services contracts. The following utilities and facilities are involved:

Japan

Hokkaido Electric Power Co., Inc., Tomari—1 and 2.

Kansai Electric Power Co., Inc., Kansai—2, 3, 4, 5, and 6, Takahama 1, 2, and 3, Mihama 1, 2, and 3, and Ohi 1 and 2.

Shikoku Electric Power Co., Inc., Ikata 1 and 3.

Chubu Electric Power Co., Inc., Hamaoka 1 and 2, and Chubu 3, 4, 5, and 6.

Republic of Korea

Korea Electric Power Co., Inc., Korea 1, 2, 5, 6, 7, 8, 11, and 12.

Mexico, through the IAEA

Uranio Mexicano, Laguna Verde 1 and 2.

Spain

Empresa Nacional del Uranio, S.A., Almaraz 1 and 2, Cofrentes, Lemoniz 1 and 2, Asco 1 and 2, Zoirta 1, and Santa Maria de Garona.

Taiwan

Taiwan Power Co., Inc., Taipower 5 and 6, Second Northern Nuclear 1 and 2, and Chinshan 1 and 2.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimicalf to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 13, 1984.

George J. Bradley, Jr.

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84–16276 Filed 6–18–84; 8:45 am]

BILLING CODE 6450–01–M

International Atomic Energy Agreements; Civil Uses; Proposed Subsquent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S–SD122, to Radium-Chemie Ltd., Switzerland, 60,000 curies of tritium gas, for use in the manufacture of luminous paint and for use in the manufacture of tritium light sources. Shipments are to be limited to 30,000 curies.

In accordance with section 131 of the Atomic Energy Act of 1954 as amended, it has been determined that the furnishing of ths material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 13, 1984.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-16277 Filed 6-18-84; 8:45 am]

BILLING CODE 6450-01-M

Industry Advisory Board; Meetings; Voluntary Agreement and Plan of Action To Implement the International Energy Program

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272), the following meeting notices are provided:

I. A meeting of Subcommittee A of the Industry Advisory Board (IAB) of the International Energy Agency (IEA) will be held on June 25, 1984, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 10:30 a.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. Stocks and supply disruptions.
3. Future work program.

II. A meeting of the IAB will be held on June 25, 1984, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 3:00 p.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. Approval of draft record of the IAB meeting of May 10, 1984.
3. Correspondence and communications with IEA and Reporting Companies.
4. Stocks and supply disruptions.
5. ISAG staffing.
6. U.S. Plan of Action.
7. Future work program and date of the next IAB meeting.

III. A meeting of the IAB will be held on June 26, 1984, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 9:45 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is being held at the offices of the IEA on that date. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the draft agenda.
2. Summary record of the 47th Meeting.
3. Oil Supply and demand:
(a) End May Assessment;
(b) Quarterly Oil Forecast; and
(c) Base Period Final Consumption (Second Quarter 1983–First Quarter 1984).
4. Emergency Preparedness:
(a) Stocks and supply disruptions;
(b) Trade discrepancies;
(c) Modifications to Questionnaires A and B;
(d) Changes in available supplies and "extra oil" during an emergency;
(e) Disruption of "matched cargoes"; and
(f) Other matters arising from AST–4.
5. AST–5 Scope and Objectives:
(a) Pricing elements; and
(b) Data.
6. Future work of the SEQ.
7. Any other business.
8. Date of the next meeting.

IV. A meeting of the IAB and the Industry Working Party (IWP) of the IEA will be held on June 27, 1984, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 9:45 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB and of the IWP at a joint meeting of the IEA's SEQ and Standing Group on the Oil Market (SOM), which is being held at the offices of the IEA on that date. The agenda for the meeting is under the control of the SEQ and the SOM. It is expected that the following draft agenda will be followed:

Stocks and supply disruptions.

V. A meeting of the IWP will be held on June 28 and 29, 1984 at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 9:30 a.m. on June 28. This meeting is being held in order to permit attendance by representatives of the IWP at a meeting of the SOM which is being held in Paris on those dates. The agenda for the meeting is under the control of the SOM. It is expected that the following agenda will be followed:

1. Adoption of the provisional agenda.
2. Approval of the summary record of the 45th session.
3. Current oil market developments:
(a) Current oil market situation:
—End-June assessment;
(b) IEA oil market report:
—Methodological issues;
—Report by the IWP;
(c) Round-table reports on notable developments in the oil sector in participating countries;
(d) Crude oil import register:
—Analysis of data for 1st quarter 1984;
(e) Crude oil cost information system:
—Analysis of data for 1st quarter 1984.
4. Review of the crude cost information systems:
Review of the crude oil cost information system and the crude oil import register:
—Note by the Secretariat;
—IWP report.
5. Financial analysis of the oil industry:
(a) Comparative analysis of oil companies in IEA regions;
(b) Financial analysis of U.S. oil companies:
—Paper and presentation by Dr. Arthur Andersen;
(c) Financial outlook for the international oil industry:
—Presentation by Mr. John Treat, New York Mercantile Exchange.
6. Future work of the SOM—1985 work program.
9. Other business.
10. Date of next meeting.

It is expected that the IWP will be present for discussion of agenda items 3, 4, 5(a) and 5(b).

VI. A meeting of Subcommittee C of the IAB will be held on June 28–29, 1984, at the office of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 9:00 a.m. on June 28. The agenda for the meeting is as follows:

1. Opening remarks.
2. U.S. Plan of Action.
3. Future work program.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings will not be open to the public.

Issued in Washington, D.C., June 14, 1984.

Theodore J. Garrish,

General Counsel.

[FR Doc. 84-16395 Filed 6-18-84; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

Dose Assessment Advisory Group; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Dose Assessment Advisory Group (DAAG).

Date and Time: Thursday, July 12, 1984—8:30 a.m.—4:30 p.m., Friday, July 13, 1984—8:30 a.m.—12:00 p.m.,

Place: U.S. Department of Energy, Nevada Operations Office Auditorium, 2753 South Highland Drive, Las Vegas, Nevada 89114.

Contact: Marshall Page, Jr., Deputy Project Manager, Off-Site Radiation Exposure Review Project, Nevada Operations Office, U.S. Department of Energy, P.O. Box 14100, Las Vegas, Nevada 89114, Telephone: 702/295-0991.

Purpose of the Group

To provide the Secretary of Energy and the Manager, Nevada Operations Office (NV), with advice and recommendations pertaining to the Off-Site Radiation Exposure Review Project (ORERP). This project concerns the evaluation and assessment of the amount of radiation received by members of the off-site population

surrounding the Nevada Test Site (NTS) as a result of the nuclear test operations conducted at the NTS.

Tentative Agenda

July 12, 1984

- Welcome and Introductions.
- Review of DAAG Recommendations and Expanded CIC Effort.
- Presentation on Planned Retrieval for Next 2 Years.
- Update on Document Collections and Processing.
- Populations to be Used and Reporting of Phase I Population Dose Estimates (Project Directives 5 & 6).
- Town Data Based Used in Population Dose Estimates.
- Review of Factors Considered in External Population Dose Estimates.
- Status of Milk Distribution Study in Phase I Regions.
- Update on Results of 10 County Lifestyle Survey.
- Radiological Analysis of PIKE.
- Cumputer Modeling and Extended Fallout Patterns.
- EG&G Update on Aerial Tracking of Fallout.
- Status of Survey Meter Data Base Development.
- Progress on the IDA.
- CSU Progress Report.
- DAAG Discussion.
- Public Comment (10 minute rule).

July 13, 1984

- ORERP Quality Assurance Program Plan.
- Review of Phase II Spoil Analysis Program.
- Review of Phase II Results.
- Review of EML Work for ORERP.
- Other Business.
- DAAG Discussion and Recommendations.
- Public Comment (10 minute rule).

Public Participation

The meeting is open to the public. The Chairperson of the Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Marshall Page, Jr., at the address or telephone number listed above.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 14, 1984.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84–16279 Filed 6–18–84; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ER84–478–000]

Arizona Public Service Company; Filing

June 14, 1984.

The filing Company submits the following:

Take notice that on June 4, 1984, Arizona Public Service Company (Arizona) tendered for filing Amendment No. 2, executed April 26, 1984, to the Firm Transmission Service Agreement between Arizona and Tucson Electric Power Company (Tucson).

Arizona states that this Amendment proposes to update to current levels the rates to be charged for firm transmission service, and also provides for an extension of the term of the original Agreement.

Arizona requests an effective date of November 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Tucson and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 motions or protests should be filed on or before June 28, 1984. 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. 84–16317 Filed 6–18–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84–477–000]

Centel Corporation; Filing

June 14, 1984.

The filing Company submits the following:

Take notice that on June 4, 1984, Centel Corporation (Centel) tendered for filing a notice of cancellation of Rate Schedule 83–A, FPC 35. Centel states that Midwest Energy Inc. is the only customer receiving service under this rate schedule, and therefore it serves no purpose retaining the schedule in effect.

Centel requests an effective date of June 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 motions or protests should be filed on or before June 28, 1984. 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. 84–16318 Filed 6–18–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–440–000]

Consolidated Gas Transmission Corporation; Application

June 14, 1984.

Take notice that on May 23, 1984, Consolidated Gas Transmission corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP84–440–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment of Rate Schedule LS and the initiation of sales service to Bridgeline Gas Distribution Company (Bridgeline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes (1) to establish an initial rate, designated as Rate Schedule LS and (2) to initiate sales to Bridgeline under Rate Schedule LS.

Applicant proposes that the Rate Schedule LS be made available for any

sale made at specified delivery points in the Louisiana area. It is stated that service under Rate Schedule LS would be on a best-efforts basis and subject to curtailment or interruption by Applicant at any time when such service would impair or interrupt service under any other currently effective rate schedule.

Applicant proposes that the rate to be available under Rate Schedule LS would be based on the costs incurred in its southern area of operations—the State of Louisiana and the Gulf of Mexico. Applicant states that Rate Schedule LS would be developed by adding (1) the average cost of purchased gas in the southern area, (2) the unit cost of transportation in the southern area, and (3) the unit cost of service of Applicant's facilities located in the southern area.

Applicant proposes to initiate sales under Rate Schedule LS to bridgeline, a distribution company located in Louisiana. The application states that pursuant to an agreement between Applicant and Bridgeline, the proposed sale is for a quantity of up to a maximum daily quantity of 70,000 dt equivalent per day and up to a maximum annual quantity of 9,000,000 dt equivalent per year. The agreement provides for a primary term of two years and may be extended by Bridgeline for not more than three successive annual periods, it is explained. The application states that Bridgeline has indicated to Applicant that it desires to obtain additional supplies of natural gas and that Applicant has sufficient supplies in the Louisiana area and a sufficient gas surplus to make the sale without detriment to its existing customers.

Applicant states that the points of delivery to effectuate the proposed sale would be at the existing interconnections of Bridgeline and Transcontinental Gas Pipe Line Corporation in St. Charles Parish, Louisiana (the Paridis Connection) and in Ascension Parish, Louisiana (the Sorrento Connection). The Application also states that it is expected that the transportation arrangements would be finalized in the near future.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 5, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herin, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

Kenneth F. Plumb,

Secretary

[FR Doc. 84-16320 Filed 6-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-323-007]

El Paso Natural Gas Company; Petition To Amend

June 14, 1984.

Take notice that on May 22, 1984, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP82-323-007, a petition to amend the order issued September 30, 1982, in Docket No. CP82-323-000, as amended February 14, 1983, and May 13, 1983, so as to authorize an extension of the term of the certificated transportation service presently provided for the account of J.R. Simplot Company (Simplot), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

El Paso requests herein that the Commission amend its order of September 30, 1982, as amended, so as to authorize the transportation service until May 21, 1987, as permitted by the Commission's Order No. 27. El Paso indicates it would continue to receive up to 15,000 Mcf of natural gas purchased by Simplot from Southern Union Gathering Company and redeliver equivalent volumes to Northwest Pipeline Corporation and/or Pacific Gas and Electric Company for Simplot's account at existing points of interconnection in LaPlata County, Colorado, and Mohave County, Arizona, respectively. El Paso states that Simplot continues to require purchases of natural gas as feedstock in the operation of its plant in Pocatello, Idaho. El Paso indicates that it proposes by this petition no other changes to the existing authorization.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 5, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16322 Filed 6-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2070-001]

Alfred D. Houston; Application

June 14, 1984.

Take notice that on June 7, 1984, Alfred D. Houston filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Treasurer—Massachusetts Electric Company
Vice President and Treasurer—The Narragansett Electric Company
Treasurer and Director—New England Electric Transmission Corporation
Treasurer and Director—New England Power Company
Vice President—Yankee Atomic Electric Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 motions or protest should be filed on or before June 29,

1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16316 Filed 6-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1854-004]

Samuel Huntington; Application

June 14, 1984.

Take notice that on May 10, 1984, Samuel Huntington filed an application pursuant to seciton 305(b) of the Federal Power Act to hold the following postions:

Clerk and Director—Massachusetts Electric Company

Secretary and Director—The Narragansett Electric Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 motions or protest should be filed on or before June 29, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16330 Filed 6-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-17-000]

Cities of Jackson, Kenneth and Malden, Missouri; Petition of the Cities of Jackson, Kenneth, and Malden, Missouri, for a Declaratory Order Concerning Union Electric Company's Obligations Following Its Aquisition of the Cities' Former Wholesale Supplier, Missouri Utilities Company

June 14, 1984.

Take notice that on June 4, 1984 the Cities of Jackson, Kenneth and Malden, Missouri ("Cities") submited for filing a petition for a declaratory order to clarify their rights and the obligations of Union Electric Company (UE). Said petition follows UE's acquisition of Missouri Utilities Company (MU), the UE subsidary formerly obligated to provide interruptible wholesale electric service to the Cities under Rate Schedule SFR-1.

Cities state that their petition is predicated upon notification received from UE informing the Cities of UE's intention to enforce the curtailment provisions of the SFR-1 rate schedule.

Cities believe that the interests of the affected parties can be resolved by means of a declaratory order and therefore request that the Commission issue an order declaring the rights of Cities and the obligations of UE.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 motions or protests should be filed on or before July 7, 1984. 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. 84-16319 Filed 6-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-479-000]

New York State Electric & Gas Corporation; Filing

June 14, 1984

The filing Company submits the following:

Take notice that on June 6, 1984, New State Electric & Gas Corporation (NYSEG), tendered for proposed changes in its FERC Rate Schedules Nos. 27, 28, 30, 33 and 35. It is estimated that the proposed changes would increase revenues from jurisdictional sales and service by about $30,600 based on the 12 month period ended March 31, 1984.

NYSEG states that after extensive hearings in Case No. 28550, "New York State Electric & Gas Corporation Electric Rates", and pursuant to Opinion 84-11 issued by the Public Service Commission of the State of New York on April 18, 1984, NYSEG filed revised leaves to Schedule PSC No. 115—Electricity, which the above Opinion allowed to become effective April 24, 1984. Rate Schedule PSC No. 115 is incorporated in the previously noted FERC schedules.

NYSEG requests an effective date of April 24, 1984, and therefore requests waiver of the Commission's notice requirements.

According to NYSEG copies of this filing were served upon NYSEG's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., 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 motions or protests should be filed on or before June 28, 1984. 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. 84-16327 Filed 6-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-472-000]

Panhandle Eastern Pipe Line Company; Request Under Blanket Authorization

June 14, 1984.

Take notice that on June 8, 1984, Panhandle Eastern Pipe Line Comnpany (Panhandle), P.O. Box 1642 Houston, Texas 77001, filed a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act that Panhandle proposes to transport natural gas on behalf of Midwest Solvents Company (Midwest) under the authorization issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to receive from Midwest up to 2,900 Mcf of gas per day at the tailgate of Union Texas Petroleum Corporation's Chaney Dell Plant, Major County, Oklahoma, and redeliver

equivalent volumes less four percent reduction for fuel to Panhandle's Peoria No. 2 Sales Station No. 9002 located in Tazewell county, Illinois where Panhandle would redeliver to Central Illinois Light Company (CILCO) on a best efforts basis. Panhandle indicates that CILCO would make ultimate redeliveries to Midwest. Panhandle indicates that CILCO is a jursidictional local distribution company customer of Panhandle and Midwest is an end-use customer of CILCO. Panhandle indicates that the annual volume, average day flow and peak day flow would be 1,040,250 Mcf, 2,850 Mcf and 2,900 Mcf, respectively. Pandandle indicates it would charge for its service the rate provided under its OST rate schedule.

Panhandle has supplies statements from CILCO indicating that it has sufficient capacity to transport the gas without adversely affecting service to its other customers and from Yankee Resources, Inc., Midwest's supplier of gas to be transported, indicating that the gas was not committed or dedicated to interstate commerce prior to November 8, 1978, and that the $2.90 price does not exceed the maximum lawful price under the Natural Gas Policy Act of 1978.

Panhandle indicates that the proposed transportation would be rendered through the use of its existing facilities and would not require the construction of any new facilities.

Panhandle also states that the gas would be used for boiler and gas dryer use at its facility in Pekin, Illinois. Panhandle indicates that the gas purchased by Midwest is not released gas.

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

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16328 Filed 6-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EI84-16-000]

Public Service Company of Oklahoma; Petition for Investigation

June 14, 1984.

Take notice that on May 21, 1984, the Attorney General of Oklahoma ("the Attorney General"), Intervenor in this cause submitted for filing a petition for investigation into the vender claim settlements negotiated by the Public Service Company of Oklahoma ("PSO") prior to January 1, 1984 pursuant to Commission's order issued on June 22, 1983.

The Attorney General states that the quarterly filings which have been filed thus far are inadequate to allow any party to make a determination of commercial prudence and do not adequately document the entire suspension and settlement process.

Further, the Attorney General submits that certain contract terminations are clearly imprudent when viewed on the basis of PSO's quarterly filings and therefore believes that a Commission investigation is necessary to provide adequate evidence so that a prudent determination may be made.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 motions or protests should be filed on or before July 7, 1984. 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. 84-16329 Filed 6-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-476-000]

Southern California Edison Company; Filing

June 14, 1984.

The filing Company submits the following:

Take notice that on June 4, 1984, Southern California Edison Company (Edison) tendered for filing an agreement entitled "Edison-Glendale Economy Energy Agreement (Agreement), which has been executed by Edison and the City of Glendale ("Glendale"), California.

Edison states that under the terms of the Agreement, Economy Energy may be sold by one Party and purchased by the other Party to make more efficient use of the Parties' electric systems.

Edison further states that the Agreement is proposed to become effective when executed by the Parties and when accepted for filing by the Commission without changes unacceptable to either Party.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Glendale, California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 motions or protests should be filed on or before June 28, 1984. 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. 84-16334 Filed 6-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-416-000]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Application

June 14, 1984.

Take a notice that on May 16, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84-416-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests authorization to transport natural gas for Transco, pursuant to the terms of a gas transportation agreement between Tennessee and Transco dated March 22, 1982 (Agreement). Tennessee states that

it is currently transporting natural gas for Transco pursuant to the provisions of § 284.221 of the Commission's Regulations and Tennessee's Order No. 60 blanket certificate issued February 21, 1980, in Docket No. CP80–132. Reports of this transaction have been filed by Tennessee at Docket No. ST83–234, it is explained.

Pursuant to the provisions of the Agreement, Tennessee has agreed to endeavor to accept, receive, transport and deliver up to 4,000 Mcf of natural gas per day for Transco from a point of interconnection between Tennessee's existing facilities in the Little Lake Field, Jefferson Parish, Louisiana, and a line extending from the wells dedicated to Transco. Tennessee states it would return such gas to Transco at (1) a point on Tennessee's 20-inch Kinder-Natchitoches pipeline near Kinder, Jefferson Davis Parish, Louisiana (Kinder), or (2) a point of interconnection between Tennessee and Transco at Crowley, Acadia Parish, Louisiana (Crowley). Pursuant to the Agreement, processing, if any, is permitted at a plant located on Tennessee's system, it is said.

In accordance with the Agreement, Tennessee states that Transco would pay Tennessee a volume charge equal to the product of the following:

(a) 13.19 cents [1] multiplied by the total volume in Mcf of gas received by Tennessee from Transco during the month and delivered at Kinder and

(b) 11.55 cents [1] multiplied by the total volume in Mcf of gas received by Tennessee from Transco during the month and delivered at Crowley,

less the volumes received by Tennessee and delivered at the aforementioned points of delivery for fuel and use as follows:

(a) 2.63 percent of the daily volume received from Transco and delivered at Kinder and

(b) 2.18 percent of the daily volume received from Transco and delivered at Crowley.

The minimum monthly bill would consist of a charge of 11.55 cents multiplied by the number of days in said month multiplied by 66⅔ percent of 4,000 Mcf per day less the volume, if any, made available to Tennessee, it is explained.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 5, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedeure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16335 Filed 6-18-84; 8:45 am]

BILLING CODE 6717-01-M

[1] As permitted by the Agreement, the rates have been increased from the rates stated in the agreement to reflect Tennessee's current costs, it is explained.

Federal Energy Regulatory Commission

[Docket No. CP84-441-000]

Tennessee Gas Pipeline Co.; a Division of Tenneco Inc.; Application

June 14, 1984.

Take notice that on May 24, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84–441–000, an application pursuant to sections 7(c) and 7(b) of the Natural Gas Act for a certificate of public convenience and necessity and for permission and approval to abandon service. Applicant seeks authorization (1) to revise sales certificate obligations on a daily and on an annual basis for various customers of Applicant, (2) to provide transportation of natural gas on a firm basis for certain of Applicant's customers, (3) to abandon certain interruptible transportation services and (4) to construct and operate facilities necessary to render the revised sales and transportation services. Applicant's proposals are more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant alleges that its customers have indicated and substantiated market requirements for gas supply on a daily and/or annual basis which differ markedly from the requirements used in establishing the current sales delivery obligations authorized on November 26, 1974, in Docket Nos. CP73–115 and CP74–27 (Opinion No. 712, 52 FPC 1459). Applicant seeks to accomodate it customers' market requirements by revising its sales delivery obligations to reflect their new daily and/or annual increases or decreases. Applicant states that such revisions would result in a negligible increase in its total daily sales delivery obligations and a total annual sales delivery obligation decrease of 41,000,000 Mcf. Applicant further states that Applicant would render the proposed revised sales services under its applicable Rate Schedules CD, G, or GS at the rates thereunder which are in effect at the time the revised services commence. Applicant's current and proposed contractual gas supply maximum daily quantities (MDQ) and annual volume limitations (AVL) are set out by customer in the Appendix A [1] to this notice.

Applicant states in its application that certain of its customers have indicated a need for revised or increased transportation service. Except for Columbia Gas Transmission Corporation (Columbia) and Public Service Electric and Gas Company (PSE&G), the transportation services proposed are new or increased firm storage gas transportation, it is explained. Applicant proposes that such transporation services to be performed will be included in Applicant's FERC Gas Tariff Volume No. 1. For proposed Rate Schedule FSST–E and T–24 transportation services, Applicant proposes a demand charge of $20.17 times the maximum daily volume (MDV) to be transported. Additionally, Applicant proposes a demand charge of $22.29 times the MDV to be transported under the proposed FSST–NE transportation service. Applicant requests authority to abandon interruptible storage gas transportation which is superseded or replaced by

[1] Appendix A filed as a part of original document.

service under Rate Schedules FSST–E or FSST–NE. Applicant states that it is currently negotiating with various storage contractors for approximately 16,000,000 Mcf in additional storage capacity associated with the proposed increased or new firm storage transportation service. Specifically, Applicant requests authority to change the MDV and/or transportation services for the following 14 customers:

Customer	Existing		Proposed	
	MDV (mcf per day)	Rate schedule/service	MDV (mcf per day)	Rate schedule/service
1. PSE&G	15,000	T–24/inter.	15,000	T–24/firm.
2. Long Island Lighting Company	6,667	T–24/inter	10,000	FSST–E/firm.
3. Berkshire Gas Company	1,273	ISST–NE/inter	1,273	FSST–NE/firm.
4. Boston Gas Company	15,608	ISST–NE/inter	15,608	FSST–NE/firm.
5. Commonwealth Gas Company	8,227	ISST–NE/inter	8,227	FSST–NE/firm.
6. Connecticut Light and Power Company	6,463	SST–NE/firm	6,463	SST–NE/firm.
	4,823	ISST/NE/inter	7,136	FSST–NE/firm.
7. Connecticut Natural Gas Company	8,030	SST–NE/firm	8,030	SST–NE/firm.
	4,924	ISST–NE/inter	6,352	FSST–NE/firm.
8. EnergyNorth, Inc	3,227	SST–NE/firm	3,227	SST–NE/firm.
			6,363	FSST–NE/firm
9. Essex County Gas Company	787	SST–NE/firm	787	SST–NE/firm.
			1,500	FSST–NE/firm
10. Fitchburg Gas & Electric Light Company	1,239	ISST–NE/inter	2,727	FSST–NE/firm.
11. Granite State Gas Transmission, Inc	21,818	T–130/inter	21,818	FSST–NE/firm.
	13,956	ISST–NE/inter	13,956	FSST–NE/firm.
12. Valley Gas Company	7,727	SST–NE/firm	7,727	SST–NE/firm.
	1,364	ISST–NE/inter	2,330	FSST–NE/firm.
13. The Brooklyn Union Gas Company	6,667	SST–NE/firm	6,667	SST–NE/firm.
			3,333	FSST–NE/firm
14. Columbia	28,233	T–20/firm	28,233	T–20/firm delivery point change.

To accomplish the revised sales delivery obligations and the revised transportation services, Applicant states that approximately 400,000 Mcf per day of additional pipeline capacity on its system would be required. Applicant requests authority to construct and operate the facilities described in the Appendix B [2] to this notice to provide the increased system capacity.

Applicant estimates the total cost of the proposed facilities to be $309,371,000. A detailed allocation of the Applicant's estimated cost by proposed facility is set out in the Appendix B to this notice. Applicant proposes initially to finance the cost of constructing the proposed facilities through revolving credit arrangements, short-term loans and from funds on hand which would be rolled in at a later date as part of Applicant's permanent financing program.

Applicant requests authority to convert all of its gas sales delivery obligations to dekatherms equivalent.

Applicant states that it is withdrawing its application filed in Docket No. CP83–225–000 concerning a reduction in service to East Tennessee Natural Gas Company.

Applicant states in its application that Exhibits G through G–2 of its application (system flow diagrams) will be submitted when they become available.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 5, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–16336 Filed 6–18–84; 8:45 am]

BILLING CODE 6717–01–M

[2] Appendix B filed as a part of original document.

[Docket No. EF84–5141–000]

Western Area Power Administration; Filing

June 14, 1984.

Take notice that on May 18, 1984, Deputy Secretary Danny J. Boggs, at the Department of Energy by Rate Order No. WAPA–23, confirmed and approved, on an interim basis an adjustment in the rate schedule for third party transmission for the Central Valley Project. The new Rate Schedule CV–TPT1 for the Western Area Power Administration's (Western) Central Valley Project is effective as of January 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 motions or protests should be filed on or before June 29, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant 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. 84–16337 Filed 6–18–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. G–3308–000, et al.]

Natural Gas Companies; Diamond Shamrock Exploration Company, et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

June 14, 1984.

Take notice that each of the Applicants listed herein has filed an

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 28, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

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

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Presure base
G-3308-000, D, May 24, 1984	Diamond Shamrock Exploration Company, P.O. Box 631, Amarillo, Texas 79173.	Panhandle Eastern Pipe Line Company J. H. Helm, et ux lease (ML-273-B) covering NW/4 Sec. 135, Van Order et al lease (ML-1078) covering SW/4 Sec. 285, H. A. Cummings et al lease (ML-1078-A) covering NW/4 Sec. 285, C. G. Brent lease (ML-843) covering undivided ½ interest in W/2 Sec. 304, Mrs. E. M. Bent lease (ML-843-A) covering undivided ½ interest in W/2 Sec. 304, all in Block 44, H&TC Ry. Co. Survey, Moore County, Texas; K. R. McNutt et al lease (ML-464) covering N/168.24 acres Sec. 17, Blk. M-27, R. C. McNutt Survey, Hutchinson County, Texas; James C. Wilson lease (ML-371) covering Sec. 198, Blk. 3-T, T.&N.O. RR Co. Survey, Moore County, Texas.	(1)	
G-4579-028, D, May 25, 1984	Cities Service Oil and Gas Corporation, P.O. Box 300, Tulsa, Oklahoma 74102.	Northern Natural Gas Company, Hugoton Field, Finney, Grant, Haskell, Kearney, Morton and Seward Counties, Kansas.	(2)	
G-11948-001, D, May 25, 1984	Mobil Producing Texas & New Mexico Inc., Nine Greenway, Plaza, Suite 2700, Houston, Texas 77046.	Panhandle Eastern Pipe Line Company, Panhandle Field, Moore County, Texas.	(3)	
G-17511-000, D, May 25, 1984	Amoco Production Company (USA), 501 Westlake Park Boulevard, Post Office Box 3092, Houston, Texas 77253.	Texas Eastern Transmission Corporation Northwest Tatum Area, Rusk County, Texas.	(4)	
CI61-985-001, D, May 22, 1984	Phillips Petroleum Company, 336 HS&L Building, Bartlesville, Oklahoma 74004.	Transwestern Pipeline Company, Richardson "AF" No. 1 well, Section 45, Block 13, T&NO Survey, Ochiltree County, Texas.	(5)	
CI84-208-000 (CI64-1301), B, May 23, 1984.	Tenneco Oil Exploration and Production Company, P.O. Box Box 2511, Houston, Texas 77001.	Mississippi River Transmission Corporation, Woodlawn Field, Harrison, et al. County, Texas.	(6)	
CI84-234-000 (G-7338), B, Mar. 1, 1984.	Mitchell Energy Corporation, 2001 Timberloch Place, P.O Box 4000, The Woodlands, Texas 77380.	Tennessee Gas Pipeline Company, New Ulm Field, Austin County, Texas.	(7)	
CI84-415-000, E, May 11, 1984	MAPCO Oil & Gas Company (Successor In Interest To Mobil Oil Corporation).	American Natural Resources Pipeline Co. Formerly: Michigan Wisconsin Pipeline Co., Cedderdale Field, Woodward County, Oklahoma.	(8)	
CI84-417-000 (CI78-540), B, May 14, 1984.	Pioneer Production Corporation, First National Place, Post Office Box 2542, Amarillo, Texas 79189.	Northern Natural Gas Company, Dixel Gas Unit #1, Pecos County, Texas.	(9)	
CI84-418-000 (CI66-951), B, May 16, 1984.	Getty Oil Company, Post Office Box 1404, Houston, Texas 77251.	Southern Natural Gas Company, Bay Springs Field, Jasper County, Mississippi.	(10)	
CI84-422-000, B, May 18, 1984	NICOR Supply Inc.	Northern Illinois Gas Company, Green Well No. 1, Elk City Area, Beckham County, Oklahoma.	(11)	
CI84-423-000 (G-10818), B, May 24, 1984.	Gulf Oil Corporation, Post Office Box 2100, Houston, Texas 77252.	Panhandle Eastern Pipeline Company, Singley Pool, Meade County, Kansas.	(12)	
CI84-424-000 (G-11996), B, May 25, 1984.	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Texas Eastern Transmission Corporation, East Provident City Field, Lavaca County, Texas.	(13)	
CI84-425-000 (CI75-668), B, May 25, 1984.	Amoco Production Company, 501 Westlake Park Boulevard, Post Office Box 3092, Houston, Texas 77253.	Valero Interstate Transmission Company, Cano Field, Hidalgo County, Texas.	(14)	
CI84-426-000 (CI65-352), B, May 29, 1984.	Mitchell Energy Corporation, 2001 Timberloch Place, P.O. Box 4000, The Woodlands, Texas 77380.	Texas Eastern Transmission Corporation, Sheridan Field, Colorado County, Texas.	(15)	
CI84-427-000, B, May 29, 1984	Diamond Shamrock Exploration Company, P.O. Box 631, Amarillo, Texas 79173.	Natural Gas Pipeline Company of America, Camrick Field, Beaver County, Oklahoma.	(16)	
CI84-428-000 (G-5035), B, May 29, 1984.	Shell Oil Company, P.O. Box 2463, Houston, Texas 77001.	Texas Gas Transmission Company, Chalkley Field, Cameron Parish, Louisiana.	(17)	
CI84-430-000, A, June 5, 1984	Pennzoil Company, P.O. Box 2967, Houston, Texas 77252-2967.	MGPC, Inc., Canal Field, Richland County, Montana	(18)	
CI84-431-000 (G-9360), B, June 4, 1984.	Monsanto Oil Company, 1300 Post Oak Tower, 5051 Westheimer, Houston, Texas 77056.	Tennessee Gas Pipeline Company, Lissie Field, Colorado County, Texas.	(19)	
CI84-432-000 (G-4995), B, June 4, 1984.	Shell Oil Company, P.O. Box 2463, Houston, Texas 77001.	Texas Eastern Transmission Corporation, Carthage Field, Panola County, Texas.	(20)	
CI84-433-000 (CI62-625), B, June 4, 1984.	Shell Oil Company, P.O. Box 2463, Houston, Texas 77001.	Tennessee Gas Pipeline Company, Chalkley Field, Cameron Parish, Louisiana.	(21)	
G-4622-001 and CI63-657-001, May 29, 1984.	Amoco Production Company, P.O. Box 3092, Houston, Texas 77253.	El Paso Natural Gas Company, Levelland Gasoline Plant, Hockley County, Texas.	(22)	
G-9354-000, D, June 4, 1984	Monsanto Oil Company, 1300 Post Oak Tower, 5051 Westheimer, Houston, Texas 77056.	Tennessee Gas Pipeline Company, Chesterville Field, Colorado County, Texas.	(23)	
CI61-810-000, D	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Tennessee Gas Pipeline Company, Trull Field, Matagorda County, Texas.	(24)	
CI77-252-001, Apr. 23, 1984	Placid Oil Company, 3900 Thanksgiving Tower, Dallas, Texas 75201.	American Natural Resources, Ship Shoal Platform 207-A, Ship Shoal Area, Offshore, Louisiana.	(25)	
CI84-421-000, A, May 29, 1984	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Texas Eastern Transmission Corporation, West Cameron Block 459, Well No. 3, Offshore, Louisiana.	(26)	

[1] Leases have expired or terminated by their own terms.

[2] Cities Service hereby seeks release of approximately 20.0 BCF from the subject contract in order to prevent the cancellation of that amount by the Kansas Corporation Commission

[3] By assignment and Bill of Sale of dated December 21, 1983, to be effective October 28, 1983, Mobil Producing Texas & New Mexico Inc. assigned to Terreland Corporation a certain lease and said assignment.
[4] Amoco has sold its interest in Oak Hill Gas Unit No. 1 by Assignment dated November 9, 1982 and Oak Hill Unit No. 2 by Assignment dated February 9, 1983. Amoco is seeking abandonment authorization for the sale of gas from these properties only, under the related Certificate and Rate Schedule.
[5] The purchaser has removed its compression facilities and the well has ceased to produce.
[6] Tenneco Oil Company is requesting for abandonment of service due to the termination of gas deliveries to Mississippi River Transmission Corporation.
[7] Reserves depleted, all oil, gas, and mineral leases dedicated to the gas purchase contract have terminated.
[8] Applicant is filing for Successor In Interest to.
[9] The well formation was found not to contain commercial quantities of gas, and the well will be plugged and abandoned.
[10] Gas from the Bay Springs Field was formerly processed in Getty's Bay Springs Plant. The plant facilities will be removed as the processing of gas in this plant has ceased.
[11] Northern Illinois Gas Company currently purchase from its affiliate NICOR Supply Inc. 10/16ths of the gas produced from the Green Well No. 1. The remaining 6/16ths of production is sold to Natural Gas Pipeline Company of America.
[12] Non economical.
[13] Last well plugged and abandoned October 1, 1983. Leases cancelled October 1, 1983.
[14] Amoco has assigned its interest in the property covered by this rate schedule to Coastal Oil and Gas Company and to American Petrofina Company of Texas, as well as to Pennzoil Producing Company.
[15] Reserves depleted, Plow Realty Gas Unit Well No. 1 has been plugged and abandoned, the oil and gas lease has expired and reverted to lessor, contract terminated.
[16] The oil and gas leases committed to this sale by Applicant are no longer productive of gas and have expired.
[17] Leases assigned to Taylor Energy Company.
[18] Applicant is willing to accept a certificate of public convenience and necessity conditioned in price to the applicable ceiling rates as established by the Natural Gas Policy Act of 1978.
[19] Property has been sold to Goldston Oil Corporation.
[20] Leases assigned to Ibex Partnership.
[21] Lease assigned to Taylor Energy Company.
[22] Applicant is filing to change delivery point.
[23] Property (Briggs Lease) has been sold to Goldston Oil Corporation.
[24] Partial abandonment due to the plugging/abandonment of wells, cessation of unit production, reverting to (one) lease production.
[25] Applicant is filing for new delivery point.
[26] Applicant is filing under Gas Purchase Contract dated May 14, 1984.
Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to deleteo acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 84-16321 Filed 6-18-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF84-349-001]

John Baardson, Lincoln Facility; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

June 14, 1984.

On May 10, 1984, John Baardson (Applicant), of 3704 Nottingham Terrace, Midland, Michigan 48640, submitted for filing an application for certification of a facility as qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near Lincoln, Michigan. The primary energy source for the facility will be biomass in the form of wood waste. The facility will consist of a two stage wood burner, heat exchanger, waste heat recovery boiler, air turbine generator, and a steam turbine generator. The net electric power production capacity of the facility will be 11 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16323 Filed 6-18-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF84-349-000]

John Baardson, Lincoln Facility; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

June 14, 1984.

On May 14, 1984, John Baardson (Applicant), of 3704 Nottingham Terrace, Midland, Michigan 48640, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near Lincoln, Michigan. The primary energy source for the facility will be biomass in the form of wood waste. The facility will consist of a two stage wood burner, heat exchanger, waste heat recovery boiler, air turbine generator, and a steam turbine generator. The useful thermal energy output, which will be in the form of steam, will be used in a nearby dry kiln/wood dryer to produce lumber. The net electric power production capacity of the facility will be 11 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20406, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16324 Filed 6-18-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF84-348-000]

John Baardson, Northumberland Facility; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

June 14, 1984.

On May 10, 1984, John Baardson (Applicant), of 3704 Nottingham Terrace, Midland, Michigan 48640, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near Northumberland, Pennsylvania. The primary energy source for the facility will be biomass in the form of wood waste. The facility will consist of a two stage wood burner, heat exchanger, waste heat recovery boiler, air turbine generator, and a steam turbine

generator. The useful thermal energy output, which will be in the form of steam, will be used in a nearby dry kiln/wood dryer to produce lumber. The net electric power production capacity of the facility will be 11 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16325 Filed 6-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-348-001]

John Baardson, Northumberland Facility; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

June 14, 1984.

On May 10, 1984, John Baardson (Applicant), of 3704 Nottingham Terrance, Midland, Michigan 48640, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near Northumberland, Pennsylvania. The primary energy source for the facility will be biomass in the form of wood waste. The facility will consist of a two stage wood burner, heat exchanger, waste heat recovery boiler, air turbine generator, and steam turbine generator. The net electric power production capacity of the facility will be 11 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16326 Filed 6-18-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SAB-FRL 2611-4]

Science Advisory Board; Environmental Effects, Transport and Fate Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a two-day meeting of the Science Advisory Board's Environmental Effects, Transport and Fate Committee. The meeting will be held on July 5th and 6th, 1984 at the Hyatt Regency Monterey, 1 Old Golf Course Road, Monterey, CA 93940 in the Conference Room. The meeting will begin at 8:00 a.m. and will adjourn at approximately 6:00 p.m. on both days.

This will be the fourth meeting of the Committee on the assessment of Environmental Impacts involved with incineration of hazardous chemical wastes and the second meeting of the Committee on the proposed revisions to the National Water Quality Criteria. There will be reports from several task groups and subcommittees for discussion. Particular emphasis will be placed on information regarding incineration emissions.

The meeting is open to the public. Any member of the public wishing to attend should contact Dr. Douglas B. Seba, Executive Secretary, Environmental Effects, Transport and Fate Committee or Joanna Foellmer (202) 382-2552 by close of business June 29, 1984. Those wishing to obtain information or submit comments to the Committee should contact Dr. Terry F. Yosie, Director, Science Advisory Board (202) 382-4126 or Dr. Douglas B. Seba, by close of business June 29, 1984.

Dated: June 12, 1984.

Terry Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 84-16298 Filed 6-18-84; 8:45 am]

BILLING CODE 6560-50-M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

Privacy of 1974; Annual Publication of Notice of Systems of Records

Correction

In FR Doc. 84-14966 beginning on page 23234 in the issue of Tuesday, June 5, 1984, make the following corrections:

1. On page 23236, first column, last line, "detailees interns" should read "detailees and interns".

2. On the same page, third column, fourth line, "OA/EPO/04" should read "OA/EOP/04".

3. On page 23237, first column, under System Number OA/EOP/05, in the System Name, "Statement" should read "Statements".

4. On page 23238, first column, under System Number OA/EOP/06, under Categories of Individuals Covered by the System, paragraph b, first line, "office" should read " officer".

5. On the same page, third column, under Record Access Procedure, twelfth line, "Officer's" should read "Office's".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Wisconsin; Major Disaster and Related Determinations

[FEMA-710-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA-710-DR), dated June 12, 1984, and related determinations.

DATE: June 12, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice: Notice is hereby given that, in a letter of June 12, 1984, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 et seq., Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Wisconsin, resulting from severe storms and tornadoes beginning on or about June 8, 1984, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to Section 408(b) of Pub. L. 93-288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Ronald Buddecke of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared major disaster:

Iowa County for Individual Assistance and Public Assistance.
Dane County for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-16268 Filed 6-18-84; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-708-DR]

Tennessee; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Management Agency.

ACTION: Notice:

SUMMARY: This notice amends the Notice of a major disaster for the State of Tennessee (FEMA-708-DR) (49 FR 22870, June 1, 1984), dated May 25, 1984, and related determinations.

DATED: June 12, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice: The notice of a major disaster for the State of Tennessee dated May 25, 1984 (49 FR 22870, June 1, 1984), is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 25, 1984: Cocke and Jefferson Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-16267 Filed 6-18-84; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Ohio Valley Bancorp; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 25, 1984.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, MO 63166:

1. *Ohio Valley Bankcorp,* Madison, Indiana; to acquire First Bank of Madison, Madison, Indiana.

Board of Governors of the Federal Reserve System, June 14, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16390 Filed 6-18-84; 8:45 am]

BILLING CODE 6210-01-M

Amoskeag Bank Shares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 11, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Amoskeag Bank Shares, Inc.,* Manchester, New Hampshire; to acquire 57.8 percent of the voting shares of Amoskeag National Bank & Trust Co., Manchester, New Hampshire.

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

1. *First Valley Corporation,* Bethlehem, Pennsylvania; to acquire 100 percent of the voting shares of The Hazleton National Bank, Hazleton, Pennsylvania.

C. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Security Bancorp of Whitesburg, Ky., Inc.,* Whitesburg, Kentucky; to become a bank holding

company by acquiring 95 percent of the voting shares of First Security Bank, Whitesburg, Kentucky.

2. *Southern Ohio Community Bancorp, Inc.*, Glouster, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Glouster Community Bank, Glouster, Ohio.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Maple Park Bancshares, Inc.*, Maple Park, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Maple Park, Maple Park, Illinois.

E. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mercantile Bancorporation Inc.*, St. Louis, Missouri; to become a bank holding company by acquiring Mercantile Bank of Northwest County, N.A., St. Louis County, Missouri, a *de novo* bank.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Spring Woods Bancshares, Inc.*, Houston, Texas; to acquire 96.1 percent of the voting shares of Richmark Bank, N.A., Houston, Texas, a *de novo* bank.

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

1. *Liberty Investment Corp.*, Glendale, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Liberty Bank, Glendale, Arizona.

Board of Governors of the Federal Reserve System, June 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16261 Filed 6-18-84; 8:45 am]

BILLING CODE 6210-01-M

Citizens Bancorporation, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1,) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 11, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens Bancorporation*, Sheboygan, Wisconsin; to engage *de novo* through its subsidiary, Citizens Management Services Corp., Sheboygan, Wisconsin, in courier activities for checks, other written documents (excluding currency or other negotiable instruments), financial and accounting media and records such as are exchanged among financial institutions. These activities would be performed in the State of Wisconsin and Michigan.

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

1. *Barnett Banks of Florida, Inc.*, Jacksonville, Florida; to engage *de novo* through its subsidiary, Barnett Computing Company, Jacksonville, Florida, in certain data processing and data transmission activities related to home banking. These activities would be performed in the State of Florida.

2. *Southern Bank Holding Company*, Savannah, Georgia; to engage *de novo* in leasing automobiles, computers and other personal property and equipment, or acting as agent, broker or advisor in leasing such property, on a nationwide basis; and in providing investment or financial advice to its affiliated members, such as general economic information and advice, general economic statistical forecasting services, and industry studies; in the State of Georgia.

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

1. *International Bancshares, Inc.*, Gladstone, Missouri; to engage *de novo* in providing data processing services to affiliated non-subsidiary banks. Primary data processing functions will include, but may not be limited to, the areas of general ledger, loans and deposits maintenance. These activities would be conducted in the city of Kansas City, Missouri.

Board of Governors of the Federal Reserve System, June 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16262 Filed 6-18-84; 8:45 am]

BILLING CODE 6210-01-M

Delano State Agency, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be

accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 12, 1984.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Delano State Agency, Inc.*, Delano, Minnesota; to continue to engage in general insurance agency activities in a community with a population not exceeding 5,000.

Board of Governors of the Federal Reserve System, June 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16263 Filed 6-18-84; 8:45 am]

BILLING CODE 6210-01-M

Maryland National Corp.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

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

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than July 12, 1984.

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

1. *Maryland National Corporation*, Baltimore, Maryland; to engage through a national subsidiary bank, Maryland National Bank/D.C., Washington, D.C., in consumer lending, deposit-taking, and other banking services, in Washington, D.C. and the surrounding area.

Board of Governors of the Federal Reserve System, June 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16264 Filed 6-18-84; 8:45 am]

BILLING CODE 6210-01-M

Northeastern Bancorp, Inc.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

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

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than July 11, 1984.

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

1. *Northeastern Bancorp, Inc.*, Scranton, Pennsylvania; to engage through a national bank subsidiary, Northeastern Trust Company of Florida, N.A., Vero Beach, Florida in consumer and mortgage lending, trust services and investment advisory services, and deposit-taking, including demand deposits. These activities would be performed from offices in Vero Beach, Florida and the geographic area to be served is Indian River County, Florida, and surrounding coaunties.

Board of Governors of the Federal Reserve System, June 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16265 Filed 6-18-84; 8:45 am]

BILLING CODE 6210-01-M

Ventura County National Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (49 FR 794) for the Board's

approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

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

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 11, 1984.

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

1. *Ventura County National Bancorp,* Oxnard, California; to become a bank holding company by acquiring 100 percent of the voting shares of Ventura County National Bank, Oxnard, California. Ventura County National Bancorp has also applied to engage *de novo* through its subsidiary, Ventura County National Leasing Corp., Oxnard, California, in leasing activities. These activities would be conducted in the State of California.

Board of Governors of the Federal Reserve System, June 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16266 Filed 6-18-84; 8:45 am]

BILLING CODE 6210-01-M

McLeod Bancshares, Inc.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 25, 1984. This changes the comment date for this application that was previously published on June 13, 1984 (49 FR 24445).

A. **Federal Reserved Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *McLeod Bancshares, Inc.,* Glencoe, Minnesota; to acquire 100 percent of the voting shares of The First Bank of Minnesota, Stewart, Minnesota.

Board of Governors of the Federal Reserve System, June 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16498 Filed 6-18-84; 10:22 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82F-0232]

Eastman Chemicals Division, Eastman Kodak Co.; Amended Notice of Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending a previous notice that announced the filing of a food additive petition proposing that the food additive regulations be amended to provide for the safe use of an aqueous blend of ammonium salts of mixed volatile fatty acids (AS–VFA) in the feed of dairy and beef cattle. The petitioner, Eastman Kodak Co., has amended the petition to propose that the food additive regulations be amended to provide for the safe use of a blend of calcium salts of mixed volatile fatty acids, in addition to SA–VFA. In addition, the petitioner has changed the proposed use of AS–VFA.

FOR FURTHER INFORMATION CONTACT: William D. Price, Center for Veterinary Medicine (formerly Bureau of Veterinary Medicine) (HFV–221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5362.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 384(b)(5))), notice was given in the **Federal Register** of August 3, 1982 (47 FR 33556) that a petition (FAP 2193; Docket No. 82F–0232) had been filed by Eastman Chemicals Division, Eastman Kodak Co., Kingsport, TN 37662, proposing that the food additive regulations be amended in Part 573 (21 CFR Part 573) by adding new § 573.190 *Ammonium salts of mixed volatile fatty acids blend* to provide for safe use of the additive in finished feed to increase milk production in lactating dairy cows and for increased rate of weight gain and improve feed efficiency in beef cattle.

Notice is given that the petition has been amended to propose that § 573.190 provide for the safe use of a second product, a blend of calcium salts of mixed volatile fatty acids. The amendment also deletes from the petition the proposed use for AS–VFA to increase milk production in dairy cows and to increase the rate of weight gain and improve feed efficiency in beef cattle. The use now proposed for both products is as a nutrient supplement in the feed of dairy cows.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: June 12, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-16257 Filed 6-18-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84N-0116]

Biocraft Laboratories, Inc.; Disopyramide Phosphate; Opportunity for Hearing on Proposal To Refuse To Approve New Drug Application

Correction

In FR Doc. 84-10663 beginning on page 15624 in the issue of Thursday, April 19, 1984, make the following corrections:

1. On page 15624, third column, second paragraph, sixth line, "December 18, 1983" should have read "December 16, 1983".

2. On page 15627, third column, in entry 12, fourth line, "Phasma" should have read "Plasma".

BILLING CODE 1505-01-M

[Docket No. 84M-0118]

Dow Corning Wright; Premarket Approval of CMW Bone Cement

Correction

In FR Doc. 84-10893 appearing on page 17584 in the issue of Tuesday, April 24, 1984, make the following correction:

On page 17584, first column, three lines from the bottom, "20957" should have read "20857".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-84-1399; FR 1953]

Availability of Funding Under the Fair Housing Assistance Program; Non-Competive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of non-competitive solicitation of funding available to State and local agencies under the Fair Housing Assistance Program.

SUMMARY: HUD is soliciting applications from eligible State and local fair housing agencies for funding under the Fair Housing Assistance Program. Agencies must meet specific eligibility criteria set out in this announcement, as well as in 24 CFR Part 111, in order to qualify for consideration under this Program.

FOR FURTHER INFORMATION CONTACT: Steven J. Sacks, Director, Federal, State and Local Programs Division, Office of Fair Housing Enforcement and Section 3 Compliance, Office of Fair Housing and Equal Opportunity, Room 5214, 451-7th Street SW., Washington, D.C. 20410. Telephone: (202) 426-3500. (This is not a toll-free number.) Application kits are available upon written or telephone request. To assure a prompt response, it is suggested that requests for application kits be made by telephone.

DATE: Applications for Type I, non-competitive funding may be submitted between June 20, 1984 and August 1, 1984. No application received after the specified date will be considered unless it is received before awards are made and qualifies for a late application exception as specified in the application kit.

SUPPLEMENTARY INFORMATION: This announcement of solicitation for non-competitive funding under the Fair Housing Assistance Program (FHAP) is based upon 24 CFR Part 111. It should be noted that on December 29, 1983, Part 111 was amended to enable all eligible agencies to apply for and receive training funds, regardless of the year of their participation in the Program. (47 FR 57272.) This announcement of solicitation for non-competitive funding is issued pursuant to Part 111 as amended.

Interested agencies are urged to review Part 111, the above referenced amendment, and the information in this announcement to determine whether they should apply.

The FHAP has two types of funding: Type I-Non-Competitive Funding and Type II-Competitive Funding. Type I-Non-Competitive Funding includes capacity building, training, complaint monitoring and reporting systems, and contributions. Type II-Competitive Funding, includes specialized project proposals developed by State and local agencies to enhance their fair housing programs. Under this announcement, eligible agencies can apply for Type I finding only.

Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-30 (the Federal Fair Housing Law), prohibits discrimination in the sale, rental or financing of housing and in the provision of brokerage services. Section 810(c) of that Title provides that wherever a State or local fair housing law provides rights and remedies substantially equivalent to those in the Federal Fair Housing Law, the Secretary is required to notify the appropriate State or local agency of any complaint filed with HUD that appears to constitute a violation of State or local law. Section 816 provides that the Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, may use their services and their employees and may reimburse the agencies for services rendered in carrying out the Federal Fair Housing Law. The FHAP was authorized by Congress to provide HUD with the resources to enhance the fair housing capabilities of State and local civil rights agencies.

This program is described in the Catalog of Federal Domestic Assistance at 14.410, Fair Housing Assistance Program.

Collection of information requirements contained in this notice has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and has been assigned OMB Control Number 2529-0005.

FHAP Funding Requirements in This Announcement

I. Eligibility

To be eligible to apply for funds under the Program, an agency must meet the criteria prescribed in 24 CFR 111.104. Specifically, an agency (1) must be certified as a substantially equivalent agency under the standards enunciated at 24 CFR Part 115, and (2) must have executed a written Memorandum of Understanding which describes the working relationship to be in effect between the agency and the appropriate HUD Regional Office of Fair Housing and Equal Opportunity.

However, if an agency has applied to the Department for recognition as a substantially equivalent agency, and has been found by the Department to have both statutory authority equivalent to Title VIII and an operational capability equivalent to that of the Department, the fact that the agency has not yet been certified will not prevent the agency from submitting funding proposals under

the FHAP. At a minimum, evidence of such a Departmental finding will consist of Secretarial approval to publish the agency as a proposed addition to the list of recognized equivalent jurisdictions. At this point, an agency may enter into negotiations with the Regional Office of Fair Housing and Equal Opportunity to develop a Memorandum of Understanding and may, at the same time, submit funding proposals. However, no funds will be committed to any agency until it has been formally recognized as substantially equivalent. All proposals considered must pertain to housing discrimination based on an individual's race, color, religion, sex or national origin.

II. Methods of Distribution

A. Scope: Applications are solicited for non-competitive funding as described at 24 CFR 111.102 (as amended by the final rule published on December 29, 1983). A total of $3,000,000 is available under this Announcement.

B. Categories of Funding:

1. Capacity Building—Under 24 CFR 111.102(a), HUD will provide all agencies seeking capacity building support for the first and second years of their participation in the FHAP with a level of funding based upon HUD records showing the number of complaints of housing discrimination received by HUD from that agency's jurisdiction during the period of January–December 1983. Payments will be determined by HUD and maximum payments will be determined in accordance with the following formula:

Number of complaints	Maximum payment
30 or less	$20,000
31–50	30,000
51–75	40,000
76–100	50,000
For each additional complaint over 100 (not to exceed $200,000)	500

Under 24 CFR 111.105(b) (as amended by the final rule published on December 29, 1983), all agencies seeking capacity building support must submit a written narrative justification documenting that within their jurisdiction there is a sufficient volume of current or potential complaint activity to justify the requested allocation of funds.

Any agency which is participating for non-competitive support for the second time and which can demonstrate that it would be entitled to a greater level of funding based upon direct reimbursement may apply in accordance with paragraph 4 of this Announcement, in lieu of this paragraph. A second-year agency electing to apply under paragraph 4 retains eligibility for complaint monitoring and reporting systems support up to the level which the agency would have been entitled to receive had it applied for capacity building support under this paragraph.

2. Training: Agencies receiving Type I funds will be required to participate in HUD-sponsored training. See 24 CFR 111.05(a)(4) (as amended by the final rule published on December 29, 1983). Funds to support participation in this training are available to the agency at 10% of their capacity building or contributions allocation, but such allocation shall not exceed $5,000, nor be less than $1,000. Any agency which is otherwise eligible to receive funding for capacity building or contributions, but elects not to apply for it, may apply for training support funds up the level which the agency would have been entitled to receive had it applied for capacity building or contribution funding.

3. Complaint Monitoring and Reporting Systems: Any agency applying for capacity building funds will be entitled to receive funds for the creation, modification or improvement of the agency's complaint information and monitoring capability, to result in a system compatible with HUD's, provided that the agency has not previously been funded for that purpose. Complaint monitoring and reporting systems funds are available, in a fixed funding amount and on a one-time only basis, in accordance with the following formula, which uses the same complaints referred to in paragraph II. B. 1., above:

Number of complaints	Maximum payment
50 or fewer complaints	$3,000
51 to 100 complaints	5,000
More than 100	8,000

4. Contributions: Under 24 CFR 111.102(b), agencies eligible for their third—or later year of non-competitive support or agencies eligible for their second-year of support which elect to apply under this paragraph will be provided with support for complaint processing based solely on the number of dual-filed housing discrimination complaints actually processed by the agency. (A dual-filed complaint is a complaint which has been docketed at both HUD and a sustantially equivalent agency.) The unit reimbursement level will be $500 per complaint, not to exceed Cooperative Agreement maxima based upon projected complaint levels that consider prior year activity and anticipated changes.

C. Applications: To receive first or second year funding, applicants must submit all information required in the Type I-Non-competitive Application Kit. Applicants eligible for third-or later-year funding will be sent a Cooperative Agreement based solely on the number of dual-filed housing discrimination complaints actually expected to be processed by the agency. HUD will incorporate the training allotment into that Agreement. (This collection of information requirement has been assigned OMB control number 2529–0005.)

D. Award Procedures: Applications for Type I funding will be reviewed upon receipt for completeness and conformity with 24 CFR 111.105. (See also, paragraph III. below.

III. Application Notification and Award Procedures

A. Notification: All Appliants will be notified of the results of their Type I applications as soon as the evaluation of their applications is completed. Awards for Type I applications are expected to be announced within four weeks of receipt.

B. Negotiations: After submission of the application, but before the award, HUD may require that applicants participate in negotiations and submit application revisions resulting from those negotiations.

C. Type of Funding Instrument: Applicants most likely will be funded under fixedprice Cooperative Agreements. However, HUD reserves the right to employ the form of agreement determined to be most appropriate after negotiation.

(Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3601–30). Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)))

Dated: June 13, 1984.

Antonio Monroig,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 84-16284 Filed 6-18-84; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[N-36761; N-36761-A]

Nevada; Conveyance

Notice is hereby given that, pursuant to the Act of December 23, 1980, 94 Stat. 3381 and the Act of October 21, 1976 (90 Stat. 2757; 43 U.S.C. 1719), Sletten Construction Co. has purchased and received a patent for the following public lands in Clark County, Nevada:

Mount Diablo Meridian, Nevada

T. 21 S., R. 61 E.,
Sec. 30, E½NW¼NW¼NE¼; containing 5 acres.

The purpose of this notice is to inform the public and interested State and local governmental officials of the conveyance.

William K. Stowers,
Acting Chief, Lands and Minerals Operations.

[FR Doc. 84-16307 Filed 6-18-84; 8:45 am]
BILLING CODE 4310-HC-M

[OR-34151]

Oregon; Conveyance

Notice is hereby given that, pursuant to section 203 of the Act of October 21, 1976 (90 Stat. 2743, 2750; 43 U.S.C. 1701, 1713), the following described public land in Benton County, was purchased by direct sale and conveyed to the party shown:

Mrs. Mary France, P.O. Box 109, Alsea, OR 97324

Willamette Meridian, Oregon

T. 13 S., R. 7 W.,
Sec. 19, Lot 5.

The purpose of this Notice is to inform the public and interested State and local governmental officials of the issuance of the conveyance document to Mrs. France.

Dated: June 8, 1984.

Harold A. Berends,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-16252 Filed 6-18-84; 8:45 am]
BILLING CODE 4310-33-M

[CA-15867]

Arcata and Clear Lake Resource Areas—Realty Action for the Exchange of Public Lands in Mendocino County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange of public lands.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Mount Diablo Meridian

T. 17 N., R. 11 W.,
Sec. 4, Lots 1, 2, SE¼NE¼.
T. 18, N., R. 11 W.,
Sec. 30, Lots 1–4, E½SW¼;
Sec. 31, Lot 1, NE¼NW¼.
T. 18 N., R. 12 W.,
Sec. 2, Lots 3, 4;
Sec. 5, Lots 2–4, E½ lot 5, W½ Lot 6;
Sec. 8, N½S½, SE¼SW¼, SW¼SE¼;
Sec. 9, N½SW¼;
Sec. 13, SW¼NW¼, NW¼SW¼, S½SW¼;
Sec. 14, SE¼NW¼, N½S½, SW¼SW¼, SE¼SE¼, S½NE¼;
Sec. 15, SE¼SE¼;
Sec. 19, Lot 5;
Sec. 20, SE¼SE¼, NW¼NE¼;
Sec. 21, SW¼SW¼;
Sec. 22, E½NE¼;
Sec. 23, NW¼NW¼, NE¼NE¼;
Sec. 24, NW¼, NW¼SW¼, SW¼SE¼, NE¼SE¼;
Sec. 25, N½NW¼, N½SE¼, NE¼;
Sec. 29, NE¼NE¼;
Sec. 30, Lot 15;
Sec. 32, SW¼NE¼.
T. 19 N., R. 12 W.,
Sec. 6, Lot 2, 10;
Sec. 7, Lots 1–8, SE¼NW¼, E½SW¼, W½SE¼, SW¼NE¼;
Sec. 18, Lots 2–9, 11–14, E½SW¼, W½SE¼, NE¼SE¼;
Sec. 19, Lot 1;
Sec. 28, E½SW¼;
Sec. 33, NE¼SW¼;
Sec. 35, SE¼SW¼.
T. 20 N., R. 12 W.,
Sec. 19, Lot 11, 15;
Sec. 30, Lots 1, 2, 4–6, 8, 11–15;
Sec. 31, Lots 1, 2, 4–9, E½NW¼, W½NE¼.
T. 18 N., R. 13 W.,
Sec. 15, SW¼NW¼;
Sec. 24, SW¼SW¼;
Sec. 25, Lot 3.
T. 19 N., R. 13 W.,
Sec. 1, Lots 3, 4, 16;
Sec. 3, W½ Lot 5;
Sec. 4, Lot 9, E½ Lot 8, S½SE¼, NW¼SE¼, N½SW¼;
Sec. 5, Lots 1, 2, W½ Lot 6, W½ Lot 7, W½ Lot 10;
Sec. 6, Lot 14, NE¼SW¼, NW¼SE¼;
Sec. 9, SE¼NE¼, N½NE¼;
Sec. 10, W½NW¼, SE¼NW¼, NW¼SW¼, SW¼NE¼;
Sec. 11, Lot 13;
Sec. 12, Lots 1, 9, 10, 15, 16;
Sec. 13, Lots 1, 13;
Sec. 14, Lots 15, 16;
Sec. 15, W½SW¼;
Sec. 22, N½NW¼, SE¼N¼, NW¼NE¼;
Sec. 23, Lot 1;
Sec. 24, Lots 4, 13;
Sec. 25 Lots 4, 5, 13;
Sec. 34, SW¼SE¼, NE¼SE¼;
Sec. 35, Lot 13.
T. 20 N., R. 13 W.,
Sec. 1, S½;
Sec. 2, SW¼, S½SE¼, NE¼SE¼;
Sec. 9, NE¼NE¼;
Sec. 10, S½NE¼, N½SW¼, SW¼SW¼, W½NE¼;
Sec. 11, NE¼NW¼;
Sec. 12, SE¼, E½NE¼;
Sec. 13, NE¼NW¼, SW¼NW¼, W½SW¼, SE¼SW¼, SW¼SE¼, N½NE¼;
Sec. 14, S½N½, S½;
Sec. 15, SE¼NW¼, SE¼;
Sec. 17, W½SW¼, SE¼SW¼;
Sec. 18, Lots 7, 12, SE¼;
Sec. 19, Lot 12, SE¼, SE¼NE¼, N½NE¼;
Sec. 20, W½NW¼, SE¼NW¼ SW¼, W½SE¼;
Sec. 22, E½E½;
Sec. 23, All;
Sec. 24, W½;
Sec. 25, W½, SE¼, S½NE¼;
Sec. 26, E½W½, SW¼NW¼, E½;
Sec. 27, NE¼SE¼, SE¼NE¼;
Sec. 29, W½, SE¼, S½NE¼, NW¼NE¼;
Sec. 30, Lot 1, E½E½, SW¼SE¼, NW¼NE¼;
Sec. 31, Lots 1–6, 8, 9, NE¼;
Sec. 32, W½NW¼, NE¼NW¼, S½, E½NE¼, NW¼NE¼;
Sec. 33, NW¼SW¼;
Sec. 35, NE¼NW¼, NE¼SW¼, E½.
T. 22 N., R. 13 W.,
Sec. 4, Lot 2, S½SW¼, SW¼SE¼;
Sec. 5, Lot 1, SE¼SW¼, SE¼NE¼;
Sec. 8 E½NW¼, NE¼SW¼, E½;
Sec. 9, W½, W½E½;
Sec. 17, NW¼SE¼, SW¼NE¼, N½NE¼;
Sec. 21, SW¼SE¼, SW¼NE¼, N½NE¼;
Sec. 28, NW¼NW¼, NW¼NE¼.
T. 20 N., R. 14 W.,
Sec. 24, SE¼SE¼;
Sec. 25, SE¼SW¼, S½SE¼, NE¼SE¼.
Containing 16,509.52 acres.

The State Lands Commission, State of California, 1807 13th Street, Sacramento, California 95814, has filed an application to acquire the above-described lands in exchange for the following unsurveyed lands that the State is entitled to under the Statehood Act, sections 2275 and 2276 of the Revised Statute, as amended (43 U.S.C., 851, 852).

Humboldt Meridian

T. 3 N., R. 1 W.,
Sec. 36, SE¼SW¼, SE¼, SE¼NE¼, N½NE¼.

Mount Diablo Meridian

T. 39 N., R. 4 E., Protraction Diagram No. 168
Sec. 36, All.
T. 31 N., R. 13 E., Protraction Diagram No. 165
Sec. 16, All.
T. 48 N., R. 16 E., Protraction Diagram No. 174
Sec. 36, All.
T. 41 N., R. 17 E., Protraction Diagram No. 166
Sec. 16, W½, SE¼.
T. 10 S., R. 37 E., Protraction Diagram No. 72
Sec. 16;
Sec. 36, N½, SE¼.
T. 12 S., R. 37 E., Protraction Diagram No. 71
Sec. 36, All.
T. 13 S., R. 37 E., Protraction Diagram No. 61
Sec. 36, All.
T. 14 S., R. 37 E., Protraction Diagram No. 61
Sec. 16, All;
Sec. 36, All.
T. 14 ½S., R. 37 E., Protraction Diagram No. 61
Sec. 36, All.
T. 15 S., R. 37 E., Protraction Diagram No. 61
Sec. 16, All;
Sec. 36, All.
T. 9 S., R. 38 E., Protraction Diagram No. 72
Sec. 36, All.
T. 10 S., R. 38 E., Protraction Diagram No. 72
Sec. 16, All;
Sec. 36, All.
T. 11 S., R. 38 E., Protraction Diagram No. 71

Sec. 16, All;
Sec. 36, All.
T. 12 S., R. 38 E., Protraction Diagram No. 71
Sec. 16, All;
Sec. 36, All.
T. 15 S., R. 38 E., Protraction Diagram No. 62
Sec. 16, All;
Sec. 36, All.
T. 16 S., R. 38 E., Protraction Diagram No. 59
Sec. 16, All;
Sec. 36, All.
T. 17 S., R. 38 E., Protraction Diagram No. 59
Sec. 16, All.
T. 9 S., R. 39 E., Protraction Diagram No. 72
Sec. 16, All;
Sec. 36, All.
T. 10 S., R. 39 E., Protraction Diagram No. 72
Sec. 16, All;
Sec. 36, All.
T. 11 S., R. 39 E., Protraction Diagram No. 71
Sec. 16, All;
Sec. 36, All.
T. 12 S., R. 39 E., Protraction Diagram No. 71
Sec. 16, All.
T. 15 S., R. 39 E., Protraction Diagram No. 62
Sec. 16, W½, SE¼;
Sec. 36, All.
T. 16 S., R. 39 E., Protraction Diagram No. 62
Sec. 16, All;
Sec. 36, All.
T. 17 S., R. 39 E., Protraction Diagram No. 35
Sec. 16, All;
Sec. 36, All.
T. 18 S., R. 39 E., Protraction Diagram No. 35
Sec. 16, N½, SE¼.
T. 8 S., R. 40 E., Protraction Diagram No. 73
Sec. 16, All;
Sec. 36, All.
T. 8 ½S., R. 40 E., Protraction Diagram No. 73
Sec. 36, All.
T. 13 S., R. 40 E., Protraction Diagram No. 63
Sec. 16, All.
T. 14 S., R. 40 E., Protraction Diagram No. 63
Sec. 16, All.
T. 15 S., R. 40 E., Protraction Diagram No. 63
Sec. 36, All.
T. 16 S., R. 40 E., Protraction Diagram No. 64
Sec. 16, All;
Sec. 36, All.
T. 17 S., R. 40 E., Protraction Diagram No. 35
Sec. 16, All;
Sec. 36, All.
T. 8 S., R. 41 E., Protraction Diagram No. 107.
(Fractional Township.)
T. 16 S., R. 41 E., Protraction Diagram No. 64
Sec. 16, All;
Sec. 36, All.
T. 17 S., R. 41 E., Protraction Diagram No. 64
Sec. 16, All.
T. 9 S., R. 42 E., Protraction Diagram No. 73
(Fractional Township.)
T. 10 S., R. 42 E., Protraction Diagram No. 73
Sec. 16, All.
T. 17 S., R. 42 E., Protraction Diagram No. 68
Sec. 36, All.
T. 19 S., R. 42 E., Protraction Diagram No. 68
Sec. 16, All.
T. 20 S., R. 42 E., Protraction Diagram No. 68
Sec. 16, All.
T. 18 S., R. 43 E., Protraction Diagram No. 66
Sec. 16, All;
Sec. 36, All.
T. 23 S., R. 43 E., Protraction Diagram No. 85
Sec. 36, All.
T. 24 S., R. 43 E., Protraction Diagram No. 85
Sec. 36, N½, SE¼.
T. 27 S., R. 43 E., Protraction Diagram No. 48
Sec. 16, All.
T. 20 S., R. 44 E., Protraction Diagram No. 67
Sec. 16, All;
Sec. 36, All.
T. 21 S., R. 44 E., Protraction Diagram No. 67
Sec. 36, All.
T. 22 S., R. 44 E., Protraction Diagram No. 76
Sec. 36, All.
T. 23 S., R. 44 E., Protraction Diagram No. 85
Sec. 36, E½.
T. 24 S., R. 44 E., Protraction Diagram No. 95
Sec. 16, All;
Sec. 36, All.
T. 30 S., R. 44 E., Protraction Diagram No. 49
Sec. 16, All.
T. 21 S., R. 45 E., Protraction Diagram No. 76
Sec. 16, S½N½, S½;
Sec. 36, All.
T. 22 S., R. 45 E., Protraction Diagram No. 76
Sec. 16, All, excepting MS 7713 A & B.
T. 23 S., R. 45 E., Protraction Diagram No. 83
Sec. 16, All;
Sec. 36, NW¼NW¼, S½N½, S½.
T. 24 S., R. 45 E., Protraction Diagram No. 83
Sec. 16, All;
Sec. 36, All.
T. 24 S., R. 46 E., Protraction Diagram No. 83
Sec. 16, All;
Sec. 36, All.
T. 25 S., R. 47 E., Protraction Diagram No. 51
Sec. 16, All.

San Bernardino Meridian

T. 5 N., R. 1 E.,
Sec. 36, E½.
T. 5 N., R. 3 E., Protraction Diagram No. 36
Sec. 16, SW¼;
Sec. 36, SW¼.
T. 22 ½N., R. 4 E., Protraction Diagram No. 28
Sec. 36 All.
T. 19 N., R. 9 E., Protraction Diagram No. 19
Sec. 36, E½.
T. 5 N., R. 1 W., Protraction Diagram No. 39
Sec. 16, N½, SW¼.
T. 6 N., R. 4 W., Protraction Diagram No. 134
Sec. 16, All.
T. 13 ½S., R. 22 E., Protraction Diagram No. 23
Sec. 36, All.
Containing 53,029 acres.

All minerals in the State and public lands will be exchanged. The purpose of this exchange is to satisfy the State's entitlement to all the unsurveyed school lands throughout California still owed them under the Statehood Act. In addition, it will serve to acquire non-Federal lands that have significant multiple-use values, i.e., archeological, wildlife, and recreation. It will benefit the general public and the people of California, and provide improved and more efficient management of the Federal and State land. The exchange is consistent with the Bureau's land management planning and has the approval of the counties involved and the State of California. The public interest will be well served by making the exchange.

The value of the lands to be exchanged is approximately equal and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

There will be reserved to the United States in the applied for lands, a right-of-way thereon for ditches and canals constructed by the authority of the United States (43 U.S.C. 945).

The publication of this notice in the **Federal Register** shall segregate the applied for public lands from all other forms of appropriation under the public land laws and the mining laws for a period of two years. The exchange is expected to be consummated before the end of that period.

Detailed information concerning the exchange, including the environmental analysis and the record of non-Federal participation, is available for review at the Bureau of Land Management's California State Office, 2800 Cottage Way, Room 2841, Sacramento, Californina 95825, and at the Ukiah District Office, 555 Leslie Street, Ukiah, California 95492.

On or before August 3, 1984, interested parties may submit comments to the State Director, Bureau of Land Management, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Any adverse comments will be evaluated by the California State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Van W. Manning,

District Manager, Ukiah.

[FR Doc. 84–16304 Filed 6–18–84; 8:45 am]

BILLING CODE 4310–84–M

Vernal District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR Part 1780 that a meeting of the Vernal District Advisory Council will be held on July 25, 1984.

The meeting will begin at 9:30 a.m. in the conference room of the Bureau of Land Management Office at 170 South 500 East, Vernal, Utah.

The agenda for the meeting will include: (1) Selection of a board chairperson and vice-person, (2) review the advisory council charter, (3) discussion of Draft Environmental

Impact Statement on the Bookcliffs Resource Management Plan, (4) reception of oral or written comment to the Board by the public and (5) scheduling of next meeting and agenda.

The meeting is open to the public. Interested persons may present oral comments to the Council between 2:30 and 3:30 p.m. on July 25, 1984, or file a written statement for the Council's consideration. Anyone wishing to make oral statements to the Council must notify the District Manager, Bureau of Land Management, 170 S. 500 E., Vernal, Utah 84078, by July 18, 1984.

Summary minutes of the Council's meeting will be maintained in the District's Office and will be available for public inspection during regular business hours.

Dated: June 11, 1984.

Lloyd H Ferguson,

District Manager.

[FR Doc. 84-16303 Filed 6-18-84; 8:45 am]

BILLING CODE 4310-DQ-M

[ES-33529, Group 137]

Minnesota; Filing of Plat of Survey of Islands

June 12, 1984.

1. On September 30, 1983, the plat representing the survey of two islands in the Pigeon River, which were omitted from the original survey, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on July 27, 1984.

The tracts shown below describe the islands omitted from the original survey.

Fourth Principal Meridian, Minnesota

T. 64 N., R. 6 E.,
Tract Numbers 37 and 38.

2. The islands described above are separate and distinct yet similar in all respects to that of the adjacent surveyed lands.

a. Tract 37 rises approximately 8 feet above the ordinary high water mark of the Pigeon River and has a soil composition of glacial till parent material. Tree species consist of ash, boxelder, and tag alder.

b. Tract 38 rises approximately 10 feet above the ordinary high water mark of the Pigeon River and has a soil composition of glacial till parent material. Tree species consist of ash, boxelder, and tag alder.

3. The islands described above were found to be over 50 percent upland in character within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). They are, therefore, held to be public land.

4. Except for valid existing rights, these islands will not be subject to application, petition, location, or selection under any public law until a further order is issued.

5. Interested parties protesting the determination that any one of these islands is public land of the United States, must present valid proof showing that the islands did not exist at the time of statehood or that it was attached to the mainland at the time of the original survey. Such protests must be submitted in writing to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., July 27, 1984.

6. Inquiries concerning color-of-title claims should not be filed until further orders are issued.

7. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Patricia A. Webb,

Acting Deputy State Director for Cadastral Survey.

[FR Doc. 84-16249 Filed 6-18-84; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-33530, Group 137]

Minnesota; Filing of Plat of Survey of Islands

June 12, 1984.

1. On September 29, 1983, the plat representing the survey of eleven islands in Lake Superior, which were omitted from the original survey, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on July 27, 1984.

The tracts shown below describe the islands omitted from the original survey.

Fourth Principal Meridian, Minnesota

T. 63 N., R. 7 E.
Tract Numbers 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47.

2. The islands described above are separate and distinct yet similar in all respects to that of the adjacent surveyed lands.

a. Tract 37 rises approximately 5 feet above the ordinary high water mark of Lake Superior and is composed of solid granite bedrock, vegetated with small clumps of grass.

b. Tract 38 rises approximately 25 feet above the ordinary high water mark of Lake Superior and is composed of solid granite bedrock, thickly vegetated with fir, spruce, and birch, averaging about 4 ins. in diam. These trees are rooted in a thin layer of organic material on top of the island.

c. Tract 39 rises approximately 20 feet above the ordinary high water mark of Lake Superior and is composed of solid granite bedrock, vegetated with small clumps of grass and a few small mountain ash trees.

d. Tract 40 rises approximately 14 feet above the ordinary high water mark of Lake Superior and is composed of solid granite bedrock, vegetated with small clumps of grass.

e. Tract 41 rises approximately 12 feet above the ordinary high water mark of Lake Superior and is composed of solid granite bedrock, vegetated with small clumps of grass.

f. Tract 42 rises approximately 8 feet above the ordinary high water mark of Lake Superior and is composed of solid granite bedrock.

g. Tract 43 rises approximately 6 feet above the ordinary high water mark of Lake Superior and is composed of solid granite bedrock.

h. Tract 44 rises approximately 5 feet above the ordinary high water mark of Lake Superior and is composed of solid granite bedrock.

i. Tract 45 rises approximately 4 feet above the ordinary high water mark of Lake Superior and is composed of solid granite bedrock.

j. Tract 46 rises approximately 10 feet above the ordinary high water mark of Lake Superior and is composed of solid granite bedrock.

k. Tract 47 rises approximately 10 feet above the ordinary high water mark of Lake Superior and is composed of solid granite bedrock.

3. The islands described above were found to be over 50 percent upland in character within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). They are, therefore, held to be public land.

4. Except for valid existing rights, these islands will not be subject to application, petition, location, or selection under any public law until a further order is issued.

5. Interested parties protesting the determination that any one of these islands is public land of the United States, must present valid proof showing that the islands did not exist at the time of statehood or that it was attached to the mainland at the time of the original survey. Such protests must be submitted in writing to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., July 27, 1984.

6. Inquiries concerning color-of-title claims should not be filed until further orders are issued.

7. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Patricia A. Webb,

Acting Deputy State Director for Cadastral Survey.

[FR Doc. 84-16250 Filed 6-18-84; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-33531, Group 137]

Minnesota; Filing of Plats of Survey of Islands

June 12, 1984.

1. On September 29, 1983, three plats representing the survey of three islands in Lake Superior and one island in the Pigeon River, which were omitted from the original survey, were accepted. They will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on July 27, 1984.

The tracts shown below describe the islands omitted from the original survey.

Fourth Principal Meridian, Minnesota

T. 64 N., R. 7 E.
Tracts 37, 38, 39, and 40.

2. The islands described above are separate and distinct yet similar in all respects to that of the adjacent surveyed lands.

a. Tract 37 rises approximately 4 feet above the ordinary high water mark of Lake Superior and is composed of solid granite bedrock, vegetated with small clumps of grass.

b. Tract 38 rises approximately 20 feet above the ordinary high water mark of Lake Superior and is composed of solid granite bedrock. Timber on the island consists of cedar, fir, spruce, and birch, rooted in soil composed mainly of organic material.

c. Tract 39 rises approximately 6 feet above the ordinary high water mark of the Pigeon River and is composed of glacial till parent material. Tree species growing around the perimeter of the island consist of spruce, fir, cedar, and birch. The center of the island, being poorly drained, is vegetated with tag alder, scattered birch, and grasses. The largest of the dominant trees alive on the island is 16 ins. in diam. and approximately 50 years of age.

d. Tract 40 rises approximately 15 feet above the ordinary high water mark of Lake Superior and is composed of solid granite bedrock.

3. The islands described above were found to be over 50 percent upland in character within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). They are, therefore, held to be public land.

4. Except for valid existing rights, these islands will not be subject to application, petition, location, or selection under any public law until a further order is issued.

5. Interested parties protesting the determination that any one of these islands is public land of the United States, must present valid proof showing that the islands did not exist at the time of statehood or that it is attached to the mainland at the time of the original survey. Such protests must be submitted in writing to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., July 27, 1984.

6. Inquiries concerning color-of-title claims should not be filed until further orders are issued.

7. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $4.00 each.

Patricia A. Webb,

Acting Deputy State Director for Cadastral Survey.

[FR Doc. 84-16251 Filed 6-18-84; 8:45 am]

BILLING CODE 4310-GJ-M

[W-87111]

Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 20 acres of public land for the White Mountain Petroglyph's Site near Rock Springs, Wyoming. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting should be received by Septemer 17, 1984.

ADDRESS: Comments and meeting requests should be sent to: Wyoming State Director, Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, Wyoming State Office, 307-772-2089.

On May 31, 1984, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the nondiscretionary public land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian, Wyoming

T. 22 N., R. 105 W.,
Sec. 11, NE¼SE¼SE¼ and N½SW¼ SE¼SE¼;
Sec. 12, W½NW¼SW¼ SW¼.

The area described contains 20 acres in Sweetwater County, Wyoming.

The purpose of the withdrawal is to protect the educational and recreational values of White Mountain Petroglyphs Site and to protect the capital investment made at the site by the Bureau.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the applications is denied or cancelled, or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are recreational and visitor use activities, wildlife habitat management, and development of oil and gas reserves without surface occupancy. No licenses, permits, cooperative agreements or discretionary land use authorizations of a temporary nature will be allowed on the lands without the approval of an authorized officer of the Bureau of Land Management.

All communications in connections with this proposed withdrawal should be addressed to the State Director, Bureau of Land Management, Wyoming State Office, P. O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: June 12, 1984.

P. D. Leonard,

Associate State Director.

[FR Doc. 84-16308 Filed 6-18-84; 8:45 am]

BILLING CODE 4310-22-M

[W-72984, W-72985]

Wyoming; Proposed Continuation of Withdrawal

Correction

In FR Doc. 84-14807 beginning on page 23123 in the issue of Monday, June 4, 1984, make the following corrections on page 23124. In the first column, fourth line, "SE¼" should read "SW¼" and "SE½" "SE¼".

BILLING CODE 1505-01-M

Minerals Management Service

Outer Continental Shelf; Proposed Development and Production Plans; Central Santa Maria Basin Area, California; Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Intent to Prepare an Evironmental Impact Statement/ Environmental Impact Report.

SUMMARY: The Minerals Management Service, Pacific Outer Continental Shelf Region, the County of Santa Barbara, and the California State Lands Commission will prepare a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for proposed development of the Central Santa Maria Basin. The EIS/EIR will include proposed development by Union Oil Company and Exxon Company, U.S.A. of the Point Pedernales Field, as well as anticipated futre development of oil and gas reserves in the Central Santa Maria Basin Area, Offshore Santa Barbara County.

The draft statement is scheduled for completion in April, 1985. A Notice of Availability will be published in the Federal Register establishing dates for the comment period following distribution of the draft. Federal, State, or local governments and special interest groups or individuals needing futher information should call Donna Brewer at (213) 688-4480. Those wishing to assist MMS in determining the scope of the Central Santa Maria Basin Area EIS/EIR should write to: William Grant, Regional Manager, Minerals Management Service, Pacific OCS Region, 1340 West Sixth Street, Los Angeles, CA 90017.

Comments on the scope of the statement should be received no later than 19 July 1984. A public scoping workshop is scheduled in Lompoc on July 2, at the City Hall-Council Chambers, 100 Civic Center Plaza, from 6 pm to 10 pm.

SUPPLEMENTARY INFORMATION: Proposed development in the Central Santa Maria Basin Area includes installation of two production platforms with associated subsea pipelines and power cables; installation of one 100,000 bbl/day capacity oil pipeline, and a 10 MMSCFD capacity gas pipeline from Union's proposed Platform on OCS Lease #P-0441 running eastward to a landfall at the Santa Ynez River and continuing onshore across Vandenburg AFB to Lompoc; installation of a return water line from the Lompoc processing facility to Union's proposed platform; installation of a 20,000 KVA capacity power cable from the Santa Ynez River landfall to Union's proposed Platform; installation of one 38,000 bbl/day design oil pipeline and one 30 MMCFD design gas pipeline from Exxon's proposed Platform on OCS Lease # P-0440 running south to Chevron's proposed Platform Hermosa on OCS Lease # P-0136 and to shore at Point Conception via Chevron's proposed consolidated pipeline and continuing onshore to Gaviota; installation of an interim 30 MMCFD design gas pipeline between Union's and Exxon's proposed platforms; expansion of existing Union oil and gas processing facilities at Lompoc; additional oil and gas lines along Union's existing R-O-W from Lompoc-to-Orcutt; and modifications to Union's Santa Maria Refinery.

The EIS/EIR will analyze the environmental consequences of the proposed projects in compliance with the National Environmental Policy Act and California Environmental Quality Act. Significant issues to be discussed include: air quality, water quality, terrestrial and marine biota, threatened and endangered species, commercial fishing, cultural resources, land use, and cumulative impacts. Alternatives to be considered include alternative pipeline routes, and options to modify, defer, or disapprove the proposed DPPs. Production from up to four additional platforms will be considered in the Central Santa Maria Basin Area EIS/EIR for the purposes of assessing cumulative impacts. The Central Santa Maria Basin Area includes a total of 28 Federal leases offshore between Point Arguallo/ Purisima Point.

How MMS Plans to Use This EIS/EIR

The EIS/EIR for the Central Santa Maria Basin Area, written in accordance with NEPA requirements, will provide the information needed to evaluate proposed and future activities in OCS waters offshore Point Arguello/Purisima Point. Since Development and Production Plans (DPP's) have or will be submitted for OCS Leases # P-0438 and P-0440 (Exxon) and P-0441 (Union), a detailed site specific impact analysis will be provided in the EIS/EIR for these two platforms. Further environmental documentation will not be required for these Development Plans before a decision is made by the MMS. Decisions on these two platforms will follow filing of a final EIS with EPA. Decisions by Santa Barabra County and the State of California will follow certification of the EIS/EIR.

Operators proposing additional; platforms in the Central Santa Maria Basin Area will be required to conduct the appropriate site-specific geohazards, cultural resource and biological surveys and to submit Development and Production Plans (DPP's) and Environmental Reports (ERs). Documents included in thse submittals are: Plans of Development, Environmental Report, Oil Spill Contingency Plan, Hydrogen Sulfide Contingency Plan, and survey data and reports. The MMS will Evaluate environmental impacts from additional development activities in subsequent Environmental Assessments or, depending on the significance of the impacts, in Environmental Impact Statements.

James W. Sutherland,

Acting Regional Manager.

[FR Doc. 84-16280 Filed 6-18-84; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Anadarko Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD)

SUMMARY: Notice is hereby given that Anadarko Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6838, Block 18, Chandeleur Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on June 12, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Buildiang, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.*

FOR FURTHER INFORMATION CONTACT: Mr. Warren Williamson, Minerals Management Service, Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 12, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84–16253 Filed 6–18–84; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 8, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by July 3, 1984.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Maricopa County

Phoenix, *Rancho Jooquina House*, 4630 E. Cheery Lynn Rd.

CALIFORNIA

Kern County

Tehachapi vicinity, *Gross, Courtlandt, House*,18600 Courtlandt Court

CONNECTICUT

Fairfield County

Westport, *Bradley-Wheeler House*, 25 Avery Pl.

Litchfield County

Salisbury, *Lime Rock Historic District*, Roughly White Hollow, Elm, Lime Rock, Norton Hill, and Furnace Rds.

FLORIDA

Broward County

Ft. Lauderdale, *Bonnet House*, 900 Birch Rd.

GEORGIA

Clayton County

Lovejoy vicinity, *Crawford-Dorsey House and Cemetery*, Freeman and McDonough Rds.

HAWAII

Hawaii County

Kii Petroglyphs,

IDAHO

Clearwater County

Weippe, *Brown's Crek CCC Camp Barracks*, 105 First ST. E.

KANSAS

Shawnee County

Berryton vicinity, *Lyons, Horace G., House*, 4831 SE 61st St.

Wyandotte County

Kansas City, *Huron Building*, 905 N. 7th St.

MASSACHUSETTS

Bristol County

Taunton, *Buildings at 80 and 88 W. Brittania Street (Taunton MRA)*, 80 and 88 W. Brittania St.

Essex County

Beverly, *Beverly Center Business District*, Roughly bounded by Chapman, Central, Brown, Dane, and Essex Sts.

Hampshire County

Amherst, *Strong House*, 67 Amity St.

Middlesex County

Reading, *Ace Art Company (Reading MRA)*, 24 Gould St.
Reading, *Bancroft, Joseph, House (Reading MRA)*, 101 Lowell St.
Reading, *Bancroft, Samuel House (Reading MRA)*, 232 West St.
Reading, *Bancroft, Wendell House (Reading MRA)*, 20 Washington St.
Reading, *Bassett, Edwin, House (Reading MRA)*, 115 Prescott St.
Reading, *Batchelder, House (Reading MRA)*, 607 Pearl St.
Reading, *Batchelder, Alden, House (Reading MRA)*, 797 Main St.
Reading, *Batchelder, George, House (Reading MRA)*, 127–129 Franklin St.
Reading, *Batchelder, Nathaniel, House (Reading MRA)*, 71 Franklin St.
Reading, *Battell House, (Reading MRA)*, 293 Haverhill St.
Reading, *Beard, Benjamin, House (Reading MRA)*, 251 Ash St.
Reading, *Boston and Maine Railroad Deposit (Reading MRA)*, Lincoln St.
Reading, *Bowser Gazebo (Reading MRA)*, 25 Linden St.
Reading, *Brackett House (Reading MRA)*, 276 Summer Ave.
Reading, *Brande House (Reading MRA)*, 54 Woburn St.
Reading, *Brooks, Francis, House (Reading MRA)*, 78–80 Prescott St.
Reading, *Carroll-Hartshorn House (Reading MRA)*, 572 Haverhill St.
Reading, *Carter Mansion House (Reading MRA)*, 89 Woburn St.
Reading, *Coggin, Gilman, House (Reading MRA)*, 123 Prescott St.
Reading, *Common Historic District House (Reading MRA)*, Roughly bound by Main, Highland, and Federal Sts.
Reading, *Cook, Asa M., House (Reading MRA)*, 81 Prospect St.
Reading, *Damon, Joseph, House (Reading MRA)*, 178 South St.
Reading, *Damon, Washington, House (Reading MRA)*, 38 Salem St.
Reading, *Dewey Place (Reading MRA)*, 176 Summer Ave.
Reading, *Durgin House (Reading MRA)*, 66 Prospect St.
Reading, *Eaton-Prescott House (Reading MRA)*, 284 Summer Ave.
Reading, *Elliott, Luther, House (Reading MRA)*, 309 Haven St.
Reading, *Hall, Stephen, House (Reading MRA)*, 64 Minot St.
Reading, *Harnden-Browne House (Reading MRA)*, 60–62 Salem St.
Reading, *Hartshorn, Timothy, House (Reading MRA)*, 379 Haverhill St.
Reading, *Hartwell House (Reading MRA)*, 121 Willow St.
Reading, *Haverhill Street Milestone (Reading MRA)*, Haverhill St.
Reading, *Highland School (Reading MRA)*, 64 Middlesex Ave.
Reading, *House at 11 Beach Street (Reading MRA)*, 11 Beach St.
Reading, *House at 1177 Main Street (Reading MRA)*, 1177 Main St.

Reading, *House at 129 High Street (Reading MRA)*, 129 High St.
Reading, *House at 16 Mineral Street (Reading MRA)*, 16 Mineral St.
Reading, *House at 199 Summer Avenue (Reading MRA)*, 199 Summer Ave.
Reading, *House at 206 West Street (Reading MRA)*, 206 West St.
Reading, *House at 242 Summer Avenue (Reading MRA)*, 242 Summer Ave.
Reading, *House at 26 Center Avenue (Reading MRA)*, 26 Center Ave.
Reading, *House at 322 Haven Street (Reading MRA)*, 322 Haven St.
Reading, *House at 42 Salem Street (Reading MRA)*, 42 Salem St.
Reading, *House at 44 Temple Street (Reading MRA)*, 44 Temple St.
Reading, *House at 483 Summer Avenue (Reading MRA)*, 483 Summer Ave.
Reading, *House at 57 Woburn Street (Reading MRA)*, 57 Woburn St.
Reading, *House at 77 Howard Street (Reading MRA)*, 77 Howard St.
Reading, *House at 79–81 Salem Street (Reading MRA)*, 79–81 Salem St.
Reading, *Kemp Barn (Reading MRA)*, 186 Summer Ave.
Reading, *Kemp Place (Reading MRA)*, 186 Summer Ave.
Reading, *Lewis House (Reading MRA)*, 276 Woburn St.
Reading, *Manning, Charles, House (Reading MRA)*, 145 Salem St.
Reading, *Manning, Jacob, House (Reading MRA)*, 140 High St.
Reading, *Masonic Block (Reading MRA)*, 600–622 Main St.
Reading, *Nichols, Daniel, Homestead (Reading MRA)*, 434Haverhill St.
Reading, *Nichols, James, House (Reading MRA)*, 273 Pearl St.
Reading, *Nichols, Jerry, Tavern (Reading MRA)*, 51 Mill St.
Reading, *Nichols, Richard, House (Reading MRA)*, 483 Franklin St.
Reading, *Octagon House (Reading MRA)*, 97 Pleasant St.
Reading, *Old Hose House (Reading MRA)*, 1249 Main St.
Reading, *Parker House (Reading MRA)*, 52 Salem St.
Reading, *Parker House (Reading MRA)*, 316 Haven St.
Reading, *Parker, Tavern (Reading MRA)*, 103 Washington St.
Reading, *Parker, Capt. Nathaniel, Red House (Reading MRA)*, 77–83 Ash St.
Reading, *Parker, Joseph, House (Reading MRA)*, 107 Grove St.
Reading, *Parker, Joseph, House (Reading MRA)*, 420 Franklin St.
Reading, *Parker, Samuel House (Reading MRA)*, 132 West St.
Reading, *Parker, Stillman, House (Reading MRA)*, 484 Summer Ave.
Reading, *Parker, William, House (Reading MRA)*, 55 Walnut St.
Reading, *Pierce House (Reading MRA)*, 128 Salem St.
Reading, *Pierce Organ Pipe Factory (Reading MRA)*, 10–12 Pierce St.
Reading, *Pratt House (Reading MRA)*, 456 Haverhill St.
Reading, *Pratt, Stillman, House (Reading MRA)*, 472 Summer Ave.
Reading, *Reading Municipal Building (Reading MRA)*, 49 Pleasant St.
Reading, *Reading Municipal Light and Power Station (Reading MRA)*, 226 Ash St.
Reading, *Reading Standpipe (Reading MRA)*, Auburn and Beacon Sts.
Reading, *Robert House (Reading MRA)*, 59 Prospect St.
Reading, *Rowhouses at 256–274 Haven Street (Reading MRA)*, 256–274 Haven St.
Reading, *Sanborn, Rev. Peter, House (Reading MRA)*, 55 Lowell St.
Reading, *Smith Shoe Shop (Reading MRA)*, 273 Haverhill St.
Reading, *Symonds, Thomas, House (Reading MRA)*, 320 Haverhill St.
Reading, *Temple, Joseph, House (Reading MRA)*, 42 Chute St.
Reading, *Temple, Mark, House (Reading MRA)*, 141 Summer St.
Reading, *Walnut Street School (Reading MRA)*, 55 Hopkins St.
Reading, *Wells, Charles, House (Reading MRA)*, 99 Prescott St.
Reading, *Weston, Ephrain, House (Reading MRA)*, 229 West St.
Reading, *Weston, Jabez, House (Reading MRA)*, 86 West. St.
Reading, *Wisteria Lodge (Reading MRA)*, 146 Summer St.
Reading, *Woburn Street Historic District (Reading MRA)*, Woburn St. from Temple St. to Summer Ave.
Somerville, *Carr, Martin W., School*, 25 Atherton St

Norfolk County

Quincy, *Cranch School*, 270 Whitwell St.

Suffolk County

Boston, *Fenway-Boylston Street District*, Fenway, Boylston, Westland, and Hemenway Sts.

MISSISSIPPI

Amite County

Liberty vicinity, *Pinewood*, S of Liberty off Greensburg Rd.

Jefferson County

Church Hill vicinity, *Richland*, Off MS 553

Jones County

Ellisville, *Deason, Amos, House*, 410 N. Deason St.

Walthall County

Tylertown vicinity, *China Grove Methodist Church*, MS 585

Warren County

Redbone vicinity, *Hullum-Mallett-Brewer House*, Redbone Rd.

NEW JERSEY

Middlesex County

New Brunswick, *Main Post Office*, 86 Bayard St.

NORTH CAROLINA

Davidson County

Arcadia vicinity, *Hampton House (Davidson County MRA)*, SR 1485
Arnold, *Everhart, Riley, Farm and General Store (Davidson County MRA)*, SR 1468
Denton vicinity, *Adderton-Badgett House (Davidson County MRA)*, SR 2529
Denton, *Mountain Ebal Methodist Protestant Church (Davidson County MRA)*, ST 2518
High Point vicinity, *Moore, Eli, House (Davidson County MRA)*, SR 1741
High Point vicinity, *Spring Hill Methodist Protestant Church Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, SR 1755
Lexington vicinity, *Junior Order United American Mechanics National Orphans Home (Davidson County MRA)*, NC 8
Lexington vicinity, *Pilgrim Reformed Church Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, SR 1843
Lexington vicinity, *Shoaf, Henry, Farm (Davidson County MRA)*, NC 64
Lexington, *Welborn, John Henry, House (Davidson County MRA)*, 511 S. Main St.
Linwood vicinity, *Beallmont (Davidson County MRA)*, SR 1133
Linwood vicinity, *Jersey Settlement Meeting House (Davidson County MRA)*, SR 1271
Linwood, *Jersey Baptist Church Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, SR 1272
Midway vicinity, *Bethany Reformed and Lutheran Church Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, SR 1716
Midway vicinity, *Everhart, Hamilton, Farm (Davidson County MRA)*, U.S. 52
Reedy Creek vicinity, *Grimes-Crotts Mill (Davidson County MRA)*, SR 1445
Silver Hill vicinity, *Beck's Reformed Church Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, SR 2250
South Thomasville, *Fair Grove Methodist Church Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, NC 109, SR 2072 and 2070
Thomasville vicinity, *Abbott's Creek Primitive Baptist Church Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, SR 1743
Thomasville vicinity, *Emanuel United Church of Christ Cemetery (Anglo-German Cemeteries TR) (Davidson County M R A)*, SR 2060
Thomasville vicinity, *Lambeth Shadrach, House (Davidson County M R A)*, SR 2062
Tyro vicinity, *Haden Place (Davidson County M R A)*, SR 1156
Tyro vicinity, *Koonts, Capt. John Jr., Farm (Davidson County M R A)*, SR 1186
Tyro vicinity, *St. Luke's Lutheran Church Cemetery (Anglo-German Cemetery T R) (Davidson County M R A)*, SR 1183
Tyro, *Tryo Tavern (Davidson County M R A)*, NC 150
Wallburg, *Wall, George W., House (Davidson County M R A)*, NC 109 and SR 1723
Welcome vicinity, *Beulah Church of Christ Cemetery (Anglo-German Cemeteries TR) (Davidson County M R A)*, SR 1457
Welcome vicinity, *Good Hope Methodist Church Cemetery (Anglo-German Cemeteries T R) (Davidson County M R A)*, NC 150 and SR 1445
Welcome vicinity, *Waggoner Graveyard (Anglo-German Cemeteries TR) (Davidson County M R A)*, SR 1814

OKLAHOMA

Carter County

Ardmore, *Douglass High School Auditorium*, 800 M NE. St.

PENNSYLVANIA

Philadelphia County

Philadelphia, *East Center City Commercial Historic District*, Roughly bounded by 6th, Juniper, Market, and Locust Sts.
Philadelphia, *Garden Court Historic District*, Roughly bounded by Larchwood Ave., 46th, 50th, and Pine Sts.

SOUTH CAROLINA

Anderson County

Anderson, *Prevost, Nick, House*, 105 N. Prevost St.

TEXAS

Armstrong County

Palo Duro Pen (41 A M5) (New Mexican Pastor Sites in Texas Panhandle T R),
Palo Duro Shelter (41 A M6) (New Mexican Pastor Sites in Texas Panhandle T R),

Hartley County

Proctor Pen I (41 H T13) (New Mexican Pastor Sites in Texas Panhandle T R),
Tafoya, Miguel, Place (41 H T17) (New Mexican Pastor Sites in Texas Panhandle T R).

Oldham County

Chavez City Ruins (41OL253) (New Mexican Pastor Sites in Texas Panhandle T R),
Chavez Suburbs East and West (41O0L254) (New Mexican Pastor Sites in Texas Panhandle T R),
Green No. 5 (41OL257) (New Mexican Pastor Sites in Texas Panhandle T R),
Griffin Site (41OL246) (New Mexican Pastor Sites in Texas Panhandle T R),
T3Mansfield I (41OL50) (New Mexican Pastor Sites in Texas Panhandle T R),
Maston I (41OL256) (New Mexican Pastor Sites in Texas Panhandle T R),
Maston No. 52 (41OL235) (New Mexican Pastor Sites in Texas Panhandle T R),
Maston No. 13 Stone Wall (41OL249) (New Mexican Pastor Sites in Texas Panhandle T R),
Stone Corrals No. 1–6 (41OL250) (New Mexican Pastor Sites in Texas Panhandle T R),

VIRGINIA

Richmond (Independent City)
Monroe Park Historic District, Roughly bounded by Belvidere, Main, Cherry, Park, Laurel, and Franklin Sts.

The 15-day commenting period for the following property is to be waived in order to permit a leasing agreement which will assist in the property's preservation.

OREGON

Grant County

Dayville vicinity, *Cant, James, Ranch Historic District*, O R 19

[FR Doc. 84–16302 Filed 6–18–84; 8:45 am]
BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Receipt of a Petition To Designate an Area Adjacent to Black Diamond, Washington, Unsuitable for Surface Coal Mining Operations; Partial Rejection of the Petition; Written Comment Period on Completeness of Petition

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

ACTION: Notice of receipt and partial rejection of a petition; public written comment period on completeness of a petition.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement received a petition to designate certain lands in the area of Black Diamond, Washington, unsuitable for mining. OSM has decided not to process the petition as it relates to that portion of the petition area coinciding with Pacific Coast Coal Company's proposed John Henry No. 1 mine permit area. OSM is processing the petition as it relates to the remainder of the petition area. OSM is soliciting written comments on the completeness of that portion of the petition which will be processed.

DATE: Comment period on completeness of petition will extend until 4:00 p.m., MDT, June 27, 1984.

ADDRESSES: *Written comments:* Hand deliver or mail to the Office of Surface Mining, Western Technical Center, Administrator's Office, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado 80202.

Availability of copies of petition: Above address.

Review of administrative record: The administrative record can be reviewed at either the above address or at the U.S. Fish and Wildlife Service, 2625 Parkmont Lane, SW., Building B3, Olympia, Washington 98502.

FOR FURTHER INFORMATION CONTACT: Charles Albrecht, OSM, Western Technical Center (telephone: 303–844–5656; FTS: 564–5656), at the Denver, Colorado, address listed above.

SUPPLEMENTARY INFORMATION: On April 6, 1984, OSM received a petition from Citizens Concerned About Strip Mining to designate approximately 800 acres of land adjacent to Black Diamond, Washington, unsuitable for surface coal mining operations. The petition area is located in portions of sections 11 and 12, T. 21 N., R. 6 E., and portions of sections 6, 7, and 8, T. 21 N., R. 7 E. Portions of the proposed permit area for the Pacific Coast Coal Company's John Henry No. 1 mine were included in the petition area.

OSM held the petition until May 16, 1984, when the procedures and criteria for designating lands unsuitable for surface coal mining operations under OSM's Federal program for the State of Washington became appliable. At that time, OSM began processing the petition in accordance with 30 CFR 947.746.

OSM has decided to reject the petition on that portion of the petition area within the John Henry No. 1 mine permit area and to process it on the remainder of the petition area, in accordance with 30 CFR 947.764(a) and 764.15(a)(7). The petition was received by OSM after the permit application for the mine was determined to be administratively complete (January 11, 1984) and after the first newspaper notice on this completeness determination was published (January 11, 1984). OSM will consider concerns raised in the petition and relating to that portion of the petition area within the John Henry No. 1 mine permit area as part of the review of the mine permit application. OSM decided to process the petition as it relates to the remainder of the petition area.

In accordance with 30 CFR 764.15(b)(2), OSM is requesting written comments from the public on the completeness of the petition. OSM's criteria for complete petitions are contained in 30 CFR 764.13(b).

Dated: June 12, 1984.

Brent Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 84–16315 Filed 6–18–84; 8:45 am]
BILLING CODE 4310–05–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Revised Delegation of Authority No. 41]

Delegations of Authority; Certain Assistant Administrators; Determinations Pursuant to the Foreign Assistance Act of 1961, as Amended

Delegation of Authority No. 41, dated May 8, 1964 (29 FR 6892), as amended, is revoked and the following substituted for it:

Section I. Pursuant to the authority vested in me by IDCA Delegation of Authority No. 1, as amended (October 1, 1979, 44 FR 57521, as amended October 31, 1980, 45 FR 74090), I hereby delegate to certain Assistant Administrators the following authority:

A. To the Assistant Administrator, Near East; Assistant Administrator, Latin America and the Caribbean; Assistant Administrator, Africa; and Assistant Administrator, Asia, each for the countries within their responsibilities, the following functions pursuant to section 607(a) of the Foreign Assistance Act of 1961, as amended (the Act), with respect to the furnishing of services and commodities to friendly countries or to international organizations having a membership consisting primarily of foreign governments:

1. Making the determinations prescribed by section 607(a) of the Act;

2. Authorizing the furnishing of such services and commodities on an advance of funds or reimbursement basis; and

3. Signing transfer or transfer/trust agreements.

B. To the Assistant to the Administrator for Management:

1. With respect to the furnishing of commodities to international organizations having a membership consisting primarily of foreign governments, the American Red Cross, and voluntary nonprofit agencies registered with and approved by the Agency for International Development, the following functions pursuant to section 607(a) of the Act:

(a) Making the determination prescribed by section 607(a) of the Act;

(b) Authorizing the furnishing of such commodities on an advance of funds or reimbursement basis; and

(c) Signing transfer or transfer/trust agreements.

2. Making the determinations prescribed by section 607(c) of the Act.

C. To the Assistant Administrator, Food for Peace and Voluntary Assistance, with respect to the furnishing of services to international organizations having a membership consisting primarily of foreign governments, the American Red Cross, and voluntary nonprofit agencies registered with and approved by the Agency for International Development, the following functions pursuant to section 607(a) of the the Act:

1. Making the determinations prescribed by section 607(a) of the Act;

2. Authorizing the furnishing of such services on an advance of funds or reimbursement basis; and

3. Signing transfer or transfer/trust agreements.

Section II. Only the authority to execute transfer or transfer/trust agreements may be redelegated to subordinate officers, except that all the authorities delegated to the Assistant to the Administrator for Management may be redelegated.

Section III. This delegation of authority shall be effective immediately.

Dated: May 23, 1984.

Jay F. Morris,

Deputy Administrator.

[FR Doc. 84-16248 Filed 6-18-84; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Discontinuance of Printing of the Advance Sheets to the Bound Volumes in Pamphlet Form

AGENCY: Interstate Commerce Commission.

ACTION: Notice of procedural change.

SUMMARY: Due to the closing of the agency printing facility, the Commission is changing procedures for issuance of decisions printed in the bound volumes. Subscription services for advance sheets to the bound volumes (print decisions) will no longer be provided by the Commission. Advance sheets to the bound volumes will no longer be issued in the pamphlet format. The Commission will discontinue maintenance of the separate volume series (I.C.C. and M.C.C.) and will establish a single series of volumes (I.C.C. 2d).

EFFECTIVE DATE: June 19, 1984.

FOR FURTHER INFORMATION CONTACT: Darlene Proctor, (202) 275-7233.

SUPPLEMENTARY INFORMATION: The discontinuance of printing and related services for the pamphlet version of advance sheets (print decisions) is necessary because the Commission will no longer have the equipment or staff necessary to produce them. Not only will serving decisions in this manner be more economical for the Commission, it is hoped that it will result in faster service of most printed decisions and in improved publication times for the bound version of the reports.

The decisions themselves will no longer be issued in 6" x 9" pamphlets. Instead, they will appear on two sides of 8½" x 11"sheets (the same size currently used for non-print decisions) and will bear the heading "This decision will be included in the bound volumes of ICC Printed Reports." The decision will be issued in typeset style and format containing the volume designation, pagination and folio titles (the citation).

Due to the discontinuance of the pamphlet form, the decisions will be served and released to the public in the same manner as currently used for non-print decisions. There will no longer be a need to maintain a separate subscription service for the pamphlets. The Commission has recently closed Motor Finance Volume 127 and Rail Finance Volume 367. The subscribers to Motor Volume 133 will continue to receive copies of all advance sheets until the Volume is complete, with the remainder of those copies to be issued in the "flat" rather than pamphlet form.

The practice of maintaining separate volumes for different case types has become obsolete. Rather than maintaining a separate volume for rates, finance, and motor carrier decisions, the Commission will establish a single volume (I.C.C. 2d) which will contain all print decisions. Upon completion of Motor Volume 133, all print decisions will be included in the I.C.C. 2d volume.

The Commission will no longer take subscriptions to the advance sheets to the bound volume series. Instead, copies of these and any other decisions of the Commission will be handled as they are now. Individuals on the service lists to proceedings will be served by the Commission. Individuals who are not on the service lists may purchase copies by calling TSI Infosystems, Inc., at (202) 289-4357 or by writing to them at Room 2227 ICC Building, 12th and Constitution Avenue NW., Washington, D.C. 20423.

Decided: June 12, 1984.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 84-16281 Filed 6-18-84; 8:45 am]

BILLING CODE 7035-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Invitation for Membership

The Joint Board for the Enrollment of Actuaries (Joint Board), established under the Employee Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. The Joint Board has established an Advisory Committee on Actuarial Examinations (Advisory Committee) to assist in its examination duties mandated by ERISA. The term of the current Advisory

Committee will expire in 1984 and the Joint Board proposes to renew such Advisory Committee's charter for a further two year period. This notice describes the Advisory Committee and invites applications from those interested in serving on it.

1. *General.* To qualify for enrollment to perform actuarial services under ERISA, an applicant must have requisite pension actuarial experience and must satisfy knowledge requirements as provided in the Joint Board's regulations. The knowledge requirements may be satisfied by successful completion of Joint Board examinations in basic actuarial mathematics and methodology, and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, in cooperation with the Society of Actuaries and the American Society of Pension Actuaries, jointly administer examinations which are acceptable to the Joint Board for enrollment purposes, and which are acceptable to those actuarial organizations as part of their respective examination programs.

2. *Purpose.* The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations which will enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The purpose of the Advisory Committee, as renewed, will remain that of assisting the Joint Board in fulfilling this responsibility. The Advisory Committee will discuss the philosophy of such examinations, will review topics appropriately covered in them, and will make recommendations relative thereto. It also will recommend to the Joint Board proposed examination questions. The Joint Board will maintain liaison with the Advisory Committee in this process to ensure that its views of examination content are understood.

3. *Function.* The manner in which the Advisory Committee functions in preparing examination questions is intertwined with the jointly administered examination program. Under that program, the participating actuarial organizations draft questions and submit them to the Advisory Committee for its consideration. After review of the draft questions, the Advisory Committee selects appropriate questions, modifies them as it deems desirable and then prepares one or more drafts of actuarial examinations to be recommended to the Joint Board. (In addition to revisions of the draft questions, it may be necessary for the Advisory Committee to originate questions of its own and include them in what is recommended.)

4. *Membership.* The Joint Board will take steps to ensure maximum practicable representation on the Advisory Committee of points of view regarding the Joint Board's actuarial examinations extant in the community of actuaries. In this regard, appointment will be made from the actuarial community at large and from nominees provided by the actuarial organizations. Since the members of the actuarial organizations comprise a large segment of the actuarial profession, this appointive process ensures expression of a broad spectrum of viewpoints. All members of the Advisory Committee will be expected to act in the public interest, that is, to produce examinations which will help ensure a level of competence among those who will be accorded enrollment to perform actuarial services under ERISA.

Membership normally will be limited to actuaries previously enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. The Advisory Committee will be comprised of not more than nine members.

The Advisory Committee will meet about six times a year. Advisory Committee members should be prepared to devote from 100 to 150 hours, including meeting time, to the work of the Advisory Committee over the course of a year. Members will be reimbursed for travel, meals and lodging expenses incurred, in accordance with applicable government regulations, with respect to their attendance at Advisory Committee meetings.

Actuaries interested in serving on the Advisory Committee should express their interest and fully state their qualifications in a letter addressed to: Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, D.C. 20220.

The deadline for accepting applications is August 15, 1984.

Dated: June 14, 1984.

Leslie S. Shapiro,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 84-16244 Filed 6-18-84; 8:45 am]

BILLING CODE 4810-25-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowments for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by July 19, 1984.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506 (202) 786-0233 or Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, D.C. 20503 (202) 395-6880.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20560, (202) 786-0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revision.

Title: General Programs Museums and Historical Organizations Guidelines and Application Instructions.

Frequency of Collection: Twice a year at each deadline.

Respondents: Museums and cultural organizations.

Use: Collection of information provides a basis for evaluation of application in a competitive review process of grant making.

Estimated Number of Respondents: 330.

Estimated Hours for Respondents to Provide Information: 26,400.

Dated: June 14, 1984.

Victor J. Loughnan,

Director of Administration.

[FR Doc. 84-16269 Filed 6-18-84; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-400-OL and 50-401-OL; ASLBP No. 82-472-03 OL]

Shearon Harris Nuclear Power Plant, Units 1 and 2; Designation of Alternate Board Member

Pursuant to the authority contained in 10 CFR 2.721, Dr. Harry Foreman is designated an alternate Board member of the Atomic Safety and Licensing Board for *Carolina Power and Light Company, et al.* (Shearon Harris Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-400-OL and 50-401-OL.

All correspondence, documents and other material shall be filed with the board in accordance with 10 CFR 2.701 (1980). The address of the alternate Board member is: Administrative Judge Harry Foreman, Box 395 Mayo, University of Minnesota, Minneapolis, Minnesota 55455.

Dated at Bethesda, Maryland, this 12th day of June, 1984.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 84-16338 Filed 6-18-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-07026; License No. 29-13848-01; EA 83-122]

International Nutronics, Inc.; Modification of Order Dated January 30, 1984

I

International Nutronics, Inc. (the Licensee) is the holder of Byproduct Material License No. 29-13848-01, which authorizes the Licensee to possess, store, and use byproduct and source material for irradiation of materials, calibration of instruments, and shielding. The license was last renewed on July 14, 1981 and will expire on July 31, 1986. The license permits use of material only at the Licensee's facilities at U.S. Highway 46 and Schley Street, Dover, New Jersey 07801 (Dover facility).

II

In response to inspection findings which revealed contamination of the Licensee's Dover facility from the release of water contaminated with cobalt-60, the Director of the Office of Inspection and Enforcement issued an Order Modifying License Immediately Effective on November 1, 1983 compelling the Licensee, *inter alia*, to discontinue any use of licensed materials for the conduct of irradiations, submit a decontamination plan for its facility and decontaminate its facility to the satisfaction of the NRC. 48 FR 51879 (November 14, 1983). The Licensee did not contest the November order. To ensure that the Licensee decontaminate the Dover facility in a timely manner, on January 30, 1984, the Director issued a second Order Modifying License Immediately Effective requiring specific decontamination requirements and setting out a decontamination timetable. 49 FR 4571 (February 7, 1984). In a letter dated February 22, 1984, the Licensee requested a hearing on the January order. The Licensee did not specify what aspect of the January order it sought to contest in a hearing.

Shortly thereafter, the Staff and the Licensee commenced negotiations as to the nature and scope of a mutually satisfactory decontamination plan and schedule. As a result of these negotiations, and in the interest of accomplishing decontamination of the Dover facility as soon as practicable, the Staff and the Licensee have agreed upon the revised decontamination plan and schedule referenced below.

III

Accordingly, pursuant to sections 81, 161(b), 161(o), and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in Parts 2 and 30, it is hereby ordered that:

1. The Licensee shall accomplish final decontamination of its Dover facility no later than October 19, 1984. Recognizing October 19, 1984 as the date for final decontamination, the Licensee shall make its best effort to meet the milestone dates contained in its decontamination plan and schedule dated March 21, 1984. These dates supercede the dates set forth in the January 30, 1984 order.

2. The Licensee shall remove all waste which is currently packaged and stored onsite at the Dover facility as of April 15, 1984 as soon as practicable, but by no later than June 15, 1984.

3. A corporate officer of the Licensee shall submit a monthly status report under oath or affirmation to the Regional Administrator of NRC Region I stating:

a. The progress that has been made toward carrying out the decontamination plan during the past 30 days. In the event that a milestone date set forth in the Licensee's March 21, 1984, submittal is not met during the period covered by the report, the report shall indicate: (1) The date by which the Licensee expects to accomplish the activity; (2) the reason for the Licensee's inability to meet the milestone date; and (3) the impact that the failure to meet the milestone date will have on the decontamination plan and schedule.

b. The actions under the decontamination plan that the Licensee expects to accomplish within the next 30 days.

c. The financial resources available to the Licensee during the period covered by the report, including but not limited to revenue, costs and expenses, net losses or profits, and sums expended on decontamination of the Dover facility.

4. The monthly status report described in paragraph (3) above shall be submitted on the 15th of every month commencing on May 15, 1984, with the first report to cover the period April 1 through May 15, 1984.

5. In all other respects, the Order Modifying License Effective Immediately dated January 30, 1984, remains in effect in accordance with its terms.

IV

The Licensee entered into a stipulation accepting these conditions on May 30, 1984, thereby withdrawing its February 22, 1984 request for a hearing.

Dated at Bethesda, Maryland, this 11th day of June 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84-16339 Filed 6-18-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-483]

Union Electric Co., Callaway Plant, Unit No. 1; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-25 to Union Electric Company (the licensee) which authorizes operation of the Callaway Plant, Unit No. 1 (the facility), at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan with a condition currently limiting operation to five percent of full power (170 megawatts thermal). Authorization to operate beyond five percent of full power will require specific Commission approval.

Callaway Plant, Unit No. 1 is a pressurized water reactor located in Callaway County, Missouri, approximately 25 miles east-northeast of

Jefferson City, Missouri. The application was submitted and accepted for review under the Commission's standardization policy statement of March 5, 1973. The Union Electric Company was one of five utilities who joined together under the acronym SNUPPS (Standardized Nuclear Unit Power Plant System) to submit applications for Construction Permits for a standard plant design for review under the Commission's standardization policy, using the duplicate plant option described in Appendix N to the Commission's regulations in Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50), "Licensing of Production and Utilization Facilities." This option allows for a simultaneous review of the safety-related parameters of a limited number of duplicate plants which are to be constructed within a limited time span at a multiplicity of sites. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the Federal Register on November 21, 1980 (45 FR 77208).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see: (1) Facility Operating License No. NPF-25, with Technical Specifications (NUREG-1058) and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated November 17, 1981; (3) the Commission's Safety Evaluation Report, dated October 1981 (NUREG-0830), and Supplements 1 through 3; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; (6) and the Final Environmental Statement, dated January 1982.

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C. 20555 and at the Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and at the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130. A copy of Facility Operating License NPF-25 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and Supplements 1 through 3 (NUREG-0830) and the Final Environmental Statement (NUREG-0813) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders may call 301-492-9530.

Dated at Bethesda, Maryland, this 11th day of June 1984.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 84-16340 Filed 6-18-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21040; File No. SR-MSTC-84-3]

Midwest Securities Trust Co.; Filing and Immediate Effectiveness of Proposed Rule Change

June 13, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 7, 1984, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change implements procedures for the automated processing of full and partial calls on municipal bonds in bearer form. Under the proposed new procedures, a participant's position as of the close of business on publication date minus one ("Pub-1") will determine the effect of either a full or partial call. In the case of a partial call, MSTC, using a random lottery, will allocate to participants called certificates on the basis of their positions in the affected securities issues. MSTC will attempt to lock up called certificates, and will return deposits of called certificates after Pub-1 to participants as soon as possible.

If called certificates are included in a participant's withdrawal after Pub-1, the participant has two business days to decide whether to return the certificates to MSTC for redemption processing. If after two days the participant has not decided to return the called certificates or informs MSTC that the called certificates or informs MSTC that the called certificates will not be returned, MSTC will exclude these certificates from the lottery. If the participant elects to return the called certificates, MSTC will include the withdrawn called certificates in the redemption lottery and will establish a date for the return of those withdrawn called certificates. If the participant fails to return the withdrawn called certificates by the established date, MSTC will rerun the allocation lottery excluding those certificates and will no longer accept the return of those certificates.

If a participant withdraws or moves certificates by depository delivery instructions after allocation, and the resulting balance in the called securities is less than the amount allocated, a negative position equalling the called shares automatically will be created for the participant. MSTC will debit from that participant's money settlement account 30% of the par value of the negative position and will withhold from that participant all redemption proceeds until the participant deposits sufficient securities to cover the negative position. Participants must cover negative positions by paying MSTC the value of the called certificates within 30 calendar days. (When a full call is established in the system, depository delivery instruction, in-transit items and deliveries to non-members will be allowed until the close of business on the day prior to redemption date ("R-1").)

In the MSTC Bearer system, payment of redemption funds will be made upon collection of funds from at least one custodian. Where at least one custodian has made redemption monies available, MSTC will bill participants a daily finance charge until the balance of the funds is collected. On redemption date, the system automatically will credit the principal and any interest amounts based on the participant's holdings as of R-1. All payments and finance charges will appear on Participant Activity Reports.

MSTC believes the proposed rule change would provide a more efficient means of processing full and partial calls on municipal bonds in bearer form. According to MSTC, the proposed rule

change is consistent with section 17A of the Act in that it provides for the prompt and accurate clearance and settlement of securities transactions.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investory, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–MSTC–84–3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–16347 Filed 6–18–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21039; File No. SR–OCC–84–8]

Options Clearing Corp.; Filing of Proposed Rule Change

June 13, 1984

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 19, 1984, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission a proposed rule change that would add section 1(b) to OCC's By-Laws. The Commission is publishing this notice to solicit comments on the proposal from interested persons. The proposal would authorize OCC's Board of Directors to invest OCC funds, in excess of the amount needed for OCC's working capital, in a wholly-owned subsidiary organized to engage in the clearance and settlement of certain commodity options and futures contracts.[1] OCC states in its filing that the proposal is consistent with section 17A of the Act because the proposal, when fully implemented, should enhance the efficient clearance and settlement of securities options transactions.

To assist the Commission in determining whether to approve the proposed rule change or to institute disapproval proceedings, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Reference should be made to File No. SR–OCC–84–4.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons.

Secretary.

[FR Doc. 84–16345 Filed 6–18–84; 8:45 am]

BILLING CODE 8010–01–M

[1] In its filing, OCC states that the new subsidiary, The Intermarket Clearance Corporation, would initially clear and settle only cash-settled commodity options and futures contracts traded on one or more exchanges designated as contract markets under the Commodity Exchange Act.

[Release No. 21037; File No. SR–Philadep–84–02]

Philadelphia Depository Trust Co.; Order Approving Proposed Rule Change

June 12, 1984.

On March 22, 1984, Philadelphia Depository Trust Company ("Philadep") filed with the Commission pursuant to section 19(b)(2) of the Securities Exchange Act, 15 U.S.C. 78s(b)(2), (the "Act") and Rule 19b–4 thereunder, a proposed rule change authorizing Philadep to offer its Customer Name Transfer Mailing Service Program on a permanent basis. Philadep offered this service as a pilot program since May 1983.[1] The Commission solicited comment on the proposed rule change but received no comments.[2] As discussed below, the Commission is approving the rule change.

Briefly, the direct mail program permits Philadep participants to obtain securities certificates in customer name from transfer agents through Philadep and to arrange for Philadep to mail those certificates directly to customers. Under the proposed rule change, Philadep participants may summit customer name transfer requests by tape transmission or paper instructions, which will be honored if the participant has a sufficient securities position to cover the transfer request. Philadep will submit a magnetic tape to the transfer agent reflecting participant transfer requests along with sufficient securities to satisfy those requests. The transfer agent will issue new certificates in accordance with participants' requests and will send those newly-issued certificates to Philadep. Upon receipt of those certificates, Philadep will verify that the certificates reflect participant instructions and will mail the new certificates to the persons indicated in the transfer instructions.

After mailing the certificates, Philadep will provide participants with activity reports of all completed transfers.

Philadep believes the proposed rule change is consistent with the Act and, more specifically, section 17A(b)(3)(F), in that the proposal will promote the prompt and accurate clearance and settlement of securities transactions. Philadep also believes that the rule change will promote the safeguarding of securities in Philadep's custody or control, or for which it is responsible, by

[1] *See* Securities Exchange Act Release No. 20112 (Aug. 25, 1983); 48 FR 39552 (Aug. 31, 1983).

[2] *See* Securities Exchang Act Relese No. 20685, (Apr. 23, 1984) 49 FR 18659 (May 1, 1984). Philadep neither solicited nor received any comments.

reducing the physical movement of securities and enhancing securities transfer processing.

The Commission believes that the proposed rule change will significantly reduce the time necessary to process customer transfers and the risk of loss associated with certificate processing. Philadep's program reflects one of several effective methods to speed delivery of securities certificates to retail investors by eliminating one or more entities from the certificate delivery process. The Commission encourages other clearing agencies to develop similar programs.

On the basis of the foregoing the Commission finds that the proposed rule change is consistent with requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of section 17A of the Act. Accordingly, it is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (Philadep–84–02) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–16346 Filed 6–18–84; 8:45 am]

BILLING CODE 8010–01–M

[License No. 05/05–0191]

Alpha Capital Corp.; Issuance of Small Business Investment Co. License

Correction

In FR Doc. 84–15517 appearing on page 24094 in the issue of Monday, June 11, 1984, make the following correction.

In the first column, the agency heading was inadvertently omitted and should read "Small Business Administration".

BILLING CODE 1505–01–M

[License No. 09/09–0239]

Brentwood Capital Corp.; Application for Approval of Conflict of Interest Transaction

Notice is hereby given that Brentwood Capital Corporation, 11661 San Vicente Blvd., Los Angeles, California 90049, a Federal Licensee under the Small Business Investment Act of 1958, as amended (Act), (15 U.S.C. 661 *et seq.*), has filed an application with the Small Business Administration, pursuant to section 312 of the Act and covered by § 107.903(b)(1) of the Regulations governing small business investment companies (SBICs/Licensees) (13 CFR 107.903 (1984)), for approval of a conflict of interest transaction falling within the scope of the above sections of the Act and Regulations.

Brentwood Capital intends to invest up to $70,000 in a convertible debenture of Callan Data Systems, Inc., 2645 Townsgate Road, Westlake Village, California 91361. Other Brentwood entities (Associates) have prior investments in this Small Business Concern.

SBA's prior written approval is required pursuant to § 107.903 of SBA Regulations because Associates own 10 or more percent of the small concern's equity securities and these are not initial joint financings with Associates.

Notice is hereby given that any person may, not late than fifteen (15) days from the date of publication of this Notice, submit written comments to Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Los Angeles, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 14, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84–16353 Filed 6–18–84; 8:45 am]

BILLING CODE 8025–01–M

[License No. 09/09–0184]

Grocers Capital Company, Inc.; Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Grocers Capital Company, Inc. (Grocers), 2601 S. Eastern Avenue, Los Angeles, California 90040, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.903 of the Regulations governing small business investment companies (13 CFR 107.903 (1984)) for approval of a conflict of interest transaction.

Grocers proposes to loan $65,000 to Trading, Inc., d/b/a Bargain Barn, 14104 Lambert Road, Whittier, California 90605, and $100,000 to Oscar's Market, Inc., d/b/a Alhambra Market, 2289 W. Main Street, Alhambra, California 91802. The proceeds of the loans will be used to purchase equipment or inventory from Grocers Equipment Company (GEC) and/or Certified Grocers of California, Ltd. (Certified), Associates of the Licensee.

All of Grocer's stock is owned by subsidiaries of Certified, a retailer owned grocery cooperative. G.E.C., a subsidiary of Certified, is a 41 percent shareholder of Grocers and is defined as an Associate by § 107.3 of the SBA Rules and Regulations.

As a result, Grocers' financing to Trans Coast Trading and Oscar's Market fall within the purview of §§ 107.3 and 107.903(b)(5) of the SBA Regulations. These loans require prior written approval of SBA.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A similar Notice shall be published in a newspaper of general circulation in the Los Angeles, California area.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: June 14, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84–16354 Filed 6–18–84; 8:45 am]

BILLING CODE 8025–01–M

[License No. 05/05–0195]

Marine Venture Capital, Inc.; Issuance of a Small Business Investment Co. License

Correction

In FR Doc. 84–15516 beginning on page 24094 in the issue of Monday, June, 11, 1984, make the following correction.

On page 24094, third column, in the headings, the license number should read as set forth above.

BILLING CODE 1505–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2144]

Florida; Declaration of Disaster Loan Area

Dixie, Hamilton, LaFayette Counties and the adjacent Counties of Columbia, Gilchrist, Madison and Suwannee in the State of Florida constitute a disaster area because of damage caused by flooding which occurred on or about March 27, 1984. Applications for loans for physical damage may be filed until the close of business on August 13, 1984, and for economic injury until the close

of business on March 12, 1985, at the address listed below: U. S. Small Business Administration, Disaster Area 2 Office, Richard B. Russell Federal Bldg., 75 Spring Street SW., Suite 822, Atlanta, GA 30303, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 214406 for physical damage and for economic injury the number is 618000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 13, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-16356 Filed 6-18-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2141]

Wyoming; Declaration of Disaster Loan Area

Correction

In FR Doc. 84-15519 appearing on page 24095 in the issue of Monday, June 11, 1984, make the following correction.

In the first column, in the heading, the Declaration of Disaster Loan Area No. should read as set forth above.

BILLING CODE 1505-01-M

[License No. 06/06-0205]

Rice Country Capital, Inc.; Surrender of License

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration's (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1984)), Rice Country Capital, Inc., (Rice), P.O. Box 2151, Eagle Lake, Texas 77434, incorporated under the laws of the State of Texas has surrendered its License No. 06/06-0205, which was issued by SBA on November 1, 1978.

Rice has complied with all conditions set forth by SBA for surrender of its license.

Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above cited Regulation, the License of Rice is hereby accepted effective June 4, 1984, and it is no longer licensed to operate as a small business investment company.

Dated: June 11, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-16355 Filed 6-18-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

National Airspace Review Advisory Committee; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 2-3 of the Federal Aviation Administration National Airspace Review Advisory Committee. The agenda for this meeting is as follows: Analyze and rewrite as necessary Part 77, Objects Affecting Navigable Airspace," for simplification and clarity.

DATE: Beginning Monday, July 9, 1984, at 11 a.m., continuing daily, except Saturdays, Sundays, and holidays, not to exceed two weeks.

ADDRESS: The meeting will be held at the Federal Aviation Administration, conference room 6A/B, 800 Independence Avenue SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1005, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, 426-3560. Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Associate Administrator for Air Traffic, AAT-1, 800 Independence Avenue, SW., Washington, D.C. 20591, by June 28. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C., on June 12, 1984.

Karl D. Trautmann,

Manager, Special Projects Staff, Office of the Associate Administrator for Air Traffic.

[FR Doc. 84-16282 Filed 6-18-84; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Campbell County, Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an FHWA approved environmental impact statement will not be prepared for a proposed highway project in Campbell County, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert B. Welton, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240-0045, Telephone: (804) 771-2682.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an environmental impact statement (EIS) on a proposal to construct a four-lane limited access bypass in Campbell County from existing Route 460 to Airport Road (Route 678) was published in the November 26, 1982 **Federal Register** (47 FR 53559). Subsequent to the publishing of the Notice of Intent, the Virginia Department of Highways and Transportation has advised the Virginia Division of FHWA that the project will be funded with State Funds. For this reason, the Notice of Intent is hereby rescinded.

Issued on: June 12, 1984.

Robert B. Welton,

District Engineer, Richmond, Virginia.

[FR Doc. 84-16247 Filed 6-18-84; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

Date: June 14, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions

may be obtained from the Treasury Department Clearance Officer, by calling (202) 535–6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7227, Constitution Avenue, NW., Washington, D.C. 20220.

United States Customs Service

OMB No. New
Form No. None
Type of Review: New
Title: Treasury Retail Security System Study-Market Research Study
OMB Reviewer: Judy McIntosh, (202) 395–6880, Office of Managment and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Cathy Thomas,

Departmental Reports Management Office.

[FR Doc. 84–16285 Filed 6–18–84; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 13, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535–6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7227, Constitution Avenue, NW., Washington, D.C. 20220.

Comtroller of the Currency

OMB No. 1557–0120
Form No. None
Type of Review: Extension
Title: Securities Offering Disclosure Rules

OMB No. 1557–0069
From No. None
Type of Review: Extension
Title: Defalcation Report.

OMB No. 1557–0095
Form No. MSD, MSDW, MSD–4 & MSD–5
Type of Review: Extension
Title: Registration and regulation of brokers and dealers.
OMB Reviewer: Judy McIntosh, (202) 395–6880, Office of Managment and Budget Room 3208, New Executive Office Building, Washington, D.C. 20503.

Cathy Thomas,

Departmental Reports Management Office.

[FR Doc. 84–16286 Filed 6–18–84; 8:45 am]

BILLING CODE 4810–25–M

Bureau of Alcohol, Tobacco and Firearms

Granting of Relief from Disabilities Incurred by Conviction

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of granting of relief from disabilities incurrred by conviction.

SUMMARY: The persons named in this notice have been granted relief by the Director, Bureau of Alcohol, Tobacco and Firearms, from their disabilities imposed by Federal laws. As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge Noel A. Haera, Firearms Enforcement Branch, Firearms Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20026, (202–566–7258).

SUPPLEMENTARY INFORMATION: In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted relief from disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to the Director's satisfaction that the circumstances regarding the convictions and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be contrary to the public interest.

The following persons have been granted relief:

ADAIR, William Allen, Jr., 2323 Dee Kay Drive, Richmond, Virginia, convicted on June 25, 1974, in the Circuit Court, Hanover County, Virginia

ALBEY, Billy Jerome, 2036 Broad Street, Paducah, Kentucky, convicted on July 15, 1981, in the Circuit Court, McCracken County, Kentucky; and on November 15, 1981, in the District Court, McCracken County, Kentucky

ANANIA, Joseph, 734 Amity Drive, Charleston, West Virginia, convicted on April 20, 1977, in the United States District Court, Southern District of West Virginia

ANDERSON, Michael G., 8130 East Point Douglas Road, Apartment 211, Cottage Grove, Minnesota, convicted on September 27, 1979, in the District Court, Seventh Judicial District, Benton County, Minnesota

ANDERSON, Reginald Woodrow, 15074 Petoskey Street, Detroit, Michigan, convicted on July 24, 1973, in the Recorders Court, Detroit, Michigan

ARAGON, Rudy Valenzuela, 129 Harvey Place, Casper, Wyoming, convicted on July 6, 1977, in the Seventh Judicial District Court, Casper, Wyoming

ARNOLD, John Wesley, 898 Sunset Drive, Grenada, Mississippi, convicted on April 31, 1978, in the United States District Court, Northern District of Mississippi

AYRES, Walter H., 510½ Balsam Street, Elmira, New York, convicted on March 16, 1973, in the Chemung County Court, Elmira, New York

BARKSDALE, Larry, 6211 North 11th Street, Philadelphia, Pennsylvania, convicted on July 18, 1974, in the United States District Court, Eastern Judicial District of Pennsylvania

BARNETT, Wesley E., 616 West Mobile Lane, Phoenix, Arizona, convicted on July 6, 1981, in the Superior Court, Maricopa County, Arizona

BEASLEY, Mose, Route 2, Box 36–C, Hogansville, Georgia, convicted on November 10, 1978, in the Troup County Superior Court, LaGrange, Georgia

BELCHER, Monty Ray, 404–C Church Street, Vienna, Georgia, convicted on April 25, 1975, in the Circuit Court, Sixth Judicial District, Pasco County, Florida

BELTZ, Charles William, 345 Spring Street, Apartment 4, Jeffersonville, Indiana, convicted on July 16, 1973; and on December 2, 1976, in the United States District Court, Louisville, Kentucky

BENDER, Donald Leroy, 504 West Second, Coffeyville, Kansas, convicted on June 28, 1965, in the Colorado District Court, Denver, Colorado

BENITEZ, Phillip H., Post Office Box 874893, Wasilla, Alaska, convicted on June 25, 1980, in the Circuit Court, Milwaukee, Wisconsin

BENNETT, Douglas Lee, 15 Pine View Drive, East Haven, Connecticut, convicted on February 26, 1971, in the District Court, Guam

BENTON, John Henry, 1950 Chestnut Log Drive, Lithia Springs, Georgia, convicted on November 19, 1979, in the Circuit Court, Whitley County, Kentucky.

BEYER, Jeff Jay, 120 Maple Drive, Frederick, Colorado, convicted on May 19, 1978, in the Sixth Judicial District, State of Minnesota

BINION, John Magham, 432 West Court Street, Winnfield, Louisiana, convicted on March 15, 1979, in the First Judicial District, Caddo Parrish, Shreveport, Louisiana

BLACK, William Robert, 1426 Maple Street, Columbia, South Carolina, convicted on February 10, 1976, in the Iowa District Court, Des Moines County, Iowa

BLANCHARD, Lloyd Ray, Star Route Box 338, Naselle, Washington, convicted on April 8, 1952, in the Superior Court, Great Falls, Montana

BLISS, James Andrew, 157 South Erie Street, Mayville, New York, convicted on April 16, 1973, in the Chautauagua County Court, Mayville, New York

BONAWITZ, James L., 1425 Lake Elmo Road, Billings, Montana, convicted on May 3, 1976, in the District Court, 13th Judicial District, State of Montana

BOSTON, Albert Lee, 221 Bleton, Texas, convicted on October 15, 1973, in the United States District Court, Waco Division, Texas

BOTTOMS, Wayne Eugene, 311 North 15th Street, Caldwell, Idaho, convicted on July 12, 1976, in the United States District Court, Boise, Idaho

BRAMLETT, Frank Lee, Sr., Route 2, Box 1, Blue Ridge, Virginia, convicted on April 12, 1972, in the United States District Court, Roanoke, Virginia; and on April 21, 1979, in the United States District Court, Danville, Virginia

BRANDON, Scott Edward, 320 Avenue B, Westwego, Louisiana, convicted on November 17, 1977, in the 24th Judicial District Court, Jefferson Parish, Louisiana

BRESSNER, John Gregory, Route 3, Box 229, Forkwood Circle, Hiram, Georgia, convicted on January 29, 1979, in the Superior Court, Cobb County, Georgia

BRIGGS, Stanley B., Post Office Box 127, Newton Hamilton, Pennsylvania, convicted on January 23, 1973, in the Huntington County Court, Huntington, Pennsylvania

BRINKER, Noel James, 6307 30th Avenue East, Palmetto, Florida, convicted on October 1, 1979, in the United States District, Covington, Kentucky

BROWN, James Howard, Route 3, Box 150, Warsaw, Virginia, convicted on April 11, 1956, in the Circuit Court, Richmond County, Warsaw, Virginia

BRYANT, Allen, Route 4, Red Hill Maxwell Road, Utica, Kentucky, convicted on November 5, 1974, in the Daviess County Circuit Court, Owensboro, Kentucky

BURGETT, Holly Eve, RFD 1, Route 87, Bozrah, Connecticut, convicted on December 23, 1974, in the Circuit Court, Norwich, Connecticut

BURKE, Dennis Kevin, 38 Little Avenue, Pombroke, Massachusetts, convicted on March 27, 1978, in the Federal District Court, Boston, Massachusetts

BURT, Lee Clifford, 2156 Dallas Drive, Billings, Montana, convicted on March 27, 1980, in the United States District Court, Billings, Montana

CAMPBELL, Laurie Dale, 221 South Oak, McPherson, Kansas, convicted on July 2, 1981, in the District Court, McPherson County, Kansas

CANTRELL, William Lester, Jr., 2016 Violet Street, Charleston, West Virginia, convicted on May 4, 1978, in the Circuit Court of Wood County, Parkersburg, West Virginia

CARMONA, Juan Francisco, 1409 Rockcut Road, Apartment B–7, Forest Park, Georgia, convicted in October 1969, in the State Court of New York

CARTER, Curtis Jacob, 4589 Autumn Woods Way, Tallahassee, Florida, convicted on April 20, 1973, in the Superior Court, Mitchell County, Georgia

CAUGHFIELD, Roy Edwin, 2268 George Drive, Opelousas, Louisiana, convicted on September 20, 1982, in the United States District Court, Western District of Louisiana

CAUSEY, Lloyd Dewain, 2945 South Sprigg Street, Cape Girardeau, Missouri, convicted on November 4, 1974, in the Bollinger County Circuit Court, Marble Hill, Missouri

CHAPMAN, Kevin Dean, Rural Route #1, Fremont, Nebraska, convicted on November 16, 1979, in the Douglas County District Court, Omaha, Nebraska

CHRISTENSEN, Eric Arthur, 1104 West 4th, Mitchell, South Dakota, convicted on October 3, 1979, in the Circuit Court, Sixth Judicial District, Lyman County, South Dakota

CHRISTMAN, James H., Rural Route #1, Box 61, DuBois, Nebraska, convicted on September 9, 1980, in the Pawnee County District Court, Paunee City, Nebraska

CHRISTOPOLAUS, George Chris, 707 East 21st Street, Sioux Falls, South Dakota, convicted on September 21, 1976, in the Circuit Court, Minnehaha County, South Dakota

CHURCH, David, c/o Chester Tavern, Box 289, South Bend, Washington, convicted on July 26, 1967, in the Superior Court, South Bend, Washington

CHURCH, Robert D., 1234 North 9th Street, Terre Haute, Indiana, convicted on January 14, 1954, in the Circuit Court of Vigo County, Terre Haute, Indiana

CLABO, Joel Wayne, 4016 Oakland Street, St. Bonifacius, Minnesota, convicted on September 22, 1972, in the District Court, Hennepin County, Minnesota; and on October 18, 1976, in the United States District Court, District of Minnesota

COFIELD, Michael L., J & V Trailor Park, Highway 290 West, Sonora, Texas, convicted on December 19, 1980, in the District Court of Kimble County, 198th Judicial District, Junction, Texas

COLE, Gerald W., Rural Route #4, Post Office Box 315, Pana, Illinois, convicted on July 10, 1969, in the Circuit Court, Shelbyville, Illinois

COLE, Kenneth H., Post Office Box 6, Keo, Arkansas, convicted on April 20, 1978, in the Pulaski County, Eastern District of Arkansas

COLZIE, John, 806 Cricket Avenue, Ardmore, Pennsylvania, convicted on August 1, 1955, in the Court of Common Pleas, City Hall, Pennsylvania

COONEY, Richard James, 2264 West 13th Street, Duluth, Minnesota, convicted on October 30, 1980, in the District Court, St. Louis County, Minnesota

COPE, Debbie Lynn, Route 1, Box 195, Linwood, North Carolina, convicted on March 17, 1981, in the Superior Court, Charlotte, North Carolina

COPELAND, Henry A., Jr., 3521 Central Boulevard, Apartment 8, Nederland, Texas, convicted on January 12, 1981, in the Criminal District Court, Jefferson County, Texas

CRABTREE, Glenn Gordon, 324 Lucas Avenue, Owensboro, Kentucky, convicted on September 21, 1979, in the Daviess County Circuit Court, Ownensboro, Kentucky

CRAM, Virgil, 105 West North Street, California, Missouri, convicted on April 9, 1974, in the Circuit Court, Booneville, Missour; and on June 21, 1974, in the Circuit Court, Jefferson City, Missouri

CROSS, Tracy, Box 477–C, Wells Hill Road, Lewis, New York, convicted on January 7, 1980, in the County Court of Essex, Elizabeth, New York

CROUSE, William Thomas, 1703 Nothwood, Austin, Texas, convicted on February 13, 1981, in the 179th Judicial District Court, Harris County, Texas

CULBRETH, Albert Joseph, 222A Pine Lane, Lompoc, California, convicted on November 22, 1974, in the United States District Court, Eastern California

CUNNINGHAM, Paul Risteen, 31 Henry Street, Martinsville, Virginia, convicted on December 4, 1972, in the Circuit Court, Montgomery County, Virginia

CUTLER, Norbert Lee, 705 12th Street, Northwest, Alabaster, Alabama, convicted on September 11, 1981 in the District Court, Jefferson County, Alabama

CUTRO, Ronald, 1382 West 7th Street, Brooklyn, New York, convicted in May 1974, in the Duvall County Court, Florida

DALTON, Raymond Kenelis, Box 284, Montvale, Virginia, convicted on April 24, 1980, in the Circuit Court, Roanoke County, Salem, Virginia

DANIELSON, Craig R., 16724 Northeast 138th Court, Woodinville, Washington, convicted on August 20, 1982, in the Superior Court, King County, Washington

DE ATLEY, David Francis, 2463 Empire Drive, Tucker, Georgia, convicted on December 30, 1974, in the Fayette Circuit Court, Fifth Division, Kentucky

DE BERNADO, Antonio, 20 Duane Street, Poughkeepsie, New York, convicted on November 6, 1974, in the Dutchess County Court, Poughkeepsie, New York

DE GRAW, Clarence Wesley, 4246 South 109th East Avenue, Apartment 1505, Tulsa, Oklahoma, convicted on May 25, 1982, in the United States District Court, Northern District of Oklahoma

DIETRICHSON, Robert Kinsey, Post Office Box 53, 213 Broadway, Johannesberg, California, convicted on March 26, 1970, in the Superior Court, Kern County, California

DONAHUE, Joseph Elmer, Rural Route 2, Box 70, Stanchfield, Minnesota, convicted on July 1980, in the Isanti District Court, Cambridge, Minnesota

DOWNING, Rick James, 1704 West El Alba Way, Chandler, Arizona, convicted on December 1, 1980, in the United States District Court, Phoenix, Arizona; and on April 14, 1981, in the Superior Court, Maricopa County, Arizona

DOYLE, Richard Edwin, Route 14, Cantebury, Connnecticut, convicted on May 2, 1952, in the Superior Court, Windham, Connecticut

DUNAGAN, James Buxton, Box 12A, Coffeeville, Alabama, convicted on January 4, 1980, in the United States District Court, Mobile, Alabama

DUNEGAN, James Edmond, 171 Fillmore Avenue, Ben Lomond, California, convicted on June 28, 1959, in the District Court, Sedgwick County, Kansas; and on February 2, 1982, in the United States District Court, Kansas

DUREE, Jack Lee, 1525 Clevenger Drive, Modesto, California, convicted on August 4, 1966, in the Superior Court, Stanislaus, California

EAMES, William David, Route 6, Box 326 A, Rocky Mount, Virginia, convicted on June 26, 1974, in the Circuit Court, Franklin County, Virginia

EAVENSON, Bruce William, 130 Sashabaw Road, Ortonville, Michigan, convicted on August 12, 1981, in the United States District Court, Detroit, Michigan

ECTOR, Billy B., 608 Providence Road, Graham,North Carolina, convicted on January 2, 1980, in the Federal Court, Winston-Salem, North Carolina

EDGE, Elbert John David, Post Office Box 101, Stedman, North Carolina, convicted on January 30, 1980, in the Superior Court, Sampson County, North Carolina

ELLEDGE, William H., 702715 Johnstonville Road, #49, Susanville, California, convicted on May 23, 1966, in the Superior Court, Contra Costa County, California

EVANS, Carl Lee, 2403 Power House Road, Yakima, Washington, convicted on October 28, 1976, in the Superior Court, Yakima County, Washington

EVERHART, Carolyn L., Route 1, Box 177E, Brooklyn, Wisconsin, convicted on September 6, 1968, in the United States District Court, Western District of Louisiana

FERGUSON, Vivian Stanley, 348 Campground Pond Road, Tallahassee, Florida, convicted on November 7, 1973, in the Circuit Court of Leon County, Tallahasseee, Florida

FINGER, Ray Leslie, Route 1, Box 173B1, Nowhere Road, Athens, Georgia, convicted on January 29, 1981, in the Superior Court, Clark County, Georgia

FINNEY, Billy Gene, 3930 West Dixon Boulevard, Shelby, North Carolina, convicted on May 5, 1976, in the Superior Court, Cleveland County, Shelby, North Carolina

FITCHUE, Joe Rex, Route 1, Box 253, Kellyville, Oklahoma, convicted on June 6, 1952, Boone County Circuit Court, Harrison, Arkansas

FIX, Carlton Eugene, 1520 4th Street, Waynesboro, Vriginia, convicted on June 14, 1979, in the Circuit Court, Waynesboro, Virginia

FLORIDA, John Louis, 530 Henderson Avenue, Washington, Pennsylvania, convicted on November 30, 1942, in the United States District Court, Western District of Pennsylvania

FORSEYTH, Wayne Carl, Route 3, Hiram, Georgia, convicted on April 20, 1976, in the United States District Court, Rome, Georgia

FORSYTHE, William Leslie III, 1818 Kennedy Street, Lake Charles, Louisiana, convicted on November 15, 1972, in the 14th Judicial District Court, Calcasieu Parish, Louisiana

FORTIER, Phillip Joseph, #52 Chateau Blanc, Chateau Road, Mammoth Lakes, California, convicted on August 2, 1979, in the United States District Court, Sacramento, California

FOSS, Michael Laird, 167 Wigley Road, Centralia, Washington, convicted on September 15, 1980, in the Superior Court, Chehalis, Washington

FRIEDL, Sidney L., 1345 North 11th Street, Springfield, Oregon, convicted on May 1, 1963, in the Circuit Court of the State of Oregon for the County of Lane

FULLER, Leroy Kenneth, 4644 Pleasant Avenue South, Minneapolis, Minnesota, convicted on December 15, 1961, in the District Court, Hennepin County, Minnesota

FULTON, Rodney Lee, 4576 Grave Street, West Palm Beach, Florida, convicted on May 9, 1972, in the Aroostook County Superior Court, Maine

GARNER, Earnest Levi, Jr., Hickory Lane, Batesville, Mississippi, convicted on March 14, 1977, in the United States District Court, Meridian, Mississippi

GARY, Adam Joseph, 2109 Tulip Street, Lake Charles, Louisiana, convicted on November 22, 1961, in the 15th Judicial District, Acadia Parish, Louisiana

GEARS, Carl Eugene, Post Office Box 702, State Route 651, Halifax, Virginia, convicted on December 15, 1976, in the Circuit Court, Halifax County, Virginia

GEORGE, David Russell, RFD #1, Windywood Road, Barre, Vermont, convicted on January 23, 1981, in the United States District Court, Rutland, Vermont

GEORGE, Robert Richard, Rural Delivery #1 Box 249, Graniteville, Vermont, convicted on January 23, 1981, in the United States District Court, Rutland, Vermont

GEORGE, Rupert Matthew, Rural Delivery #3, Birchwood Park, Barre, Vermont, convicted on January 23, 1981, in the United States District Court, District of Vermont

GERAINE, Charles, 50–60 96th Street, Corona, New York, convicted on March 30, 1979, in the United States District Court, Brooklyn, New York

GLAAB, John, 1103–5th Street, New Brighton, Pennsylvania, convicted on February 27, 1975, in the Court of Common Pleas, Beaver County, Pennsylvania

GONZALES, Albert Joe, 1309 West Jolly Road, Lansing, Michigan, convicted on

August 29, 1949, in the Recorders Court, Detroit, Michigan

GONZALEZ, Juan Sanchez, 7024 Bell Rose Drive, El Paso, Texas, convicted on January 2, 1979, in the 210th District Court, El Paso County, Texas

GOODMAN, Don Bradley, Route #3, Box 113 A, Taylorsville, North Carolina, convicted on October 15, 1971, United States District Court, Western District of North Carolina

GOODMAN, Lonzo Richard, 13919 Fleetwell, Houston, Texas, convicted on November 6, 1978, in the 182nd Criminal District Court, Harris County, Texas

GOODMAN, Tracy Kay, Post Office Box 174, Murtaugh, Idaho, convicted on June 17, 1981, in the Sixth Judicial District Court, Sevier County, Utah

GOODNER, Jimmy Paul, Route #3, Box 81, McAlester, Oklahoma, convicted on May 6, 1975, in the Bryan County District Court, Durant Oklahoma

GOSNEY, James Darryl, Post Office Box 226, Mount Jackson, Virginia, convicted June 16, 1980, in the Circuit Court, Rockingham County, Harrisburg, Virginia

GREEN, David Lloyd, 619 Belmar Drive, Owensboro, Kentucky, convicted on February 1, 1972, in the Circuit Court, Daviess County, Owensboro, Kentucky

GREEN, John, 1029 South 6th Street, Philadelphia, Pennsylvania, convicted on December 16, 1958, in the Court of Quarter Sessions, Philadelphia, Pennsylvania

GREEN, Kenneth Jay, 3261 Nina Street, Gaylord, Michigan, convicted on June 16, 1975, in the Circuit Court, Gaylord, Michigan

GRISSOM, Nathaniel Gowan, Post Office Box 1291, Concord, North Carolina, convicted on October 4, 1972, in the Superior Court, Cabarrus County, North Carolina

HAMILTON, Charles J., 311 East 31st Street #102, Austin, Texas, convicted on March 9, 1979, in the 179th District Court, Harris County, Texas

HAMILTON, Elam Bracy, Route 2, Box 229 A, Athens, Alabama, convicted on April 11, 1980, in the United States District Court, Northern District of Alabama

HAMM, Ronnie Dale, 103 Frazier Road, Galax, Grayson County, Virginia, convicted on December 28, 1977, in the District Court, Carroll County, Virginia

HANSAKER, Donald Arthur, Route A Box 256, Yellville, Arizona, convicted on March 17, 1938, in the District Court, Marion County, Iowa

HARDY, James Lanier, 7432 Culver, Fort Worth Texas, convicted on July 7, 1978, in the United States District Court, Northern District, Texas

HARRIS, Johnny Glenn, 2400 South Lincoln, Amarillo, Texas, convicted on August 5, 1977, in the 181 District Court, Randall County, Canyon, Texas

HATCHER, Curtis Hassel, Route 1 Box 230, Floyd, Virginia, convicted on July 20, 1979, in the Floyd County Circuit Court, Floyd, Virginia

HAUGHEY, Stephen M., 1904 Westridge Drive, Plano, Texas, convicted on February 20, 1979, in the United States District Court, Chicago, Illinois

HAWES, Joseph David, Route 4 Box 154, Gray, Georgia, convicted on March 3, 1975, in the Federal Court, Middle Judicial District of Georgia

HAWES, William Norman, 527 Pierce Avenue, Macon, Georgia, convicted on March 11, 1975, in the Middle Judicial District, Macon, Georgia

HAWKINS, Albert Julius, 2222 Old Holton Road, Macon, Georgia, convicted on March 11, 1975, in the Middle Judicial District, Macon, Georgia

HAWKINS, Reverend Harry Delmont, Jr., 2347 North Park Avenue, Philadelphia, Pennsylvania, convicted on April 24, 1973, in the Philadelphia Municipal Court, Philadelphia, Pennsylvania

HAYDEN, Millard Wayne, 5017 West 36th Street, Indianapolis, Indiana, convicted on April 22, 1975, in the Vigo County Circuit Court, Terre Haute, Indiana

HAYES, John Robert, Rural Route 1 Box 215, Bowling Green, Indiana, convicted on September 24, 1958, in the Parker Circuit Court, Rockville, Indiana

HAYES, Lonnie E., Jr., 6622 Loch Bruceray, Houston, Texas, convicted on December 20, 1977, in the Fourth Circuit Court, Clay County, Florida

HENSLEY, Donald Wayne, Box 121, Evansville, Wyoming, convicted on July 6, 1979, in the District Court, Natrona County, Wyoming

HERNDON, William Warren, Route 1 Box 183, Skipwith, Virginia, convicted on April 27, 1978, in the Circuit Court, Mecklenburg County, Virginia

HESKETT, Leroy Ellsworth, 210 Rhoda Street, Saint James, Montana, convicted on October 23, 1980, in the Court of General Sessions, Charleston County, South Carolina

HILL, Carolyn Ann, 45–15 Colden Street, Flushing, New York, convicted on March 23, 1962, in the Nassau County Court, New York

HINES, Malcolm Adolph, Post Office Box 283, Edgerton, Wyoming, convicted on October 5, 1964, in the Delta County Court, Delta, Colorado

HOFFMAN, Marvin Lester, Route 3 Box 113, Spring Valley, Minnesota, convicted on January 10, 1978, in the Wabasha County District Court, Minnesota

HOLLAND, William Radford, Sr., 1208 West Waddell Street, Selma, North Carolina, convicted on March 28, 1977, in the Superior Court, Johnston County, North Carolina

HOLMAN, Franklin Ronald, 111 Carol Avenue, Opelika, Alabama, convicted on December 5, 1977, in the United States District Court, Middle Judicial Court, Alabama

HORWITZ, Phillip Samuel, 7025 North Ridge Road, Raleigh, North Carolina, convicted on September 16, 1982, in the Superior Court, Wake County, North Carolina

HOWARD, Jeffery Wallace, Route 2 Box 134, Franklin, Georgia, convicted on November 5, 1976, in the Superior Court, Troup County, Georgia

HUGHES, Robert Evan, 734 20th Avenue East, Jerome, Idaho, convicted on January 4, 1980, in the Fifth District Court, Twin Falls, Idaho

HUTCHINSON, Ronald Eugene, Rural Delivery #3 Box 466, Carlisle, Pennsylvania, convicted on May 5, 1959, in the Court of Sessions, Cumberland County, Pennsylvania

HYMAN, Bryon Maurice, 3707 Rojo Street, Corpus Christi, Texas, convicted on March 11, 1977, in the District Court, Comanche County, Oklahoma

INGRAM, Jimmy Lee, 2401 West 3rd, Odessa, Texas, convicted on April 26, 1979, in the 244th Judicial District Court, Ector County, Texas

JACKSON, A. C., Post Office Box 125, Caryville, Florida, convicted on January 8, 1960, in the Court of Records, Pensacola, Florida; and on December 10, 1963, in the Court of Records, Pensacola, Florida

JACKSON, Benard Dwane, 73 Washington Lode-Isox 1423, Breckenridge, Colorado, convicted in 1976, in the United States District Court, Houston, Texas

JACKSON, Clifford Ray, Box 74, Crawford Road, Opelika, Alabama, convicted on May 6, 1980, in the Circuit Court, Lee County, Alabama

JACKSON, RANDY Lee, 1366 North 5th Apartment 6, Laramie, Wyoming, convicted on May 19, 1981, in the Albany County Court, Laramie, Wyoming

JACKSON, Thomas Dan, Route 2 Box 145–B, Opp, Alabama, convicted on August 31, 1966, in the Circuit Court, Covington County, Alabama

JOHNSON, James Alan, 10930 Virginia, Kansas City, Kansas, convicted on May 10, 1983, in the District Court, Reno County, Kansas

JOHNSON, Jimmy Lynn, 206 South East Avenue A, Andrews, Texas, convicted on November 17, 1978, in the 106 Judicial District Court, Gains County, Texas

JOHNSON, Joseph Richard, 6812 BoB-O-Link, Dallas, Texas, convicted on June 15, 1960, in the 142nd District Court, Midland County, Texas

JONES, Eldon Boyd, 526 Portland, Abilene, Texas, convicted on February 26, 1976, in the 104th Judicial District Court, Abilene, Texas

JONES, Gloria Faye, 526 Portland, Abilene, Texas, convicted on January 9, 1976, in the 104th Judicial District Court, Taylor County, Texas

JUNKIN, Jon Eldred, 501 South Taylor, Lexington, Nebraska, convicted on September 25, 1981, in the District Court, Dawson County, Lexington, Nebraska

KADE, Paul Stanley, 549 Orchard Avenue, Beckley, West Virginia, convicted on November 10, 1980, in the Federal Court, Beckley, West Virginia

KARL, Earl Jerome, 1883 East County Road C, Maplewood, Minnesota, convicted on November 30, 1945; on February 25, 1964; on August 29, 1955; on September 7, 1951; on May 12, 1971; and on November 22, 1977, in the Ramsey County District Court, Saint Paul, Minnesota

KARNS, Steven Blaine, 3317 North Woodlake Circle Apartment 5, Memphis, Tennessee, convicted on April 19, 1973, in the Shelby County Criminal Court, Memphis, Tennessee

KARTES, David Ellen, 17410 Southeast Maple Valley Highway #34, Renton, Washington, convicted on October 24, 1979, in the Superior Court, King County, Washington

KEMP, Carl H., Knights Creek Road, Rural Route #1 Box 103, Scio, New York, convicted on March 9, 1979, in the Allegany County, New York

KENNISON, David Foster, 1426 Maple Street, Columbia, South Carolina, convicted on February 10, 1976, in the Iowa District Court, DeMoines County, Iowa

KERR, Eugene Karl, 615 Forest Avenue, Boyne City, Michigan, convicted on January 23, 1978, in the Antrim County Circuit Court, Michigan

KOCEN, Kenneth John, 2048 Hideway Circle, Port Saint Lucie, Florida, convicted on May 23, 1963; and on July 9, 1963, in the Circuit Court of Commonwealth, Highland County, Florida

KOEHLER, Henry P., 118 Connecticut Avenue, Bayshore, New York, convicted on January 4, 1980, in the Supreme Court, Suffolk County, Hauppause, New York

KOENIG, Frederick Richard II, 1108 Buncombe Street Apartment 1, Greenville, South Carolina, convicted on September 25, 1978, in the Berkeley County Court, South Carolina

KORDUS, Mark Anthony, 2501 Dunblane, Rawlings, Wyoming, convicted on April 2, 1976, in the District Court, Second Judicial District, Rawlings, Wyoming

KRATZER, Allen Ray, 950 Park Lane, Harrisonburg, Virginia, convicted on May 7, 1969, in the Circuit Court, Rockingham County, Virginia

KREPP, Bradford Lee Alexander, 20706—53rd Avenue West, Lynwood, Washington, convicted on September 13, 1973, in the Superior Court, King County, Washington

KURCZ, Joseph Richard, 636 South 31st Avenue, Omaha Nebraska, convicted on December 6, 1974, in the District Court, Omaha, Nebraska

LANGFORD, Bruce Harrel, Route 4 Box 573, Leesville, Louisiana, convicted on February 4, 1953, in Fort Hood, Texas

LANKA, Mark Alan, 807 East Murray, Rawlings, Wyoming, convicted on March 29, 1979, in the District Court, Bax Butte, Nebraska

LARIMORE, Frankie Wayne, Route 1A Box 264 A, Maraman Road, Lebanon Junction, Kentucky, convicted on May 22, 1973, in the Breckinridge County Circuit Court, Hardinsburg, Kentucky

LARSEN, Mike George, 204 6th Avenue, Safford, Arizona, convicted on March 3, 1975, in the Superior Court, Greenlee County, Arizona

LATTANZIE, Frederick, Jr., 410 Ash Street, Erie, Pennsylvania, convicted on September 14, 1964, in the Westmoreland County Criminal Court, Greensburg, Pennsylvania

LAURITZ, Steve, 11909 18th South West, Seattle, Washington, convicted in June 1976, in the Kittitas County Court, Washington

LAWSON, William Roger, Post Office Box 564, Randleman, North Carolina, convicted on October 8, 1980, in the Superior Court, Randolph County, Asheboro, North Carolina

LAZELL, Howard, 8525 via De Los Libros, Scottsdale, Arizona, convicted on May 1, 1972, in the United States District Court, Manhattan, New York

LEE, Eddie Dean, Post Office Box 1215, Highway 9, Cumming, Georgia, convicted on April 11, 1978, in the Superior Court, Forsyth County, Georgia

LEONARD, Richard Dale, 1615 Gillman Way, Apartment #4, Fairbanks Alaska, convicted on October 6, 1975, in the Circuit Court, Lane County, Oregon

LINGK, Kenneth S., 3154 Porter Street, Enumclaw, Washington, convicted on December 20, 1977, in the Superior Court, Rock County, Wisconsin

LOCKHART, Jack A., 204 Daniels Drive, Wampsville, New York, convicted on December 3, 1981, in the Madison County Court, Wampsville, New York; and on January 21, 1981, in the Camden Village Justice Court, Camden, New York

LONG, George William, 2131 Critten, Ypsilanti, Michigan, convicted on May 8, 1970, in the United District Court, Southern District of Ohio

LOONEY, Donald W., 27 Welsford Street, Brockton, Massachusetts, convicted on December 22, 1961, in the District Court Brockton, Massachusetts; on April 12, 1962; and on April 16, 1964, in the District Court, Brockton, Massachusetts

LORENZ, Thomas Edward, Sr., Route 1, Box 221 B, Nashwauk, Minnesota, convicted on November 25, 1980, in the Itasca County District Court, Itasca, Minnesota

LUDWIG, Tommy Arthur, Route 1, Box 13 B, Toms Brook, Virginia, convicted on August 5, 1974, in the Circuit Court, Shenandoah County, Virginia

LUKETIC, John, Rural Delivery #1 Box 120–D Adrian, Pennsylvania, convicted on September 12, 1977, in the Court of Common Pleas, Kittanning, Pennsylvania

LYON, John William, 10819 Pleasant Hill Drive, Potomac Falls, Maryland, convicted on April 19, 1982, in the United States District Court, Baltimore, Maryland

LYONS, Mark III, 71 Hillwood Road, Mobile, Alabama, convicted on May 18, 1982, in the United States District Court, Mobile, Alabama

MACKIE, Franklin Lee, Jr., Route 1, Box 287 A, Jonesville, North Carolina, convicted on March 5, 1974, in the Superior Court, Surry County, North Carolina

MAKOFSKY, Howard Lewis, Jr., 4518 Pontchartrain Drive, Slidell, Louisiana, convicted on September 9, 1975, in the United States District Court, Eastern District, Louisiana

MARSHALL, John Thomas, 13 Willow Lake Drive, Woodsboro, Texas, convicted on March 8, 1979, in the Southern Judicial District Court, Corpus Christi Division, Texas

MARTIN, George Elliot, Sr., 110 Martin Lane, Hammond, Louisiana, convicted on November 15, 1976, in the 21st Judicial District Court, Parish of Livingston, Louisiana

MARTIN, William Kenneth, 328 Oakview Drive, Nashville, Tennessee, convicted on March 27, 1955, in the United States District Court, Memphis, Tennessee

MARTINEK, Virgil K., 6008 Tonka, Des Moines, Iowa, convicted on June 14, 1961, in the District Court, Cedar Rapids, Iowa

McAFEE, Timothy Franklin, Route 1, Box 184 F, Hoover Heights, Platte City, Montana, convicted on July 30, 1970, in the Court of Common Pleas, Holmes County, Ohio

McCLAMY, John Alfred, 3475 Azalea Garden Road, Apartment 9, Norfolk, Virginia, convicted on July 14, 1978, in the Circuit Court, Norfolk, Virginia

McCORKLE, Terry Lee, 263 Horseshoe Bend, Thomaston, Georgia, convicted on September 10, 1979, in the Upson Superior Court, Thomaston, Georgia

McCOULLOUGH, Robert Allen, 420 South Elm Street, Apartment 39 Arroyo Grande, California, convicted on July 13, 1969, in the Ninth Judicial District Court, State of Iowa

McMICHAEL, Earl John III, 222 Lawry, Port Lavaca, Texas, convicted on February 6, 1978, in the State District Court, Calcasieu Parish, Louisiana

McMULLON, Henry M., Route 4 Box 653–H, Southport, Florida, convicted on October 5, 1959, in the Circuit Court, Panama City, Florida

MEADOWS, Ronald L., Route 1 Box 490, McGaheysville, Virginia, convicted on June 3, 1975, in the Circuit Court, Page County, Virginia

MERCER, Richard Scott, Post Office Box 256, Loon Lake, Washington, convicted on February 8, 1980, in the Superior Court, Whitman, Colfax, Washington

MICERI, John, 1634 South 9th Street, Philadelphia, Pennsylvania, convicted on May 16, 1957, in the County Court, Media, Pennsylvania

MILLERTON, Phillip Anthony, 2317 Newport Avenue, Dayton, Ohio, convicted on December 18, 1974, in the Common Pleas Court, Montgomery County, Ohio

MINICK, Wilbert Finis, 3950 Angus Drive, Fort Worth, Texas, convicted on July 20, 1979, in the United States District Court, Fort Worth, Texas

MINNICK, Carl Herman, 434 Pioneer Drive, Prescott, Arizona, convicted in April 1965, in the Los Angeles County Superior Court, Los Angeles, California

MOORE, Jack Joseph, Route 2 Box 41, Forney, Texas, convicted on June 29, 1966, in the 62nd Judicial Circuit State Court, State of Indiana

MOORE, James Albert, Route 2 Box 122, Ferrum, Virginia, convicted on December 8, 1965, in the Circuit Court, Franklin County, Virginia

MOORE, William Jefferson, 5402 Renwick, Apartment 1065, Houston, Texas, convicted on June 20, 1979, in the 183rd District Court, Houston, Texas

MORGAN, William D., Gravel Pond Road, Rural Delivery #4, Clarks Summit, Pennsylvania, convicted on December 1, 1977, in the United States District Court, Scranton, Pennsylvania

MORISSET, Eugene Arthur, 2294 Hampden, Saint Paul, Minnesota, convicted on January 31, 1972, in the Ramsey County District Court, Saint Paul, Minnesota

MULLINS, B. Hughe, 4025 West Camelback Road, Apartment M–21, Phoenix, Arizona, convicted on April 19, 1976, in the United States District Court, Phoenix, Arizona

MURIETTA, Paul J., 3796 Strandhill Road, Cleveland, Ohio, convicted on February 28, 1948; and on May 18, 1961, in the Common Pleas Court, Cuyahoga County, Ohio

NARDINI, Enrico E., 279 Windybush Road, Rural Delivery #2, New Hope, Pennsylvania, convicted on June 27, 1975, in the United States District Court, Eastern District of Pennsylvania

NIMMO, George McCabe, 143 West Power Circle, Apartment 306, Littleton, Colorado, convicted on April 20, 1978, in the Laramie County District Court, Cheyenne, Wyoming; and on July 28, 1978, in the Converse County District Court, Douglas, Wyoming

NOBLES, Robert, Route 1, Dean Avenue, Blakely, Georgia, convicted on October 3, 1961, in the United States District Court, Early County, Georgia

NORMAN, Ernest Haywood, 20837 Desert Woods Drive, Bend, Oregon, convicted on May 19, 1979; and on June 13, 1978, in the District Court, Ada County, Boise, Idaho

O'CONNOR, Kenneth James, 111 Mark Street, Ville Platte, Louisiana, convicted on October 22, 1981, in the 12th Judicial District Court, Marksville, Louisiana

OLDENETTEL, Rodney, 114 Randall, Hesston, Kansas, convicted on May 12, 1978, in the District Court, Reno County, Kansas

OSTROOT, Kenneth Ray, 621 Paul Street, Sun Prairie, Wisconsin, convicted on February 5, 1965, in the District Court, Saint Louis County, Minnesota; on February 1, 1966, in the Circuit Court, Dane County, Wisconsin; and on April 21, 1972, in the District Court, St. Louis County, Wisconsin

OTEY, William Van, 502 Grant Street, Charleston, West Virginia, convicted on September 28, 1971, in the United States District Court, Southern District, West Virginia

OWENS, Charles Edward, 1833 North Avenue, Bogalusa, Louisiana, convicted on February 8, 1957, in the 22nd Judicial Court, Washington Parish, Louisiana

PARKER, Mark Charles, 7227 Rixie Road, Southeast, Olympia, Washington, convicted on July 14, 1978, in the Superior Court, Thurston County, Washington

PARNELL, Murray Mack, Post Office Box 29, Parkton, North Carolina, convicted on October 3, 1977, in the United States District Court, Eastern District, North Carolina; and on October 4, 1977, in the Superior Court, Cumberland County, North Carolina

PATE, Dallas Dean, 7332 West Roma, Phoenix, Arizona, convicted on July 20, 1979, in the Superior Court, Maricopa County, Arizona

PATTISON, Guffey Lynn, Route 1, Box 1–W, Zwolle, Louisiana, convicted on March 5, 1980, in the United States District Court, Western District, Louisiana

PAYNE, Clinton Eugene, 3 Bayshore Drive, LaPorte, Texas, convicted on July 23, 1982, in the 209th Criminal District Court, Harris County, Texas

PEAL, Steven Wayne, 3 Winnstead Drive, Mableton, Georgia, convicted on June 19, 1979, in the Superior Court, Cobb County, Georgia

PEARL, Lannie Joe, 3023 Wandering Lane, Owensboro, Kentucky, convicted on November 1, 1973, in the Daviess County Circuit Court, Owensboro, Kentucky

PEARSON, Randall Frederick, 520 9th Street, West Des Moines, Iowa, convicted on April 7, 1970, in the District Court, Council Bluffs, Iowa

PECOT, Elmo Emanuel, Jr., 584 Oakwood Drive, Gretna, Louisiana, convicted on January 18, 1978, in the United States District Court, Eastern District, Louisiana

PERRY, Carl Robert, Maples Apartments, 307–D Primrose Place, Zebulon, North Carolina, convicted on November 30, 1965, in the United States District Court, Eastern Division, New Bern, North Carolina; and on April 25, 1969, in the Superior Court, Salem County, New Jersey

PETERSON, Gregory L., 3120 Emerson Avenue South, Minneapolis, Minnesota, convicted on August 30, 1971, in the Hennepin County District Court, Fourth Judicial District, Minnesota

PIERCE, John R., 1215 East Vista Del Cerra, Apartment #1034, Tempe, Arizona, convicted on January 10, 1980, in the Superior Court, Pima County, Arizona

PLUMB, James Edwin, Rural Delivery #1, Box 34, Marietta, Pennsylvania, convicted on June 9, 1977, in the

United States District Court, Middle District, Pennsylvania

POE, Michael W., 4128 Avenue H, Fairfield, Alabama, convicted on September 26, 1967, in the Superior Court, Fulton County, Georgia

POLSON, Douglas Allen, 47 Cascade, Irvine, California, convicted on March 5, 1971, in the Superior Court, Providence County, Rhode Island

PORTER, Daniel Delos, Jr., 8343 3rd Avenue South, Bloomington, Minnesota, convicted on June 7, 1982, in the District Court, County of Dakota, Minnesota

PORTER, John Alexander, 3508–A Parkwood Drive, Greensboro, North Carolina, convicted on September 14, 1980, in the Superior Court, Guilford County, Greensboro, North Carolina

POWERS, Micheal Charles, 6805 West 17th Street, Sioux Falls, South Dakota, convicted on April 12, 1977, in the Circuit Court, Chamberlain, South Dakota

PRENDERGAST, Thomas Raymond, Rural Delivery #1, Hookstown, Pennsylvania, convicted on November 11, 1976, in the United States District Court, Western District, Pennsylvania

PROWELL, Keith Preston, 84 North 5th Street, Mount Wolf, Pennsylvania, convicted on March 26, 1976, in the Court of Common Pleas, York County, Pennsylvania

PURVIS, Raymond Leroy, #12 Timberlane Estates, Willow Creek, California, convicted on July 1, 1966, in the District Court, 13th Judicial District, Idaho

PUURI, Ralph Edward, Route 9, 379 Wisconsin Road, Appleton, Wisconsin, convicted on February 1, 1979 in the Circuit Court Branch 3, Outagamie County, Wisconsin

REED, Wilfred Mack, Post Office Box 236, Crestview, Florida, convicted on January 3, 1979, in the United States District Court, Pensacola, Florida

REEVES, Roy Kenneth, Route 4, Box 808, LaFayette, Georgia, convicted on April 16, 1973, in the United States District Court, Middle District of Tennessee, Nashville, Tennessee

RHONE, William, 1221 Fairmount Avenue, Apartment #109, Philadelphia, Pennsylvania, convicted on June 12, 1962, in the Court of Quarter Sessions, Philadelphia, Pennsylvania; on December 21, 1962; and on July 11, 1974, in the Philadelphia Municipal Court, Philadelphia, Pennsylvania

RICE, Larry Eugene, Route 3, Box 643, Candler, North Carolina, convicted on May 19, 1980, in the Superior Court, Bun Combe County, Ashville, North Carolina

RICHARDSON, Robert Philip, 145–C Corban Avenue South East, Concord, North Carolina, convicted on August 1, 1977, in the United States District Court, Western District, North Carolina

RIVERS, James, 3609 North Tacoma Avenue, Indianapolis, Indiana, convicted on July 6, 1967, in the United States District Court, Indianapolis, Indiana

ROBERT, Marceil E., Route 1 Box 183, Noches, Washington, convicted on April 17, 1980, in the Superior Court, Yakima County, Washington

ROBERTS, Earl A., 352 Stony Hill Road, Wilbraham, Massachusetts, convicted on April 28, 1942; and on November 7, 1961, in the District Court, Eastern Hampden County, Palmer, Massachusetts

ROBINSON, Steven Louis, 1262 Minnehaha East, Saint Paul, Minnesota, convicted on November 29, 1966, in the Ramsey County District Court, Saint Paul, Minnesota

ROETTELE, Michael James, Route #8, Box 248, Franklin, North Carolina, convicted on July 26, 1976, in the Superior Court, Macon County, North Carolina

ROGERS, Jerry, 507 Eckler Road, Dayton, Washington, convicted on October 28 , 1977, in the Superior Court, Garfield County, Washington; and on February 22, 1980, in the Superior Court, Walla Walla County, Washington

ROSELLE, William Clay, Post Office Box 38, Lima, Montana, convicted on June 15, 1971, in the District Court, Pocatello, Idaho

ROSS, Clarence, Jr., 1328 North Park Street, Kalamazoo, Michigan, convicted on December 17, 1962, in the Circuit Court, Wayne County, Michigan

RUSHING, Thomas Jefferson, Route 1, Box 413–A, Quincy, Florida, convicted on May 5 , 1978, in the United States District Court, Middle District of Georgia, Thomasville Division

RUSSELS, Emmons Parrish, 9032 South Blackstone Avenue, Chicago, Illinois, convicted on October 5, 1973, in the United States District Court, Northern District, Illinois

RUSTIGAN, Susan Carol, 2412 East 52nd Street, Anchorage, Alaska, convicted on November 19, 1976, in the United States District Court, Anchorage, Alaska

SANCHEZ, Dan M., Jr., Post Office Box 120, Encinal, Texas, convicted on August 17, 1977, in the United States District Court, San Antonio, Texas

SANDERS, Oscar Thomas, Box 87, Elgin, Oklahoma, convicted on February 16, 1982, in the United States District Court, Western Judicial District, Oklahoma

SCHETTINE, John Justin, Rural Delivery 1, Box 372, Delanson, New York, convicted on March 31, 1972, in the Schenectady County Court, Schenectady, New York

SCHULDE, Richard David, 2017 Victoria Drive, Garland, Texas, convicted on March 21, 1980, in the Criminal District Court #5, Dallas County, Texas

SCOMA, Carmelo James, 8717 Jennie Lee, Dallas, Texas, convicted on November 25, 1963, in the Criminal District Court #1, Dallas County, Texas

SEARS, Terry Leon, 608 Northeast Marshall, Bend, Oregon, convicted on October 16, 1953, in the Circuit Court, Deshutes County, Oregon

SETTLEMYRE, Tony Jerome, 23105 Stanton Road, Sand Lake, Michigan, convicted on March 10, 1978, in the District Court, Tarrant County, Texas

SHARBY, Ronalyn Paul, 2233 Las Vegas Boulevard South, Apartment 136, Las Vegas, Nevada, convicted on December 2, 1968, in the Court of Records, Manatee County, Florida; and on June 26, 1969, in the 12th Judicial District Court, Sarasota County, Florida

SHELHORA, Robert Steve, 9205 East Colonial Drive, Orlando, Florida, convicted on July 26, 1972, in the United States District Court, Orange County, Florida

SHELTON, R.C., Post Office Box 456, Pennington Gap, Virginia, convicted on May 26, 1978, in the United States District Court, Western District, Virginia

SKELLY, David John, 829 Elizabeth Street, Ogdensburg New York, convicted on January 5, 1981, in the Saint Lawrence County Court, Canton, New York

SLAGLE, Garland L., Post Office Box 581, Buxton, North Carolina, convicted on July 31, 1978, in the United States District Court, Eastern District, Richmond, Virginia

SLOVERNICK, George Kent, Post Office Box 163, Frontier, Wyoming, convicted on August 23, 1973, in the District Court, Third Judicial District, Wyoming

SMITH, Frederick Jesse, Route 1, Box 3A, Grangeville, Idaho, convicted on November 3, 1975, in the County Court, Oswego, New York

SNYDER, Alvin, 111 Hamlet Hill Road, Baltimore, Maryland, convicted on February 24, 1972, in the United States District Court, Baltimore, Maryland

SOLBERG, Richard Martin, 762 Wells Street, Saint Paul, Minnesota, convicted on May 4, 1972; and on

October 5, 1976, in the Itasca County District Court, Minnesota

SOLIS, Ramon, 1314 West Pine Street, Lompoc, California, convicted on January 30, 1973, in the United States District Court, Arapahoe County, Colorado

SORENSEN, Edwin A., Box 393, Cokeville, Wyoming, convicted on August 16, 1982, in the District Court, Kemmerer, New York

STALEY, Robert Wayne, 3309 Old Highway 440, Killeen, Texas, convicted on April 20, 1977, in the Third Criminal District Court, Dallas County, Texas

STINE, Theresa Ross, 322 Slidell Street, New Orleans, Louisiana, convicted on August 14, 1976, in the Polk County Judicial Court, Crookston, Minnesota

STOFFLE, Thomas L., Jr., 3623 California Avenue, South West, Seattle, Washington, convicted on January 17, 1979, in the Superior Court of Thurston, Olympia, Washington.

STONEBARGER, Tommy L., 5824 Geer Road, Hughson, California, convicted on April 17, 1978, in the Superior Court, County of Stanislaus, California

STOWE, Emanuel, 702 Wilson Street, Kannapolis, North Carolina, convicted on March 21, 1979, in the United States District Court, Middle District, North Carolina

SUTTON, Needham Farrell, Route 5, Box 347, La Grange, North Carolina, convicted on May 5, 1980, in the Superior Court, Lenoir County, Kinston, North Carolina

SWANSON, Daniel Sever, 3946–2nd Street, North East, Columbia Heights, Minnesota, convicted on July 25, 1974, in the Fourth Judicial District Court, Hennepin County, Minnesota

TAYLOR, George Wesley, 3520 Church Street, Greensboro, North Carolina, convicted on April 21, 1977, in the Guilford County Superior Court, Greensboro, North Carolina

TEIXEIRA, Manuel Anthony, 309 Schester Avenue, Mineola, New York, convicted on January 31, 1975, in the County Court, County of Nassau, Mineola, New York

TERRY, Charles Marvin, 7245 Madison Street, Kansas City, Missouri, convicted on August 18, 1978, in the Circuit Court, Jackson County, Kansas City, Missouri

TILLINGHAST, Bruce Paul, Post Office Box 111, Exeter, Rhode Island, convicted on June 30, 1980, in the Ken County Superior Court, Warwick, Rhode Island

TRASK, Meredith Rae, Rural Delivery #1, Box 4060, Clinton, Maine, convicted on October 23, 1974, in the Waldo County Superior Court, Belfast, Maine

TRUSSELL, John C., Jr., Route 1, Perote, Alabama, convicted on January 24, 1980, in the United States District Court, Middle District, Alabama

ULMEN, William Harvey, Route 1, Box 211, Lacrescent, Minnesota, convicted on June 5, 1980, in the District Court, Houston County, Minnesota

VALERIO, Daniel Alfred, Jr., 3171 Claridge Road, Bensalem, Pennsylvania, convicted on July 1, 1977, in the Court of Common Pleas, Bucks County, Pennsylvania

VAN HALLE, Richard Paul, 139 Dean Pond Road, Spencerport, New York, convicted on March 13, 1951, in the Monroe County Court, Rochester, New York

VAUGHAN, Hal Gautier, Sr., 2009 Vaughan Dale Road, Gautier, Mississippi, convicted on September 25, 1980, in the United States District Court, Southern District, Mississippi

VAUGHAN, Michael Cameron, Airport Road, Fair Haven, Vermont, convicted on March 2, 1981, in the District Court, of Vermont

WALDEN, Lonny Layne, 10088 State Street, Boise, Idaho, convicted on July 20, 1978, in the Seventh Judicial District Court, Idaho Falls, Idaho

WALKER, Ivey Thomas, Route 1, Box 210, Watha, North Carolina, convicted on May 18, 1981, in the United States District Court, Raleigh, North Carolina

WALLACE, Mart, Route 1, Box 132, Haysi, Virginia, convicted on May 21, 1970, in the United States District Court, Abingdon, Virginia

WARD, Jerry Wayne, Route 2, Box 108–A, Killeen, Texas, convicted on December 4, 1981, in the 27th Judicial District Court, Bell County, Texas

WARD, Robert Earl, III, 7004 Lone Oak Place, Raleigh, North Carolina, convicted on February 25, 1974, in the United States District Court, Eastern District, Raleigh, North Carolina

WARREN, John Carlton, Jr., 431 Van Molan, Houston, Texas, convicted on December 15, 1978, in the District Court, Dallas County, Texas

WASHINGTON, Charles R., 4208 Booker Street, Monroe, Louisiana, convicted on November 13, 1978, in the Fourth District Court, Quachita Parish, Louisiana

WASSERMAN, Richard Lee, 2102 West 69th Terrace, Mission Hills, Kansas, convicted on April 14, 1978, in the United States District Court, Kansas City, Kansas

WATKINS, William Garrett, 6556 Upton Lane, Nashville, Tennessee, convicted on December 13, 1963, in the State of Tennessee, Division Two, Criminal Court of Davidson County, Tennessee

WATSON, James, Jr., 3428 North Kip Street, Philadelphia, Pennsylvania, convicted on May 23, 1963, in the Common Pleas Court, Philadelphia, Pennsylvania

WATTS, Shannon Keith, Route 6, Box 219, Greenwell Springs, Louisiana, convicted on January 2, 1975, in the 20th Judicial District Court, Parish of Feliciana, Louisiana

WEINTRAUB, Matthew David, 855 Shenandoah, Los Angeles, California, convicted on April 30, 1974, in the Superior Court, Los Angeles, California

WHITE, Leon Henry, Depot Street, Madrid, New York, convicted on October 8, 1956, in the Saint Lawrence County Court, Canton, New York

WHITE, Wendell Earl, 205 North 36th Street, Richmond, Virginia, convicted on April 17, 1973, in the Circuit Court, Hanoven County, Virginia

WHITES, William D., 3511 Summit Drive, Cheyenne, Wyoming, convicted on July 25, 1979, in the United States District Court, Wyoming

WHITESELL, George Robert, 1080 Virginia Avenue, Harrisonburg, Virginia, convicted on July 6, 1979, in the Rockingham Circuit Court, Harrisonburg, Virginia

WHITSETT, Allen Ervin, Post Office Box 704, Coaling, Alabama, convicted on January 20, 1977, in the Circuit Court, Tuscaloosa, Alabama

WILLIAMS, Robert M., 10071 East Atherton Road, Davison, Michigan, convicted on January 7, 1981, in the United States District Court, Detroit, Michigan

WILLIAMS, Roy, Route 2, Newport, Tennessee, convicted in 1946 and 1947, in the United States District Court, Greenville, Tennessee

WILSON, Scott Leroy, 1305 6th Street South East, Austin, Minnesota, convicted on July 18, 1978, in the District Court, Mower County, Minnesota

WOODUL, Lewis Walter, Post Office Box 596, Cotulla, Texas, convicted on August 17, 1977, in the United States District Court, Western District of Texas

WYATT, Billy Ray, Route 1, Hazel, Kentucky, convicted on May 5, 1980, in the Callaway Circuit Court, Murray, Kentucky

YOUNG, William C., 4913 Old Bradenton Road, Apartment #203, Sarasota, Florida, convicted on April 4, 1975, in the Circuit Court, Sarasota, Florida

Compliance with Executive Order 12291

It has been determind that this notice is not a "major rule" within the meaning of Executive Order 12291. 46 FR 13193 (1981), 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 cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Signed: June 11, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84-16259 Filed 6-18-84; 8:45 am]

BILLING CODE 4810-31-M

[Dept. Circ. 570, 1983 Rev., Supp. No. 23]

S&H Insurance Co.; Surety Companies Acceptable on Federal Bonds; Termination of Authority

Notice is hereby given that the certificate of authority issued by the Treasury to S&H Insurance Company, under sections 9304 to 9308 of title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective May 11, 1984.

The company was last listed as an acceptable surety on Federal bonds at 48 FR 30540, July 1, 1983.

With respect to any bonds currently in force with S&H Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company.

Questions concerning this notice may be directed to the Operations Staff (Surety), Banking and Cash Management, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634-5745.

Dated: June 1, 1984.

W. E. Douglas,

Commissioner.

[FR Doc. 84-16280 Filed 6-18-84; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

International Educational Exchange; Advisory Committee Meeting

The Advisory Panel on International Educational Exchange will hold its fifth meeting on Monday, July 23, 1984 at the Woodrow Wilson International Center for Scholars, 1000 Jefferson Drive SW., Third Floor, from 9:00 a.m. to 4:45 p.m.

The general purpose of this meeting is to define the questions that the Advisory Panel will address in its final report. Subcommittees will be appointed to work on drafts of each question.

Members of the public who wish to attend the meeting must reserve a seat by July 13, 1984 by calling Christopher Paddack at (202) 485-2557. Space is limited and the public will be admitted on a space available basis by prior reservation.

Dated: June 14, 1984.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 84-16351 Filed 6-18-84; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Medical Research Service Merit Review Board; Availability of Annual Reports

Notice is herey given that the Annual Reports of the Veterans Administration Medical Research Service Merit Review Boards for calendar year 1983 have been issued.

The reports summarize activities of the Boards on matters related to the review, discussion and evaluation of individual investigator initiated medical research projects. They are available for public inspection at two locations:

Library of Congress, Serial and Government, Publications Reading Room, LM 133, Madison Building, Washington, DC 20540

and

Veterans Administration, Medical Research Service, Chief, Merit Review Board Staff Division, Room 755, 810 Vermont Avenue NW., Washington, DC 20420.

Dated: June 11, 1984.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-16291 Filed 6-18-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 119
Tuesday, June 19, 1984

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

CIVIL AERONAUTICS BOARD

[M-406, (amdt 1)]

Notice of deletion from the June 14, 1984 meeting.

TIME AND DATE: 10:00 a.m., June 14, 1984.

PLACE: Rooom 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, DC. 20428.

SUBJECT: 22. Undocketed, Order requiring BWIA and Caricargo to obtain prior approval before operating any charter flight between the United States and Trinidad and Tobago. (Memo 2372, BIA, OGC).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, *the Secretary*. (202) 673-5068.

[FR Doc. 84-16352 Filed 6-14-84; 5:10 pm]

BILLING CODE 6320-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

Deleton of Agenda item from June 15th closed meeting.

The following item has ben deleted at the request of the Office of General Counsel from the list of agenda items scheduled for consideration at the June 15, 1984 Closed Meeting and previously listed in the Commission's Notice of June 8, 1984.

Agenda, Item No. and Subject

Hearing—1—Peitions for Review and Rehearing filed by Beehive Telephone Co., Inc. and a request for approval of an agreement between Beehive Telephone Co., Inc. and the Common Carrier Bureau in the Western Utah, Common Carrier proceeding (Docket 78-240).

Issued: June 15, 1984.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-16414 Filed 6-15-84; 3:44 pm]

BILLING CODE 6712-01-M

3

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TME AND DATE: 11:00 a.m., Monday, June 25, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 15, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-16423 Filed 6-15-84; 3:51 am]

BILLING CODE 6210-01-M

4

U.S. INTERNATIONAL TRADE COMMISSION

[USITC SE-84-29]

TIME AND DATE: 10:a.m. Wednesday, June 27, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigation 731-TA-147 [Preliminary—Remand] (Cut-to-Length Carbon Steel Plate from West Germany)—redetermination.
6. Investigation TA-201-52 (Unwrought Copper)—briefing and vote on remedy, if necessary.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

[FR Doc. 84-16415 Filed 6-15-84; 3:44 pm]

BILLING CODE 7020-02-M

5

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-84-22]

TIME AND DATE: 9 a.m., Tuesday, June 26, 1984.

PLACE: Conference Room 8ABC, 8th Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Highway Accident Report*—Collapse of a Section of the I-95 Highway Bridge Over the Mianus River, Greenwich, Connecticut, June 28, 1983, and *Recommendations* to the Connecticut Department of Transportation, the Federal Highway Administration, the American Association of State Highway and Transportation Officials, the U.S. Department of Transportation, the American Institute of Steel Construction, and the National Committee on Uniform Traffic Laws and Ordinances.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202), 382-6525.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

June 15, 1984.

[FR Doc. 84-16400 Filed 6-15-84; 2:09 pm]

BILLING CODE 4910-58-M

6

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: [49 FR 23976, June 8, 1984).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, June 5, 1984.

CHANGE IN THE MEETING: Additional item.

The following additional item was considered at a closed meeting scheduled for Tuesday, June 12, 1984.

Litigation matter.

Chairman Shad and Commissioners Treadway, Cox, Marinaccio and Peters determined that Commission business required the above change 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: Marianne Keler at (202) 272-2014.

George A. Fitzsimmons,

Secretary.

June 14, 1984.

[FR Doc. 84-16344 Filed 6-14-84 4:24 pm]

BILLING CODE 8010-01-M

federal register

Tuesday
June 19, 1984

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1908

Consultation Agreements; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1908

Consultation Agreements

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: In this final rule, the Occupational Safety and Health Administration (OSHA) is revising a significant portion of its regulation governing Cooperative Agreements between OSHA and State agencies whereby such agencies provide consultation assistance to employers. The revised regulation provides for broadening the scope of consultative activities by shifting the focus from simply the identification and correction of specific workplace hazards to a concern for the effectiveness of the employer's total management system for ensuring a safe and healthful workplace. The regulation also expands the scope of service by allowing offsite consultation as well as training and education of employers and employees. In addition, the regulation provides an exemption from general schedule OSHA inspections for employers meeting specified conditions.

The revised regulation is intended to further the Agency's goal of achieving a balanced mix of program activities by strengthening, encouraging and assisting voluntary employer and employee safety and health efforts.

EFFECTIVE DATE: This regulation is effective July 19, 1984 except for § 1908.7(b)(4) which is effective August 20, 1984.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION:

I. Background

Section 21(e) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(c)) directs the Secretary of Labor to establish programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employment covered by the Act. The need for a greater understanding by employers of their obligations under the Federal or State OSH Acts has been widely acknowledged. The interpretation of complex standards and the ability to recognize hazards in the workplace are often difficult for employers. Small business employers who may lack the financial resources to utilize private consultants may face even greater difficulty in understanding their obligations under the Act.

Under the Federal OSH Act, onsite consultation services by OSHA personnel cannot be provided without triggering the normal enforcement provisions of the Federal Act, including citation and possible penalties for any hazards observed. Onsite consultation services can, however, be provided by State personnel without triggering the enforcement mechanisms of the Act. Federally funded onsite consultation was originally conducted only by States operating plans approved under section 18 of the Act. In response to the demand for consultation in other States, Part 1908 was first promulgated on May 20, 1975 (40 FR 21935) to authorize Federal funding of onsite consultation activity by States without approved State Plans through Cooperative Agreements entered into under the authority of sections 21(c) and 7(c)(1) of the Act. Part 1908 was subsequently amended on August 16, 1977 (42 FR 41386) to clarify a number of provisions which had been subject to misinterpretation, as well as to increase the level of Federal funding to ninety percent, a level that was considered necessary to provide a strong incentive for States to enter the program.

On October 5, 1983, a notice was published in the Federal Register (48 FR 45411) requesting public comment on further proposed changes to Part 1908. These amendments were intended to clarify various provisions to reflect the experience gained since the 1977 revisions. Additionally, the proposal raised a number of new issues, including: A shift of focus from simply the identification and correction of specific workplace hazards to a broader concern for the employer's total management system for ensuring a safe and healthful workplace, provision for offsite consultation, training and education, and exemption from general schedule inspections for employers satisfying specific criteria. Over 50 comments were received from State agencies, labor organizations, business associations and individuals. After consideration of the public comments, the proposal has been amended to a limited extent and is published herein as a final rule.

II. Summary and Explanation of Final Rule

This section includes an analysis of the public record and the policy considerations underlying the decisions on various provisions of the regulation.

OSHA has made various changes to the October 5, 1983 proposed language in the final rule. Editorial and grammatical corrections are made throughout the final rule which do not alter the specific intent or purpose of the proposal's requirements. In most instances, these minor changes are not discussed in the preamble. The preamble focuses primarily on substantive issues raised in the proposal.

OSHA has cited public comments in the record by identifying exhibits parenthetically. The comments of the National Advisory Committee on Occupational Safety and Health (NACOSH) are included in Exhibit 2. All other public comments are identified as Exhibit 3. Comment numbers identifying a particular commenter follow the exhibit number. If more than one comment is cited, the comment numbers are separated by commas. For example, (Ex. 3:4, 5, 6) means Exhibit 3; comment numbers 4, 5, and 6. The names and numbers of commenters are listed in Attachment I.

Section 1908.1 Purpose and scope.

This section describes in general terms the purpose of Cooperative Agreements between OSHA and State governments for the provision of consultation services to employers. In its present form, the section describes free consultation services which focus on the identification of specific workplace hazards and assistance in their elimination. It explains that the consultation services are independent of OSHA enforcement, but that employers remain under statutory obligation to protect their employees and are required to take necessary protective action in certain instances.

The October 5, 1983 proposal revised this section to clarify the central purpose of the Cooperative Agreements and set forth the expanded scope envisioned in changes to subsequent sections of the regulation. The proposal identified the central purpose of the Agreements as the prevention of injuries and illnesses which may result from exposure to hazardous workplace conditions and practices. The expanded scope of work under the Agreements would include evaluation of, and assistance with, an employer's occupational safety and health program,

as well as the identification of specific hazards and assistance in their correction. In addition, as part of the expanded scope, consultation assistance away from the employer's worksite would be authorized, as would education and training of the employer, the employer's supervisors, and the employer's other employees as needed to make the employer self-sufficient in ensuring safe and healthful work and working conditions. In conjunction with the proposed new focus on effective safety and health programs, a provision of this section in the October 5, 1983 proposal noted that employer correction of serious hazards and establishment of an effective safety and health program may serve as the basis for employer exemption from certain OSHA enforcement activities.

In an addendum to the section, a new statement in the final rule makes clear that, in States operating Plans approved under section 18 of the Act, the provisions of the regulation governing enforcement policies do not apply to safety and health issues covered by the Plan. States operating such Plans are, in accord with section 18(b), required to establish enforcement policies which are at least as effective as Federal policies. The wording of this statement in the final rule has been changed slightly from that in the proposal. The proposal would have provided that the Federal enforcement provisions of Part 1908 are totally inapplicable within any State Plan State. However, this language is modified in today's final rule to reflect the fact that some Plans do not cover all occupational safety and health issues within the State. Where coverage of an issue is provided by Federal OSHA, the enforcement related provisions of Part 1908 will apply even in a Plan State. Although no comment was directed to this feature of the proposed rule, OSHA believes that the modified language is more appropriate, and more clearly reflects existing State Plan relationships, than the language originally proposed.

A significant number of commenters (See Ex. 3:1, 2, 3, 4, 6, 8, 11, 14, 20, 21, 25, 27, 31, 33, 34, 41, 43, 47, 52) have expressed support for the expanded scope of activity under the proposal. Several States specifically welcomed the addition of the new provisions. One State agency (Ex. 3:33) commended the general shift in focus "from the limited program scope of the identification and control of specific workplace hazards to an emphasis on a complete health and safety program." Similarly, another commenter (Ex. 3:43) stated that "assistance in establishing occupational safety and health programs, including training and education, can help systematically to prevent workplace hazards from appearing. Such assistance will establish a more durable comprehensive basis for continued improvement by the employer * * *." Another State (Ex. 3:11) indicated "that inclusion of training and education services * * * will lead to greatly enhanced abilities for employers and employees to protect themselves against the hazards present." A third State (Ex. 3:21) endorsed the proposal's provision for offsite assistance, noting that "telephone and correspondence are effective methods to provide offsite consultant services and are a necessary adjunct to a good * * * consultation program."

One commenter (Ex. 3:45) objected to the expansion on the basis of a lack of evidence that OSHA-sponsored consultants are "competent and qualified to do more than offer technical advice about hazards." OSHA has, however, had experience to the contrary. Although the focus of consultation assistance under the current regulation has been on the identification of specific hazards, § 1908.7(b)(2)(i) of the 1977 regulation establishes as a minimum requirement that consultants demonstrate "knowledge of workplace safety and health program requirements." Many consultants have in fact offered assistance to employers in establishing or improving a workplace safety and health program. As well, many consultants have provided informal training and education to employers and their employees as a part of the routine consultation process, during the opening and closing conference and during the walk through the workplace.

At the same time, OSHA recognizes that this shift of emphasis in consultation services will necessitate increased training of State consultants in these areas. All consultants will receive training in the evaluation of, and assistance with, employers' workplace safety and health programs, and in the provision of training and education in the course of the initial consultation visit. Moreover, consultants in each State project will be selected to specialize in the delivery of more formal training, and these consultants will receive additional training.

Other commenters (Ex. 3:9, 17) objected to the proposed changes on the grounds that they would place the Federal government in the position of competing with the private sector. Since States are directed to give priority to smaller businesses, their assistance is provided largely to businesses which usually do not obtain consultation assistance from the private sector. In fact, State consultation services have generated significant private sector business by advising employers to obtain specialized assistance from the private sector.

One commenter (Ex. 3:38) objected that allowing offsite assistance through telephone and correspondence "to replace worksite visits" will not allow consultants to determine workplace hazards effectively. OSHA does not, however, regard offsite assistance as a substitute for onsite consultation. The intent is rather to provide assistance which does not require onsite observation, such as the review of construction or design plans or the interpretation of standards. After careful consideration of these comments, OSHA has determined that expansion of the scope of consultation services is in the interest of occupational safety and health, and this section remains unchanged in this respect.

As discussed in relation to section 7 of this rule, the provision for exemption from certain OSHA enforcement activities has been modified to require correction of other-than-serious hazards as well as serious hazards, and this section is modified accordingly.

One commenter (Ex. 3:41) suggested that this section requires that all training and education be provided at the worksite and proposes that workshops and seminars to public groups, trade associations, labor groups and employer groups be authorized. However, OSHA provides for such training through the funding of State Plans and through its own Area Offices. Because consultation funds are limited, OSHA prefers to focus the training and education activities of consultants at the worksite, where their impact can be most immediate and most efficient. At the same time, OSHA will prescribe by directive limited circumstances under which consultants may conduct training and education offsite.

One commenter (Ex. 3:21) expressed the view that the authorization of an expanded scope for consultation will not result in the expected benefits without additional staff to provide the new activities. Another commenter (Ex. 3:1) proposed that the provision of training and education by consultants be delayed until additional funds are available. A third commenter (Ex. 3:14) proposed such a delay only in the provision of offsite training and education.

OSHA recognizes that the focus on employer safety and health programs and the provision of training and

education by consultants will require, on the average, that consultants spend a longer time in each establishment visited. OSHA believes, however, that these additional activities will produce a more complete and more enduring impact on employee safety and health in those workplaces visited. In workplaces where safety and health program assistance has been provided through OSHA's Voluntary Protection Program and California's Small Employer Voluntary Compliance Program, significant decreases in average injury incidence rates have been realized. Year end evaluations of plants participating in the California Small Employer Voluntary Compliance Program show an average 60 percent reduction in lost workday injuries and illnesses, and an 85 percent improvement in employer/employee safety consciousness. After a year, the four Try participants in the OSHA Voluntary Protection Programs for which data are available had reduced their lost workday injuries by an average of 45 percent. OSHA has concluded, therefore, that the increased impact of these visits justifies a reduction in the number of visits which can be made with current funding.

OSHA will work with the States to ensure that the priority accorded to employer requests will provide assistance where the need is greatest. Further, although OSHA will not delay authorization of training and education until additional funding is available, it will carefully monitor the proportion of consultant time which may be expended on training and education. In addition, OSHA will expect that the States will carefully evaluate requests for training and education in relation to requests for other assistance, to ensure that the most efficient and effective mix of consultative activities is provided. As already indicated, offsite training and education will be limited.

No comments were received on the statement limiting the applicability of the enforcement provisions of the regulation to States not operating Plans approved under section 18 of the Act. One State (3:14) asked that the regulation declare that the provision of exemption from specified enforcement activities is applicable in a State with a Plan approved under section 18 only if the State adopts the exemption provision. Since the exemption from inspection is an enforcement-related provision of the regulation, it would apply only if the State adopts it.

Section 1908.2 Definitions.

OSHA is adding a number of definitions to § 1908.2, to define terms used throughout the final Part 1908.

For purposes of Part 1908, OSHA defines "imminent danger" as a hazard which could reasonably be expected to cause death or serious physical harm immediately or before the danger can be eliminated through the procedures set forth in § 1908.6(e)(4), (f) (2) and (3), and (g). These latter-referenced provisions relate to employers' obligations to eliminate serious hazards identified during a consultation and establish the procedures to be followed with respect to such hazards. One commenter (Ex. 3:45) suggested that the definition was in conflict with the substance of the regulation in § 1908.6(f)(1), which relates to referrals of imminent danger situations to OSHA enforcement authorities. The commenter suggested that imminent danger should be defined exactly as it appears in section 13 of the Act. The definition in section 13 of the Act describes an imminent danger as one which may cause death or serious harm before it can be eliminated through the normal *enforcement* process. That definition does not provide meaningful guidance within the consultation process. The definition proposed for Part 1908, therefore, applies the same concept to the consultation process; i.e., it defines an imminent danger as one which may cause death or serious harm before it can be eliminated through the normal consultation process. Section 1908.6(f)(1) requires that such hazards be eliminated immediately, or they will be referred to the appropriate enforcement authority. OSHA, therefore, sees no inconsistency between the definition and the requirements of § 1908.6(f)(1).

Two States (Ex. 3:20, 41) proposed that the definitions be revised to permit onsite training and education without requiring a walk through the workplace to identify hazards. One State (Ex. 3:41) proposed the same with respect to assistance in developing a safety and health program. OSHA believes that the conduct of a hazard survey is essential in determining the need for training and education in a workplace and in determining the nature of the safety and health program needed by an employer. OSHA has decided, therefore, not to revise the definitions which establish this requirement. OSHA has, however, revised § 1908.6(b) to indicate that a hazard survey conducted in an enforcement inspection may serve as the basis for scheduling a visit specifically for training and education or assistance with a safety and health program.

In response to concerns expressed in relation to § 1908.4, the definition of offsite consultation has been modified to include offsite training and education in limited cases to be specified by the Assistant Secretary.

One commenter (Ex. 3:45) suggested that a definition of "employee" and "employee representative" be added. OSHA has added the definition of "employee" as it appears in section 3 of the Act. In identifying employee representatives, consultants will be instructed to follow the definition in OSHA's Field Operations Manual.

As discussed herein, § 1908.7(b)(4) is amended to require the correction of all hazards, other-than-serious as well as serious, as a prerequisite of employer exemption from general schedule inspection. Accordingly, a definition of "other-than-serious hazard" has been added. An "other-than-serious hazard" is defined as one which would be classified as an other-than-serious violation of applicable Federal or State statutes, regulations or standards, based on criteria contained in the current OSHA Field Operations Manual.

Several commenters (Ex. 3:22, 41, 47) proposed that the regulation refer to State enforcement officials as well as to OSHA's Regional Administrators in discussing certain enforcement-related responsibilities under the regulation. However, since section 1908.1 makes clear that the provisions of this part which govern enforcement policies do not apply to safety and health issues covered by States operating an enforcement program as part of a Plan approved under section 18 of the Act, OSHA believes that referencing State enforcement officials in this part would be misleading. A State operating an approved Plan must have enforcement procedures which are at least as effective as the enforcement procedures in this part, but the enforcement procedures may differ from the Federal procedures. A reference to State enforcement officials in this part would imply that those officials are bound by the procedures in relation to which they are referenced. It may be inferred that where reference is made in this part to OSHA's Regional Administrators or Area Directors in their enforcement capacity (e.g., §§ 1908.5(b)93), 1908.6(f)(4) and 1908.7(c)(4)), State enforcement officials may have a comparable function. However, it is necesary to compare State procedures to determine whether those functions are carried out in a similar way.

Section 1908.3 Eligibility and funding.

This section establishes the criteria for State eligibility to enter into a Cooperative Agreement with OSHA and sets forth the terms of reimbursement under an Agreement. OSHA proposed

no change to this section. However, several commenters proposed changes.

One commenter (Ex. 3:9) proposed that the regulation be modified to "provide funds for the States to enter into contractual agreements with qualified small business consulting firms either in conjunction (with) State employees funded through the program or in lieu thereof." Although OSHA has, pursuant to section 7(c)(2) of the Act, established contracts with private firms to provide consultation in States which have not agreed to provide the service, the Act does not authorize OSHA to provide funds to the States for contracts with private firms. Section 7(c)(1) of the Act, pursuant to which this regulation is issued, specifically authorizes OSHA to reimburse States for carrying out, through State agencies and employees, the responsibilities of the Secretary of Labor. Neither section 7(c)(1) nor any other section authorizes the allocation of funds to the States for contracting with private firms. Thus, OSHA cannot accommodate this recommendation.

One State (Ex. 3:14) points out that § 1908.3(a)(2) is either an exception to § 1908.3(a)(1) or is in conflict with it. Section 1908.3(a)(1) indicates that any State may enter into an Agreement with the Assistant Secretary. Section 1908.3(a)(2) says that a State with a Plan approved under section 18 of the Act may enter into an Agreement if the Plan does not provide for Federally funded consultation to private sector employers. The latter section is in fact an exception to the former. That fact is clarified in the final rule by combining the two.

One State (Ex. 3:37) proposed that State and local governments be eligible for consultation assistance under the Cooperative Agreements pursuant to this part. Although OSHA recognizes the need for assistance to State and local governments, they are not included in the definition of "Employer" in section 3 of the Act. They are not, therefore, within the jurisdiction of OSHA. The Act provides for Federal funding to cover State and local government employers only under a Plan approved pursuant to section 18 of the Act.

Section 1908.4 Offsite consultation.

A new § 1908.4 was proposed to replace the present § 1908.4. It authorizes consultation assistance to employers away from the employer's worksite. No objections were raised to this section which are not addressed elsewhere. However, the section has been modified to permit offsite training and education in limited cases to be specified by the Assistant Secretary.

Section 1908.5 Requests and scheduling for onsite consultation.

This section was § 1908.4 in the 1977 regulation. The section includes requirements for State consultation agencies to encourage employers to request onsite consultative visits and to publicize the availability and scope of services provided. Several promotional methods are suggested. The language in these requirements is unchanged.

Section 1908.5(a)(3), Scope of Service, provides that publicity for the program must explain that the service is provided at no cost to the employer and that the purpose is to assist in establishing and maintaining effective programs for providing safe workplaces in accord with State or Federal laws. The description of purpose is changed from the 1977 regulation which was limited solely to assisting the employer in understanding the requirements of applicable State and Federal laws and regulations. The broadened statement of purpose in this section makes it consistent with the expanded mission of the consultation program as described and discussed in § 1908.1.

This section also requires that State publicity regarding the program describe certain employer responsibilities incurred when utilizing consultative services. These responsibilities include the statutory obligation to provide a safe and healthful workplace and the obligation to eliminate employee exposure to a hazard which is an imminent danger to employees or which would be classified as a serious hazard. Publicity must also inform employers that the identification of imminent danger situations or serious hazards will not initiate any enforcement activity unless the employer fails to eliminate or control the hazard.

The requirements for the content of publicity for the consultation program are the same as in the 1977 regulation. The addition of the word "immediate" before "action" to eliminate employee exposure to imminent danger situations is intended to clarify the requirement for corrective action at the moment that an imminent danger situation is identified.

Section 1908.5(b)(2) provides that State consultants encourage employers in smaller, high hazard establishments to allow them to conduct a comprehensive assessment of the conditions of the worksite and the employer's safety and health program. More limited scope consultative visits may be encouraged in larger and less hazardous establishments.

One State agency (Ex. 3:49) expressed concern that this language would discourage larger employers from seeking consultative assistance and noted that some larger employers particularly desire assistance in reviewing their safety and health program. This language was added to the regulation so that smaller, high hazard workplaces which are generally less able to afford safety and health expertise would receive a high priority in receiving assistance. Moreover, OSHA desires to discourage the possibility that a State program might provide resource intensive services to a few large employers at the expense of servicing several smaller, yet high hazard workplaces. OSHA also believes that in smaller, higher hazard workplaces it is particularly useful to assess the entire workplace and safety and health program because this requires less consultant time than it would in a large establishment and has a significant potential for "pay-off" in establishing or improving a preventive program tailored to the needs of the workplace. It is not, however, OSHA's intention to discourage larger employers from seeking consultative assistance.

OSHA has, therefore, decided to retain this language but has added the qualifying phrase that a more limited scope may be encouraged in larger "and less hazardous" establishments. This language makes clearer OSHA's belief that consultative resources are most efficiently utilized when focused in industries and establishments which are known to pose higher risks to employees, and that this factor is as important as size in targeting the use of consultative resources. These provisions and rationale are also consistent with the provision for scheduling priority in § 1908.5(c).

Language was also added to § 1908.5(b)(2) of the proposal which provides that during a limited scope consultation visit the consultant will review only the working conditions, hazards, or situations specified by the employer. It also provides the exception that if, in the course of the limited visit, hazards are observed which are outside the scope of the request, the consultant must treat such hazards as though they were within the scope of the request. This means that any hazards observed outside the scope of the request would be pointed out to the employer and if, in the judgment of the consultant, the hazard poses a serious hazard and is not corrected during the visit, a correction date would be established. An imminent danger situation, outside the scope of the request but observed by the consultant, would require immediate action as described in § 1908.6(f)(1).

Two commenters (Ex. 2; Ex. 3:49) objected to this provision as a violation of the voluntary nature of a request. One of these commenters (Ex. 3:49) expressed concern that it could result in "wall-to-wall" visits regardless of the limited scope of the request. Other commenters suggested that the requirement be limited only to the observation of serious hazards (Ex. 3:1, 14, 52).

The added language in this section only clarifies a requirement which was already in the 1977 regulation (§ 1908.5(e)(3)). This requirement is essential for consultants to carry out their professional responsibility to notify employers of observed hazards so that employees may be removed from potential risks. This requirement has been operative in the past on limited scope visits without appreciably expanding the nature of the visit.

Program experience also suggests that most employers wish to be notified of all hazards observed by the consultant so that appropriate corrective action may be taken. This has seldom resulted in a feeling that the voluntary nature of the request has been violated or is in conflict regarding the scope of the request. OSHA has, therefore, decided to retain the language in this section which makes consultant responsibilities, also contained in the 1977 regulation, more explicit.

Section 1908.5(b)(3) as originally proposed would provide that a consultative visit shall not be available to an employer when a compliance officer has been refused entry to conduct a compliance inspection. The proposal notes that the purpose of the provision is to prevent the possible frustration of an ongoing compliance inspection by a subsequent consultative visit. One commenter (Ex. 3:43) suggested that this provision has the effect of penalizing employers for exercising their constitutional rights. NACOSH (Ex. 2) expressed a similar concern. After further consideration, OSHA has determined that the provision as written may create misunderstanding with respect to its actual intent. It was not the Agency's intent to penalize employers for the exercise of their Fourth Amendment rights. Rather the Agency intended, as previously stated, to avoid the possible frustration of an ongoing compliance inspection. OSHA also believes that conducting a consultative visit while an enforcement inspection is in progress would result in an inefficient utilization of the Agency's resources.

In order to avoid any possible misunderstanding, §§ 1908.5(b)(3) and 1908.7(b)(3) have been revised to provide that an onsite consultative visit may not take place while an OSHA enforcement inspection is in progress. An enforcement inspection will be deemed "in progress" starting at the time an inspector initially attempts entry to the workplace. An enforcement inspection will also be deemed in progress in cases where entry is refused until such time as the inspection is actually conducted; a determination is made that a warrant will not be sought; or a determination is made that allowing the consultation to proceed is in the best interest of employee safety and health. The revised provisions, therefore, do not distinguish between employers who refuse entry and those who do not. Instead, consultative visits generally will not be conducted at any time an enforcement inspection is in progress.

Two commenters (Ex. 3:12, 38) stated that OSHA should not allow a consultation visit to take place, under any circumstances, if an employer has refused entry to the workplace. They expressed the belief that a denial of entry, in itself, demonstrates that such employers have no genuine concern for the safety of their employees which could be served by a consultative visit. Another commenter (Ex. 3:45) also expressed concern and asked for an explanation of the circumstances under which OSHA might allow a consultation visit following a denial of entry for inspection.

OSHA believes, however, that there may be some unusual situations in which employee safety may be enhanced if a consultative visit is allowed following a denial of entry while an inspection is considered to be "in progress." Therefore, OSHA has decided to provide those responsible for enforcement some discretion in this matter. OSHA foresees that only rarely will circumstances be such that it will decide to allow a consultation visit to proceed when an enforcement inspection is in progress. Guidance on such circumstances will be provided by Agency directive.

Two commenters proposed revisions to the criteria in § 1908.5(c) for determining priority in responding to requests from employers. One commenter (Ex. 3:25) cited the legislative history of a proposed amendment to the Act in support of limiting consultative assistance to employers with 50 or fewer employees. NACOSH (Ex. 2), on the other hand, cited figures for 1981 from the Bureau of Labor Statistics which indicated that businesses employing 100 to 249 employees have the highest injury rates, and that the rates of businesses having 50–99 employees, 250–499 employees and 500–999 employees have a higher injury rate than businesses having fewer than 50 employees. NACOSH argues that smaller businesses in hazardous industries should receive priority, but that no limit should be set on the size of establishment which may receive assistance. A third commenter (Ex. 3:38) stated that consultation should only be provided to small businesses.

As previously indicated, OSHA believes that both the need of smaller businesses for assistance that they might otherwise not be able to afford and the need to focus OSHA resources on higher hazard businesses merit consideration in determining which employers will receive assistance and with what priority. The criteria of § 1908.5(c) seek to balance these concerns by giving equal weight to both. The proposed amendment to the Act which occasioned a discussion of limiting consultation to businesses with 50 or fewer employees was not passed, and no legislative limit has been set on the size of businesses which may receive assistance. There is a wide range of definitions of small business among Federal agencies, and OSHA does not wish to establish an absolute limit in this regulation. Some businesses requesting service in the middle size range may be sufficiently more hazardous than the smaller businesses requesting assistance and therefore merit priority. At the same time, OSHA recognizes that some limitations may be necessary on the nature and extent of assistance which may be accorded to businesses of varying size, in order to ensure the most efficient and effective use of OSHA resources. Under § 1908.1, the Assistant Secretary is authorized to establish limitations in the Cooperative Agreement on the consultative assistance which may be provided, and OSHA will provide any limitations which are found necessary through that mechanism.

Section 1908.6 Conduct of a visit.

This section was § 1908.5 in the 1977 regulation.

The proposed § 1908.6(b) provides that training and education of employers and employees may be conducted during an initial consultative visit. One commenter (Ex. 3:27) suggested that the language be clarified to provide that training and education be conducted only at an employer's request. Inasmuch as the consultative services are voluntary on the part of employers, OSHA agrees with the commenter and has amended the language to provide that training and education will be

conducted in response to employer requests.

One State (Ex. 3:41) pointed out that language in the proposal may limit the provisions of safety and health program assistance and education and training assistance to employers who have requested an initial consultation visit. OSHA believes that in order for a consultant to know what type of assistance is needed on the workplace, such assistance must be linked to knowledge of the conditions, processes and potential hazards of the workplace. OSHA recognizes that such knowledge may possibly result from a previous compliance inspection. Therefore, the final rule provides that a visit limited to training and education or assistance with the employer's safety and health program may, in some cases, be provided without a prior initial consultative visit, if a recent compliance inspection has been completed at the workplace. In such cases, the results of the compliance inspection would have to be reviewed by the consultant prior to visiting the workplace. Guidance on when such a procedure is appropriate will be provided by Agency directive.

Although the proposal did not include modifications to § 1908.6(c) relating to employee participation in the consultation process, a number of commenters (EX, 3:15, 38, 42, 48, 51) objected to the lack of mandatory employee participation in the consultative process. One commenter (Ex. 3:51) stated: "Full employee participation must be provided by the regulations for any consultative visits conducted under the Act to be meaningful." While OSHA agrees that employee participation in the consultation is both useful and desirable, a number of State consultation officials have expressed the belief that many employers would not request the service if employee participation is required. OSHA concluded in the 1977 revision of this regulation that the Act's purposes are better served by providing consultative assistance without employee participation, if the employer objects to such participation, rather than denying assistance to employers who have indicated a desire to undertake voluntary measures to improve safety and health but who resist employee participation in the process. On this same basis, the regulation will continue to encourage but not require employee participation.

Section 1908.6(e)(1) allows an employer to expand or reduce the scope of a consultative visit at any time during the visit. The employer, however, remains obligated to ensure correction of serious hazards identified during the visit. One commenter (Ex. 3:39) expressed concern that this paragraph "appears to give an employer an unlimited or unqualified opportunity to expand the scope of a consultation, even when the original request was intentionally limited because of the size of the establishment." The commenter points out that some requests for expansion may require review by the consultant's supervisor to ensure that the consultant is qualified and prepared for the additional task and that the request merits priority attention. OSHA concurs with this concern and has modified this paragraph to establish criteria for determining whether a request for expanding the scope may be responded to immediately, or whether it must be referred to the consultation manager.

One commenter (Ex. 3:38) objected to the provision for reducing the scope of a visit after it has started, arguing that it allows employers to avoid visiting all serious and imminent danger areas. OSHA believes that because the consultation program is basically voluntary, it would be inadvisable and in fact improper for a consultant to attempt to continue a visit over an employer's objection. Moreover, OSHA believes it is unlikely that an employer will wish to curtail a visit in progress where such an employer has already demonstrated the desire to voluntarily improve the safety and health conditions at the worksite by requesting a consultation in the first instance. Additionally, the employer is obligated to take appropriate corrective action with respect to serious hazards observed during the visit.

Section 1908.6(e)(3) provides that consultants will review and provide advice on the employer's safety and health program within the scope of the employer's request. NACOSH (Ex. 2) proposed not to limit the review and advice to the scope of the employer's request. One commenter (Ex. 3:52), on the other hand, suggested that the provision be reworded to make clear that consultants have authority to review an employer's safety and health plan only if the employer has included those areas of the plan in the scope of the request. Because of the voluntary nature of the service, OSHA's intent in this section is not to require a review of any aspect of an employer's safety and health program which the employer does not wish to be covered. OSHA does intend, however, that the consultant, in addressing those conditions or hazards regarding which the employer has requested assistance, will advise the employer of any ways in which the hazards reflect deficiencies in the employer's safety and health program. For example, if the nature of the hazard observed appears to indicate the lack of employee awareness of a safe work practice which should have been communicated to the employee through the establishment of a work rule and through training on and enforcement of the rule, this fact will be pointed out to the employer.

Section 1908.6(e)(7) provides for the consultant and the employer to develop a specific plan to correct serious hazards identified during a consultation visit. The plan must give the employer a reasonable time to complete hazard correction. This section also provides an opportuntiy for the employer, upon request within 15 working days of receipt of the consultant's report, to have an informal discussion with the consultation manager concerning established hazard correction periods or other substantive consultant findings. One commenter (Ex. 3:26) expressed concern that this section makes the consultant a guarantor that the plan will successfully result in correction of the hazards. Another commenter (Ex. 3:27) asserted that "the employer should be solely responsible for developing and implementing the plan." OSHA's intent in this section is to provide for the consultant to assist the employer in identifying hazard correction measures and to determine a reasonable time period for their correction. This will provide the employer an opportunity to contribute to the consultant's judgment in determining what a reasonable correction period is. The consultant's assistance does not relieve the employer of the responsibility for ensuring that the selected measures adequately correct the hazard; nor does the employer's proposal for a reasonable correction time period remove the consultant's responsibility for determining such a period. OSHA has revised the language of this section to clarify these points.

Although the provision for establishing correction dates for serious hazards only (not for other-than-serious) is unchanged from the 1977 regulation, several commenters (Ex. 2; Ex. 3:45, 51) argued that OSHA should require the setting of correction dates for all hazards. One commenter (Ex. 3:49), on the other hand, asked that this provision be modified to require corrective action only in imminent danger situations.

OSHA believes that requiring only the correction of serious hazards is reasonable since hazards classified as other-than-serious are pointed out to

employers, and recommendations for correction are made and normally followed in a timely manner. The lack of a requirement for setting correction dates on other-than-serious hazards is also based on the consideration that these situations would probably not cause death or serious physical harm. (See OSHA Field Operations Manual, Chapter IV.) Furthermore, an employer who has had a consultation visit is still subject to OSHA enforcement and, therefore, in order to avoid possible citation, has another incentive to correct other-than-serious hazards identified by a consultant. For these reasons, OSHA has decided to retain the language of the 1977 regulation on this matter.

Other commenters objected to the 15-day period during which the employer may request an expeditious informal review of hazard correction periods or other substantive consultation findings. One commenter (Ex. 3:4) reflected the belief that, after this 15-day period, an employer could not request an extension of the hazard correction period. Another (Ex. 3:35) expressed concern that the 15-day period would serve as a "grace period" during which an employee would not be expected to take action to correct serious hazards. OSHA intends neither. The 15-day period provides an employer an opportunity to discuss with the consultation manager any objections or questions concerning the consultant's findings or the established hazard correction periods. If the employer does not raise such objections or questions during that period, the consultant's findings and hazard correction periods will be regarded as acceptable to the employer. The employer will not, however, be precluded from requesting an extension of a hazard correction period after the 15 days have passed, based on the criteria set forth in § 1908.6(f)(3). On the other hand, the employer will not be relieved of responsibility to correct a serious hazard within less than 15 days, if the consultant finds a shorter correction period to be reasonable and necessary in order to ensure employee safety and health. In the event of such a situation, the consultation manager will be expected to respond quickly to an employer's request for review of the hazard correction period.

Section 1908.6(e)(8) provides that employers shall be encouraged to advise affected employees of hazards identified and their correction. Several commenters (Ex. 2; Ex. 3:37, 38, 42) suggested that notification to employees of hazards and correction thereof should be mandatory. OSHA believes that employee notification of hazards and their correction is desirable and should be encouraged. As is the case with employee participation in the consultative visit, however, OSHA is concerned that making this a mandatory requirement may dissuade some employers from undertaking voluntary actions to improve safety and health conditions and thus frustrate the purpose of the program.

Section 1908.6(f)(1) requires employers to take immediate action to eliminate employee exposure to imminent dangers. If the employer fails to take such action, the consultant will notify employees and the appropriate OSHA enforcement authority of the imminent danger. Although this provision is unchanged from the 1977 version, several comments were received concerning the provision. One commenter (Ex. 3:16) suggested that the consultant be required to document the existence of an imminent danger and the fact that the employer has failed to take appropriate action. Because the OSHA enforcement authorities will make an independent judgment concerning the hazard and determine whether proceedings under section 13 of the Act are appropriate, separate documentation by the consultant is unnecessary. One commenter (Ex. 3:27) suggested that the provision be amended to make clear that the consultant is required to notify the employer of the imminent danger. OSHA believes that no modification is necessary inasmuch as the consultant is obligated to advise employers of all hazards observed during a visit. (See §§ 1908.6(e) (6) and (7)). One commenter (Ex. 3:38) suggested that immediate correction of serious hazards as well as imminent dangers be required. OSHA believes that, as is true in the enforcement context, setting a requirement for immediate correction is not always reasonable. If the hazard is such that it is likely to cause death or serious physical harm before correction can be achieved through the ordinary procedures, then the hazard would be classified as an imminent danger and immediate correction required.

Section 1908.6(f)(2) provides that an employer may be required to submit periodic reports, permit a followup visit or take similar action in order to demonstrate that appropriate action is being taken to eliminate identified serious hazards. Several commenters (Ex. 3:21, 49, 50) objected to the submission of periodic reports, arguing that this is an unnecessary burden on employers. It should be noted that the employer's obligation to correct serious hazards identified during a consultative visit has always been a central feature of the program. Along with this employer obligation, OSHA has the concomitant responsibility to assure that the employer's obligation is fulfilled. Accordingly, submission of periodic progress reports by employers or conducting followup visits by consultants may be necessary for OSHA to fulfill its responsibility. OSHA has not found that employers have considered this provision to be unduly burdensome.

Section 1908.6(f)(3) allows for the extension of the time frame allowed for correction of serious hazards under specific conditions. One commenter (Ex. 3:45) suggested that there must be a maximum limit on extensions permitted. The commenter states that "it is unrealistic to believe that a consultation service that survives on employer cooperation will ever act to cut off their extension requests and refer the matter for enforcement." OSHA believes that an adequate limitation on extensions is established in the provision. An extension may only be granted if the employer: (1) Has in good faith attempted to correct the hazard within the established time frame; (2) has demonstrated that correction of the hazard has not been completed because of factors beyond the employer's control; and (3) demonstrates that all available steps are being taken to protect employees in the interim. If this showing is not made, an extension will not be granted. OSHA has no reason to believe that the various State program authorities will not carry out these responsibilities fully and effectively. Moreover, OSHA will monitor State performance in this as in other areas.

In § 1908.6(f)(5), OSHA proposed to require written confirmation of hazard correction. Several commenters (Ex. 3:1, 25, 41) raised questions concerning the role of followup visits in the program. One commenter (Ex. 3:25) stated that followup visits should be conducted in all instances rather than written confirmation. OSHA recognizes that certain cases may require followup visits rather than acceptance of written confirmation. At the same time, in many cases written confirmation would be sufficient. A rule requiring that followup visits be conducted in all cases may result in an inefficient utilization of program resources. Instead, OSHA has amended the proposal to require written confirmation of hazard correction unless correction is verified by a followup visit. The determination of when followup visits are necessary is left to the discretion of the State program authorities, under guidelines which will be established by Agency directive.

Section 1908.6(g) requires that a written report be prepared for each visit and sent to the employer. One State (Ex. 3:22) asked whether this provision applies to all visits or only to initial visits. OSHA intends that a report be sent to the employer following any initial visit and following any subsequent visit which results in a substantive finding (e.g., a finding of hazards or of a need for improvement in the employer's safety and health program) or recommendation. Visits which follow an initial visit, which involve only the provision of assistance to the employer (e.g., training), and which result in no new findings or recommendations will not require a report to the employer.

Section 1980.7 Relationship to enforcement.

This section was § 1908.6 in the 1977 regulation.

Section 1908.7(a) provides that State consultation programs be operated independently of Federal or State OSHA enforcement programs. Independent operations mean that the consultation program must have a management staff separate from enforcement and that the identity of employers requesting onsite consultation not be given to Federal or State OSHA for use in any enforcement activities, except for failure on the part of the employer to act in good faith to correct serious hazards as provided in § 1908.6(f)(1), and for participants in the exemption program as provided in § 1908.7(b)(4).

One commenter (Ex. 3:14) suggested that § 1908.7(a)(3) be modified to allow an exchange of information under exceptional circumstances where OSHA determined that it would serve the interest of worker safety and health and would not prejudice statutory employer and employee rights. The commenter noted that such language would provide specific criteria to meet objectives of the program. OSHA has considered this request and determined that while there may be some situations in which worker safety and health would be served by an exchange of information, the current provision for communication upon failure to correct serious hazards adequately covers the great majority of cases. OSHA believes, moreover, that the phrase "exceptional circumstances" is open to interpretation which may lead many employers to doubt the independence of State consultation and Federal or State OSHA enforcement programs. OSHA has therefore not added any qualifying language to § 1908.7(a)(3).

One commenter expressed concern that the proposed language in § 1908.7(a)(3) may imply that consultation information could be *provided* to OSHA as long as it is not used (Ex. 3:20). In order to avoid the introduction of any doubt regarding the confidentiality of consultation information, the language of the final regulation is the same as the 1977 regulation which prohibits providing the identity of employers requesting consultation or the file of consultation visits to OSHA for use in any compliance inspection or scheduling activities. Use of this language requires, however, that an exception be added. That is, consultation projects will notify OSHA of employers who qualify for, and request to participate in, the inspection exemption program as provided in § 1908.7(b)(4) so that they may be removed from the OSHA general schedule inspection list.

Section 1908.7(b) (1) and (2) provide that a consultation visit already in progress has priority over an OSHA compliance inspection unless the inspection is an imminent danger, fatality, catastrophe, complaint, or other critical investigation as determined by the Assistant Secretary. The proposed regulation places a time limit on the period during which a consultation visit is considered to be "in progress." No such limits were contained in the 1977 regulation.

For working conditions, hazards, or other situations included in the scope of the request, a consultation visit is considered in progress from the beginning of the opening conference through the end of the closing conference. If this period exceeds 30 days, the Regional Administrator may decide to proceed with an inspection even though the consultation closing conference has not yet been held. For conditions not covered in the scope of the request, a consultative visit is considered in progress only while the consultant is at the workplace. This would permit an inspection of conditions not covered by the consultation visit to proceed as soon as the consultant leaves the workplace, whether or not a closing conference has been held.

One commenter (Ex. 3:14) suggested that § 1908.7(a) (1) and (2) be amended to allow a consultant and a compliance officer to proceed in those portions of the workplace not covered by an employer's consultation request. OSHA believes this would be administratively infeasible because the potential for overlap and conflict is high. This potential results from the responsibility of both consultants and enforcement compliance officers to notify the employer of observed hazards (some of which may be outside the boundaries of the request) and from the employer's flexibility to expand or reduce the scope of the request.

Several commenters pointed out that 30 days may be an insufficient time to obtain laboratory results when a visit involves taking air samples (Ex. 3:3, 4, 20, 36, 41). A variety of alternative time frames were suggested. Another commenter (Ex. 3:14) proposed that a consultation visit should be considered "in progress" 30 days before the scheduled visit and 30 days after the closing conference. This commenter and another (Ex. 3:14) felt it would be counterproductive to conduct an enforcement inspection just before or after a consultative visit. Some suggested leaving the time period open-ended (Ex. 3:20, 50). After carefully considering the alternatives, OSHA has determined that 30 days is a reasonable period of time to require delay of an inspection for a consultation visit which is in progress. This provision does not mean that immediately after the 30-day period a delayed inspection would automatically proceed, but rather that the Regional Administrator would have the opportunity to review the rationale for the extended consultation and to initiate the inspection if it appears to be warranted.

OSHA's intent is that inspections not be delayed indefinitely by consultation visits which are "in progress." Enforcement officials should have the authority to evaluate the situation and determine whether or not it is appropriate to proceed with an inspection. If a comprehensive health visit was made and laboratory sample results have not been received, the Regional Administrator is likely to delay inspection until the results are obtained. In other circumstances, however, the enforcement authority may determine that worker safety and health may best be served by proceeding with an inspection. The final provision, therefore, is the same as the proposal. Guidance for Regional Administrators on the exercise of the discretionary authority will be provided through Agency directive.

One State (Ex. 3:14) suggested adding a sentence to the end of § 1908.7(b)(3) stating, "Consultation services shall not be precluded in those portions of the workplace which were not affected by citations." OSHA believes that adding this provision is unnecessary. The proposed language already allows consultation visits following the issuance of citations, but prior to the citation items becoming final orders.

with regard to conditions not involving the cited items.

As indicated earlier in relation to § 1908.5(b)(3), § 1908.7(b)(3) has been revised to address issues raised by the earlier section.

Another commenter (Ex. 3:5) stated that the restriction in § 1908.7(b)(3) on providing consultative advice regarding cited items prior to their becoming final orders is unreasonable in that it denies the employer an important abatement tool. The language of this section is unchanged from the 1977 regulation and reflects OSHA's concern that potential conflicts between State consultation programs and enforcement agencies regarding contested citations be avoided. In addition, under OSHA enforcement, the employer may already receive constructive advice on possible abatement methods from the compliance officer.

The proposed § 1908.7(b)(4) would allow employers a one-year exemption from general schedule enforcement inspections if such employers have, among other things, received a comprehensive consultative visit, corrected all serious hazards identified during the visit and demonstrated that an effective safety and health program is in effect. Several commenters (Ex. 3:25, 38, 45, 51) have suggested that OSHA lacks statutory authority to grant such an exemption. They argue basically that because "agency inspections are an integral part of the enforcement mechanism Congress established to achieve compliance with the requirements of the Act," the Secretary lacks statutory authority to substitute voluntary employer consultation arrangements for general schedule inspections. In support of this assertion, the commenters offer the floor statements of Congressman Steiger which were made when proposing a substantial appropriation to fund onsite consultative activities.

> Federal enforcement would continue without regard to State consultation activity. An employer seeking consultation would not be immunized from regular inspection activity but the consultation would in no way trigger an enforcement inspection. (120 Cong. Rec. 21297).

OSHA believes that the Act grants the Secretary considerable discretion in determining what methods will best effectuate the purposes of the Act. The Act, in fact, sets forth 13 separate means by which its purposes are to be achieved. (20 U.S.C. 651(b)). An effective enforcement mechanism (including inspections and citations) is merely one of those thirteen methods. Moreover, the Act does not indicate that the enforcement mechanism is considered the primary means of achieving its ultimate purpose. Accordingly, the Act does give the Secretary authority to provide a balanced program including both voluntary compliance activities and general schedule inspections.

Additionally, the exemption program provided for in § 1908.7(b)(4) is entirely consistent with Congressional intent, as expressed in the previous statements of Congressman Steiger. The commenters impropery equate Congressman Steiger's phrase "regular inspection activity" with general schedule inspections. General schedule inspections are but one of a variety of enforcement activities conducted by OSHA. The Agency additionally conducts inspections in response to employee complaints made pursuant to section 8(f) of the Act, imminent dangers, fatalities and catastrophies, and referrals. Although § 1908.7(b)(4) would exempt employers from general schedule inspections, such employers would in no sense be immunized from other enforcement actions. The Act authorizes general schedule inspections, but the scheduling and frequency of such inspections are left to the Secretary's discretion. In OSHA's judgment, conducting general inspections in workplaces where an extensive consultation visit has been carried out within the past year, where the employer has already been required to correct all identified hazards, and where the employer has or is establishing an effective safety and health program would not be useful and indeed would divert enforcement resources from areas of greater need.

In response to comments received on the proposal, several modifications have been made in the specific conditions under which an exemption may be granted. Under the proposal, correction dates and verification of correction would have been required only for serious hazards identified by the consultant. The final rule requires that correction dates be established and correction verified for *all* hazards identified during the consultative visit. In addition, under the proposal, OSHA would have granted an exemption based, in part, on the *commitment* from the employer to correct hazards identified by agreed upon dates and the *commitment* to establish an effective safety and health program. Under the final rule, however, an exemption will be granted only after all identified hazards are verified corrected, certain core elements of an effective safety and health program are in place, and the employer demonstrates to the consultant that the remaining elements of an effective safety and health program will be in place within a reasonable time frame. The core elements and other elements of an effective safety and health program will be established by Agency directive. The employer would post a notice of participation in the process required to qualify for the exemption, between the time of election to participate and the completion of the process. In addition, the employer would have to agree to request a consultative visit if, during the exemption period, major changes in working conditions or work processes occur which may introduce new hazards. The rationale for these modifications to the proposal are discussed below.

Several commenters stated that if OSHA is to grant an exemption based on a consultative visit, the Agency should require that *all* hazards identified by the consultant be corrected (Ex. 2; Ex. 3:15, 28, 39, 41, 51). In the general consultation program, the 1977 regulation and the proposed regulation require that consultants establish correction dates only for hazards classified as "serious." Hazards classified as "other-than-serious" are identified and recommendations for correction are made; however, no correction dates for other-than-serious hazards are established.

As already indicated, the lack of a requirement for setting correction dates on other-than-serious hazards in the general consultation program is based in part on the consideration that these situations would probably not cause death or serious physical harm. (See OSHA Field Operations Manual, Chapter IV.) Moreover, program experience indicates that most employers voluntarily seeking consultative assistance genuinely desire to safeguard employees and therefore correct other-than-serious hazards as soon as possible. In any case, the possibility of an OSHA inspection remains as an incentive for the employer to correct all hazards identified by the consultant.

OSHA is aware, however, that when an employer becomes a participant in the one-year exemption program provided in § 1908.7(b)(4), the incentive to correct "other-than-serious" hazards to avoid the possibility of citation is removed. Inspections would no longer operate as a "check" on the correction of other-than-serious hazards, as they do in the general consultation program. OSHA believes, moreover, that verifying correction of all hazards to qualify for the exemption program will not discourage employer participation. Correction of all identified hazards should routinely occur as part of the

employer's required safety and health program.

The final rule, therefore, requires employers wishing to qualify for the exemption program to correct all identified hazards, including hazards classified as other-then-serious as well as those classified as serious. This requirement applies only to employers seeking an exemption based, in part, on a consultation visit. If no exemption is being sought, agreement on correction dates and verification of correction is required only for serious hazards identified as provided in § 1908.6(e)(7). If correction dates are established for other-than-serious hazards with the intention of qualifying for the exemption program and the employer fails to correct the other-than-serious hazards within the agreed upon time frame (including approved extensions), the employer will not be granted exemption program participation. Failure to correct other-than-serious hazards within the established time frame will not, however, cause referral to Federal or State enforcement authority. Such referral will occur only when an employer has failed to correct a serious hazard as provided in § 1908.6(f)(4). This provision is unchanged from the 1977 regulation.

The proposed language in § 1908.7(b)(4) also provided that an exemption may be based, in part, on the employer's commitment that identified hazards will be corrected within established time frames, and on the employer's demonstration to the consultant that an effective safety and health program is in effect, or will be implemented within an established time frame.

Several commenters expressed concern that an exemption based on consultation should only be granted once identified hazards are corrected and an effective safety and health program is in place, rather than on future intentions. (Ex. 2; 3:14, 15, 37). OSHA's intent in providing for inspection exemption in conjunction with consultation is threefold: To provide recognition to employers who voluntarily work with OSHA-sponsored consultants to correct identified hazards and to establish an effective safety and health program; to employ such recognition as a means of providing an incentive to employers to take such voluntary action; and to make the most efficient use of its limited resources by avoiding a duplication by enforcement staff of work already successfully completed by a consultant. After carefully considering the comments on this issue, OSHA has concluded that these objectives can best be met by requiring that all hazards be corrected and that a good beginning be made in the establishment of an effective safety and health program before the exemption is granted.

This requirement will serve as an incentive to correct identified hazards and implement certain core elements of an effective safety and health program as soon as possible following the consultative visit. Inasmuch as the potential exemption year begins on the date of the consultative visit closing conference, the actual exemption period is shortened by whatever time is required by the employer to correct hazards and implement the required aspects of a safety and health program which are not in place at the time of the visit. At the same time, establishing a plan to complete the implementation of all elements of an effective safety and health program will ensure that reasonable progress is made.

Two commenters (3:26, 41) made specific suggestions on the manner of administering the certificate of exemption and definitions for closing conference date. In order to provide necessary administrative flexibility, such details will be addressed through Agency directive implementing the program. Two commenters (Ex. 3:1, 26) suggested that State consultation projects issue exemption certificates directly rather than going through OSHA. OSHA views the exemption status as a condition authorized by the Federal or State enforcement authority. Certificates of exemption reference the enforcement agency and therefore, OSHA believes, must be issued directly by the Federal or State enforcement agency.

One State (Ex. 3:20) commented that occasionally after a consultative visit, a major change in procedures occurs or new equipment is purchased which substantially contributes to safety or health hazards. The State suggested adding a provision to the exemption program which would require the employer to request a consultation visit if this kind of change occurs in the workplace during the exemption period. After considering this issue, OSHA has determined that such a requirement would provide the Agency with greater assurance that no new hazards have been introduced and that the workplace safety and health program is capable of "handling" the new work situation. Therefore, § 1908.7(b)(4) of the final regulation contains an added provision, not found in the proposal, which stipulates that an exempted employer will request a consultative visit if major changes in working conditions or work processes occur which may introduce new hazards.

Some commenters (Ex. 3:12, 15, 38, 51) were under the impression that an exemption could be based on a limited scope consultative visit. Apparently, the discretion to limit the scope of a visit as provided in § 1908.5(b)(2) created some confusion in this regard. Participation in the exemption program as described in § 1908.7(b)(4) is to be granted only after, among other conditions stated, the consultant has completed a visit covering all conditions and operations in the workplace related to occupational safety and health. In order to avoid any possibility of misinterpretation in this regard, the words "and undergoes" have been added to the first sentence of § 1908.7(b)(4).

One commenter (Ex. 3:26) suggested that exemptions be based on a consultative visit limited to one or more specific areas of a worksite. Only the areas visited would be included in the exemption program. OSHA has concluded that such a program would be administratively infeasible, in that it would create confusion during subsequent enforcement visits as to what working conditions and practices are covered by the exemption program.

One commenter (Ex. 3:52) stated that the language of § 1908.7(b)(4) should be modified from "may" to "shall," pointing out that "may" implies that even if an employer meets all the conditions specified, the exemption could be denied. The use of the term "may" reflects OSHA's current intention to authorize but not to commit to providing an exemption for non-fixed worksites (see below) and to limit the size of establishments which may be exempt. OSHA believes that firms of all size categories which take the initiative to seek Federal or State review of their safety and health conditions and program and voluntarily abide by the resultant recommendations deserve official recognition. The consultation program is intended to provide such recognition and assistance for smaller firms. OSHA's Voluntary Protection Program provides recognition for larger firms, needing less intensive assistance, which request OSHA review and successfully demonstrate the establishment of an effective workplace safety and health program.

Use of the word "may" reflects, moreover, that OSHA's recognition of State consultation project exemption recommendations is dependent on monitoring of the State project as provided in § 1908.9(a). Use of the word "may" in the regulation also provides

OSHA greater flexibility to modify implementation of the program as experience indicates is necessary. It should be noted, however, that under normal circumstances when an employer meets the requirements in this section and requests an exemption, it is OSHA's intention to grant an exemption.

Another commenter (Ex. 3:45) requested that the regulation make clearer that an exemption cannot be based on offsite consultative assistance. The revised provisions of § 1908.7(b)(4) make that clear.

The preamble to the proposal limited the application of the exemption program provided in § 1908.7(b)(4) to fixed worksites only, while noting that OSHA was considering a pilot program covering non-fixed worksites. Comments were requested on the design and application of the exemption program to non-fixed worksites, including operations such as construction, logging and longshoring. Comments were specifically requested on the following issues: (1) How can consultation projects under this Part provide services to ensure worker protection sufficient to merit an exemption from general schedule inspections under the changing working conditions of non-fixed worksites; and (2) how can the services be designed so that the level of resources required to provide assistance in relation to these changing working conditions does not impose an unworkable burden? Several commenters endorsed the proposed plan for a pilot exemption program involving non-fixed worksites (Ex. 3:7, 19, 23, 40, 52). The Associated General Contractors of Massachusetts (Ex. 3:7) noted that the focus of consultation at non-fixed establishments would not be on the changing worksite, but rather on the "permanent attitudes * * * programs * * * policies * * * systems, (and) procedures that make a safety program in any industry." The West Gulf Maritime Association (Ex. 3:19) stated, "Working conditions do not change at non-fixed worksites, only the sites change." Several commenters objected to implementing even a pilot exemption program at non-fixed worksites or expressed serious reservations about the practicality of an exemption program at non-fixed worksites (Ex. 3:1, 2, 35). They argued basically that the changing conditions at the non-fixed worksite prevent application and proper monitoring of the exemption program. OSHA has not made a final decision on this issue. The Agency will examine further whether the unique problems posed by these worksites may be manageable and may warrant a test program to assess feasibility of an exemption program.

In regard to § 1908.7(c) (1) and (2), two commenters (Ex. 2; Ex. 3:3) recommended that the findings of a consultant be made binding on a compliance officer in a subsequent enforcement inspection. OSHA believes this requirement would restrict the Agency from independently carrying out its enforcement responsibilities under the Act, likely lead to confusion and conflict regarding conditions at specific worksites at different points in time, and negate current management and administrative separation between the two programs. The provisions of § 1908.7(c) (1) and (2), therefore, are unchanged from the 1977 regulation.

Section 1908.7(c)(3) permits the Area Director to assess minimum penalties for violations observed, if such violations had previously been identified during a consultative visit and the employer is in good faith complying with the recommendations of the consultant. One commenter (Ex. 3:25) asserted that the "Act offers no authority for a reduction in penalties through participating in the consultative program." OSHA believes to the contrary, that nothing in the language of the Act prohibits OSHA from proposing a reduced penalty based on an employer's participation in consultation activity. Indeed, the Act specifically requires that an employer's good faith be considered in determining appropriate penalties. [29 U.S.C. 661(j)]. OSHA believes that an employer's voluntary participation in the consultative process and willingness to comply with the correction assistance recommended by a consultant is evidence of considerable employer good faith and would ordinarily justify the assessment of minimum penalties.

Section 1908.8 Consultant specifications.

This section was numbered § 1908.7 in the 1977 regulation.

It establishes criteria for selection of consultants to implement a Cooperative Agreement under this Part. It sets forth criteria for determining the number and mix of consultant positions which will be funded under an Agreement, fixes qualification requirements for the consultants, and provides for consultant training requirements to be developed by the Assistant Secretary.

The revisions proposed in this section involve the inclusion of "industrial mix" among the criteria to be considered in determining the number of consultants under an Agreement; elimination of a section regarding the ratio of consultants to compliance officers, the effect of which expired in August, 1978; authorization of trainee positions under a Cooperative Agreement; and removal of a requirement for a specific plan from each State on upgrading the qualifications of State consultants. In addition, the preamble to the proposal to revise the regulation requested comment on two alternative approaches to encourage the continued broadening of consultant skills. One approach was the development of model consultant qualification requirements which would provide guidance to the States in revising their own requirements; the other was a certification system for OSHA-funded consultants, operated by OSHA in conjunction with Agreement States.

One commenter (Ex. 3:38) states that this section would allow the Assistant Secretary to shift enforcement positions to consultative staff. However, since only State employees can be consultants under this Part, the Assistant Secretary cannot shift Federal enforcement positions to consultation.

In the course of reviewing comments on this proposal and preparing for its implementation, OSHA has recognized that the factors on which consultant performance must be measured did not clearly include elements related to the training and education which was proposed for authorization under this part. Since, on the basis of the comments received, OSHA will authorize training and education by consultants, the evaluation factors in § 1908.9(b)(1)(iii) have been modified to clarify the elements of the ability to communicate on which consultants will be evaluated. These elements include communicating to employers not only consultant findings but also recommendations and the reasons for them, and communicating to employers and employees information, skills and techniques necessary to safe and healthful employment and a place of employment.

A number of commenters (Ex. 3:2, 4, 5, 11, 21, 27, 33, 35, 53) expressed support for the provision of model consultant qualification requirements as guidance to the States in improving the skills of their consultants. On the other hand, one commenter (Ex. 3:51) argued that OSHA is obligated to establish mandatory qualification requirements. Several other commenters (Ex. 3:18, 46, 53, 54) proposed the adoption as consultant qualification requirements of the criteria for certification issued by the Board of Certified Safety Professionals and the American Board of Industrial Hygiene, or other specific

criteria. In considering these comments, OSHA has taken account of the fact that the present and proposed regulations already include mandatory skill requirements. However, OSHA has concluded that the identification of model education and experience criteria will provide useful guidance and encouragement to the States in the improvement of consultant skills. OSHA will work with State officials and other interested parties to identify such criteria.

Two commenters (Ex. 3:20, 27) endorsed the development of a consultant certification system by OSHA. One commenter (Ex. 3:20) argued that such a system would provide "a positive framework for encouraging maximum training for consultants." At the same time, several commenters opposed the development of a system; one (Ex. 3:5) on the basis that it is difficult to judge communication skills by standardized testing, and others (Ex. 3:11, 46, 53, 54) on the basis that certification systems for occupational safety and health professionals already exist which consultants should be encouraged to use. In light of these comments, OSHA has decided not to proceed with the development of a certification system for consultants at this time but will examine the issue further.

Section 1908.9 Monitoring and evaluation.

This section was number § 1908.8 in the 1977 regulation.

The proposal included several revisions to the 1977 monitoring and evaluation provisions. The Assistant Secretary is made responsible for monitoring and evaluation in order to provide for greater uniformity and for use of a monitoring system which relies on a nationwide data system. OSHA may suspend recognition of State consultative visits as a basis for inspection exemption as permitted under § 1908.7(b)(4), if State procedures and policies raise doubts regarding assurances that hazards are corrected and that effective safety and health programs are in place. Section 1908.8(b) of the 1977 regulation on State performance is deleted since its provisions will be handled by Agency directive which will specify the "Federal plan" for monitoring and evaluation referred to in § 1908.9(a). A consultant evaluation factor concerning safety and health program expertise is added in § 1908.9(b)(1)(iii) to conform with the new emphasis on providing assistance in this area. The proposal also revises the 1977 requirement for semiannual accompanied visits to allow for variation according to the needs of individual consultants.

One State (Ex. 3:1) asked that the methods OSHA would use to monitor State exemption program procedures be defined. New Federal monitoring procedures have been developed and will be specified by Agency directive. One commenter (Ex. 3:45) suggested that a mechanism be developed which would enable public input as part of OSHA's monitoring of State consultation programs. OSHA welcomes information from the public regarding the operation of State consultation programs at any time. Any information which would be of assistance to OSHA in carrying out its monitoring responsibilities will receive full attention and should be sent to the nearest OSHA Regional Office. A list of OSHA Regional Offices is provided in Attachment II at the conclusion of this section.

One commenter (Ex. 3:38) stated that § 1908.9(b)(iv) should require a specific number of accompanied visits by State consultation management with their consultants. OSHA has found such a requirement to be overly restrictive since it does not allow a project to focus its management resources where they are most needed. It should be noted that while the revised regulation deletes the *requirement* for semiannual accompanied visits of each consultant in every State, these visits must still be performed in accordance with a plan established in the Cooperative Agreement. This plan may, in some cases, call for accompanied visits more frequently than once every six months; in other cases it may require an accompanied visit on only an annual basis, depending on the State's and OSHA's judgment with regard to the need for such supervisory assistance and evaluation.

III. Regulatory Impact and Regulatory Flexibility Act Analysis

This amendment of the existing regulations governing Onsite Consultation Agreements is not a major action as defined by Executive Order No. 12291 as it will not have an annual effect on the economy of $100 million or more, cause major increases in costs or prices, or have any other significant adverse effects. This is based on the fact that the proposed revisions to Part 1908 primarily concern the relationship between OSHA and State authorities administering consultation programs, and that participation in the program is voluntary both with respect to States wishing to administer the program and employers wishing to make use of the consultative services.

The proposed amendments will, in fact, produce numerous beneficial results. The amendments are intended in large part to stimulate employer utilization of consultation services as well as to broaden the scope of services offered. In this way they are intended to encourage voluntary efforts of employers in improving the working conditions of employees. Since priority under the consultation program is accorded to smaller businesses in high hazard industries, the program offers an economic benefit to smaller employers, and thereby to their employees, by providing advice and assistance which they might otherwise be unable to afford. Although small business employers often work directly with their employees and thereby are in a position to recognize obvious hazards in their workplaces, they often have greater difficulty recognizing less obvious and more complex hazards and discovering effective remedies for correction of such hazards.

Many small business entrepreneurs find OSHA regulations complex and difficult to comprehend. Larger employers, on the other hand, are generally better able to afford needed assistance in comprehending and developing means of complying with OSHA regulations. Since the consultation program is primarily aimed at high hazard small businesses, it will tend to offset any advantage that larger businesses may enjoy through employment of larger staffs or access to specialized consultants.

Furthermore, since the consultation program offers assistance to employers in relation to hazards which are difficult to address by regulation, the program offers an additional benefit to employers and their employees.

OSHA believes that the amendments proposed herein, by broadening the scope of the consultation services offered, will substantially increase the impact of the program on both regulated and unregulated hazards, and will in consequence significantly strengthen the value and appeal of this nonregulatory approach to the safety and health of employees.

For the same reasons, OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) that this rulemaking will not have a significant adverse economic impact on a substantial number of small entities.

Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S.

Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

List of Subjects in 29 CFR Part 1908

Intergovernmental relations, Occupational safety and health, Technical assistance.

(Secs. 7(c)(1), 21(c), 84 Stat. 1598, 1612) 29 U.S.C. 656(c)(1), 670(c); 29 CFR Part 1908)

Signed at Washington, D.C., this 8th day of June 1984.

Patrick R. Tyson,

Deputy Assistant Secretary of Labor.

Part 1908 is revised as follows:

PART 1908—CONSULTATION AGREEMENTS

Sec.

1908.1 Purpose and scope.
1908.2 Definitions.
1908.3 Eligibility and funding.
1908.4 Offsite consultation.
1908.5 Requests and scheduling for onsite consultation.
1908.6 Conduct of a visit.
1908.7 Relationship to enforcement.
1908.8 Consultant specifications.
1908.9 Monitoring and evaluation.
1908.10 Cooperative Agreements.
1908.11 Exclusions.

Authority: Secs. 7(c)(1), 21 (c), 84 Stat. 1598, 1612 (29 U.S.C. 656(c)(1), 670(c)).

§ 1908.1 Purpose and scope.

This part contains requirements for Cooperative Agreements between States and the Federal Occupational Safety and Health Administration under sections 7(c)(1) and 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) under which OSHA will utilize State personnel to provide consultative services to employers. The service will be made available at no cost to employers to assist them in establishing effective occupational safety and health programs for providing employment and places of employment which are safe and healthful. The overall goal is to prevent the occurrence of injuries and illnesses which may result from exposure to hazardous workplace conditions and from hazardous work practices. The principal assistance will be provided at the employer's worksite, but offsite assistance may also be provided by telephone and correspondence, and at locations other than the employer's worksite, such as the consultation project offices. At the worksite, the consultant will, within the scope of the employer's request, evaluate the employer's program for providing employment and a place of employment which is safe and healthful, as well as identify specific hazards in the workplace, and will provide appropriate advice and assistance in establishing or improving the employer's safety and health program and in correcting any hazardous conditions identified.

Assistance may include education and training of the employer, the employer's supervisors, and the employer's other employees as needed to make the employer self-sufficient in ensuring safe and healthful work and working conditions. Although onsite consultation will be conducted independent of any OSHA enforcement activity, and the discovery of hazards will not mandate citation or penalties, the employer remains under a statutory obligation to protect employees, and in certain instances will be required to take necessary protective action. Employer correction of hazards identified by the consultant during a comprehensive workplace survey, and implementation of certain core elements of an effective safety and health program and commitment to the completion of others may serve as the basis for employer exemption from certain OSHA enforcement activities. States entering into Agreements under this part will receive ninety percent Federal reimbursement for allowable costs, and will provide consultation to employers requesting the service, subject to scheduling priorities, available resources, and any other limitations established by the Assistant Secretary as part of the Cooperative Agreement.

In States operating approved Plans under section 18 of the Act, the provisions of this Part which establish policies governing enforcement activities do not apply to safety and health issues covered by the State Plan. States operating such Plans shall, in accord with section 18(b), establish policies which are at least as effective as Federal policies.

§ 1908.2 Definitions.

As used in this part:

"Act" means the Federal Occupational Safety and Health Act of 1970.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health.

"Compliance Officer" means a Federal compliance safety and health officer.

"Consultant" means an employee under a Cooperative Agreement pursuant to this Part who provides consultation.

"Consultation" means all activities related to the provision of consultative assistance under this Part, including offsite consultation and onsite consultation.

"Cooperative Agreement" means the legal instrument which enables the States to collaborate with OSHA to provide consultation in accord with this Part.

"Designee" means the State official designated by the Governor to be responsible for entering into a Cooperative Agreement in accord with this part.

"Education" means planned and organized activity by a consultant to impart information to employers and employees to enable them to establish and maintain employment and a place of employment which is safe and healthful.

"Employee" means an employee of an employer who is employed in a business of that employer which affects commerce.

"Employer" means a person engaged in a business who has employees, but does not include the United States, or any State or political subdivision of a State.

"Hazard correction" means the elimination or control of a workplace hazard in accord with the requirements of applicable Federal or State statutes, regulations or standards.

"Imminent danger" means any conditions or practices in a place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the procedures set forth in § 1908.6(e)(4), (f) (2) and (3), and (g).

"Offsite consultation" means the provision of consultative assistance on occupational safety and health issues away from an employer's worksite by such means as telephone and correspondence, and at locations other than the employer's worksite, such as the consultation project offices. It may, under limited conditions specified by the Assistant Secretary, include training and education.

"Onsite consultation" means the provision of consultative assistance on an employer's occupational safety and health program and on specific workplace hazards through a visit to an employer's worksite. It includes a written report to the employer on the findings and recommendations resulting from the visit. It may include training and education needed to address hazards, or potential hazards, at the worksite.

"OSHA" means the Federal Occupational Safety and Health Administration or the State agency responsible under a Plan approved under section 18 of the Act for the

enforcement of occupational safety and health standards in that State.

"Other-than-serious hazard" means any condition or practice which would be classified as an other-than-serious violation of applicable Federal or State statutes, regulations or standards, based on criteria contained in the current OSHA Field Operations Manual or an approved State Plan counterpart.

"RA" means the Regional Administrator for Occupational Safety and Health of the Region in which the State concerned is located.

"Serious hazard" means any condition or practice which would be classified as a serious violation of applicable Federal or State statutes, regulations or standards, based on criteria contained in the current OSHA Field Operations Manual or an approved State Plan counterpart, except that the element of employer knowledge shall not be considered.

"State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

"Training" means the planned and organized activity of a consultant to impart skills, techniques and methodologies to employers and their employees to assist them in establishing and maintaining employment and a place of employment which is safe and healthful.

§ 1908.3 Eligibility and funding.

(a) *State eligibility.* Any State may enter into an Agreement with the Assistant Secretary to perform consultation for private sector employers; except that a State having a Plan approved under section 18 of the Act is eligible to participate in the program only if that Plan does not include provisions for federally funded consultation to private sector employers.

(b) *Reimbursement.* (1) The Assistant Secretary will reimburse 90 percent of the costs incurred under a Cooperative Agreement entered into pursuant to this part. Approved training of State staff operating under a Cooperative Agreement and specified out-of-State travel by such staff will be fully reimbursed.

(2) Reimbursement to States under this part is limited to costs incurred in providing consultation to private sector employers only.

(i) In all States with Plans approved under section 18 of the Act, consultation provided to State and local governments, as well as the remaining range of voluntary compliance activities referred to in 29 CFR 1902.4(c)(2)(xiii), will not be affected by the provisions of this Part. Federal reimbursement for these activities will be made in accordance with the provisions of section 23(g) of the Act.

(ii) In States without Plans approved under section 18, no Federal reimbursement for consultation provided to State and local governments will be allowed, although this activity may be conducted independently by a State with 100 percent State funding.

§ 1908.4 Offsite consultation.

The State may provide consultative services to employers on occupational safety and health issues by telephone and correspondence, and at locations other than the employer's worksite, such as the consultation project offices. It may, under limited conditions specified by the Assistant Secretary, include training and education.

§ 1980.5 Requests and scheduling for onsite consultation.

(a) *Encouraging requests.*—(1) *State responsibility.* The State shall be responsible for encouraging employers to request consultative assistance and shall publicize the availability of its consultative service and the scope of the service which will be provided. The Assistant Secretary will also engage in activities to publicize and promote the program.

(2) *Promotional methods.* To inform employers of the availability of its consultative service and to encourage requests, the State may use methods such as the following:

(i) Paid newspaper advertisements;

(ii) Newspaper, magazine, and trade publication articles;

(iii) Special direct mailings or telephone solicitations to establishments based on workers' compensation data or other appropriate listings;

(iv) In-person visits to workplaces to explain the availability of the service, and participation at employer conferences and seminars;

(v) Solicitation of support from State business and labor organizations and leaders, and public officials;

(vi) Solicitation of publicizing by employers and employees who have received consultative services;

(vii) Preparation and dissemination of publications, descriptive materials, and other appropriate items on consultative services;

(viii) Free public service announcements on radio and television.

(3) *Scope of service.* In its publicity for the program, in response to any inquiry, and before an employer's request for a consultative visit may be accepted, the State shall clearly explain that the service is provided at no cost to an employer through Federal and State funds for the purpose of assisting the employer in establishing and maintaining effective programs for providing safe and healthful places of employment for employees, in accord with the requirements of the applicable State or Federal laws and regulations. The State shall explain that while utilizing this service, an employer remains under a statutory obligation to provide safe and healthful work and working conditions for employees. In addition, while the identification of hazards by a consultant will not mandate the issuance of citations or penalties, the employer is required to take necessary action to eliminate employee exposure to a hazard which in the judgment of the consultant represents an imminent danger to employees, and to take action to correct within a reasonable time a hazard which would be classified as a serious hazard. The State shall emphasize, however, that the discovery of such a hazard will not initiate any enforcement activity, and that referral will not take place, unless the employer fails to eliminate the identified hazard within the established time frame. The State shall also explain that when an employer requests and receives a consultative visit covering all conditions and operations in the place of employment related to occupational safety and health and meets the other conditions set forth in § 1908.7(b)(4), the employer may, upon request, be exempt from a general schedule OSHA enforcement inspection for a period of one year from the end of the closing conference of the consultative visit.

(b) *Employer requests.* (1) An onsite consultative visit will be provided only at the request of the employer, and shall not result from the enforcement of any right of entry under State law.

(2) When making a request, an employer in a small, high hazard establishment shall generally be encouraged to include within the scope of such request all working conditions at the worksite and the employer's entire safety and health program. However, a more limited scope may be encouraged in larger and less hazardous establishments. Moreover, any employer may specify a more limited scope for the visit by indicating working conditions, hazards, or situations on which onsite consultation will be focused. When such limited requests are at issue, the consultant will limit review and provide assistance only with respect to those working conditions, hazards, or situations specified; except that if the consultant observes, in the course of the

onsite visit, hazards which are outside the scope of the request, the consultant must treat such hazards as though they were within the scope of the request.

(3) Employers may request onsite consultation to assist in the abatement of hazards cited during an OSHA enforcement inspection. However, an onsite consultative visit may not take place after an inspection until the conditions set forth in § 1908.7(b)(3) have been met.

(c) *Scheduling priority.* Priority shall be assigned to requests from businesses with the most hazardous operations, with primary attention to smaller businesses. Preference shall be given to the smaller businesses which are in higher hazard industries or which have the most hazardous conditions at issue in the request.

§ 1908.6 Conduct of a visit.

(a) *Preparation.* (1) An onsite consultative visit shall be made only after appropriate preparation by the consultant. Prior to the visit, the consultant shall become familiar with as many factors concerning the establishment's operation as possible. The consultant shall review all applicable codes and standards. In addition, the consultant shall assure that all necessary technical and personal protective equipment is available and functioning properly.

(2) At the time of any promotional visit conducted by a consultant to encourage the use of the onsite consultative services, a consultation may be performed without delay if the employer so requests and the consultant is otherwise prepared to conduct such consultation.

(b) *Structured format.* An initial onsite consultative visit will consist of an opening conference, an examination of those aspects of the employer's safety and health program which relate to the scope of the visit, a walk through the workplace, and a closing conference. An initial visit may include training and education for employers and employees, if the need for such training and education is revealed by the walk through the workplace and the examination of the employer's safety and health program and if the employer so requests. The visit shall be followed by a written report to the employer. Additional visits may be conducted as the employer requests to provide needed education and training, assistance with the employer's safety and health program, or technical assistance in the correction of hazards, or as necessary to verify the correction of serious hazards identified during previous visits. A compliance inspection may, in some cases, be the basis for a visit limited to education and training, assistance with the employer's safety and health program, or technical assistance in the correction of hazards.

(c) *Employee participation.* (1) The consultant shall retain the right to confer with individual employees during the course of the visit in order to identify and judge the nature and extent of particular hazards within the scope of the employer's request, and to evaluate the employer's safety and health program. The consultant shall explain the necessity for this contact to the employer during the opening conference, and an employer must agree to permit such contact before a visit can proceed.

(2) In addition, employees, their representatives, and members of a workplace joint safety and health committee may participate in the onsite consultative visit to the extent desired by the employer. In the opening conference, the consultant shall encourage the employer to allow employee participation to the fullest extent practicable.

(d) *Opening conference.* In addition to the requirements of § 1908.6(c), the consultant shall, in the opening conference, explain to the employer the relationship between onsite consultation and OSHA enforcement activity and shall explain the obligation to protect employees in the event that certain hazardous conditions are identified.

(e) *Onsite activity.* (1) Activity during the onsite consultative visit will focus primarily on those areas, conditions, or hazards regarding which the employer has requested assistance. An employer may expand or reduce the scope of the request at any time during the onsite visit. The consultant shall, if prepared and if scheduling priorities permit, expand the scope of the visit at the time of the request. If the employer's request for expansion necessitates further preparation by the consultant or the expertise of another consultant, or if other employer requests may merit higher priority, the consultant shall refer the request to the consultation manager for scheduling. In all cases in which the scope of the visit is reduced, the consultant remains obligated to work with the employer to ensure correction of those serious hazards which are identified during the visit.

(2) The consultant shall advise the employer as to the employer's obligations and responsibilities under applicable Federal or State law and implementing regulations.

(3) Within the scope of the employer's request, consultants shall review the employer's safety and health program and provide advice on modifications or additions to make such programs more effective.

(4) Consultants shall identify and provide advice on correction of those hazards included in the employer's request and any other safety or health hazards observed in the workplace during the course of the onsite consultative visit. This advice shall include basic information indicating the possibility of a solution and describing the general form of the solution. The consultant shall conduct sampling and testing, with subsequent analyses, as may be necessary to confirm the existence of safety and health hazards.

(5) Advice and technical assistance on the correction of identified safety and health hazards may be provided to employers during and after the onsite consultative visit. Descriptive materials may be provided on approaches, means, techniques, and other appropriate items commonly utilized for the elimination or control of such hazards. The consultants shall also advise the employers of additional sources of assistance, if known.

(6) When a hazard is identified in the workplace, the consultant shall indicate to the employer the consultant's best judgment as to whether the situation would be classified as a "serious" or "other-than-serious" hazard.

(7) At the time the consultant determines that an identified serious hazard exists, the consultant shall assist the employer to develop a specific plan to correct the hazard, affording the employer a reasonable period of time to complete the necessary action. The State shall provide, upon request from the employer within 15 working days of receipt of the consultant's report, an opportunity for an expeditious informal discussion with the consultation manager regarding the period of time established for the correction of a hazard or any other substantive finding of the consultant.

(8) The employer shall be encouraged to advise affected employees of the hazards when they are identified, and to notify them of their correction.

(f) *Employer obligations.* (1) An employer must take immediate action to eliminate employee exposure to a hazard which, in the judgment of the consultant, presents an imminent danger to employees. If the employer fails to take the necessary action, the consultant must immediately notify the affected employees and the appropriate OSHA enforcement authority and provide the relevant information.

(2) An employer must also take the necessary action in accordance with the plan developed under § 1908.6(e)(7) to

eliminate or control employee exposure to any identified serious hazard. In order to demonstrate that the necessary action is being taken, an employer may be required to submit periodic reports, permit a followup visit, or take similar action.

(3) An employer may request, and the consultation manager may grant, an extension of the time frame established for correction of a serious hazard when the employer demonstrates having made a good faith effort to correct the hazard within the established time frame; shows evidence that correction has not been completed because of factors beyond the employer's reasonable control; and shows evidence that the employer is taking all available interim steps to safeguard the employees against the hazard during the correction period.

(4) If the employer fails to take the action necessary to correct a serious hazard within the established time frame or any extensions thereof, the consultation manager shall immediately notify the appropriate OSHA enforcement authority and provide the relevant information. The OSHA enforcement authority will make a determination, based on a review of the facts, whether enforcement activity is warranted.

(5) After correction of all serious hazards, the employer shall notify the consultation manager by written confirmation of the correction of the hazards, unless correction of the serious hazards is verified by direct observation by the consultant.

(g) *Written report.* A written report shall be prepared for each visit which results in substantive findings or recommendations, and shall be sent to the employer. The timing and format of the report shall be approved by the Assistant Secretary. The report shall restate the employer's request and describe the working conditions examined by the consultant; shall, within the scope of the request, evaluate the employer's program for ensuring safe and healthful employment and provide recommendations for making such programs effective; shall identify specific hazards and describe their nature, including reference to applicable standards or codes; shall identify the seriousness of the hazards; and, to the extent possible, shall include suggested means or approaches to their correction. Additional sources of assistance shall also be indicated, if known, including the possible need to procure specific engineering consultation, medical advice and assistance, and other appropriate items. The report shall also include reference to the completion dates for the situations described in § 1908.6(f) (1) and (2).

(h) *Confidentiality.* The consultant shall preserve the confidentiality of information obtained as the result of a consultative visit which contains or might reveal a trade secret of the employer.

§ 1908.7 Relationship to enforcement.

(a) *Independence.* (1) Consultative activity by a State shall be conducted independently of any OSHA enforcement activity.

(2) The consultative activity shall have its own identifiable managerial staff. In States with Plans approved under section 18 of the Act, this staff will be separate from the managing of compliance inspections and scheduling.

(3) The identity of employers requesting onsite consultation, as well as the file of the consultant's visit, shall not be forwarded or provided to OSHA for use in any compliance inspection or scheduling activity, except as provided for in § 1908.6(f) (1) and (4) and § 1908.7(b)(4).

(b) *Effect upon scheduling.* (1) An onsite consultative visit already in progress will have priority over OSHA compliance inspections except as provided in § 1908.7(b)(2). The consultant and the employer shall notify the compliance officer of the visit in progress and request delay of the inspection until after the visit is completed. An onsite consultative visit shall be considered in progress in relation to the working conditions, hazards, or situations covered by the request from the beginning of the opening conference through the end of the closing conference; except that for periods which exceed 30 days from the initiation of the opening conference, the RA may determine that the inspection will proceed. For working conditions, hazards, or situations not covered by the request, the onsite consultative visit shall be considered in progress only while the consultant is at the place of employment.

(2) The consultant shall terminate an onsite consultative visit already in progress where one of the following kinds of OSHA compliance inspections is about to take place:

(i) Imminent danger investigations;

(ii) Fatality/catastrophe investigations;

(iii) Complaint investigations;

(iv) Other critical inspections as determined by the Assistant Secretary.

(3) An onsite consultation visit may not take place while an OSHA enforcement inspection is in progress at the establishment. An enforcement inspection shall be deemed "in progress" from the time a compliance officer initially seeks entry to the workplace to the end of the closing conference. An enforcement inspection will also be considered "in progress" in cases where entry is refused, until such times as: the inspection is conducted; the RA determines that a warrant to require entry to the workplace will not be sought; or the RA determines that allowing a consultative visit to proceed is in the best interest of employee safety and health. An onsite consultative visit shall not take place subsequent to an OSHA enforcement inspection until a determination has been made that no citation will be issued, or if a citation is issued, onsite consultation shall only take place with regard to those citation items which have become final orders.

(4) When an employer requests and undergoes a consultative visit at an establishment covering all conditions and operations in the place of employment related to occupational safety and health; corrects all hazards that have been identified during the course of the consultative visit within established time frames, and posts notice of their correction when such is completed; demonstrates to the consultant that certain core elements of an effective safety and health program are in effect, and that the remaining elements of an effective safety and health program will be implemented within a reasonable, established time frame; and agrees to request a consultative visit if major changes in working conditions or work processes occur which may introduce new hazards, the employer may, upon request, be exempt from a general schedule OSHA enforcement inspection for a period of one year from the end of the closing conference of the consultative visit. Between the time of election to participate in the process required to qualify for the exemption and the completion of the process, the employer must post a notice of such participation.

(5) When an employer requests consideration for an inspection exemption under § 1908.7(b)(4), the provisions of § 1908.6 (e)(7), (f)(3) and (f)(5) shall apply to other-than-serious hazards as well as serious hazards.

(c) *Effect upon enforcement.* (1) The advice of the consultant and the consultant's written report will not be binding on a compliance officer in a subsequent enforcement inspection. In a subsequent inspection, a compliance officer is not precluded from finding hazardous conditions, or violations of standards, rules or regulations, for

which citations would be issued and penalties proposed.

(2) The hazard identification and correction assistance given by a State consultant, or the failure of a consultant to point out a specific hazard, or other possible errors or omissions by the consultant, shall not be binding upon a compliance officer and need not affect the regular conduct of a compliance inspection or preclude the finding of alleged violations and the issuance of citations, or constitute a defense to any enforcement action.

(3) In the event of a subsequent inspection, the employer is not required to inform the compliance officer of the prior visit. The employer is not required to provide a copy of the State consultant's written report to the compliance officer, except to the extent that disclosure of information contained in such a written report is required by 29 CFR 1910.20.

(4) If, however, the employer chooses to provide a copy of the consultant's report to a compliance officer, it may be used as a factor in determining the extent to which an inspection is required and as a factor in determining proposed penalties. When, during the course of a compliance inspection, an OSHA compliance officer identifies the existence of serious hazards previously identified as a result of a consultative visit, the Area Director shall have authority to assess minimum penalties if the employer is in good faith complying with the recommendations of a consultant after such consultative visit.

§ 1908.8 Consultant specifications.

(a) *Number.* (1) The number of consultant positions which will be funded under a Cooperative Agreement pursuant to this Part for the purpose of providing consultation to private sector employers will be determined by the Assistant Secretary on the basis of program performance, demand for services, industrial mix, resources available, and the recommendation of the RA, and may be adjusted periodically.

(2) States shall make efforts to utilize consultants with the safety and health expertise necessary to properly meet the demand for consultation by the various industries within a State. The RA will determine and negotiate a reasonable balance with the State on an annual basis.

(b) *Qualifications.* (1) All consultants utilized under Cooperative Agreements pursuant to this part shall be employees of the State, qualified under State requirements for employment in occupational safety and health. They must demonstrate adequate education and experience to satisfy the RA before assignment to work under an Agreement, and annually thereafter, that they meet the requirements set out in § 1908.8(b)(2), and that they have the ability to perform satisfactorily pursuant to the Cooperative Agreement. Persons who have the potential but do not yet demonstrate adequate education and experience to satisfy the RA that they have the ability to perform consultant duties independently may, with RA approval, be trained under a Cooperative Agreement to perform consultant duties. Such persons may not, however, perform consultant duties independently until it has been determined by the RA that they meet the requirements and have the ability indicated. All consultants shall be selected in accordance with the provisions of Executive Order 11246 of September 24, 1965, as amended, entitled "Equal Employment Opportunity."

(2) Minimum requirements of consultants shall include the following:

(i) The ability to identify hazards; the ability to assess employee exposure and risk; knowledge of OSHA standards; knowledge of hazard correction techniques and practices; knowledge of workplace safety and health program requirements; and the ability to effectively communicate, both orally and in writing.

(ii) Consultants shall meet any additional degree and/or experience requirements as may be established by the Assistant Secretary.

(c) *Training.* As necessary, the Assistant Secretary will specify immediate and continuing training requirements for consultants. Expenses for training which is required by the Assistant Secretary or approved by the RA will be reimbursed in full.

§ 1908.9 Monitoring and evaluation.

(a) *Assistant Secretary responsibility.* A State's performance under a Cooperative Agreement will be regularly monitored and evaluated by the Assistant Secretary as part of a systematic Federal plan for this activity. The Assistant Secretary may require changes as a result of these evaluations to foster conformance with consultation policy. If the State policies or practices which require change are such that the State's assurance of correction of serious hazards and of the effectiveness of employers' safety and health programs is in doubt, the Assistant Secretary may, pending the completion of the changes, suspend recognition of a State's consultative visits as a basis for exemption from compliance inspection as permitted under § 1908.7(b)(4).

(b) *Consultant performance*—(1) *State activity.* The State shall establish and maintain an organized consultant performance monitoring system under the Cooperative Agreement:

(i) Operation of the system shall conform to all requirements established by the Assistant Secretary. The system shall be approved by the Assistant Secretary before it is placed in operation.

(ii) A performance evaluation of each State consultant performing consultation services for employers shall be prepared annually. All aspects of a consultant's performance shall be reviewed at that time. Recommendation for remedial action shall be made and acted upon. The annual evaluation report shall be a confidential State personnel record and may be timed to coincide with regular personnel evaluations.

(iii) Performance of individual consultants shall be measured in terms of their ability to identify hazards in the workplaces which they have visited; their ability to determine employee exposure and risk, and in particular their performance under § 1908.6 (e) and (f); their knowledge and application of applicable Federal or State statutes, regulations or standards; their knowledge and application of appropriate hazard correction techniques and approaches; their knowledge and application of the requirements of an effective workplace safety and health program; and their ability to communicate effectively their findings and recommendations and the reasons for them to employers, and relevant information, skills and techniques to employers and employees.

(iv) Accompanied visits to observe consultants during onsite consultative visits shall be conducted periodically in accord with a plan established in each annual Cooperative Agreement. The State may also conduct unaccompanied visits to workplaces which received onsite consultation, for the purpose of evaluating consultants. A written report of each visit shall be provided to the consultant. These visits shall be conducted only with the expressed permission of the employer who requests the onsite consultative visit.

(v) The State will report quarterly to the RA on system operations, including copies of accompanied visit reports completed that quarter.

(2) *Federal activity.* State consultant performance monitoring as set out in § 1908.9(b)(1) shall not preclude Federal monitoring activity by methods determined to be appropriate by the Assistant Secretary.

(c) *State reporting.* For Federal monitoring and evaluation purposes, the State shall compile and submit such factual and statistical data in the format and at the frequency required by the Assistant Secretary. The State shall prepare and submit to the RA any narrative reports, including copies of written reports to employers as may be required by the Assistant Secretary.

§ 1908.10 Cooperative Agreements.

(a) *Who may make Agreements.* The Assistant Secretary may make a Cooperative Agreement under this part with the Governor of a State or with any State agency designated for that purpose by the Governor.

(b) *Negotiations.* (1) Procedures for negotiations may be obtained through the RA who will negotiate for the Assistant Secretary and make final recommendations on each Agreement to the Assistant Secretary.

(2) States with Plans approved under section 18 of the Act may initiate negotiations in anticipation of the withdrawal from the Plan of Federally funded onsite consultation services to private sector employers.

(3) Renegotiation of existing Agreements funded under this Part shall be initiated within 30 days of the effective date of these revisions.

(c) *Contents of Cooperative Agreement.* (1) Any Agreement and subsequent modifications shall be in writing and signed by both parties.

(2) Each Agreement shall provide that the State will conform its operations under the Agreement to:

(i) The requirements contained in this Part 1908;

(ii) All related formal directives subsequently issued by the Assistant Secretary implementing this regulation.

(3) Each Agreement shall contain such other explicit written commitments in conformance with the provisions of this part as may be required by the Assistant Secretary. Each Agreement shall also include a budget of the State's anticipated expenditures under the Agreement, in the detail and format required by the Assistant Secretary.

(d) *Location of sample Cooperative Agreement.* A sample Agreement is available for inspection at all Regional Offices of the Occupational Safety and Health Administration of the U.S. Department of Labor.

(e) *Action upon requests.* The State will be notified within a reasonable period of time of any decision concerning its request for a Cooperative Agreement. If a request is denied, the State will be informed in writing of the reasons supporting the decision. If a Cooperative Agreement is negotiated, the initial finding will specify the period for the Agreement. Additional funds may be added at a later time provided the activity is satisfactorily carried out and appropriations are available. The State may also be required to amend the Agreement for continued support.

(f) *Termination.* Either party may terminate a Cooperative Agreement under this part upon 30 days' written notice to the other party.

§ 1908.11 Conclusions.

A Cooperative Agreement under this part will not restrict in any manner the authority and responsibility of the Assistant Secretary under sections 8, 9, 10, 13, and 17 of the Act, or any corresponding State authority.

Note.—Attachments I and II will not appear in the Code of Federal Regulations.

Attachment I

Exhibit 3.—Commenters on Proposal

3:1 Delaney Kinchen, Safety Administrator, Arkansas Department of Labor, Little Rock, AR
3:2 John F. Kirk, Jr., Director, Division of Industrial Affairs, Delaware Department of Labor, Wilmington, DE
3:3 William B. Huelsen, Vice President, Environmental Affairs, American Foundryman Society, Des Plaines, IL
3:4 Henry L. Laird, Director, Branch of Occupational Safety and Health, Mississippi State Board of Health, Jackson, MS
3:5 Stephen G. Brown, Corporate Safety Engineer, Tektronic Inc., Beaverton, OR
3:6 Linda Reivitz, Secretary, Wisconsin Department of Health and Social Services, Madison, WI
3:7 William D. Kane, Director of Industry Affairs, Associated General Contractors of Mass., Inc., Wellesley, MA
3:8 William J. Brown, Director, Oregon Worker's Compensation Department, Labor and Industries Building, Salem, OR
3:9 Alvin F. Meyer, Jr., President, A. F. Meyer and Associates, Inc., Environmental, System Safety and Occupational Health Consultants, McLean, VA
3:10 K. L. Patrick, Director, Safety Western Wood Products Assoc., Portland, OR
3:11 Jack Geissert, Team Leader, Colorado Occupational Health and Safety Consultation Program, Colorado State University, Fort Collins, CO
3:12 Dan C. Edwards, Director, Health and Safety Department, Oil Chemical and Atomic Workers International Union, AFL-CIO, Denver, CO
3:13 Keith Brooks, President, Safe and Sound Inc., Storrs, CT
3:14 Douglas R. Earle, Director, Bureau of Safety and Regulation, Michigan Department of Labor, Lansing, MI
3:15 Donald L. Spatz, Director of Occupational Safety and Health, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Kansas City, KS
3:16 V. C. Eissler, Vice President, North American Production, Conoco Inc., Houston, TX
3:17 William C. Ahearn, Ahearn and Associates, Occupational Health Consultants, Phoenix, AZ
3:18 Thomas J. Reilly, President-Elect, American Society of Safety Engineers, Park Ridge, IL
3:19 Hal Draper, Vice President, Safety and Health Department, West Gulf Maritime Association, Houston, TX
3:20 Nancy B. Burkheimer, Deputy Commissioner of Labor and Industry, Division of Labor and Industry, Maryland Department of Licensing and Regulation, Baltimore, MD
3:21 Raymond W. Thorn, Director, Division of Environmental Health, Minnesota Department of Health, Minneapolis, MN
3:22 Joseph S. Godsoe, Chief, Voluntary Compliance, Alaska Department of Labor, Anchorage, AK
3:23 Michael I. Fanning, Director, Safety and Health Services, The Associated General Contractors of America, Washington, D.C.
3:24 Charles A. Roberts, 11401 Woodson Avenue, Kensington, MD
3:25 Suzanne J. Kossen, Industrial Hygienist, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Washington, D.C.
3:26 Howard L. Kusnetz, Chairman, Texas Occupational Safety Board, Houston, TX
3:27 C. T. Sawyer, American Petroleum Institute, Washington, D.C.
3:28 Donald D. Owsley, Health and Safety Administrator, Wyoming Occupational Health and Safety, Cheyenne, WY
3:29 Donald D. Owsley, Health and Safety Administrator, Wyoming Occupational Health and Safety, Cheyenne, WY
3:30 James E. Hickey, Chief, Division of Occupational Health and Radiation Control, Rhode Island Department of Health, Providence, RI
3:31 Walter G. Martin, Director, Division of Occupational Safety and State Safety Engineer, Texas Department of Health, Austin, TX
3:32 Joseph H. Alleva, Program Manager, Division of Safety and Health, New York Department of Labor, New York, NY
3:33 Flint C. Watt, Chief, Office of Special Programs, Michigan Department of Public Health, Lansing, MI
3:34 Stephen B. Kemp, Safety/Medical Superintendent, Occidental Chemical Co., White Springs, FL
3:35 Mattie I. Taylor, Deputy Director, District of Columbia Department of Employment Services, Washington, D.C.
3:36 John C. Glenn, 7(c)(1) Program Director, Florida Department of Labor and Employment Security, Tallahassee, FL
3:37 Michael Rodgers, Director, Voluntary Safety Compliance and Training, Virginia Department of Labor and Industry, Richmond, VA
3:38 Franklin E. Mirer, Health and Safety Department, International Union, UAW, Detroit, MI
3:39 Timothy M. Tierney, Director/Project Manager, Minnesota Consultation Division—7(c)(1), St. Paul, MN

3:40 William C. Abernathy, Director of Industry Affairs, Mechanical Contractors Assoc. of America, Inc., Chevy Chase, MD
3:41 Emmett E. Jones, Chief, Cal/OSHA Consultation Service, California Department of Industrial Relations, San Francisco, CA
3:42 Ghay E. Holcomb, Assistant Director, Ohio Department of Industrial Relations, Columbus, OH
3:43 Ronald A. Lang, Executive Director, SOCMA, Scarsdale, NY
3:44 William H. Bywater, President, International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, AFL-CIO, Washington, D.C.
3:45 Mary-Win O'Brien, Assistant General Counsel, United Steelworkers of America, Pittsburgh, PA
3:46 Harry A. Partlow, President, American Society of Safety Engineers, Park Ridge, IL
3:47 Joshua C. Agsalud, Director, Hawaii Department of Labor and Industrial Relations, Honolulu, HI
3:48 Wayne E. Glenn, President, United Paperworkers International Union, Nashville, TN
3:49 Jerry Shelor, Secretary of Human Resources, Kansas Department of Human Resources, Topeka, KS
3:50 H. M. Bergesen, Director, Utah Job Safety and Health Consultation Services, Salt Lake City, UT
3:51 Margaret Seminario, Associate Director, Department of Occupational Safety, Health and Social Security, AFL-CIO, Washington, D.C.
3:52 Randel K. Johnson, Associate Director, Loss Prevention and Control, National Association of Manufacturers, Washington, D.C.
3:53 Ralph J. Vernon, President, Board of Certified Safety Professionals of the Americas, Inc., Savoy, IL
3:54 Harry J. Ettinger, Chairman, American Board of Industrial Hygiene, Akron, OH

Attachment II.—Addresses of OSHA Regional Administrators

Region and address

I—US Department of Labor—OSHA, 16-18 North Street, 1 Dock Square Building, 4th Floor, Boston, Massachusetts 02109
II—US Department of Labor—OSHA, 1515 Broadway, Room 3445, New York, New York 10039
III—US Department of Labor—OSHA, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 19104
IV—US Department of Labor—OSHA, 1375 Peachtree Street, NE., Suite 587, Atlanta, Georgia 30367
V—US Department of Labor—OSHA, 230 Dearborn Street, Room 3230, Chicago, Illinois 60604
VI—US Department of Labor—OSHA, 555 Griffin Square, Room 602, Dallas, Texas 75202
VII—US Department of Labor—OSHA, 911 Walnut Street, Room 406, Kansas City, Missouri 64106
VIII—US Department of Labor—OSHA, Federal Office Building, 1961 Stout Street, Room 1554, Denver, Colorado 80294
IX—US Department of Labor—OSHA, 450 Golden Gate Avenue, Room 11349, P.O. Box 36017, San Francisco, California 94102
X—US Department of Labor—OSHA, Federal Office Building, Room 6003, 909 First Avenue, Seattle, Washington 98174

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Part III

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Industrial-Commercial-Institutional Steam Generating Units; Proposed Rule and Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2489-1]

Standards of Performance for New Stationary Sources; Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This proposal would revise Subpart D of 40 CFR Part 60 as it currently pertains to emissions of particulate matter and nitrogen oxides from industial-commercial-institutional steam generating units. The proposed standards would limit emissions of particulate matter and nitrogen oxides from all new, modified, and reconstructed industrial-commercial-institutional steam generating units capable of combusting more than 29 MW (100 million Btu/hour) heat input. Under the proposed standards, emissions of particulate matter and nitrogen oxides would be reduced by an estimated 22,000 to 46,000 Mg (24,000 to 51,000 tons) per year and an estimated 11,000 to 28,000 Mg (12,000 to 31,000 tons) per year, respectively, from new, modified, and reconstructed industrial-commercial-institutional steam generating units built in the next 5 years.

Revised sulfur dioxide emission standards are currently under development for industrial-commercial-institutional steam generating units and will be the subject of a separate rulemaking action. Consequently, the sulfur dioxide emission standards under Subpart D of 40 CFR Part 60 would remain in effect for industrial-commercial-institutional steam generating units larger than 73 MW (250 million Btu/hour) heat input capacity until revised sulfur dioxide standards are proposed. Similarly, emissions of particulate matter from oil-fired industrial-commercial-institutional steam generating units with heat input capacities greater than 73 MW (250 million Btu/hour) would also continue to be regulated by Subpart D of 40 CFR Part 60 until revised standards for particulate matter emissions from oil-fired steam generators are proposed as part of the rulemaking to revise the sulfur dioxide emission standards. Electric utility steam generating units larger than 73 MW (250 million Btu/hour) heat input capacity would not be covered by the proposed standards. They would continue to be subject to separate standards under 40 CFR Part 60, Subpart Da.

The proposed standards would implement section 111 of the Clean Air Act and are based on the Administrator's determination that industrial-commercial-institutional steam generating units cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intent of this rulemaking it to require new, modified, and reconstructed industrial-commercial-institutional steam generating units to achieve emission limits reflecting the best demonstrated technological system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

DATES: *Comments:* Comments must be received on or before September 17, 1984. *Public Hearing:* A public hearing will be held on August 1, 1984, beginning at 10:00 a.m. Persons wishing to present oral testimony must notify Ms. Shelby Journigan at the address below by July 26, 1984.

ADDRESSES: *Comments:* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket Number A-79-02, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Public Hearing: A public hearing will be held at the ERC Auditorium, Corner of Highway 54 and Alexander Drive, Research Triangle Park, N.C. Persons wishing to present oral testimony must notify Ms. Shelby Journigan, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5624.

Background Information Documents: The background information documents (BID's) for the proposed standards may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, telephone number (202) 783-3238 (GPO stock number 055-000-00216-9). The background information documents include EPA-450/3-82-006a "Fossil Fuel Fired Industrial Boilers—Background Information Volume 1: Chapters 1-9," EPA-450/3-82-006b "Fossil Fuel Fired Industrial Boilers—Background Information Volume 2: Appendices," and EPA-450/3-82-007 "Nonfossil Fuel Fired Industrial Boilers—Background Information." The price of the three-volume set is $28.00.

The cost reports for steam generating units and control devices may be obtained from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161, telephone number (703) 487-4650 (NTIS stock number PB-83-119438). The cost reports include EPA-450/3-82-021 "Costs of Sulfur Dioxide, Particulate Matter, and Nitrogen Oxide Controls on Fossil Fuel/fired Industrial Boilers" (NTIS stock number PB-83-119438), and EPA-450/3-83-004 "Costs of Particulate Matter Controls for Nonfossil Fuel-fired Boilers" (NTIS stock number PB-83-19365). The price is $20.50 and $13.00, respectively, for each volume in printed copy, or $4.50 for a microfiche copy of each volume.

Information on spreader stoker steam generating units gathered in a three-volume joint study by the American Boiler Manufacturing Association (ABMA), Department of Energy (DOE), and Environmental Protection Agency (EPA) may also be obtained from the National Technical Information Service (NTIS stock number DE81030264-Vol. 1; DE81030265-Vol. 2; DE81030266-Vol. 3). These reports include DOE/ET/10386-T1 (Volumes 1, 2, and 3) "Emissions and Efficiency Performance of Industrial Coal Stoker Fired Boilers." The price is $26.50 each for volumes 1 and 2 and is $35.50 for volume 3 (printed copy). The cost of a microfiche copy of each volume is $4.50.

Docket: Docket Number A-79-02, containing supporting information used in developing the proposed standards, is 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, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter or Mr. Walter Stevenson, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5624.

SUPPLEMENTARY INFORMATION:

Preamble Outline

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B. Selection of Pollutants, Fuels, and Affected Facilities

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I. Proposed Standards

Standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated (section 111(a)(1)).

The proposed standards would revise the particulate matter and nitrogen oxides emission limits in Subpart D of 40 CFR Part 60 for industrial-commercial-institutional steam generators over 73 MW (250 million Btu/hour) heat input capacity and would set new standards for industrial-commercial-institutional steam generating units larger than 29 MW (100 million Btu/hour) heat input capacity. The proposed standards would not revise the standards for sulfur dioxide currently included in Subpart D of 40 CFR Part 60. The sulfur dioxide standards in Subpart D will continue to apply to industrial-commercial-institutional steam generating units of greater than 73 MW (250 million Btu/hour) heat input capacity.

The proposed standards apply to all new, modified or reconstructed industrial-commercial-institutional steam generators which have a capacity of more than 29 MW (100 million Btu/hour) heat input and which fire coal, oil, natural gas, wood, or municipal-type solid waste and mixtures of these fuels with and without other fuels. Electric utility steam generating units with greater than 73 MW (250 million Btu/hour) heat input capacity will continue to be covered under Subpart Da of 40 CFR Part 60.

Only those steam generating units with a heat input capacity of greater than 29 MW (100 million Btu/hour) for which construction, modification, or reconstruction is commenced after June 19, 1984 would be affected by the proposed standards. "Construction" is defined by 40 CFR 60.2 to mean "fabrication, erection or installation of an affected facility." *Sierra Pacific Power Co.* v. *EPA*, 647 F.2d 60 (9th Cir. 1981). The affected facility for this standard is the steam generating unit as defined in the proposed standards (§ 60.41b). "Commenced" is defined by 40 CFR 60.2 to mean "than an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification." The phrase "contractual obligation" means a contractual obligation that cannot be cancelled without incurring significant liability. *Potomac Electric Power Co.* v. *EPA, 650 F.2d 509, 513–515 (4th Cir. 1981).*

Particulate matter standards are proposed for coal-, wood-, and municipal-type solid waste-fired steam generating units, as well as for steam generating units firing mixtures including these fuels. For coal-fired steam generating units, the proposed particulate matter standard is 22 ng/J (0.05 lb/million Btu) heat input. For steam generating units which fire wood or municipal-type solid waste, the proposed particulate matter standard is 43 ng/J (0.10 lb/million Btu) heat input. For steam generating units which fire coal with wood, solid waste or other fuels, applicability of the proposed standard would be determined based on the amount of coal combusted relative to other fuels. Steam generating units which have an annual capacity factor for wood, solid waste or other fuels greater than 5 percent and which have an enforceable Federal, state or local operating permit which specifies that while the unit is operated, an annual capacity for wood, solid waste or other fuels is to be maintained above 5 percent, would be subject to the proposed particulate matter standard of 43 ng/J (0.10 lb/million Btu) heat input. If a steam generating unit combusts coal but has an annual capacity factor for wood, solid waste, or other fuel of 5 percent or less, or if there is no Federal, state or local operating permit, the proposed particulate matter standard of 22 ng/J (0.05 lb/million Btu) heat input would apply.

Steam generating units in the 29 through 73 MW (100 through 250 million Btu/hour) heat input capacity range that would have an annual capacity factor of 30 percent or less, based upon the combustion of coal, wood, or municipal-type solid waste, and which have an enforceable Federal, State or local operating permit limiting the annual capacity factor of the steam generating unit for these fuels to 30 percent or less on an annual basis, would be subject to a particulate matter standard of 86 ng/J (0.20 lb/million Btu) heat input.

The annual capacity factor for determining the applicable particulate matter standard would be calculated by dividing the actual annual heat input to the steam generator from firing coal, wood, solid waste or mixtures of these fuels by the potential annual heat input to the steam generating unit from all fuels. The potential annual heat input is defined as the product of the maximum rated heat input capacity (MW or million Btu/hour) times 8,760 hours per year.

The proposed opacity standard for all steam generating units firing coal, wood, or solid waste is 20 percent opacity (six-minute average).

Performance tests to determine compliance with the particulate matter emission limits would be conducted using Reference Method 5 or 17. Reference Method 3 would be used for gas analysis and Reference Method 1 for the selection of sampling points. Reference Method 9 (a 6-minute average of 24 observations) would be used to determine compliance with the opacity standard. Continuous opacity monitoring would be required for all steam generators. Semiannual reports of excess opacity would be required if any excess emissions are monitored during a 6-month period.

Nitrogen oxide (NO_x) standards are proposed for industrial-commercial-institutional steam generating units with a heat input capacity above 29 MW (100 million Btu/hour) which fire natural gas, oil, coal or mixtures of these fuels with or without other fuels.

The proposed NO_x emission limits are 301 ng/J (0.70 lb/million Btu) heat input for pulverized coal-fired steam generating units, 258 ng/J (0.60 lb/million Btu) heat input for spreader stoker coal-fired steam generating units, and 215 ng/J (0.50 lb/million Btu) for mass-feed stoker coal-fired steam generators. For lignite-fired steam generating units, the proposed NO_x standard is 258 ng/J (0.60 lb/million Btu) heat input, except for lignite mined in North Dakota, South Dakota, or Montana that is combusted in a slag tap type furnace for which the proposed

standard is 340 ng/J (0.80 lb/million Btu) heat input.

For natural gas-fired steam generating units and distillate oil-fired steam generating units, the proposed NO_x standard is 43 ng/J (0.10 lb/million Btu) heat input. For steam generating units firing mixtures including more than 5 percent (by heat input) natural gas or distillate oil on an annual basis with either wood or municipal-type solid waste, the proposed standard is 129 ng/J (0.30 lb/million Btu) heat input.

For steam generating units firing residual oil with a fuel nitrogen content of 0.35 weight percent or less, the proposed NO_x standard is 129 ng/J (0.30 lb/million Btu) heat input. The proposed NO_x standard is 172 ng/J (0.40 lb/million Btu) heat input for affected steam generating units firing residual oil with a fuel nitrogen content greater than 0.35 weight percent.

The proposed nitrogen oxides emission limits for steam generating units burning mixtures of coal, oil, or natural gas would be determined by proration of the NO_x standards, based on the respective amounts of each fuel combusted. For steam generating units which fire coal, oil, or natural gas in a mixture containing other fuels (except for mixtures of natural gas with wood or municipal-type solid waste) and for which the annual capacity utilization factor based on coal, oil, or natural gas or a mixture of these fuels is greater than 5 percent, the steam generating unit would be required to meet the NO_x standard for coal, oil, or natural gas, as applicable.

Under the proposed standards, gaseous or liquid byproducts and wastes that are produced during industrial processes and are combusted in steam generating units, whether for heat recovery or for disposal, are treated as either natural gas or residual oil. Gaseous byproducts or wastes are included in the definition of natural gas and affected facilities firing these substances are subject to the proposed NO_x emission limit of 43 ng/J (0.10 lb/million Btu) heat input. Liquid byproducts or wastes are included in the definition of residual oil and are subject to an emission limit based on their fuel nitrogen content. Affected facilities firing liquid byproducts and wastes having a fuel nitrogen content of 0.35 weight percent or less are subject to the proposed standard of 129 ng/J (0.30 lb/million Btu) heat input. Steam generating units combusting liquid byproducts and wastes having a fuel nitrogen content of greater than 0.35 weight percent are subject to a proposed standard of 172 ng/J (0.40 lb/million Btu) heat input.

Steam generating unit specific NO_x emission limits could be established for steam generating units combusting fuel mixtures containing nonhazardous high nitrogen content by-products/wastes if the owner or operator can demonstrate to the Administrator's satisfaction that the applicable NO_x standard cannot be achieved due to the nitrogen content of the by-product/waste. Unit specific NO_x emission limits could also be established for steam generating units combusting fuel mixtures containing by-products/wastes classified as hazardous under the Resource Conservation and Recovery Act (RCRA) due to their toxicity, reactivity, or corrosivity if the owner or operator can demonstrate to the Administrator's satisfaction that applicable Federal, State or local permit requirements for thermal destruction of these by-product/wastes would prevent achievement of the NO_x emission limits.

The proposed NO_x emission limits would not apply to modified steam generating units. These limits also would not apply to affected facilities which combust 5 percent or less (by heat input) coal, oil, or natural gas with other fuels, on an annual basis, and which are subject to an enforceable Federal, State or local permit requirement limiting the annual capacity of the steam generating unit for these fuels to 5 percent or less.

Steam generating units firing coal, oil or natural gas which have annual capacity utilization factors for coal, oil, natural gas, or mixtures of these fuels greater than 5 percent would be subject to the nitrogen oxides emission limits and would be required to conduct a performance test to determine compliance with the NO_x emission limits. Affected facilities with an annual capacity factor between 5 percent and 30 percent would be required to conduct a 30-day performance test when the steam generating unit begins operation. Following the initial compliance test, steam generating unit operating conditions would be monitored.

Affected facilities having an annual capacity factor for coal, oil or natural gas of greater than 30 percent (0.30) would be required to operate a continuous nitrogen oxides emissions monitor. The continuous monitoring system would be used to conduct the initial compliance test. Subsequently, data from the continuous NO_x monitoring system would be used to determine a 30-day rolling average NO_x emission rate each day, calculated as the arithmetic average of the hourly NO_x values available for the preceding 720 hours of steam generating unit operation. This 30-day average would be used to determine compliance on a continuous basis.

Steam generating units subject to the proposed nitrogen oxides standards and with an annual capacity factor for coal, oil, or natural gas between 5 and 30 percent would be required to monitor steam generating unit operating conditions. The owner or operator of an affected facility would submit a monitoring plan for review by EPA. Manufacturers of steam generating units may develop monitoring plans and provide them to owners or operators of steam generating units. The monitoring plans could subsequently be submitted by the owner or operator of the affected facility.

The conditions to be monitored under this plan are to be indicative of nitrogen oxides emissions control. The results from this monitoring will be recorded and used to determine when the nitrogen oxides emissions controls are operating properly or when some failure or malfunction in those controls indicate that a performance test should be conducted.

Owners or operators of steam generating units capable of firing more than 29 MW (100 million Btu/hour) heat input would be required to maintain records of the annual fuel consumption by fuel type. For oil-fired steam generating units, fuel oil records indicating the amount and nitrogen content of oils fired would also be maintained. Fuel specification data from the oil supplier may be used to determine fuel oil nitrogen content. If fuel oil blends are being fired, specifications may be prorated based on the ratio of the oils of different nitrogen content in the fuel blend. In all cases, records would be maintained for 2 years, after which they could be discarded. Records of continuous NO_x emission data also must be maintained for 2 years.

Steam generating unit owners or operators would be required to submit certain reports. The proposed regulation would require that EPA be notified of the intent to initiate operation of a new, modified, or reconstructed steam generator and that EPA be provided with the results of the initial performance test and performance evaluation of the continuous monitoring system, if applicable. In addition, semiannual reports of excess opacity and NO_x emissions (for those affected facilities employing continuous nitrogen oxides monitoring) would be required if any exceedance occurred during a semiannual period.

II. Summary of Environmental, Energy, and Economic Impacts

The environmental, energy, and economic impacts of the proposed standards are expressed as incremental differences between the impacts for industrial-commercial-industrial steam generators complying with the proposed standards and steam generators complying with current emission regulations (referred to as the baseline). These impacts vary considerably depending on the assumptions made with regard to future fuel prices. If future natural gas prices are assumed to be low relative to coal prices, a large proportion of the new industrial-commercial-institutional steam generator population would be expected to fire natural gas or oil. On the other hand, if future natural gas prices are assumed to be high relative to coal and oil prices, a large proportion of the new industrial-commerical-institutional steam generating units are expected to fire coal. Because coal combustion has the potential of emitting larger quantities of particulate matter and NO_x than natural gas or oil combustion, the greater the number of coal-fired steam generators projected to be subject to the proposed standards, the greater the environmental, energy, and economic impacts associated with the standards. Because the number of coal fired steam generating units projected varies with the price of natural gas, the national impact projections are discussed in terms of a range rather than as a single value.

The primary environmental impact resulting from the proposed standards is a significant reduction in the quantity of particulate matter and nitrogen oxides emitted from new industrial-commercial-institutional steam generators. It is estimated that between 1983 and 1988 approximately 800 new steam generators will be constructed that would be subject to the proposed standards. Depending on the mix of new natural gas-fired, oil-fired, and coal-fired steam generators, baseline emissions from new steam generators greater than 29 MW (100 million Btu/hour) heat input capacity would range from 35,000 to 71,000 Mg (39,000 to 78,000 tons) of particulate matter per year and from 71,000 to 127,000 Mg (78,000 to 140,000 tons) of nitrogen oxides per year in 1988. The proposed standards would reduce baseline particulate matter emissions from these new industrial-commercial-institutional steam generating units by 22,000 to 46,000 Mg (24,000 to 51,000 tons) and nitrogen oxides emissions by 11,000 to 28,000 Mg (12,000 to 31,000 tons) in 1988. This represents about a 60 percent reduction in the growth of particulate matter emissions and about a 10 to 40 percent reduction in the growth of nitrogen oxides emissions from new industrial-commercial-institutional steam generating units. The increase in liquid waste generation as a result of the proposed standard would be negligible. Solid waste generation would increase by less than 5 percent over baseline. Because of the availability of existing solid waste disposal methods, no adverse environmental impacts resulting from the disposal of solid waste are anticipated.

The economic impacts of the proposed standards have been evaluated in terms of the nationwide capital expenditures for pollution control equipment, the increase in the annualized cost of producing steam, the resulting rise in the price of products produced by operators of steam generators, and the impact on the availability of capital to the firms purchasing steam generators.

In analyzing potential product price, profitability, and capital availability impacts associated with the proposed standards, industries likely to experience the severest impacts and the conditions which would produce the most adverse impacts were chosen for examination. The proposed standards were found to have no significant adverse economic impacts on any of these industries under these conditions.

On the national level, assuming increases in annualized costs are passed forward to product consumers and not absorbed by industry, the proposed standards would result in a projected average increase of no more than a 0.05 percentage point increase in the product price for any major steam user group examined with smaller increases for industries using less steam. For those selected industries which have been judged likely to be most affected by the proposed standards, product prices could increase by 0.05 to 0.40 percent in 1988. This projected product price increase is based on a "worst case" analysis assuming full cost pass-through. If no cost pass-through and full cost absorption by industry are assumed, no product cost increase would result, and the return on assets would decrease by 0.01 to 0.60 percentage point under the proposed standards. Impacts on any given plant would likely be much less than these worst case examples under either assumption.

On a national basis, the proposed standards would increase the capital cost for new steam generators by a negligible amount. It is projected that the nationwide increase in annualized costs for producing steam from new generators subject to the proposed standards would range from about $30 to $62 million in 1988. This represents an increase of less than 0.7 to 1.4 percent over baseline annualized costs for producing steam from new generators.

The energy impacts of the proposed standards have been analyzed in terms of the impact on demand for coal as an industrial-commercial-institutional steam generator fuel and in terms of overall energy requirements of steam generator and pollution control equipment operation. Steam generating units that would be affected by the proposed standards are projected to demand approximately 580 million GJ (550 trillion Btu) of fossil fuels in 1988. Depending on the relative cost of natural gas and oil versus coal, it is projected that coal use in industrial-commercial-institutional steam generating units would range from 25 percent to 75 percent of this fossil fuel energy demand under baseline conditions. The wide range of projected coal penetration levels results from the sensitivity of fuel selection to projected natural gas and oil prices. Coal use in new industrial-commercial-institutional steam generating units under the proposed standards is projected to decrease by less than 5 percent of the total fossil fuel demand as compared to baseline levels over the full range of natural gas and oil prices considered.

The proposed particulate matter standards would increase the national electric energy requirements of new steam generating units by about 130 to 190 GWh/yr in 1988. This increased electrical energy requirement to operate air pollution control equipment could be met by combusting an additional 2.1 million GJ (2 trillion Btu) of fossil fuel at an electric utility power plant. This increased fuel use would be partially offset by fuel savings associated with low excess air operation, as required under the proposed NO_x standards. Without considering the potential energy savings resulting from low-excess air operation, the projected 2.1 million GJ (2 trillion Btu) per year increase in fossil fuel use would represent less than one half of one percent increase in the overall fuel consumption for new industrial-commercial-institutional steam generators.

III. Rationale

A. Selection of Source Category

On August 21, 1979, a priority list for development of future new source

performance standards was published in accordance with sections 111(b)(1)(A) and 111(f)(1) of the Clean Air Act Amendments of 1977. This list identified 59 major stationary source categories for which new source performance standards would be established in the future. Fossil fuel-fired industrial steam generating units ranked eleventh on this priority list of sources judged to contribute significantly to air pollution which could reasonably be expected to endanger public health or welfare.

Of the 10 sources ranked above fossil fuel-fired industrial steam generating units on the priority list, 9 were major sources of volatile organic compound (VOC) emissions. Given the nonattainment status of many areas with respect to the national ambient air quality standard for ozone, major sources of VOC emissions were accorded a very high priority. The remaining source category ranked above fossil fuel-fired industrial steam generating units was stationary internal combustion engines, a major source of nitrogen oxides emissions. Consequently, fossil fuel-fired industrial steam generating units was the highest ranked source category for particulate matter and sulfur dioxide emissions and the second highest ranked source category for nitrogen oxides emissions on the priority list of source categories not regulated by NSPS.

However, a separate proposal is being made today to amend the priority list to include nonfossil fuel-fired steam generating units of all types (including incinerators with heat recovery) and commercial and institutional steam generating units. Analyses of emissions from existing steam generating units and future trends in steam generating unit fuel use indicate that emissions from coal combustion will be a significant source of pollution from new steam generating units due to future widespread use of coal as a steam generator fuel. Analyses also show that wood and solid waste are the most widely used nonfossil fuels in steam generating units and, therefore, could potentially be significant contributors to future air pollution. In addition, studies also show that large commercial and institutional steam generating units have essentially the same design, fuel capability, and emissions potential as industrial steam generators. Consequently, the proposed standards would cover both fossil and nonfossil fuel-fired steam generating units, as well as industrial, commercial and institutional steam generating units.

Fossil and nonfossil fuel-fired steam generators are a significant source of emissions of three major pollutants: particulate matter (PM), sulfur dioxide (SO_2), and nitrogen oxides (NO_x). As discussed in "Priorities for New Source Performance Standards Under the Clean Air Act amendments of 1977" (EPA–450/3–78–019), in the absence of the proposed standards, emissions from industrial-commercial-institutional steam generators with a heat input capacity of 3 through 73 MW (10 through 250 million Btu/hour) would contribute 18 percent of the total national particulate matter emissions from major sources and 24 percent of the total national nitrogen oxides emissions from major sources in 1990.

The expected construction of new coal-, wood-, and solid waste-fired steam generators as a result of plant expansions and replacement of natural gas- and oil-fired steam generators is the principal reason for the large growth in emissions from steam generators. New steam generators with heat input capacities greater than 29 MW (100 million Btu/hour) are expected to increase total additional fossil fuel demand by approximately 580 million GJ (550 trillion Btu) by 1988. Many of these new facilities will fire coal, creating an increased coal demand of 140 to 430 million GJ (130 to 410 trillion Btu) annually, or approximately 5 to 18 million Mg (5 to 20 million tons) of coal per year, over existing coal combustion levels. Combustion of other solid fuels (wood and solid waste) is also rapidly increasing due to their lower cost. These developments could result in significant increases in emissions if standards of performance are not established.

National ambient air quality standards have been established for particulate matter, sulfur dioxide, and nitrogen oxides because of their known adverse effects on public health and welfare. Impacts of these pollutants have been documented in criteria documents prepared under section 108 of the Clean Air Act. These effects are the primary basis for the determination that emissions from industrial-commercial-institutional steam generating units constitute a potential danger to public health and welfare. Also significant in this determination is the finding that many steam generating units will continue to be located in urban areas where a large population will be exposed to the emissions. From 25 to 50 percent of the projected number of new steam generating units will be replacements for existing natural gas-or oil-fired steam generating units, and many of the remaining steam generating units, representing new steam generating unit capacity, will also be located at existing plant sites. Therefore, the present concentration of steam generating units in industrialized urban areas will continue to contribute to local and regional air pollution. For these reasons the source category of industrial-commercial-institutional steam generating units was selected for development of standards of performance.

B. Selection of Pollutants, Fuels, and Affected Facilities

Particulate matter (PM) and nitrogen oxides (NO_x) would be the pollutants regulated under the proposed standards. Other pollutants emitted from steam generating units, including sulfur dioxide (SO_2), carbon monoxide (CO), hydrocarbons (HC), and other trace substances would not be covered under these proposed standards.

Table 1 indicates the uncontrolled quantity of pollutants emitted through the combustion of each of the fuels examined in the development of the proposed standards.

TABLE 1.—TYPICAL UNCONTROLLED EMISSION FACTORS FOR STEAM GENERATOR FUELS, NG/J (LB/MILLION BTU) HEAT INPUT

Fuel Type	PM	NO_x	SO_2	CO	HC	Trace metals [e]
Coal [a]	1,092 (2.54)	387 (0.90)	2,450 (5.70)	13 (0.03)	2 (0.005)	4 (0.009)
Oil (residual) [b]	96 (0.23)	[d] 170 (0.39)	1,400 (3.22)	14 (0.03)	3 (0.01)	0.07 (0.0002)
Oil (distillate) [c]	6 (0.01)	[d]100 (0.23)	220 (0.51)	16 (0.04)	3 (0.01)	
Natural Gas	4 (0.01)	[d] 100 (0.23)	0.3 (0.001)	7 (0.02)	1 (0.003)	0 (0)
Wood	2,100 (4.88)	110 (0.25)	9 (0.02)			
Solid Waste	1,400 (3.22)	130 (0.31)	210 (0.49)			

[a] Based on high-sulfur (3.5 percent by weight), high-ash (10.6 percent by weight) coal burned in a spreader stoker coal-fired steam generating unit.
[b] Based on high-sulfur oil (3.0 percent by weight).
[c] Based on low-sulfur oil (0.5 percent by weight).
[d] Assumes no combustion air preheat.
[e] Based on lead to illustrate general level of trace metal emissions.

Steam generating units constitute a major stationary source of particulate matter emissions. Because particulate matter is a criteria pollutant and because of the large potential emission rate, it has been selected for regulation

under the proposed standards of performance. Similarly, nitrogen oxides have been selected for regulation under the proposed standards of performance.

Sulfur dioxide emissions from industrial-commercial-institutional steam generating units have been selected for regulation under a separate proposal. As part of the deliberations on reauthorization of the Clean Air Act, amendments were introduced in the 97th Congress that would have changed the definition of standard of performance. Development of sulfur dioxide standards for industrial-commercial-institutional steam generating units was suspended shortly after the start of the 97th Congress in 1981, pending the outcome of the Clean Air Act amendments. However, amendments to the Act have not been adopted by Congress to date and, rather than continue to defer development of new source performance standards for sulfur dioxide, analysis of standards for sulfur dioxide emissions has been resumed. Sulfur dioxide emission standards for industrial-commercial-institutional steam generating units will be proposed as a separate rulemaking.

The potential impacts associated with this "phased" approach to proposing particulate matter and nitrogen oxides standards now and proposing sulfur dioxide standards in the future have been considered. There appears to be no reason for delaying the proposal of emission standards for particulate matter and nitrogen oxides while waiting for the sulfur dioxide standards to be developed. State sulfur dioxide standards now in effect would not interfere with compliance with today's proposed standards for particulate matter or nitrogen oxides. Similarly, when standards are proposed for sulfur dioxide, they would not be retroactive and would affect only new steam generating units built after that date. Since the standards will not affect steam generating units which have commenced construction prior to that time, this will assure that no unreasonable impacts occur. Any unforeseen impacts a sulfur dioxide standard may have on particulate matter and nitrogen oxides emissions control will be addressed at the time sulfur dioxide standards are proposed. In the interim, the present standards of performance limiting sulfur dioxide emissions from large fossil fuel-fired steam generating units (40 CFR Part 60, Subpart D) will remain in effect. No potential problems have been identified which might result from proposal of standards for particulate matter and nitrogen oxides today and proposal of standards for sulfur dioxide in the future.

Carbon monoxide and hydrocarbons were not selected for regulation due to their relatively low emission rates and the lack of any control technology for these pollutants which is reasonable in cost. Trace metals have not been selected for regulation under the proposed standards because of the lack of information on the performance of alternative control technologies to reduce these emissions. It is anticipated that the proposed particulate matter standard would result in significant reductions in trace metal emissions.

Trace amounts of radionuclides present in coal are also emitted by industrial-commercial-institutional steam generating units but are not a direct subject of these proposed regulations. Control of particulate matter emissions from coal-fired steam generating units to low levels is expected to bring about a corresponding reduction in emissions of radionuclides. Further discussion of the control of radionuclides from coal-fired steam generating units can be found in the **Federal Register** (48 FR 15085, April 6, 1983) as part of recently proposed standards for radionuclides under section 112 of the Act.

The proposed standards would limit emissions from steam generating units firing natural gas, residual and distillate oil, coal, wood, solid waste and fuel mixtures containing any of these fuels. Steam generating units or incinerators with heat recovery firing only municipal-type solid waste or steam generating units firing only wood (5 percent fossil fuel or less on an annual basis) would be covered by the proposed particulate matter standards, but not by the proposed nitrogen oxides standards. Similarly, steam generating units firing only oil or natural gas would be subject to the proposed standard for nitrogen oxides, but not to the proposed standards for particulate matter emissions. Emissions of particulate matter from the combustion of natural gas are low and therefore the costs of further emission control would be unreasonably high. Control of particulate matter from oil-fired steam generating units will be considered in the development of the sulfur dioxide standards.

The proposed standards would cover only industrial-commercial-institutional steam generating units with heat input capacities of greater than 29 MW (100 million Btu/hour). Analyses of the projected new steam generating unit population indicate that nearly all new steam generating units larger than 29 MW (100 million Btu/hour) heat input capacity will be industrial-type steam generating units with only a few commercial and institutional steam generating units in this size range. The steam generating unit size limit of 29 MW (100 million Btu/hour) heat input capacity would, thus, include only the largest commercial and institutional steam generating units and would concentrate the scope of the proposed standards on industrial-type steam generating units.

In addition to differences in application, the type of steam generating unit fuels which are combusted in steam generating units above 29 MW (100 million Btu/hour) heat input capacity is markedly different from the type combusted in steam generating units below this size. Depending on future energy pricing scenarios, from 25 to 75 percent of all new steam generating units larger than 29 MW (100 million Btu/hour) heat input capacity are expected to combust coal as the primary steam generating unit fuel. For units less than 29 MW (100 million Btu/hour) up to 90 percent of the fuel is expected to be natural gas or fuel oil. Additionally, the use of firetube-type steam generating units becomes more common for units of 29 MW (100 million Btu/hour) heat input capacity or less. Watertube-type steam generating units predominate among steam generating units larger than 29 MW (100 million Btu/hour) heat input capacity.

Development of new source performance standards limiting emissions of sulfur oxides, nitrogen oxides, and particulate matter from steam generating units smaller than 29 MW (100 million Btu/hour) heat input capacity is planned. In this small steam generator size range, the type of unit used, the physical design characteristics of these units, the cost impacts of emission control systems on steam production costs, and the steam generation applications are often different than for larger steam generating units. Because these factors have been found to be materially different, a separate study for these smaller steam generating units is appropriate. This will assure that an adequate evaluation is conducted on the technical and economic factors associated with applying emission controls to smaller steam generating units.

C. Selection of Formats for Emission Limits

Three possible formats were considered for the emission limits in the proposed standards: (1) Concentration,

(2) emissions per unit of steam generating unit energy output, and (3) emissions per unit of steam generating unit heat input. The criteria used for selecting the format were: (1) The ability of the format chosen to reflect the application of the best system of emission reduction, and (2) the ease of monitoring and compliance testing.

A concentration format measures the ability of the control system to reduce the level of pollutants relative to the volume of flue gas and provides a direct measure of the performance of the control equipment. There is, however, the potential that the effectiveness of a concentration standard can be reduced by dilution of the exhaust gases discharged to the atmosphere with excess combustion air, thus lowering the concentration of pollutants emitted but not the total mass emitted. This problem can be corrected by using a concentration standard at a reference carbon dioxide or oxygen level. Use of such a correction, however, renders this format functionally equivalent to a mass per unit of heat input format with respect to measurements needed to determine compliance. Thus, a concentration format was not selcted for the proposed standards.

A format of emissions per unit of steam generating unit energy output would make the process of determining compliance with the proposed standards very complicated. A format of this type would require measurement of pollutant emissions followed by calculation of the steam generating unit energy output which would require measurements of the steam production rate, steam quality, and condensate return conditions. The cumulative effect of requiring all these measurements would be to complicate compliance testing and monitoring, increase the likelihood for error, and increase costs for compliance testing and monitoring without significant benefits.

It is suggested that this format would create an incentive to purchase more efficient steam generating units and to increase operational efficiency. However, an incentive to purchase more efficient steam generating units would exist in any case because less efficient steam generating units would have to combust more fuel and use a larger emission control device compared to more efficient steam generating units which would produce the same amount of steam while firing less fuel.

Using a mass per unit of energy output format, standards which are based on best systems of emissions reduction applied to less efficient steam generating units may not reflect the best system of emissions reduction when compared to more efficient steam generating units. This outcome may not be consistent with the basic requirements of section 111 of the Clean Air Act that standards of performance reflect the application to all affected facilities of the best systems of continuous emission reduction considering costs and other impacts. Adjusting standards in some manner to reflect application of the best systems of emission reduction on all steam generating units would render this format functionally equivalent to a mass per unit of heat input format. Therefore, a format of emissions per unit of energy output was not selected for the proposed standards; however, this would not in any way discourage the use of higher efficiency steam generating units.

A mass per unit of heat input format was selected for the proposed standards since this format directly relates the net quantity of pollutants emitted to the amount of fuel fired in the steam generating unit. Monitoring and emission testing used to determine compliance with standards written in this format would be based on established methods. Additionally, this format is consistent with other standards established for steam generators (Subparts D and Da of 40 CFR Part 60). The major feature of this format, however, is that the required degree of emission control would be the same for all similar steam generating units burning the same amounts of fuel.

Emission credits for cogeneration systems and for combined cycle units were also considered and are discussed under the *Cogeneration Steam Generators—Emission Credits* and the *Combined Cycle Steam Generators—Emission Credits* sections of this preamble (See **REQUEST FOR COMMENTS** section).

D. Selection of Demonstrated Emission Control Technology and Emission Limits Nitrogen Oxides

1. Introduction

Nitrogen oxides (NO_x) formed during fuel combustion are composed of thermal NO_x and fuel-nitrogen NO_x. Thermal NO_x is formed through a reaction between the nitrogen and oxygen present in the combustion air. In contrast, fuel-nitrogen NO_x is the result of a reaction between nitrogen present in the fuel and oxygen present in the combustion air.

Nitrogen and oxygen in the combustion air can combine to form thermal NO_x at the elevated temperatures found in steam generating unit flames. Increased formulation is due to two factors; high combustion temperatures and high concentrations of oxygen in the presence of nitrogen. Boiler operating and design conditions which elevate combustion temperatures include increasing design heat release rates, full load operation, and preheating combustion air. Fuel moisture, on the other hand, will lower combustion temperatures. This lower temperature is a result of the cooling effect created by the evaporation of the moisture as the fuel burns. High concentrations of oxygen in the presence of nitrogen exposed to the high combustion temperatures are generally associated with the use of large amounts of excess air introduced early in the combustion zone.

The fuel nitrogen component of NO_x emissions is generated by the reaction of nitrogen in the fuel with oxygen in the combustion air. The two steam generating unit operating conditions which contribute most to fuel-nitrogen NO_x formation are increased fuel nitrogen content and the presence of large amounts of excess air in the combustion region where the fuel nitrogen evolves from the fuel.

Because of the influence of fuel nitrogen content, various fuels fired in steam generating units have widely differing NO_x characteristics. For example, natural gas and distillate oils contain little, if any, fuel nitrogen. As a result, nearly all of the NO_x emissions produced by the combustion of these fuels is thermal NO_x. Accordingly, the uncontrolled emissions from firing these low nitrogen fuels are generally much lower than from firing residual oils and coal.

Residual oils and nonfossil fuels are characterized by varying, but generally greater, amounts of fuel nitrogen than natural gas or distillate oil. As a result of these higher fuel nitrogen levels, total NO_x emissions from firing residual oils are comprised of both thermal NO_x and fuel-nitrogen NO_x. Uncontrolled emissions from residual oil combustion are generally higher than for natural gas and distillate oil, but less than for coal. Nonfossil NO_x emissions are generally in the same range as those from gas and distillate oil fuels.

Coal contains a substantial amount of fuel nitrogen relative to natural gas and oil. Consequently, NO_x emissions resulting from coal combustion typically include both thermal NO_x and significant quantities of fuel-nitrogen NO_x. The level of NO_x emissions generated by coal combustion is also dependent on steam generating unit type. In order of increasing NO_x emissions, the three basic steam generating unit types used to fire coal

are: mass-feed stokers, spreader stokers, and pulverized coal-fired steam generating units. The differences in NO_x emission characteristics are due primarily to the different combustion mechanisms employed in each steam generating unit type.

Mass-feed stoker coal-fired steam generating units (e.g., underfeed stokers and chaingrate stokers) generally have the lowest uncontrolled NO_x emissions. In this steam generating unit type, the coal [approximately 2 cm (¾ in) in diameter] is pushed directly into a coal bed positioned in a retort or on a grate. All combustion occurs in the coal bed. Compared to the other two steam generating unit types, coal combustion is less intense and occurs relatively slowly in mass feed stokers. The reduced combustion intensity reduces combustion temperature and tends to result in lower NO_x emissions. Considerable burning occurs in the interior of the fuel bed where oxygen is locally deficient. This reduced oxygen availablility also reduces combustion intensity and further contributes to the lowering of NO_x emissions.

Spreader stoker steam generating units also employ coal beds for combustion; however, the coal [approximately 0.6 cm (¼ in) in diameter] is introduced by a mechanism above the grate which throws the coal onto the grate. Coal combustion occurs in suspension above the grate as well as on the grate. Suspension burning tends to be more intense and results in higher NO_x emissions. In this regard, the combustion characteristics of spreader stokers are a hybrid of both the mass-feed stokers and pulverized coal-fired steam generating units. The NO_x emissions of spreader stokers are greater than those of mass-feed stokers but less than those of pulverized coal-fired steam generating units, reflecting this hybrid combustion characteristic.

Pulverized coal-fired steam generating units burn finely powdered coal [more than 75 percent of the coal is less than 75μ (.005 in) in diameter] in burners similar to a natural gas- or oil-fired burner. Combustion occurs in suspension in the steam generating unit firebox. This combustion is relatively intense compared to stoker steam generating units, and uncontrolled NO_x emissions from pulverized coal-fired steam generating units are the highest of all coal-fired steam generating unit types.

In summary, NO_x emission rates are influenced by both steam generating unit design and operating conditions and by fuel properties. The steam generating unit design and operating conditions that influence NO_x emissions most significantly are suspension-vs-grate combustion, levels and location of combustion air introduction, heat release rates, steam generating unit load, and degree of combustion air preheat. The fuel properties that influence NO_x emissions most significantly are fuel type, nitrogen content, and moisture content. The proposed NO_x standards were developed with careful consideration given to these and other factors.

Demonstrated Control Techniques. A variety of methods can be employed to control NO_x emissions. The lowest cost and most widely used techniques modify the combustion process to minimize NO_x formation. Other less common NO_x control techniques remove NO_x from the flue gas after its formation (flue gas treatment).

Flue (or combustion) gas treatment was reviewed as a NO_x control technique during development of the proposed standards. The flue gas NO_x cleanup technique currently receiving the most attention is selective catalytic reduction (SCR), in which combustion gases are passed over a catalyst to reduce NO_x emissions back to elemental nitrogen (N_2) and oxygen (O_2).

SCR is quite costly compared to combustion modification control techniques. Also, SCR has not yet been applied in the United States to full-scale steam generating units firing coals and high nitrogen oils which have the highest NO_x emissions potential. Technical and economic questions exist concerning the application of SCR to steam generating units which preclude a conclusion at this time that SCR is a universally demonstrated technology for the purpose of developing standards of performance limiting NO_x emissions from steam generating units.

Combustion modification control techniques have been applied to industrial-commercial-institutional steam generating units. The principal combustion modification NO_x control techniques which have received the most development are low excess air and low excess air/staged combustion. Other NO_x control techniques, however, such as reduced air preheat and flue gas recirculation have also been applied to industrial-commercial-institutional steam generating units.

Reduced combustion air preheat is a form of combustion modification that reduces NO_x formation. At present, steam generating units using preheated combustion air, heat the combustion air by heat exchange with the hot flue gas exiting the steam generating unit, thereby improving steam generating unit efficiency and thereby reducing fuel costs. As combustion air preheat temperature is increased, NO_x emissions generally increase because of increased flame temperatures. Reduced combustion air preheat reduces flame temperatures and thus serves to control the formation of thermal NO_x emissions.

Data from uncontrolled natural gas-fired steam generating units indicate that direct use of unheated ambient air achieves NO_x emission reductions in the range of 30 to 40 percent from NO_x emission levels where combustion air is preheated to 150°C (300°F). The technique of reduced combustion air preheat, however, is generally much less effective on coal- and residual oil-fired steam generating units where a large percentage of the NO_x emissions may be derived from the fuel-nitrogen content, and not from the thermal formation.

One area of concern with the use of reduced combustion air preheat as a NO_x control technique, however, is the potential energy penalty associated with certain applications. The costs associated with an energy penalty largely depend on whether a steam generating unit feedwater heater (economizer) can be used in the place of a combustion air preheater. Similar to combustion air preheaters, economizers increase steam generating unit efficiency by recovering heat from steam generating unit flue gases and using it to preheat the steam generating unit feedwater instead of preheating the inlet combustion air. This method of recovering waste heat improves steam generating unit efficiency without raising flame temperatures or increasing NO_x emissions.

If steam generating unit flue gas heat is recovered in an economizer rather than in a combustion air preheater, no costs would be associated with use of reduced (or no) air preheat as an NO_x control technique. The capital costs of economizers and combustion air preheaters are similar. Also, any loss in overall steam generating unit efficiency due to reduced combustion air preheat is offset by a gain in steam generating unit efficiency due to the preheating of steam generating unit feedwater, with no net change in efficiency.

Reduced combustion air preheat, however, could result in a cost penalty where alternative sources of waste heat are available in excess of the energy utilization capacity of preheating the steam generating unit feedwater. This situation may occur in large industrial plants with integrated energy systems such as petroleum refineries and chemical plants. In these instances, the most effective use of the available energy may require the use of both economizers to preheat feedwater and

combustion air preheaters. Therefore, where large quantities of waste heat are available, the use of reduced combustion air preheat for NO_x emission control could preclude the recovery of waste energy. In such cases the cost-effectiveness of applying reduced combustion air preheat as an NO_x control technique can be quite poor for natural gas-fired steam generating units. As a result, while the proposed standard would not preclude the use of combustion air preheaters, the use of this control technique was not considered a reasonable basis for developing standards of performance when cost and energy impacts are taken into consideration.

Flue gas recirculation (FGR) is another form of combustion modification which has received some application to industrial-commercial-institutional steam generating units as a means of reducing NO_x emissions. This control technique involves extracting a portion of the flue gas and returning it to the steam generating unit firebox. FGR reduces the oxygen concentration in the combustion air by using oxygen-depleted flue gas as a portion of the combustion air and thereby reduces the combustion temperature. Experience suggests that FGR is most effective in suppressing thermal NO_x formation and has less effect on fuel-nitrogen NO_x formation. Consequently, FGR appears more suitable for steam generating units firing low nitrogen fuels, such as natural gas and distillate oil than for residual oil- and coal-fired steam generating units.

FGR systems are offered by one manufacturer of gas- and oil-fired steam generating units and one manufacturer of stoker coal-fired steam generating units. Each manufacturer has retrofitted several industrial-commercial-institutional steam generating units with FGR systems. Very limited data on two small gas- and oil-fired steam generating units [2.5 MW and 15 MW (8.6 and 50 million Btu/hr) heat input], however, appears to indicate that FGR achieves little NO_x reduction beyond the NO_x emission reduction capability of another and much more widely employed control technique referred to as low excess air (LEA), which is discussed below. Similarly, very limited data on one coal-fired spreader stoker steam generating unit also appears to indicate that FGR achieved minor NO_x emission reduction beyond that associated with the use of LEA alone on modern coal-fired spreader stoker generating units. FGR, on the other hand, appears to cost somewhat more than LEA. As a result, attention focused primarily on the use of LEA rather than FGR as an NO_x control technique to serve as the basis of standards of performance.

As mentioned above, one of the most common forms of combustion modification which is widely used in industrial-commercial-institutional steam generating units is operation of the steam generating unit at low excess air levels (LEA). With LEA, less oxygen is available in the flame zone and thus formation of both thermal and fuel-nitrogen NO_x is diminished. Although effective on both types of NO_x emissions, experience indicates that LEA is considerably more effective in reducing thermal NO_x. There is, however, a practical limit to the use of LEA. At extremely low air settings, problems may occur with combustion stability, and smoking could result from incomplete combustion. When firing coal, another potential problem resulting from unreasonably low excess air levels is coal ash slagging which can lead to steam generating unit operating constraints or maintenance problems. Within practical low excess air limits for good steam generating unit operation, however, LEA can significantly reduce NO_x emissions for any steam generating unit.

LEA control can be implemented by manual or automatic control (trim) of the steam generating unit combustion air (windbox) controls to maintain an appropriate air-to-fuel ratio at each steam generating unit load condition. LEA control can also be enhanced for steam generating units burning liquid or gaseous fuels by use of low excess air burners, which promote complete and stable combustion at very low excess air levels.

LEA exhibits two features which have encouraged its use on all types of coal-, oil-, and natural gas-fired steam generating units. The first feature is increased steam generating unit efficiency, which occurs because less excess combustion air is required to be heated in the steam generating unit during the combustion process.

The second feature is the ability of LEA to reduce NO_x formation in steam generating units firing a variety of fossil fuels, including natural gas, oil and coal and a variety of fossil fuel blends with wood and solid wastes. This versatility allows steam generating unit owners or operators to switch fuels or to fire various fuel mixtures and still obtain the energy and environmental benefits of LEA.

Generally, data from natural gas, distillate oil and stoker coal firing indicate the LEA achieves NO_x emission reductions of up to 30 percent depending on steam generating unit fuel and steam generating unit type. Consequently, LEA is considered a demonstrated NO_x control technique for the development of standards of performance limiting NO_x emissions from industrial-commercial-institutional steam generating units.

The final combustion modification technique evaluated was staged combustion (SC). Although SC is most effective in reducing fuel-nitrogen NO_x formation, SC is also effective in reducing thermal NO_x formation. Because of this broad influence on NO_x formation, SC has found application in a broad range of steam generator categories.

SC supresses NO_x emission formation by separating the combustion process into multiple stages, each varying by the availability of combustion air. With SC, the oxygen availability during the critical stages of combustion in minimized and the conversion of both atmospheric-nitrogen and fuel-nitrogen to NO_x is reduced. SC also delays a portion of the combustion process, thereby reducing the peak flame temperature and the formation of thermal NO_x. The application of low excess air plus staged combustion (LEA/SC) compounds the reduction of thermal NO_x and fuel-nitrogen NO_x emissions, thereby resulting in effective reduction of total steam generating unit NO_x emission.

SC controls can be implemented by two methods. One method, known as overfire air (OFA), involves diverting a fraction of the combustion air away from the burner, and injecting it into the flame from secondary air ports. These secondary air ports are typically located in the side of the stream generating unit downstream from the burners.

OFA controls are currently offered by several industrial-commercial institution steam generating unit manufacturers. Over the past several years, OFA controls have received limited application to natural gas and distillate oil fired steam generating units and wide application to pulverized coal- and residual oil-fired steam generating units. Due to this wide application of OFA to pulverized coal and residual oil fired steam generating units, the NO_x emission reduction capabilities of OFA controls are well documented for firing of these fuels and OFA controls are considered the preferred technology for achieving SC on pulverized coal- and residual oil-fired steam generating units.

The second method for achieving SC is through the use of staged combustion burners (SCB), which are often referred to as "low-NO_x" burners. SCB achieve staging of the combustion process by

creating a core flame that is either oxygen or fuel deficient. The remaining air or fuel required to complete the combustion process is introduced by the burner in a cylindrical zone around the core flame. The specific mechanical designs of SCB vary by manufacturer, but are based on these staged combustion principles. In addition to reducing NO_x emission, SCB also greatly relduces the sensitivity of NO_x emissions from natural gas- and distillate oil-fired steam generating units to combustion air preheat.

SCBs are a relatively new NO_x control technology and are the result of several years of very active research and development. In addition, this technology will continue to be an area of active development and rapidly expanding application. This research and development has pursued SCB technology for all fuels fired with burners, including pulverized coal. However, the greatest emphasis has been on the development of SCB for the control of NO_x emissions from natural gas- and distillate oil-fired steam generating units in response to significant environmental problems occurring in locations such as California where natural gas and distillate oil fuels are commonly used. As a result of the rapid development of SCB, there are now a limited number of SCB applied to natural gas- and distillate oil-fired industrial-commercial-institutional steam generating units installed and operating in the U.S. Furthermore, there are four steam generating unit manufacturers and four burner manufacturers offering SCB's for field-erected and packaged steam generating units. Performance guarantees are being offered for SCB application to the combustion of natural gas and distillate oil.

Althought SCB for residual oil-fired steam generating units are commercially available from three vendors, the application of SCB to residual oil- and pulverized coal-fired steam generating units has largely been limited to pilot and demonstration applications. The establishment of performance capabilities for SCB on residual oil- and pulverized coal-fired units is complicated by the wide variability in composition exhibited by these two fuels. Because of these performance data limitations performance guarantees for SCB when applied to residual oil- and pulverized coal-fired steam generating units are limited, although one vendor will generatee NO_x emissions of 129 ng/J (0.30 lb/million Btu) heat input for residual oil with low nitrogen content.

SC control techniques have been shown to be a very effective NO_x emission control technique for natural gas-, oil-, and pulverized coal-fired steam generating units. The OFA method of SC has seen limited application on natural gas- and distillate oil-fired steam generating units and has seen widespread application for several years on residual oil- and pulverized coal-fired steam generating units. OFA is, therefore, considered a demonstrated control technique for purposes of developing standards of performance limiting NO_x emissions from natural gas-, distillate oil-, residual oil- and pulverized coal-fired steam generating units. SCB, although a newer technology, has been the focus of much recent SC activity, particularly for distillate oil- and natural gas-fired steam generating units. SCB is considered a demonstrated control technique for the purpose of developing standards of performance limiting NO_x emissions from natural gas- and distillate oil-fired steam generating units. For residual oil- or pulverized coal-fired steam generating units, SCB technology is under active development but does not appear to have reached the point where it can be considered demonstrated and available for universal application to industrial-commercial-institutional steam generating units.

When LEA is applied in conjunction with SC, LEA/SC compounds the effectiveness of each technology, resulting in from 25 to 60 percent NO_x emission reductions from fossil fuel-fired steam generating units. Consequently, LEA and LEA/SC are considered demonstrated control techniques for the purpose of developing standards of performance limiting NO_x emissions from industrial-commercial-institutional steam generating units.

NO_x Emission Limits. As discussed above, after evaluating a number of NO_x control technologies currently in existence, the low excess air (LEA) and the low excess air-staged combustion (LEA/SC) modification techniques are considered to be demonstrated control technologies for the purpose of developing standards of performance for industrial-commercial-institutional steam generating units. The emission reduction capability and achievable emission limit for each combination of fuels and major type of steam generating units were determined based on the use of these control techniques.

Natural Gas/Distillate Oil-Fired Steam Generating Units. The evaluation of combustion modification controls for natural gas- and distillate oil-fired steam generating units focussed on two NO_x emission control technologies; LEA and LEA/SC. Because natural gas and distillate oil are both low nitrogen fuels, fuel-nitrogen NO_x formation is minimal and thermal NO_x formation composes the major source of NO_x emissions from firing these fuels. LEA has been shown to be quite effective in controlling thermal NO_x formation and consequently is quite effective in reducing NO_x emissions from steam generating units firing natural gas and distillate oil. However, in the last two years LEA/SC controls in the form of staged combustion burners (SCB) have been the focus of most NO_x emission control technology demonstration and application activities. SCB, when combined with LEA, has been shown to be more effective than LEA alone in reducing NO_x emissions from natural gas and distillate oil combustion.

A large amount of NO_x emission data covering a wide range of conditions was collected on the performance of LEA applied to natural gas- and distillate oil-fired steam generating units. Over 250 short-term test results were collected for approximately 24 natural gas- and distillate oil-fired steam generating units. These data were gathered using a continuous NO_x analyzer (chemiluminescent) with each test period ranging from a few minutes to several hours. The natural gas-fired steam generating units ranged in size from 6 to 117 NW (22 to 400 million Btu/hour) heat input capacity. The distillate oil-fired steam generating units ranged from 6 to 73 MW (22 to 250 million Btu/hour) heat input capacity. Some steam generating units had preheated combustion air, while others did not. Thus, the temperature of the combustion air entering the steam generating units ranged from 16°C to 360°C (60°F to 680°F). Boiler loads ranged from 18 percent to nearly 106 percent of rated capacity and excess oxygen levels ranged from 0.2 to 14.5 percent (1 to 200 percent excess air). Under these conditions, resulting short term NO_x emissions ranged from 13 to 237 ng/J (0.03 to 0.55 lb/million Btu) heat input.

The wide variability in the test data is due primarily to wide variations in steam generating unit test conditions. In some cases, the test conditions were not representative of adverse NO_x formation conditions such as high loads and high combustion air preheat temperatures. In other cases, the amount of excess air used was above the level that is consistent with reasonable LEA control. In order to characterize each steam generating unit's emissions under LEA controls, a method was developed which matched the emission data to

their associated set of LEA operating conditions and then predicted NO_x emission. This method relied on statistical regressions that established a relationship between NO_x emissions and heat release rate (load), excess air level, and combustion air temperature (degree of combustion air preheat). After identifying the relationship, operating conditions were specified to represent LEA controls and high potential NO_x emissions (full load and maximum preheat temperature) and the NO_x emission level for steam generating unit under LEA control was estimated.

For natural gas- and distillate oil-fired steam generating units not using combustion air preheat, LEA reduced NO_x emissions to less than 69 ng/J (0.16 lb/million Btu) heat input. For steam generating units firing the same fuels but employing combustion air preheat, LEA reduced average NO_x emissions to less than 120 ng/J (0.28 lb/million Btu) heat input under worst case operating conditions.

These NO_x emission levels represent the mean performance of LEA under operating conditions which are conducive to high NO_x emissions. However, day-to-day variation around this mean can be expected. One method to address this variation is to average the data from more than one day of operation. NO_x emissions averaged over 30 days, for example, show much less variation than NO_x emissions averaged on a 24-hour basis.

Short-term variations in NO_x emission levels can be minimized by averaging emissions, but not eliminated completely. By performing time series analysis of long-term NO_x emission data from individual steam generating units, it is possible to quantify the amount of long-term variation remaining after averaging. No long-term NO_x data are available for the application of LEA to watertube natural gas- and distillate oil-fired steam generating units; however, long-term NO_x data were available and were analyzed for the application of LEA/SC to watertube residual oil-fired steam generating units. Since the composition of natural gas and distillate oil fuels are generally more consistent than residual oils, the analysis based upon residual oil represents a worst case situation and the variation in NO_x emissions resulting from the use of LEA would be smaller for steam generating units firing natural gas or distillate oil.

The long-term NO_x data for application of LEA/SC to residual oil-fired steam generating units (discussed in next section) indicate that variations above and below the mean NO_x emission level would be expected to be less than 8 percent when an averaging period of 30 days is used to analyze the data. This means that an NO_x emission level 8 percent higher than the mean NO_x emission level could be met consistently when using a 30-day period to average NO_x emission data.

Applying the results of this analysis of NO_x emission variation to the application of LEA to natural gas- and distillate oil-fired steam generating units leads to the conclusion that LEA is capable of reducing NO_x emissions from natural gas- and distillate oil-fired steam generating units without preheated combustion air to 86 ng/J (0.20 lb/million Btu) heat input or less on a 30-day rolling average basis. Similarly, LEA is capable of reducing NO_x emissions from natural gas- and distillate oil-fired steam generating units with preheated combustion air to 129 ng/J (0.30 lb/million Btu) heat input or less on a 30-day rolling average basis.

To evaluate the performance of LEA/SC NO_x emission controls on natural gas- and distillate oil-fired steam generating units, performance data was collected on both LEA/OFA and LEA/SCB systems. NO_x emission data were collected from two natural gas-fired steam generating units equipped with LEA/OFA controls. All data were gathered with a continuous NO_x emission monitor (chemiluminescent). The two steam generating units had heat input capacities of 165 MW and 230 MW (567 and 800 million Btu/hour) and were capable of combusting both natural gas and residual oil fuels (no residual oil data were available, however). A series of twelve short term tests ranging in length from 8 minutes to 25 minutes were conducted on each steam generating unit. NO_x emissions during these tests averaged 37 ng/J and 38 ng/J (0.086 and 0.089 lb/million Btu) heat input, respectively.

NO_x emission test data was also collected from five natural gas-fired steam generating units equipped with LEA/SCB. All data were gathered with a continuous NO_x analyzer (chemiluminescent). The five steam generating units ranged in size from 19 MW to 29 MW (65 to 100 million Btu/hour) heat input capacity. Two of the steam generating units were designed to fire only natural gas and three of the steam generating units were designed for both natural gas and distillate oil firing. Finally, four of the five units were packaged units and the fifth unit was a field erected unit.

The NO_x emission data consisted of three or more short term tests conducted on each of the five steam generating units at full load conditions. These data indicate that average NO_x emissions ranged from 30 ng/J to 38 ng/J (.07 to .09 lb/million Btu) heat input for natural gas firing and 43 ng/J (0.10 lb/million Btu) heat input for distillate oil firing.

The manufacturers of LEA/SCB and of steam generating units equipped with LEA/SCB were also contacted to determine what NO_x emission performance guarantees they offered. Four of the five manufacturers contacted are providing guarantees for their LEA/SCB units. Two of the guarantees offered were for achieving sustained NO_x emission levels of 17 to 34 ng/J (0.04 to 0.08 lb/million Btu) heat input when firing natural gas. The other two manufacturers are providing guarantees that their LEA/SCB units are capable of achieving sustained NO_x emission levels of 43 ng/J (0.10 lb/million Btu) heat input for natural gas firing. Finally, one manufacturer is also providing guarantees that their LEA/SCB are capable of achieving sustained NO_x emission levels of 43 ng/J (0.10 lb/million Btu) heat input for distillate oil-fired steam generating unit applications.

All emission control technologies exhibit some sensitivity to changes in combustion conditions, which result in variations in emission performance. However, these sensitivities to combustion conditions are greatly reduced when LEA/SC controls are applied to natural gas- and distillate oil-fired units due to the consistently high quality of these fuels and the combustion characteristics of LEA/SC controls. Any variations in NO_x emissions when LEA/SC controls can be further reduced by averaging the emission data for more than one day of operation. NO_x emissions when averaged over a 30-day period, exhibit much less variation than NO_x emissions averaged over a 24-hour period.

This analysis and assessment of the NO_x emission performance capabilities of the application of LEA/SC to natural gas- and distillate oil-fired steam generating units, the rapid development and continuing improvement in the performance characteristics of this technology, and the availability of NO_x emission performance guarantees from the vendors of this technology, indicates that LEA/SC will reduce NO_x emissions from steam generating units firing natural gas or distillate oil to 43 ng/J (0.10 lb/million Btu) heat input on a 30-day rolling average basis.

Residual Oil-Fired Steam Generating Units. The composition of residual oils varies considerably. Some residual oils contain very little fuel nitrogen, while others, derived from heavy crude oils, may have fuel nitrogen levels exceeding 0.5 weight percent. However, most

residual oils have fuel nitrogen contents in the range of 0.1 to 0.4 weight percent.

The control technique most effective in reducing NO_x emissions from residual oil-fired steam generating units depends on the fuel nitrogen content of the oil. For residual oils with low fuel nitrogen levels, thermal NO_x predominates and LEA is the most effective NO_x control technique. At this fuel nitrogen level LEA/SC does not generally result in a further reduction in emissions. For residual oils with intermediate or high fuel nitrogen contents, fuel-nitrogen NO_x predominates and LEA/SC is distinctly the most effective control technique.

The data gathered for assessment of LEA and LEA/SC as control techniques for NO_x emissions from steam generating units firing residual oils consist of results from both short-term and long-term emission tests. These data were gathered using a continuous NO_x analyzer (chemiluminescent). The short-term test periods ranged from 30 minutes to 6 hours in duration. The long-term test data were collected from a residual oil-fired steam generating unit over a 29-day period.

The short-term NO_x data consist of over 150 tests (each test was less than 6 hours) performed on 12 residual oil-fired industrial steam generating units. Five steam generating units were tested under LEA/SC controls using overfire air ports (OFA). OFA has been the perferred technique for achieving LEA/SC on residual oil-fired steam-generating units. These data were gathered in order to analyze the effect of LEA and LEA/SC on NO_x emissions from firing residual oil of varying fuel nitrogen contents using varying degrees of combustion air preheat. The steam generating units tested ranged in size from 6 to 59 NW (22 to 200 million Btu/hour) heat input capacity. Some of the steam generating units used preheated combustion air, while others did not. Thus, the temperature of the combustion air entering the steam generating unit ranged from 16°C to 310°C (60°F to 590°F). The steam generating units were operated at stem generating unit loads from 20 to 94 percent. The residual oil fired during these tests had fuel nitrogen levels ranging from 0.14 to 0.77 weight percent. The flue gas oxygen levels ranged from 0.9 to 13.3 percent (5 to 150 percent excess air). Under these conditions, NO_x emissions ranged from 60 to 335 ng/J (0.14 to 0.78 lb/million Btu) heat input.

These data were analyzed in the same manner as that employed to analyze the LEA data base for the natural gas- and distillate oil-fired steam generating unit data. Statistical regressions were performed to relate NO_x emissions to key steam generating unit operating conditions. These analyses showed that by far the most pronounced factor affecting the performance of LEA and LEA/SC was the fuel nitrogen content of the residual oil fired. From these analyses a strong correlation was established between the effectiveness of LEA and LEA/SC in reducing NO_x emissions and the fuel nitrogen content of the residual oil fired. When LEA is used alone, NO_x emissions are reduced but tend to increase in an almost linear fashion as the fuel nitrogen content of the residual oil increases. Thus, as the fuel nitrogen content of the residual oil increases, the effectiveness of LEA alone decreases.

When SC is used in combination with LEA, NO_x emissions also increase as the fuel nitrogen content of the residual oil increases, but at a much slower rate. Ultimately, there is little further increase in NO_x emissions as the residual oil fuel nitrogen content exceeds 0.4 weight percent. These relationships are consistent with the general view that LEA is quite effective in reducing thermal NO_x formation, but is much less effective in reducing fuel-nitrogen NO_x formation, and that SC in combination with LEA is very effective at reducing both thermal and fuel-nitrogen NO_x formation.

The regressions were used to match each of the short-term tests to a common set of steam generating unit operating conditions representing high NO_x emission potential and the use of LEA or LEA/SC, as applicable. For steam generating units firing low nitrogen residual oil (less than 0.2 weight percent fuel nitrogen) and employing LEA, 30-day average NO_x emissions did not exceed 116 ng/J (0.27 lb/million Btu) heat input. At this level of fuel nitrogen LEA/SC does not generally result in a further reduction in emissions. For steam generating units firing a medium nitrogen residual oil (0.2 to 0.35 weight percent fuel nitrogen) and employing LEA, average NO_x emissions were 158 ng/J (0.37 lb/million Btu) heat input or less. Using LEA/SC while firing a medium nitrogen residual oil resulted in 30-day average NO_x emissions which did not exceed 122 ng/J (0.28 lb/million Btu) heat input. Finally, for steam generating units firing a high nitrogen residual oil (greater than 0.35 weight percent fuel nitrogen) and employing LEA/SC, 30-day average NO_x emissions did not exceed 124 ng/J (0.29 lb/million Btu) heat input.

In addition to short-term NO_x emission test data, long-term NO_x emission data were also gathered on the performance of LEA and LEA/SC in reducing NO_x emissions from residual oil-fired steam generating units. The long-term data were collected with a continuous NO_x analyzer (chemiluminescent) from a 29 MW (100 million Btu/hour) heat input capacity steam generating unit over a 29-day period. During this test period, the steam generating unit fired residual oil having a fuel nitrogen content of 0.3 weight percent and was operated between 45 and 95 percent of steam generating unit capacity. For 16 days of the test period, this steam generating unit was controlled using LEA alone, with flue gas oxygen levels ranging from 6 to 11 percent (40 to 100 percent excess air). For the remainder of the period, LEA continued to be used while SC was implemented by removing one of the burners from service and by using the port for overfire air. This test provides a good indication of the preformance of LEA/SC. A new steam generating unit which is specifically designed for SC, however, would be expected to achieve even greater reductions in NO_x emissions because of the flexibility to locate staging air ports in optimal positions. NO_x emissions from this steam generating unit averaged 125 ng/J (0.29 lb/million Btu) heat input using LEA alone. With the addition of SC, average NO_x emissions were reduced to 99 ng/J (0.23 lb/million Btu) heat input.

These long-term NO_x data were analyzed to examine the ability of the 30-day averaging period to reduce the variation in NO_x emissions. Using time series analysis, the variation in NO_x emissions remaining after using a 30-day rolling average to calculate NO_x emission levels was found to be 8 percent. Using this factor to increase the average NO_x emission levels resulting from the analysis of the short-term NO_x emission data is sufficient to ensure that NO_x emissions calculated using a 30-day rolling average would be consistently under this level. As a result, this analysis indicates that for steam generating units firing residual oils with less than 0.35 weight percent fuel nitrogen, LEA/SC will reduce NO_x emissions to 129 ng/J (0.30 lb/million Btu) heat input or less when using a 30-day rolling average to calculate emissions. Some low fuel nitrogen residual oils will be able to meet this emission level using LEA controls. For steam generating units firing residual oil having a fuel nitrogen content greater than 0.35 weight percent, LEA/SC will reduce NO_x emissions to 172 ng/J (0.40 lb/million Btu) heat input or less when using a 30-day rolling average to calculate emissions.

Coal-Fired Mass-Feed Stoker Steam Generating Units. The analysis of NO_x

emissions data from coal-fired mass-feed stoker steam generating units examined the emission reduction potential of LEA. In general, SC has not been applied to mass-feed stoker steam generating units. The available data consist of approximately 150 short-term tests on 7 steam generating units. The steam generating units varied in heat input capacity from 16 to 79 MW (56 to 269 million Btu/hour).

During these tests, loads ranged from 32 to 104 percent of capacity. Coals fired varied in fuel nitrogen from 0.94 to 1.55 weight percent and moisture content varied from 2.7 to 12.3 percent. One steam generating unit employed a combustion air preheater which heated combustion air to 107° C (225° F); the remainder used ambient combustion air. At flue gas oxygen levels of 5.0 to 14 percent (30 to 170 percent excess air), NO_x emissions as measured by a continuous NO_x analyzer (chemiluminescent) varied from 73 to 224 ng/J (0.17 to 0.52 lb/million Btu) heat input.

Statistical regressions were used to correlate NO_x emissions with steam generating unit operating conditions. This regression analysis differed from that used in the natural gas- and oil-fired steam generating unit analysis discussed earlier in that correlations were developed for each individual steam generating unit rather than for the data set as a whole. Individual steam generating unit regressions were more apropriate because the response of NO_x emissions to changes in operating conditions was found to be more specific to individual steam generating unit design.

The steam generating unit specific correlations indicate that NO_x emissions are related primarily to excess air level and grate heat release rate (or steam generating unit load). While the data base for mass-feed stoker steam generating units is insufficient to investigate the effect of other operating variables, such as combustion air preheat and coal fuel nitrogen levels, statistical analysis of the NO_x data base for coal-fired spreader stoker steam generating units (discussed below), which are similar to mass-feed stoker steam generating units, concluded that the effect of these other variables is relatively insignificant.

The correlations predicted average NO_x emissions for each steam generating unit at maximum grate heat release rate (i.e., full load) under LEA conditions. This analysis predicted average NO_x emissions would range from 95 to 194 ng/J (0.22 to 0.45 lb/million Btu) heat input.

Based on this analysis, LEA operation will reduce average NO_x emissions from mass-feed stoker steam generating units to 194 ng/J (0.45 lb/million Btu) heat input or less. Although no long-term NO_x data from mass-feed stoker steam generating units are available, two long-term NO_x tests on spreader stoker steam generating units are available. The variability in NO_x emissions from coal-fired mass-feed stoker and spreader stoker steam generating units is expected to be similar. As discussed below, analysis of these long-term data indicates that the long-term variation in NO_x emissions is about 7 percent when using a 30-day rolling average to calculate NO_x emissions. Using this factor to increase the average NO_x emission levels resulting from analysis of the short-term NO_x data from mass-feed stoker steam generating units indicates that NO_x emissions calculated using a 30-day rolling average would be consistently below 215 ng/J (0.5 lb/million Btu) heat input. As a result, this analysis concludes that LEA will reduce NO_x emissions from mass-feed stoker steam generating units to 215 ng/J (0.50 lb/million Btu) heat input or less, using a 30-day rolling average to calculate emissions.

Coal-Fired Spreader Stoker Steam Generating Units. LEA has been the primary control technique employed on spreader stoker steam generating units to reduce NO_x emissions. SC controls have been employed on several spreader stoker steam generating units by diverting a greater portion of the undergrate combustion air to the overfire air ports located above the grate. Available NO_x emission data, however, do not indicate significant emission reductions beyond those achieved using LEA alone. For this reason, the analysis of spreader stoker NO_x emission control concentrated on LEA alone.

NO_x emission data were gathered from approximately 350 short-term tests (less than 3 hours per test) on 11 spreader stoker steam generating units to determine the effectiveness of LEA in reducing NO_x emissions. All data were gathered with a continuous NO_x analyzer (chemiluminescent). The short-term NO_x emission data gathered from 6 of the 11 spreader stoker steam generating units were gathered in a joint study by the American Boiler Manufacturing Association (ABMA), Department of Energy (DOE), and EPA. The results of this joint study were published recently by the ABMA in a three-volume document entitled "Emissions and Efficiency Performance of Industrial Coal Stoker Fired Boilers." (See *Background Information Documents* for details.)

The overall conclusions drawn in this joint study confirm the NO_x emission trends discussed in the data base contained in the Background - Information Document. The study concluded that NO_x emissions increased with load and that this increase could be offset by lowering excess air levels as load is increased. The amount of NO_x emission decrease associated with lowering excess air varied from 9 to 29 ng/J (0.021 to 0.067 lb/million Btu) heat input for each 10 percent decrease in excess air at a fixed load. The study also concluded that staged combustion (SC) did not result in significant reductions in NO_x emissions for spreader stoker steam generating units and that variations in coal nitrogen contents from 0.75 to 1.5 weight percent also had no measurable effect on NO_x emissions.

The 11 spreader stoker steam generating units tested ranged in size from 28 to 105 MW (97 to 359 million Btu/hour) heat input capacity and were operated at loads from 30 to 100 percent during the tests. Coal nitrogen contents ranged from 0.82 to 1.8 weight percent and coal moisture ranged from 1.5 to 25.0 weight percent. Two steam generating units employed combustion air preheat, operating with combustion air temperature of 158°C (315°F) in one case and 149°C (300°F) in the other case.

As in the analysis for mass-feed stoker steam generating units, statistical regressions were developed for each individual steam generating unit correlating NO_x emissions to steam generating unit operating conditions. These correlations indicate that NO_x emissions are related primarily to excess air level and grate heat release rate (i.e., Btu/hour-ft^2). In addition, these correlations also indicate that no significant relationships exist between NO_x emissions and combustion air preheat level, coal fuel nitrogen content, or any other operating parameters of these spreader stoker-fired steam generating units.

Using these correlations, average NO_x emissions at maximum grate heat release rate (i.e., full load) were predicted for each steam generating unit under LEA conditions consistent with proper steam generating unit operation. Predicted average NO_x emissions for all steam generating units except one were in the range of 146 to 232 ng/J (0.34 to 0.54 lb/million Btu) heat input. Predicted emissions from the other spreader stoker steam generating unit were much higher at 340 ng/J (0.79 lb/million Btu) heat input.

An investigation was conducted to determine the cause of the anomalous emission characteristics of the one steam generating unit. A site visit was conducted and the investigation revealed that a number of operational changes have been made to this steam generating unit to improve its operation since the NO_x data were originally gathered. These changes improved steam generating unit operation and reduced NO_x emissions considerably. Additional continuous, long-term NO_x data were obtained for this steam generating unit and for an indentical companion steam generating unit covering a 1-month period. These new data show that NO_x emissions from these two steam generating units, after steam generating unit improvements, varied from 40 to 150 ng/J (0.11 to 0.40 lb/million Btu) heat input. A statistical correlation based on these data predict average NO_x emissions at maximum grate heat release rate to be 168 ng/J (0.39 lb/million Btu) heat input for each of the two steam generating units under LEA operating conditions.

The analyses indicate that LEA will reduce average NO_x emissions from spreader stoker steam generating units to 232 ng/j (0.54 lb/million Btu) heat input or less. To determine the variation in NO_x emissions, long-term NO_x emissions data were collected from two spreader stoker steam generating units using a continuous NO_x analyzer (chemiluminescent). The first steam generating unit was tested over a 30-day period at average daily loads between 55 and 80 percent of the 37 MW (125 million Btu/hour) rated heat input capacity. A coal analysis indicated an average fuel nitrogen content of 1.3 weight percent and an average coal moisture of 7 weight percent. The combustion air was not preheated. During the test period, NO_x emissions using LEA ranged from 155 to 189 ng/J (0.36 to 0.44 lb/million Btu) heat input.

The second spreader stoker steam generating unit was tested during a 20-day period with daily average loads between 32 and 60 percent of the 59 MW (200 million Btu/hour) rated heat input capacity. Coal analysis indicated an average fuel nitrogen content of 0.8 weight percent and an average moisture of 23 weight percent. This steam generating unit employed a combustion air preheater designed to heat combustion air to 177 °C (350 °F). Actual combustion air temperature during testing, however, was not recorded. During the test periods when LEA was applied (approximately 8 hours per day), NO_x emissions ranged from 189 to 232 ng/J (0.44 to 0.54 lb/million Btu) heat input.

A time series statistical analysis was conducted on the long-term NO_x emission data from the above two spreader stoker steam generating units and from the previously discussed two spreader stoker steam generating units that underwent operational changes. This statistical analysis determined the variability in NO_x emissions remaining after use of 30-day rolling average to calculate emissions. This analysis indicated a variability in NO_x emissions of about 7 percent. Using this factor to adjust the average NO_x emissions resulting from the analysis of the short-term NO_x data, NO_x emissions calculated using a 30-day rolling average are consistently below the proposed emission level. As a result, the analysis indicates that LEA will reduce NO_x emissions from spreader stoker steam generating units to 258 ng/j (0.60 lb/million Btu) heat input or less, using a 30-day rolling average to calculate emissions.

Pulverized Coal-Fired Steam generating units. To assess the performance of LEA/SC in reducing NO_x emissions from pulverized coal-fired steam generating units, 2 years of continuous NO_x emission data were gathered using a continuous NO_x analyzer (chemiluminescent) from two relatively new 88 MW (300 million Btu/hour) heat input capacity steam generating units having a single stack. During this long-term NO_x emissions test, steam generating unit loads for the two steam generating units ranged from 31 to 93 percent of rated capacity and averaged 78 percent for one steam generating unit and 58 percent for the other. A typical coal analysis showed a coal nitrogen content of approximately 1.6 weight percent and a moisture content of approximately 7 weight percent. Both steam generating units employed combustion air preheaters, and although actual combustion air temperatures were not recorded, each preheater was designed to heat combustion air to 272° C (522° F). During the 2-year test period, the daily NO_x emissions from this facility ranged from 130 to 335 ng;/J (0.30 to 0.78 lb/million Btu) heat input. The monthly average NO_x emissions were all below 258 ng/J (0.6 lb/million Btu) heat input. Overall NO_x emissions for the entire 2-year test period averaged 228 ng/J (0.53 lb/million Btu) heat input.

Data were also analyzed for two pulverized coal-fired steam generating units tested over a 1-month period. For the 156 MW (535 million Btu/hour) heat input capacity steam generating unit, load ranged from 41 to 90 percent of capacity and stack O_2 levels ranged from 6.1 to 9.8 volume percent (44 to 84 percent excess air). For the 234 MW (800 million Btu/hour) heat input capacity steam generating unit, load ranged from 51 to 98 percent of capacity and stack O_2 levels ranged from 3.0 to 7.1 volume percent (17 to 54 percent excess air). NO_x emissions as measured by a continuous NO_x analyzer (chemiluminescent) ranged from 120 to 297 ng/J (0.28 to 0.69 lb/million Btu) for the two steam generating units, respectively. Over the 1-month time period, NO_x emissions averaged 203 ng/J and 220 ng/J (0.47 and 0.51 lb/million Btu). respectively.

A time series statistical analysis of the data from the two year test was conducted to determine the variability in NO_x emissions remaining after use of a 30-day rolling average to calculate emissions and reduce this variation. This analysis indicated a variability in NO_x emissions of about 69 ng/J (0.16 lb/million Btu). Using this factor to adjust the average NO_x emissions for each of the above four steam generating units provides an NO_x emission level achievable on a 30-day rolling average basis. This analysis showed that LEA/SC can reduce NO_x emissions from industrial sized pulverized coal-fired steam generators to 300 mg/J (0.70 lb/million Btu) heat input or less when NO_x emissions are calculated on a 30-day rolling average basis.

The long-term NO_x data collected are representative of the performance of LEA/SC in reducing NO_x emissions from pulverized coal-fired steam generating units under adverse operating conditions. For example, the coal fired in these steam generating units had a high nitrogen content (i.e., 1.6 weight percent compared to 0.5 to 1.5 weight percent for most coals) and a low moisture content (i.e., 7 weight percent compared to 3 to 30 weight percent for most coals). Both of these coal properties would contribute to high uncontrolled NO_x emissions from pulverized coal-fired steam generating units, thus representing adverse conditions in terms of the ability of LEA/SC to reduce NO_x emissions.

Examination of the data at different loads indicates on trends with respect to higher NO_x emissions at higher loads. This can be explained by the lower excess air levels feasible at higher loads. At high loads, steam generating unit combustion conditions are characterized by greater turbulence and correspondingly better mixing of fuel and air. Under these conditions, complete fuel combustion and safe steam generating unit operation can be

maintained at lower excess air levels. In addition, both steam generating units incorporate combustion air preheat, reflecting relatively adverse operating conditions with respect to thermal NO_x formation.

The analyses, therefore, show, that LEA/SC can reduce NO_x emissions from industrial-sized pulverized coal-fired steam generating units to 301 ng/J (0.70 lb/million Btu) heat input or less when emissions are calculated on a 30-day rolling average basis.

Fossil Fuel Mixtures. NO_x control techniques are compatible and frequently employed in combination with one another to reduce NO_x emissions from firing of fossil fuels. This is especially the case with LEA and LEA/SC. These techniques are as applicable to steam generating units firing several fossil fuels simultaneously as they are to steam generating units firing fossil fuels individually. Therefore, the "mix" of LEA and SC employed to reduce NO_x emissions is directly related to the amount of each fossil fuel fired.

Because of the compatability of LEA with SC and because the required "mix" of these two control techniques is directly related to the amount of each fuel fired, NO_x emissions from steam generating units firing mixtures of fossil fuels can be controlled to levels proportionate to the NO_x emission limits for each fossil fuel alone. Thus, the NO_x emission limit for a specific fossil fuel mixture would be calculated as a weighted average, based on the percentage of fossil fuel heat input to the steam generating unit and the NO_x emission limits for each fossil fuel fired.

Fossil Fuel and Chemical By-Product/Waste Fuel Mixtures. Chemical by-products and wastes are frequently combusted in steam generating units used in the chemical and refining industries. These waste materials are not generally combusted alone but are fired in combination with fossil fuels. Chemical by-products and waste are combusted in steam generating units to dispose of these waste materials and to recover their heating value. The term "chemical by-products and wastes" includes refinery or process gas, combustible by-products, and various combustible wastes that may or may not be classified as hazardous under the Resource Conservation and Recovery Act (RCRA). NO_x emission data were analyzed for three categories of by-product/waste fuels fired in mixtures with fossil fuels: refinery or process gas; low nitrogen content liquid wastes; and high nitrogen content liquid wastes.

Refineries and chemical plants typically burn a blend of natural gas and nonhazardous by-product/waste gases which is characteristically termed "process gas" or "refinery gas." NO_x emission data was collected from seven steam generating units firing fossil fuel and process gas mixtures comprised of up to 50 volume percent by-product/waste gases. The capacities of these steam generating units ranged from approximately 16 to 170 MW (53 to 580 million Btu/hour) heat input with loads ranging from 46 to 113 percent of rated capacity. Five steam generating units had no combustion air preheat while two steam generating units had combustion air preheat temperatures ranging from 216°C to 321°C (420°F to 610°F). The approximate heating values of the process gases fired in these steam generating units ranged from 30 to 64 MJ/m^3 (800 to 1,700 Btu/SCF) which compares to a natural gas heat value of approximately 40 MJ/m^3 (1,050 Btu/SCF).

Flue gas from the seven process gas-fired steam generating units contained oxygen concentrations ranging from 1.2 to 12.0 percent by volume (5 to 130 percent excess air) and NO_x emission rates ranging from 56 to 280 ng/J (0.13 to 0.65 lb/million Btu) heat input. Data were collected using a continuous NO_x analyzer (chemiluminescent). Analysis of the NO_x emission data reveals a strong correlation between the higher NO_x emission rates and the higher combustion preheat temperatures and flue gas oxygen concentrations (excess air). These relationships are characteristic of thermal NO_x formation and are the same relationships exhibited by natural gas-fired steam generating units. (Thermal NO_x formation and control are discussed above in detail in the section on NO_x emission limits for natural gas- and distillate oil-fired steam generating units.) When NO_x emissions from the seven process gas-fired steam generating units were compared to the NO_x emissions from more than 30 natural gas-fired steam generating units under the same operating conditions, there were no discernible distinctions between the NO_x emissions from the two fuels. All 37 steam generating units responded in a like manner to LEA controls revealing that NO_x emissions from both fuels are generated by similar mechanisms and respond similarly to a given NO_x emission control technique.

The similar responses of both natural gas and process gas NO_x emissions to combustion conditions are attributable to both being comprised of thermal NO_x. Thus, the NO_x control techniques which are effective in reducing thermal NO_x emissions from steam generating units firing natural gas, will also be effective in reducing thermal NO_x emissions from steam generating units firing process gas. Similarly, the NO_x control techniques which are effective in reducing thermal NO_x emissions from steam generating units firing a mixture of natural gas and other fossil fuels, will also be effective in reducing thermal NO_x emissions from steam generating units firing mixtures of process gas with fossil fuels. The proposed standards, therefore, would limit NO_x emissions from steam generating units firing process gas to the same level as steam generating units firing natural gas. Additionally, the proposed standard for steam generating units firing mixtures of process gas and fossil fuels would limit NO_x emissions to the same levels as steam generating units firing mixtures of natural gas and other fossil fuels.

Liquid by-products/wastes are generally cofired in steam generating units with natural gas. Data were collected from two steam generating units firing mixtures of natural gas and low nitrogen liquid by-products/wastes. One steam generating unit was rated at 25 MW (85 million Btu/hour) heat input capacity and the other rated at 73 MW (250 million Btu/hour) heat input capacity. The test data covered steam generating unit load ranging from 103 to 125 percent capacity in one case and 76 to 114 percent capacity in the other. Neither steam generating unit was equipped for operation using staged combustion (SC) and neither used preheated combustion air. However, both steam generating units applied various degrees of low excess air (LEA). Flue gas O_2 content ranged from 1.2 to 3.4 percent (6 to 9 percent excess air) for the 25 MW (85 million Btu/hour) heat input capacity steam generating unit and from 2.0 to 4.6 percent (10 to 27 percent excess air) for the 73 MW (250 million Btu/hour) heat input capacity steam generating unit.

Data were collected for the combustion of natural gas alone and for the combustion of mixtures of natural gas and these liquid by-products/wastes. The mixtures contained 4 to 11 percent of the waste on a total heat input basis. The waste had a heating value of 46 kJ/g (20,000 Btu/lb) and was composed primarily of C_2 to C_{10} alkanes, alkenes, and dienes.

Analysis of NO_x emissions both with and without cofiring of the liquid by-product/waste with natural gas indicates that the presence of the waste had little effect on NO_x emission levels, nor on the ability of LEA controls to reduce NO_x formation. In all cases where this waste was cofired with natural gas, including tests using LEA controls, NO_x emissions were identical to those that would be generated by the

corresponding mixture of natural gas and low nitrogen residual oil.

When combusting low nitrogen liquid by-products/wastes, as with the combusting of low-nitrogen residual oil, NO_x emissions are composed primarily of thermal NO_x. As discussed earlier, the factors which impact thermal NO_x formation most are combustion temperature and excess oxygen levels. Because the majority of low nitrogen liquid by-product/waste fuels will have heat contents analogous to or lower than residual oil (i.e., less than 40 kJ/g (18,000 Btu/lb), the majority of these fuels will result in combustion temperatures and, hence, thermal NO_x emissions similar to or lower than NO_x emissions from low-nitrogen residual oil combustion. Similarly, NO_x emission control techniques which are effective in the reduction of thermal NO_x emissions from low-nitrogen residual oil combustion will also be effective in the reduction of thermal NO_x emissions from low nitrogen liquid by-product/waste fuel combustion.

Consequently, NO_x emissions resulting from cofiring low nitrogen content liquid chemical by-products/wastes with fossil fuels are not significantly different from NO_x emissions resulting from firing low-nitrogen residual oil alone or with other fossil fuels. Similarly, the firing of these liquid by-products/wastes with fossil fuels does not reduce the effectiveness of NO_x control techniques in limiting NO_x emissions.

As a result, NO_x emissions from low nitrogen liquid chemical by-products/wastes cofired with fossil fuels can be reduced to the same NO_x emission levels as would be required for steam generating units firing low-nitrogen residual oil or cofiring mixtures of low-nitrogen residual oil with other fossil fuels.

Data on the combustion of natural gas and a high nitrogen liquid by-product/waste were also collected. These data were collected on the same two natural gas steam generating units described above which cofired natual gas with low nitrogen chemical by-product/waste. The nitrogen content of the high nitrogen liquid by-product/waste was 11.5 weight percent. These wastes had a heating value of 26.7 kJ/g (11,500 Btu/lb) and were composed primarily of nitrobenzene, benzene, and aniline. The test data covered steam generating unit loads ranging from 95 to 126 percent capacity for the 25 MW (85 million Btu/hour) heat input capacity steam generating unit and 64 to 114 percent capacity for the 73 MW (250 million Btu/hour) heat imput capacity steam generating unit. Flue gas O_2 content ranged from 1.2 to 3.6 percent (6 to 20 percent excess air) and from 1.7 to 5.9 percent (8 to 39 percent excess air) for the two steam generating units, respectively.

When cofiring natural gas with this high nitrogen liquid by-product/waste, NO_x emissions increased significantly compared to NO_x emissions when natural gas was fired alone. NO_x emissions ranged from 159 to 228 ng/J (0.37 to 0.53 lb/million Btu) heat imput, while cofiring this waste with natural gas in concentrations of 3 to 9 percent (based on heating value).

As shown by these data, the presence of nitrogen in liquid by-product/waste fuels increases NO_x emissions in a manner similar to the effect of nitrogen in residual oils. The relationship of nitrogen content and NO_x emissions has been well established for residual oils, with higher fuel nitrogen contents resulting in higher NO_x emissions. This relationship is discussed above in the section on NO_x emission controls for residual oil-fired steam generating units. Nitrogen present in liquid by-product/waste fuels in general contributes to NO_x formation according to similar chemical reactions and mechanisms as nitrogen in residual oils. Thus, the same NO_x control techniques which are effective for reducing NO_x emissions from steam generating units cofiring mixtures of high nitrogen residual oils with other fossil fuels are effective for steam generating units cofiring high nitrogen liquid by-products/wastes with fossil fuel.

To ensure that the standards for high-nitrogen liquid by-product/wastes based on high-nitrogen residual oils are not unreasonable, provisions are included within the standards for petitioning the Administrator to establish an individually tailored NO_x standard for specific steam generating units, where it can be shown to the Administrator's satisfaction that NO_x emissions from firing such specific mixtures in the steam generating unit cannot be reduced to the levels necessary to comply with the proposed standard.

Under RCRA, waste materials may be listed as hazardous due to corrosivity, reactivity, flammability, or toxicity. Enforcement guidelines for the combustion of hazardous waste-derived fuels in steam generating units were recently published (**Federal Register**, 48 FR 11157, March 16, 1983). These guidelines distinguish between recycling and disposing of hazardous wastes in steam generating units. Combustion in steam generating units of hazardous wastes having a heating value comparable to or greater than that of low energy commercial fuels, such as wood or low-grade subbituminous coal, constitutes recycling and presently would not be subject to RCRA requirements. The combustion in steam generating units of hazardous wastes with lower heating values, however, constitutes disposal and would be subject to RCRA provisions requiring 99.99 percent destruction of hazardous wastes.

Wastes listed as hazardous due to corrosivity or reactivity are not likely to be fired in steam generating units because of the destructive threat they present to the steam generating unit and to its downstream equipment. Wastes classified as hazardous due to flammability alone are easy to combust due to their flammable properties and are candidate fuels for cofiring with fossil fuels. Additionally, wastes classified as hazardous due to both flammability and toxicity may also have relatively high heating values and under proper steam generating unit operating conditions would not require combustion at unusually high temperatures or high excess oxygen levels to ensure complete destruction (**Federal Register**, 48 FR 11160, March 16, 1983, Appendix A). For these reasons, the impact on NO_x emissions of firing hazardous wastes with fossil fuels in steam generating units would, in most cases, be no different than the impact on NO_x emissions of firing nonhazardous wastes with fossil fuels in steam generating units.

Some toxic wastes may be difficult to destroy by thermal means and, as a result, may require high combustion temperatures and high excess air levels to ensure complete destruction. These combustion conditions would preclude the application of demonstrated NO_x control techniques. In these cases, however, incinerators are generally better suited to achieving these combustion conditions and ensuring complete toxic waste destruction than are steam generating units. Steam generating units are designed to provide steam for various end uses and are not designed specifically to destroy wastes although high destruction efficiencies can frequently be achieved in steam generating units. Incinerators, on the other hand, can be designed specifically to achieve whatever combustion conditions are necessary to ensure high destruction efficiencies. As a result, in many cases hard to destroy toxic wastes may need to be disposed of in incinerators, rather than steam generating units, to ensure complete thermal destruction.

Since many hazardous wastes which will be combusted in steam generating

units are not any more difficult to destroy than nonhazardous wastes and the combustion of many hazardous wastes in steam generating units constitutes recycling which would not be subject to specific RCRA destruction requirements at this time, the proposed standards would limit NO_x emissions from steam generating units firing mixtures of hazardous wastes and fossil fuels to the same levels as steam generating units firing mixtures of nonhazardous wastes and fossil fuels. To ensure that these standards are not unresonable or do not have any adverse effects, however, provisions are included within the standards for petitioning the Administrator to establish an individually tailored NO_x standard for specific steam generating units firing mixtures of toxic, corrosive, or reactive hazardous wastes and fossil fuels, where it can be shown, to the Administrator's satisfaction, that NO_x emissions cannot be reduced to the levels necessary to comply with the proposed standards while simultaneously complying with other applicable Federal, State, or local requirements for achieving specific waste destruction efficiencies.

Nonfossil Fuels and Fossil/Nonfossil Fuel Mixtures. Because of the generally lower nitrogen content and lower combustion temperature of most nonfossil fuels, the formation of NO_x during the combustion of these fuels is characteristically less than that experienced in coal-fired steam generating units. The lower nitrogen content results in less fuel-nitrogen NO_x formation. The lower combustion temperature results in lower thermal NO_x formation. These two factors combine to reduce uncontrolled NO_x emissions from nonfossil fuel firing to considerably lower levels than those emitted by coal-fired steam generating units and most residual oil-fired steam generating units. Emissions levels are similar to uncontrolled NO_x emissions from natural gas-fired steam generating units.

Nonfossil fuel-fired steam generating units can experience flame stability problems due to the high moisture content of the fuel, the variable heating value of the fuel, and other factors. In order to compensate for these problems, nonfossil fuel-fired steam generating units are typically operated at higher excess air levels than fossil fuel-fired steam generating units. Since combustion modification techniques, such as LEA, could aggravate the flame stability problems associated with firing of nonfossil fuels, they have not received wide application to such steam generating units to reduce NO_x emissions. As a result, NO_x control techniques are not proposed for steam generating units firing nonfossil fuels alone.

Nonfossil fuels and fossil fuels, however, are frequently cofired in industrial-commercial-insitutional steam generating units, and it is expected that many new steam generating units, and it is expected that many new steam generating units will be capable of firing a mixture of such fuels. As the proportion of fossil fuels in a fuel mixture increases, the NO_x emission characteristics of the steam generating unit tend to resemble those of fossil fuel-fired steam generating units and also become more amenable to NO_x control through combustion modification techniques, such as LEA and LEA/SC.

To determine the effectiveness of combustion modification on reducing NO_x emissions from the cofiring of nonfossil fuel and natural gas, NO_x emission data were gathered on two spreader stoker steam generating units equipped with LEA firing wood and natural gas. Emission data were obtained on these steam generating units using continuous NO_x monitors (chemiluminescent) over a period ranging in length from 1 to 10 hours. In addition, test data were also obtained using Reference Method 7. The two steam generating units were 220 and 236 MW (752 and 806 million Btu/hour) heat input capacity in size, and they were operated at 54 to 104 percent of steam generating unit load capacity during the tests. The natural gas/wood fuel mixtures fired ranged from 1 to 40 percent natural gas on a heat input basis. The wood nitrogen contents ranged from 0.10 to 0.14 weight percent and the wood moisture contents ranged from 42 to 50 percent. Both steam generating units preheated combustion air to approximately 260° C (500° F). At excess air levels of 17 to 78 percent, NO_x emissions varied from 82 to 138 ng/J (0.19 to 0.32 lb/million Btu) heat input. However, if only data obtained while the steam generating unit was operated under LEA conditions are considered, NO_x emission levels ranged from 82 to 120 ng/J (0.19 to 0.28 lb/million Btu) heat input. These data show that NO_x emissions from wood/natural gas mixtures can be controlled to a level of 129 ng/J (0.30 lb/million Btu) heat input or less.

No steam generating units have been identified that cofire distillate oil/nonfossil fuel mixtures. However, all NO_x emission test results indicate that distillate oil and natural gas form similar NO_x emissions and that these emissions respond similarly to LEA controls. NO_x emissions from combustion of nonfossil fuel/distillate oil mixtures in steam generating units therefore, can be controlled to NO_x levels similar to NO_x emission levels for nonfossil fuel/natural gas mixtures, or to a level of 129 ng/J (0.30 lb/million Btu) heat input or less.

Similarly no data are available on steam generating units firing mixtures of nonfossil fuels and residual oil with NO_x controls such as LEA or SC. As discussed above and below, however, NO_x control techniques are as applicable to steam generating units firing nonfossil/fossil fuel mixtures as they are to steam generating units firing fossil fuel alone. Therefore, NO_x emission control techniques are capable of reducing NO_x emissions from steam generating units firing mixtures of nonfossil fuel and low nitrogen residual oil to 129 ng/J (0.30 lb/million Btu) heat input and from units firing mixtures of nonfossil fuels and high nitrogen residual oil to 172 ng/J (0.40 lb/million Btu) heat input.

NO_x emission control techniques have also been applied to steam generating units firing mixtures of coal and nonfossil fuels. Tests were conducted on a 45 MW (153 million Btu/hour) heat input capacity spreader stoker steam generating unit firing a wood/bark mixture with coal to determine NO_x emissions from mixed fuel-firing and the performance of LEA in reducing these emissions. These NO_x emission data were obtained using a continuous NO_x monitor (chemiluminescent). The steam generating unit load was 85 to 97 percent during testing. The wood/bark nitrogen content varied from 0.18 to 0.21 weight percent and the coal nitrogen content varied from 1.33 to 1.49 weight percent. The wood/bark moisture content varied from 52 to 61 weight percent and the coal moisture content varied from 7.4 to 7.5 weight percent. NO_x emissions from this steam generating unit were 168 ng/J (0.39 lb/million Btu) heat input when fired with a mixture of 20 percent wood/bark and 80 percent coal (based on heat input). NO_x emissions increased as the percentage of coal in the fuel mixture increased. At normal operating excess air levels, the highest NO_x emissions occurred when only coal was fired in the steam generating unit and were 232 ng/J (0.54 lb/million Btu) heat input. These tests

also showed that for the mixture of approximately 20 percent wood/bark and 80 percent coal (based on heat input) the use of LEA resulted in a reduction in NO_x emissions. For example, reducing the excess air level from about 80 percent to an LEA level of about 50 percent reduced NO_x emissions from 250 ng/J (0.58 lb/million Btu) heat input to a level of 122 ng/J (0.28 lb/million Btu) heat input.

Data on NO_x emissions were also obtained on two spreader stoker steam generating units firing mixtures of coal and solid waste in the form of refuse-derived fuel (RDF). Emission data were obtained using Reference Method 7. The steam generating units are located at the same site and are 43 and 56 MW (146 and 191 million Btu/hour) heat input capacity in size. They were operated at loads from 59 to 98 percent during testing. These two steam generating units fired different coals and the same RDF. The average coal moisture contents were 11 and 16 weight percent and the average RDF moisture content was 23 weight percent. The average RDF nitrogen content was 0.42 weight percent. The coal nitrogen contents were not measured. Both steam generating units used ambient temperature combustion air. The excess air levels during testing ranged from 40 to 128 percent.

The results from these tests show that as the percentage of heat input to the steam generating unit from the solid waste increases, NO_x emissions decrease. This change is due to the decrease in combustion temperatures caused by the lower heat content of the solid waste and the evaporation of moisture contained in the solid waste. Average NO_x emissions from these two steam generating units ranged from 80 to 133 ng/J (0.19 to 0.31 lb/million Btu) heat input when no RDF was fired with the coal. When heat input mixtures of 16 to 32 percent RDF were fired, average NO_x emissions were reduced to 76 to 131 ng/J (0.18 to 0.30 lb/million Btu) heat input. When the percentage of RDF was increased to a range of 40 to 68 percent of the heat input, average NO_x emissions were reduced to 50 to 106 ng/J (0.12 to 0.25 lb/million Btu) heat input.

Analysis of these data on NO_x emissions from steam generating units firing nonfossil fuel/coal mixtures indicates that NO_x emissions from steam generating units firing such fuel mixtures are lower than emissions from steam generating units firing coal alone. In addition, analysis of these data also confirms that NO_x control techiques are as applicable to steam generating units firing coal/nonfossil fuel mixtures as they are to steam generating units firing coal alone. Therefore, it is concluded that NO_x emission controls will reduce NO_x emissions from steam generating units firing mixtures of nonfossil fuels and coal to 215 ng/J (0.50 lb/million Btu) heat input for mass/feed stoker steam generating units, 258 ng/J (0.60 lb/million Btu) heat input for spreader stoker steam generating units, and 301 ng/J (0.70 lb/million Btu) heat input for pulverized coal-fired steam generating units.

Nonfossil fuel fired steam generating units may have auxiliary burners to fire natural gas or oil and in some cases, to fire pulverized coal. Generally, the primary purpose of these burners is to serve as a "pilot" flame during combustion, if necessary, in order to maintain flame stability, or to provide additional heat input into the steam generating unit if sufficient nonfossil fuel is unavailable to provide the desired level of heat input. Additionally, these burners may be used to maintain steam production if the nonfossil fuel firing system is inoperative. For nonfossil fuel fired steam generating units in which fossil fuel is used to maintain flame stability, the amount of fossil fuel fired is quite small in comparison to the amount of nonfossil fuel fired. In such cases, the fossil fuel fired frequently represents less than 5 percent of the annual heat input capacity of the steam generating unit. In addition, since the fossil fuel is being fired to maintain flame stability, the application of NO_x control techniques, which generally aggravate flame stability problems, is frequently not possible. Consequently, the proposed NO_x standards include an exemption for nonfossil/fossil fuel fired steam generating units with an annual heat input capacity factor, based on the combustion of fossil fuel (i.e. fossil fuel heat input divided by total heat input), of less than 5 percent.

Summary. In summary, LEA or LEA/SC are considered demonstrated systems of continuous NO_x emission reduction for the range of steam generating unit types and fuels covered by the proposed standards. The specific technological basis for the proposed NO_x standards and the applicable NO_x emission limits depends on the particular fuel or fuel mixture combusted. Table 2 summarizes the technology on which the proposed NO_x standards are based and their corresponding NO_x emission levels for each steam generating unit type and fuel covered.

TABLE 2.—SUMMARY OF DEMONSTRATED NO_x-Control Techniques and Achievable Emission Limits

Fuel/steam generator type	Demonstrated technology	Proposed emission limits ng/J (lb/million Btu) total heat input
Natural gas/distillate oil	LEA/SC	43 (0.10).
Low nitrogen residual oil[a].	LEA/SC	129 (0.30).
High nitrogen residual oil	LEA/SC	172 (0.40).
Mass-feed stoker coal	LEA	215 (0.50).
Spreader stoker coal[b]	LEA	258 (0.60).
Pulverized coal (other than lignite).	LEA/SC	301 (0.70).
Pulverized lignite	LEA/SC	258 (0.60).
Pulverized lignite mined in North Dakota, South Dakota, or Montana and fired in a slag tap furnace.	LEA/SC	340 (0.80).
Nonfossil/fossil fuel mixtures.	Applicable technology for fossil fuel.	Applicable value for fossil fuel.

[a] Residual oil with a fuel nitrogen content of 0.35 weight percent or less.
[b] Includes fluidized bed combustion.

2. Particulate Matter

Introduction. An important aspect of the development of the proposed particulate matter standards is the recognition that the design and controlled emission characteristics of various steam generating units differ substantially. Different steam generator fuels contain different levels of ash and the design of the firing mechanism in coal-fired units affect the amount of fly ash generated and carried from the steam generating unit by entrainment in the flue gas stream.

Of the major steam generator fuels, natural gas inherently emits less particulate matter than others. The uncontrolled particulate matter emissions from firing natural gas without controls are less than 9 ng/J (0.02 lb/million Btu) heat input.

The particulate emission characteristics of most fuel oils are greater than for natural gas and vary with the ash and sulfur content of the oil, the carbon residue formed during combustion, and the firing mechanism of the steam generating unit. The uncontrolled particulate matter emissions from the combustion of distillate oil are most similar to those for natural gas-fired steam generating units, however, for residual oil (such as a typical Number 6 fuel oil) the ash content of the oil is usually higher and the uncontrolled particulate matter emissions are greater than for distillate oils. Also, the uncontrolled emissions from oil-fired steam generating units are significantly affected by burner design and operation.

Coal and nonfossil fuels have significantly higher uncontrolled particulate matter emissions than either

natural gas or oil. The firing of these fuels characteristically results in emissions of from 860 to 2000 ng/J (2 to 7 lb/million Btu) heat input, depending on the type of steam generating unit, the quality of the fuel, and the operating load conditions. A pulverized coal-fired steam generating unit, for instance, typically has particulate matter emissions three times as high as a mass-feed stoker unit firing the same quantity of a similar coal. If the ash content of the coal is raised, the uncontrolled particulate matter emissions from either type of steam generator would be increased. Similarly, uncontrolled particulate matter emissions from nonfossil fuel-fired steam generating units will increase substantially if the moisture or ash content of the fuel is increased.

In summary, uncontrolled particulate matter emissions are significantly influenced by both fuel characteristics and steam generating unit characteristics. Important fuel characteristics include fuel type, ash content, sulfur content, and moisture content. Characteristics which can significantly influence uncontrolled particulate matter emissions from steam generating units include unit design, excess air setting, and operating load.

Demonstrated Control Technologies. Flue gas cleaning is the most widely employed approach used for the control of particulate matter emissions. Flue gas cleaning techniques employed to control particulate matter emissions from steam generating units include various types of mechanical collectors, sidestream separators, wet scrubbers, electrostatic granular bed filters, electrostatic precipitators, and fabric filters.

Mechanical collection is a well-established technology which uses centrifugal separation to remove particles from a gas stream. Mechanical collectors have been widely used for years to control particulate matter emissions from steam generating units firing coal and wood. More recently, they have been used as flue gas precleaning devices located upstream of more efficient particulate matter control devices.

Most mechanical collectors consist of multiple small cyclone collectors connected in a paralell arrangement (multiclone). A variation of this technology consists of two mechanical collectors connected in series. This latter configuration is frequently referred to as a double mechanical collector. This arrangement typically achieves lower particulate matter emission levels than a single mechanical collector.

The effectiveness of mechanical collectors is highly variable depending on collector design, steam generator operating load, uncontrolled emission level, particle size, collector maintenance, fly ash properties. Mechanical collector performance can deteriorate significantly under low load operating conditions and when the device is not properly maintained. Operation at low loads results in reduced flue gas velocity through the collector tubes, which reduces centrifugal separation effects, and, consequently, lowers the particulate matter collection efficiency. This lower collection efficiency is of concern because industrial-commercial-institutional steam generating units are not commonly operated at constant full load conditions.

Mechanical collectors must also be protected from temperature excursions below the dew point with as much care as would be required for more sophisticated particulate collection technologies. If the flue gas temperature in the collector falls below the dew point, the mechanical collector tubes can become plugged from the bridging of damp fly ash particles. If this would happen the mechanical collector rapidly fills with fly ash and the collection efficiency quickly and substantially deteriorates.

To maintain the collection efficiency of mechanical collectors, frequent maintenance is often needed due to air leakage into the ductwork and erosion of the internal mechanical collector structure by the abrasive fly ash. Air leakage and erosion of the internal structure tend to disturb the cyclonic flow pattern which is vital to mechanical collector performance. Air leakage may also lead to reentrainment of particles previously collected. In both cases, the particulate matter control efficiency of the mechanical collector is significantly reduced.

Particulate matter emissions data indicate that single mechanical collectors applied to coal-fired and nonfossil fuel-fired steam generating units generally show reductions of 50 to 90 percent. However, these removal efficiencies are principally associated with particles larger than 10 microns. Mechanical collectors are relatively ineffective for collection of smaller particles, typically achieving reductions of only 35 to 50 percent for particles with mean diameters smaller than 10 microns. These sizes of particles are in the inhalable range and, therefore, have the greatest potential for adverse health impacts.

Mechanical collectors are a demonstrated particulate matter emission control technology. However, even the most lenient existing air pollution control regulations limit particulate matter emissions to levels that require use of single mechanical collectors. In fact, many existing State or local air pollution control regulations limit particulate matter emissions to levels that can only be met through the use of more efficient particulate matter control technologies, such as electrostatic precipitators or fabric filters. Consequently, single mechanical collectors were considered as the "baseline" against which the incremental costs and benefits of standards based on more efficient particulate matter emission control technologies were analyzed and assessed. Double mechanical collectors are a demonstrated control technology for purposes of establishing proposed particulate matter standards; however, due to their limited effectiveness in controlling particulate matter emissions compared to other demonstrated technologies, the application of double mechanical collectors is considered appropriate only in limited circumstances.

Sidestream separators (a technology also known as hopper evacuation) are modified mechanical collectors in which a fraction of the flue gas stream (about 20 percent) is withdrawn from the mechanical collector ash hopper and is passed through a small fabric filter. By drawing flue gases from the ash hopper, fly ash reentrainment from the ash hopper is reduced. Application of sidestream separator control technology has generally been limited to retrofitting of existing steam generating units which are equipped with mechanical collectors and provides a means of upgrading mechanical collector performance. Sidestream separators have been applied to a limited number of new steam generating units, and they are now being offered as a single, integrated control system by at least one vendor.

The available particulate matter emission control performance data for sidestream separators applied to stoker steam generating units firing coal indicate an improvement in performance in comparison to mechanical collectors. For typical stoker bituminous coals containing 4 to 10 percent ash, collection efficiency can be improved to between 90 and 97 percent through the use of a sidestream separator arrangement. Sidestream separators result in more efficient removal of small particles than mechanical collectors. The limited particle size data available indicate

sidestream separators remove approximately 70 to 80 percent of particles with a mean diameter of less than 10 microns. In addition, sidestream separators can be operated with a constant air flow level through the fabric filter, thereby increasing the ratio of gas through the baghouse at reduced load and offsetting any deterioration in mechanical collector performance characteristics. Over the full operating range, sidestream separators represent a method of improving mechanical collector performance; however, the mechanical collector component of a sidestream separator must be well maintained to assure low overall emission rates. The small fabric filter used in the sidestream separator arrangement cannot offset poor performance of inadequately maintained mechanical collectors.

Although the effectiveness of sidestream separators has been demonstrated in applications to coal-fired stoker steam generating units, sidestream separators have not been applied on the several other types of steam generating units that would be regulated by the proposed standards (i.e., pulverized coal-fired units, wood-fired units, or solid waste-fired units). Sidestream separator performance on the coal-fired stoker steam generating units tested would not be expected to be representative of performance on pulverized coal-fired units due to the differences in particulate matter emission characteristics of pulverized coal-fired units compared to stoker units. Changes in factors that may affect the reentrainment and capture of the particles being evacuated from the mechanical collector hopper, such as uncontrolled particulate matter emission rates, the size distribution of the steam generating unit fly ash, and the particle composition could alter sidestream separator performance. Because mass loadings, particle size distribution, and particle composition, are not the same for all steam generating unit types, it is difficult to extrapolate the performance of this technology to pulverized coal-, wood-, or solid waste-fired steam generating units. Consequently, sidestream separators can only be considered a demonstrated particulate matter emission control technology for the purpose of developing standards of performance limiting emissions from coal-fired stoker steam generating units.

A wet scrubber uses an aqueous stream to remove particulate matter from a gas stream. Wet particulate mater scrubber systems (venturi scrubbers) may use water as a scrubbing medium for controlling particulate matter emissions from steam generating units firing wood, or mixtures of wood and coal containing limited amounts of coal. Wet scrubbers using alkaline scrubbing liquids (flue gas desulfurization systems) can be used on coal-fired steam generating units. Even if used for particulate matter emission control alone, an alkaline scrubbing liquid is necessary for coal-fired steam generating units to neutralize the sulfur dioxide or sulfur trioxide removed by the scrubber. Without neutralization, the recycled scrubbing liquid would become increasingly acidic and could lead to scrubber corrosion problems. Steam generating units firing mixtures of coal and wood do not have to adjust scrubber alkalinity/acidity (pH) with as much care because the fly ash from wood combustion is alkaline and, within limitations, will neutralize the sulfur dioxide or sulfur trioxide removed.

The wet scrubber is usually preceded by a mechanical collector to minimize scrubber erosion, to reduce the total particular matter collected as sludge, and to improve the overall particulate matter collection efficiency of the control system.

A disadvantage of wet particulate matter scrubbers relative to dry collection systems is the generation of a liquid waste stream which must be disposed of properly. However, environmentally acceptable methods of waste stream disposal are currently in use. Wet scrubbers are considered a demonstrated particulate matter emission control technology for the purpose of developing standards of performance to limit particulate matter emissions from industrial-commercial-institutional steam generating units firing wood, coal and mixtures of these fuels.

Electrostatic granular filtration (EGF) is a technology in which particulate matter is collected as the flue gas passes through a bed of electrically charged gravel. The electric field helps to collect particulate matter on the surface of the gravel.

There are approximately 10 electrostatic granular filters (EGF's) in operation on wood-fired or wood/coal-fired steam generating units at nine different facilities. Based on an evaluation of the limited particulate matter test data available, EGF's in combination with mechanical collectors are capable of reducing uncontrolled particulate matter emissions from wood-fired units by up to 99.5 percent. To date, users of EGF's have not reported any major operating or maintenance problems. The performance of EGF's on wood-fired steam generating units is comparable to that of electrostatic precipitators.

EGF's have been applied to a few steam generating units firing fuels other than wood, such as municipal solid waste and coal. However, limited particulate matter emission data are currently available for EGF's applied to steam generating units firing any fuel other than wood. Therefore, for the purpose of developing standards of performance, EGF's are considered a demonstrated particulate matter emission control technology only for wood-fired steam generating units.

Electrostatic precipitators (ESP's) are in commercial use for the control of particulate matter emissions from industrial steam generating units firing coal, oil, wood and, more recently, from steam generating units firing municipal-type solid waste. ESP's remove particulate matter from steam generating unit flue gases by electrically charging the suspended particles and precipitating them onto a collection plate.

ESP's have been shown in particulate matter emission tests to achieve reductions in uncontrolled particulate matter emissions up to 99.5 percent. Such reductions have been achieved on a wide range of steam generating unit types and fuels, including difficult applications such as the collection of high resistivity fly ash from low sulfur coal combustion.

A principal design factor affecting the performance of ESP's is the specific collection area, expressed as the ratio of the collector plate surface area to the flue gas flow rate. For any given steam generating unit and fuel type, a larger collection area will provide improved ESP particulate matter collection efficiency. For a given ESP design, the ratio of collection area to steam generating unit flue gas flow will increase under reduced steam generator load operating conditions. ESP's with adequate collector areas for high steam generating unit loads, therefore, will perform efficiently at low loads as well. Thus, the particulate matter emission control performance of ESP's tends to increase as operating load decreases.

The performance of ESP's is significantly superior to mechanical collectors and sidestream separators, especially with respect to control of smaller particles. Tests of two pulverized coal-fired steam generators firing low sulfur coal, for example, showed ESP's to have removal efficiencies of 99 percent for particulate matter with a mean particle diameter of less than 10 microns. In addition, ESP's offer considerable operating flexibility

to steam generating unit owners and operators who may wish to retain the capability to combust fuel mixtures, such as wood/coal, wood/oil, coal/solid waste, or other fossil/nonfossil fuel mixtures. ESP's are applicable to each of these fuels and fuel mixtures. ESP's therefore, are considered a demonstrated particulate matter emission control technology for the purpose of developing standards of performance limiting such emissions.

Fabric filters (also known as baghouses) are a particulate matter control technology that has been used on an increasing number of steam generating units in recent years. A fabric filtration system is one which directs particle-laden flue gas through a number of fabric bags where the particulates collect as a filter cake on the bag surface. Since the late 1960's, over 100 fabric filters have been installed on pulverized and spreader stoker coal-fired steam generating units. Fabric filters have had limited application to wood-fired units (approximately seven steam generating units) and have only been used in one pilot project on a municipal-type solid waste-fired unit.

On coal-fired steam generating units, fabric filters can achieve particulate matter emissions reductions of 99.5 percent or more over uncontrolled particulate matter emission levels for a wide range of steam generator designs, operating conditions, and fuel characteristics. Fabric filters have also been shown to be one of the most efficient of the particulate matter control techniques in controlling small particles, achieving more than 99 percent removal efficiency for particles smaller than 10 microns in diameter. Fabric filters have been shown to be one of the most versatile high efficiency particulate matter emission control technologies and can readily be applied to steam generating units firing a wide range of coals. For coal-fired steam generating units equipped with fabric filters, fuel flexibility is limited to a greater extent by steam generator design constraints than by fabric filter limitations.

A principal design factor affecting the performance of fabric filters is the air-to-cloth (A/C) ratio, which represents the volume of flue gas treated in relation to the total surface area of the filters. Generally, the operating pressure drop and fabric filter bag life improves as the A/C ratio decreases. For a given total cloth area, the A/C ratio will decrease as flue gas flow is decreased under reduced load operating conditions. Thus, fabric filters with adequate cloth areas for high loads will perform as well or better at low loads.

Fabric filters, therefore, are a demonstrated particulate matter control technology for the purpose of developing standards of performance for coal-fired steam generating units.

Particulate Matter Emission Data. After evaluating a wide range of particulate matter emission control technologies, fabric filters, electrostatic precipitators, wet scrubbers, electrostatic granular filters, and sidestream separators are the five technologies considered demonstrated for the purpose of developing standards of performance limiting particulate matter emissions from industrial-commercial-institutional steam generating units. Based on these technologies, the emission reduction capability and achievable emission limits for each combination of fuel and steam generator design were determined.

Natural Gas-fired Steam Generating Units. The uncontrolled particulate matter emissions from the combustion of natural gas in steam generators are very low. Uncontrolled particulate matter emission levels of less than 9 ng/J (0.02 lb/million Btu) heat input are typical of natural gas-fired steam generating units. Because of these low uncontrolled particulate matter emission levels, the application of any particulate matter control technology to natural gas-fired steam generating units would entail unreasonable costs, and no further consideration was given to the development of standards of performance to limit particulate matter emissions from units firing natural gas.

Oil-fired Steam Generating Units. The uncontrolled emissions of particulate matter from oil-fired steam generating units vary depending on the characteristics of the oil being fired. For distillate oil, which typically has a low ash content, the uncontrolled particulate matter emission levels are similar to those of natural gas-fired steam generating units. For higher ash residual oils, uncontrolled particulate matter emission levels are typically in the range of 10 to 65 ng/J (0.02 to 0.15 lb/million Btu) heat input, although some residual oils, particularly those with high sulfur contents, have considerably higher uncontrolled particulate matter emission levels, up to 21 ng/J (0.5 lb/million Btu) heat input. Uncontrolled particulate matter emissions from firing high ash residual oil, however, are about an order of magnitude less than those associated with uncontrolled emissions from the firing of solid fossil fuels (such as coal) or solid nonfossil fuels (such as wood or solid waste). Although these emissions are sufficient to consider development of standards of performance, the application of "add-on" postcombustion particulate matter controls to oil-fired steam generating units is quite costly per unit of particulate matter emissions collected due to the relatively low uncontrolled emission rate. Consequently, the most cost-effective approach (and most common approach) to the control of particulate matter emissions from oil-fired units is the use of a low ash, low sulfur oil. The use of a low ash, low sulfur oil is also presently considered to be the most cost-effective approach for control of sulfur dioxide emissions from oil-fired steam generating units.

As discussed earlier, sulfur dioxide standards for industrial-commercial-institutional steam generating units are being developed separately. Because of the relationship between control of particulate matter emissions and sulfur dioxide emissions from oil-fired units (i.e., control of both pollutants relies primarily on the use of low ash, low sulfur oils), consideration will be given to standards of performance limiting particulate matter emissions from oil-fired steam generator during development of the standards for sulfur dioxide. In the interim, the current particulate matter standards contained in 40 CFR Part 60 Subpart D for oil-fired steam generating units above 73 MW (250 million Btu/hour) heat input capacity will remain in effect.

Coal-Fired Steam Generating Units. In order to assess the performance of double mechanical collectors on coal-fired stoker steam generating units, particulate matter emissions were reviewed from nine units equipped with double mechanical collectors. These data were gathered using Reference Method 5 procedures. The steam generating units ranged in size from 25 to 62 MW (84 to 211 million Btu/hour) heat input capacity, and were operated during the emissions tests at loads ranging from 33 to 100 percent of capacity. Analyses of the coal fired in seven of these units showed ash contents ranging from 4.8 to 10.3 weight percent. Fuel analyses at the remaining two sites were not available. The average particulate emissions ranged from 77 to 125 ng/J (0.18 to 0.28 lb/million Btu).

These data represent the performance of double mechanical collectors on coal-fired stoker steam generating units at both high and low loads. Also, some of these tests were performed while the steam generating unit was operated under swing loads. These data, therefore, represent the performance of double mechanical collectors tested

under the most adverse steam generating unit conditions.

To assess the performance of sidestream separators applied to stoker boilers, particulate matter emissions data were gathered by Reference Method 5 on seven coal-fired stoker boilers which ranged in heat input capacity from 15 to 66 MW (50 to 225 million Btu/hour). During these tests, boiler loads ranged from 33 percent of capacity to over 100 percent of capacity. The bituminous coal fired varied from 4.3 to 10.0 weight percent and sulfur content varied from 0.7 to 2.1 weight percent. Average particulate matter emissions ranged from 52 to 77 ng/J (0.12 to 0.18 lb/million Btu) heat input.

These data represent the performance of sidestream separators on bituminous coal-fired stoker boilers at both low and high loads. At high loads the uncontrolled particulate matter emissions are highest. At low loads the mechanical collector portion of the sidestream separator is least efficient. Thus, both high and lows loads may present relatively adverse conditions with respect to sidestream separator performance. The test data are representative of both of these conditions.

In order to assess the performance of fabric filters on coal-fired stoker steam generating units, particulate matter emission data from four units equipped with fabric filters were reviewed. These data were gathered using Reference Method 5 test procedures. These steam generator ranged in size from 24 to 68 MW (80 to 227 million Btu/hour) heat input capacity, were operated during the emissions tests at steam generating unit loads ranging from 77 to 99 percent of total capacity, and fired coal having ash contents of 5.5 to 10.2 percent. At operating fabric filter air-to-cloth ratios of 1.2 to 1.8 cm/s (2.3 to 3.6 ft/min), the average particulate matter emissions from each of these coal-fired stoker units were less than 12 ng/J (0.03 lb/million Btu) heat input.

In order to analyze the effectiveness of fabric filters in controlling particulate matter emissions from industrial-commercial-institutional pulverized coal-fired steam generating units, particulate matter emission data gathered by Reference Method 5 from two pulverized coal-fired units were evaluated. These units have capacities of 94 to 98 MW (313 to 325 million Btu/hour) heat input and were operated at loads of 100 and 83 percent, respectively, during the testing. At operating air-to-cloth ratios of 1.1 to 0.8 cm/s (2.2 to 1.7 ft/min), the fabric filters on these steam generating units reduced the average particulate matter emissions to 8 and 16 ng/J (0.019 and 0.037 lb/million Btu) heat input, respectively.

These data represent the performance of fabric filters on stoker and pulverized coal-fired steam generating units at high operating load conditions. At high operating loads, the air-to-cloth ratio is increased because a larger quantity of flue gas is introduced into the baghouse while the filter area remains constant. The operating loads presented in these data, therefore, represent the performance of the fabric filters tested under the most adverse load conditions.

Particulate matter emission data were gathered using Reference Method 5 on the performance of ESP's on five coal-fired stoker steam generating units which ranged in size from 27 to 110 MW (93 to 375 million Btu/hour) heat input capacity. These units were tested at operating load conditions of 52 to 106 percent of the steam generator capacity and fired coal having sulfur contents of 0.54 to 1.0 percent and ash contents of 5.4 to 12 percent. The operating specific collections areas of the ESP's ranged from 25.2 to 124.8 $m^2/(m^3/s)$ (128 to 634 $ft^2/1,000$ acfm). Under these conditions, the average particulate matter emissions from each of the five steam generating units were less than 21 ng/J (0.05 lb/million Btu) heat input.

Particulate matter emission data were also gathered by Reference Method 5 from ESP's applied to six different industrial-commercial-institutional pulverized coal-fired steam generating units. These tests were conducted on units having a heat input capacity of 110 to 158 MW (375 to 537 million Btu/hour) and operating at 73 to 100 percent of the steam generator capacity. The coals fired in these tests were all similar and averaged approximately 1 percent in sulfur content and 12 percent in ash content. The ESP's had operating specific collection areas of 18.9 to 71.6 $m^2/(m^3/s)$ (96 to 364 $ft^2/1,000$ acfm). Average particulate matter emissions for each test were 21 ng/J (0.05 lb/million Btu) heat input or less. A seventh pulverized coal-fired unit controlled by an ESP was tested by Reference Method 5. This steam generating unit had a heat input capacity of 158 MW (537 million Btu/hour). At loads of 95 to 98 percent of capacity and an operating specific collection area of 17.7 $m^2/(m^3/s)$ (90 $ft^2/1,000$ acfm), average particulate matter emissions from this steam generating unit were 30 ng/J (0.07 lb/million Btu) heat input. This higher level of emissions is due to the very low specific collection area of the ESP.

One characteristic of flue gas particulate matter which can make control and collection by ESP's difficult is high electrical resistivity. As the sulfur content of coal decreases, the resistivity of the particulate matter in the steam generating unit flue gas increases, requiring a larger collection area for effective electrostatic precipitation. The sulfur content of the coal combusted during the tests reported above was 0.54 to 1.0 percent by weight, which represents low sulfur levels for most industrial-commercial-institutional steam generating units. Further, the high operating load conditions which were included in many of these tests effectively lowered the ratio of the flue gas flow rate to the collection plate area of the ESP. As this ratio is lowered, the effectiveness of the ESP decreases. Because the steam generating units tested fired low sulfur content coal and were operated at high loads, the test results represent the performance of ESP's under adverse conditions.

Fossil Fuel Mixtures. Fossil fuel mixtures fired in steam generating units include various combinations of coal, oil, and natural gas. ESP's can be applied to units firing coal with oil or natural gas. Since oil and natural gas are inherently cleaner burning fuels than coal, the uncontrolled particulate matter emissions from firing mixtures of coal with oil or natural gas or both are reduced from the uncontrolled particulate matter emissions from firing coal alone. The use of ESP's on steam generating untis firing mixtures of coal with oil or natural gas or both, therefore, will reduce particulate matter emissions to levels less than the emission levels achieved through the use of ESP's on units firing coal alone.

Wood-Fired Steam Generating Units. The performance of double mechanical collectors in reducing particulate matter emissions from wood-fired steam generating units was examined. Very little emission test data are available, however, to evaluate these systems on wood-fired units. As a result, no conclusions about their performance can be made from a review of emissions data collected under test conditions. Based on a review of factors affecting the control of particulate matter emissions from wood-fired units, the performance of double mechanical collectors is believed to be comparable to the performance of these devices on coal-fired steam generating units. Therefore, for purposes of the proposed standards, double mechanical collectors are considered capable of achieving an emission level of 129 ng/J (0.30 lb/million Btu) heat input on wood-fired units.

To evaluate the performance of wet scrubbers in reducing particulate matter emissions from wood-fired steam

generating units, particulate matter emisssion tests were conducted using Reference Method 5 on 13 spreader stoker units firing 100 percent wood. These untis ranged in size from 20 to 70 MW (57 to 230 million Btu/hour) heat input capacity. The wood burned during the tests included bark, wood scraps, hog fuel (a wood/bark mixture), sanderdust, and pulverized wood residue. The reported fuel moisture contents ranged from 45 to 65 weight percent and the ash contents ranged from 0.7 to 3.2 weight percent. During 11 of the tests, fly ash was reinjected from the mechanical collector precleaner back to the generator firebox for burnout. Nine of these tests were conducted on low pressure drop impingement and fixed throat venturi scrubbers with pressure drops of 1.5 to 2.0 kPa (6 to 8 inches of water) and loads which ranged from 56 to 104 percent of the steam generating unit capacity. The other four tests were conducted on units operating at average loads of 91 to 100 percent of design capacity and controlled with adjustable throat venturi scrubbers operating at medium pressure drops of 3.8 to 6.5 kPa (15 to 26 inches of water). The average particulate matter emissions from the low pressure drop scrubbers tests ranged from 30 to 90 ng/J (0.07 to 0.21 lb/million Btu) heat input. Average particulate matter emissions from the four tests on scrubbers using medium pressure drops were significantly lower, ranging from 22 to 30 ng/J (0.05 to 0.07 lb/million Btu) heat input.

To evaluate the performance of ESP's on wood-fired steam generating units, emissions tests were performed on two spreader stoker units using Reference Method 5. These steam generating units fired 100 percent wood in the form of bark, sanderdust, and hog fuel. The first unit had a heat input capacity of 49 MW (168 million Btu/hour) and fired bark supplemented with sanderdust. During testing, operating unit load conditions ranged from 64 to 67 percent of design capacity. The moisture content of the fuel was not available. All of the fly ash from the mechanical collector was reinjected into the steam generator. The average operating specific collection area was 45 $m^2/(m^3/s)$ (230 $ft^2/1000$ acfm). The average particulate matter emissions were 30 ng/J (0.07 lb/million Btu) heat input. The second steam generating unit had a heat input capacity of 236 MW (806 million Btu/hour). During testing, the average load ranged from 88 to 95 percent, and hog fuel with a typical moisture content of 42 weight percent was fired. Fly ash from the mechanical collector was reinjected into the steam generating unit. The average operating specific collection area was 89 $m^2/(m^3/s)$ (453 $ft^2/1000$ acfm). The average particulate emisisons were 26 ng/J (0.06 lb/million Btu) heat input.

Two spreader stoker steam generating units firing wood/coal mixtures and equipped with a single ESP were tested using Reference Method 5. Operating loads during the test ranged from 84 to 90 percent of the design capacities of 112 and 151 MW (382 and 517 million Btu/hour) heat input. These units fired a mixture of 25 percent wood bark and 75 percent coal, and employed fly ash reinjection. The wood bark had a moisture content of 46 weight percent and an ash content of 1.8 weight percent. The coal ash content was 11.7 weight percent and the sulfur content was 0.81 weight percent. The ESP was operated at an average collection area of 63 $m^2/(m^3/s)$ (320 $ft^2/1000$ acfm). Controlled particulate matter emissions from these steam generating units were less than 22 ng/J (0.05 lb/million Btu) heat input.

Two tests were also conducted on an ESP applied to the combined flue gas streams of a pulverized coal-fired steam generating unit and a spreader stoker unit which had heat input capacities of 56 MW (192 million Btu/hour) and 93 MW (320 million Btu/hour), respectively. These steam generating units cofired from 80 to 100 percent wood bark/sawdust with coal. Average moisture contents of the wood were 42 and 28 weight percent, and the ash contents were 4.4 and 5.9 weight percent, respectively. The ash content of the coal was 7.1 weight percent for the first test and 17.7 weight percent for the second test. The sulfur content of the coal fired was 0.7 percent for the first test and 0.5 weight percent for the second test. Fly ash reinjection was used on the spreader stoker steam generating unit. During the first test, operating loads for this system were 48 to 49 percent for the pulverized coal unit and 87 to 88 percent for the spreader stoker. During the second test, the steam generating units were operated at 76 to 88 and 45 to 52 percent of capacity, respectively. At average operating collection areas of 89 to 118 $m^2/(m^3/s)$ (452 to 600 $ft^2/1000$ acfm), particulate matter emissions from this combined system were reduced to less than 30 ng/J (0.07 lb/million Btu) heat input.

An ESP was also tested on a 280 MW (950 million Btu/hour) heat input capacity spreader stoker steam generating unit firing a mixture of 64 percent bark/sawdust and 36 percent residual oil. This test was performed at a load of 76 percent of design capacity and an ESP operating specific collection area of 90 $m^2/(m^3/s)$ (456 $ft^2/1000$ acfm). Fly ash reinjection was used during this test. The average particulate matter emissions were determined to be less than 13 ng/J (0.03 lb/million Btu) heat input.

Particulate matter emission test data were collected for a wood-fired steam generating unit controlled with dual mechanical collectors followed by an electrostatic granular filter (EGF). The steam generating unit was a 210 MW (716 million Btu/hour) heat input capacity spreader stoker steam generating unit which operated at a unit load range of 62 to 118 percent of rated capacity. This unit fired wood and bark with a moisture content of 49 to 58 weight percent and an ash content of 1.8 to 2 weight percent. Operating at average pressure drops of 0.7 to 1.7 kPa (3 tp 7 inches of water), the EGF achieved average emission of 9 to 17 ng/J (0.02 to 0.04 lb/million Btu).

Two sites with wood-fired steam generating units which controlled particulate matter emission using a fabric filter were tested using Reference Method 5. One site had a single 11 MW (38 million Btu/hour) heat input capacity spreader stoker unit operating at a load of 73 to 77 percent and firing wood bark with a moisture content of 47 weight percent and an ash content of 2.7 weight percent. The fabric filter on this steam generating unit operated at an air-to-cloth ratio of 1.9 cm/s (3.66 ft/min). There was no fly ash reinjection during this test. The average particulate matter emissions from this steam generating unit were less than 9 ng/J (0.02 lb/million Btu) heat input. The other site had three dutch oven-type wood-fired units which fired salt-laden hog fuel. These steam generating units operated at 86 to 99 percent of their combined 67 MW (230 million Btu/hour) heat input capacity. Moisture content of the fuel was 57 weight percent and the ash content was 1.5 weight percent. The flue gases of the three steam generating units were combined and ducted through a fabric filter for particulate matter control. Fly ash reinjection was not used. At an average air-to-cloth ratio of 1.5 cm/s (2.98 ft/min), the average particulate matter emissions from these steam generating units were 9 ng/J (0.02 lb/million Btu) heat input.

The particulate matter emission data discussed above were abtained from steam generating units firing wood, or cofiring wood with other fuels, both with and without fly ash reinjection. Fly ash reinjection effectively increases the amount of particulate matter entering

the steam generating unit, placing a greater demand on the capacity of the particulate matter control device.

In addition, the effectiveness of the particulate matter control devices tested is reduced in some instances by an increase in emissions due to the high moisture content of the wood. The highest moisture content of the wood burned during these tests was approximately 65 weight percent, which is the highest moisture content expected of wood fired in steam generating units. High moisture content in the wood results in an increase in the gas velocity through the steam generating unit as water evaporates from the fuel and increases the flue gas exhaust volumetric flow rate. This higher gas velocity which results cause more particles to be entrained in the flue gas, which increases the uncontrolled emission rate. In addition, high fuel moisture content reduces the gas temperature and lowers the thermal efficiency of the steam generating unit, requiring higher fuel feed rates (and undergrate air intake) to maintain steam production. These two factors increase particulate matter emissions by increasing the concentration of particles in the steam generating unit and entraining them in the flue gas as air is forced through the combustion zone. Thus, conditions of fly ash reinjection and high wood moisture content are representative of the most adverse conditions which are expected to be encountered during the operation of wood-fired steam generating units.

Solid Waste–Fired Steam Generating Units. ESP's are the most widely used particulate matter control devices on steam generating units firing municipal solid waste. Four Reference Method 5 particulate matter emission tests were collected for steam generating units ranging in heat input capacity from 14 to 85 MW (47 to 290 million Btu/hour) which fire municipal solid waste and which are controlled by ESP's. The tests on these four steam generating units were conducted at loads ranging from 76 to 90 percent of capacity. Moisture contents of the solid waste fire at three of the four steam generating units were measured at 20, 27, and 27 percent, respectively, and the ash contents were 22, 22, and 31 percent, respectively. No fuel analysis was available for the remaining steam generating unit. The steam generating units tested are overfeed stoker units which are the only large units commonly used to burn municipal solid waste. The ESP's showed a range of particulate matter emissions from a high of 86 ng/J (0.20 lb/million Btu) heat input at an average specific collection area of 27 $m^2/m^3/s$ (139 ft^2/1000 acfm), down to 22 ng/J (0.05 lb/million Btu) heat input at an average specific collection area of 113 $m^2/(m^3/s)$ (570 ft^2/1000 acfm). The data also showed that particulate matter emissions decreased with increasing ESP collection area and that with ESP collection areas larger than 47 $m^2/(m^3/s)$ (240 ft^2/1000 acfm), average particulate matter emissions were less than 43 ng/J (0.10 lb/million Btu) heat input.

A test to determine the performance of ESP's on steam generating units firing refuse-derived fuel (produced from processing and drying MSW) was conducted using Reference Method 5. The steam generating unit selected was a spreader stoker with a heat input capacity of 97 MW (332 million Btu/hour). The steam generating unit was operated at 72 to 92 percent of capacity during the test. The solid waste fired in this unit was a wet pulp refuse-derived fuel having both a high moisture content of 51 weight percent and a high ash content of 7.9 weight percent. Operating with a collection area of 64 $m^2/(m^3/s)$ (326 ft^2/1000 acfm), the ESP reduced particulate matter emissions from this steam generating unit to an average of 30 ng/J (0.07 lb/million Btu) heat input.

The above data indicate that ESP's can reduce particulate matter emissions from steam generating units firing municipal-type solid waste and refuse-derived fuels to levels below 43 ng/J (0.10 lb/million Btu) heat input. Particulate matter emission data presented earlier also indicate that ESP's can reduce particulate matter emissions from coal-fired steam generating units to levels considerably below 43 ng/J (0.10 lb/million Btu) heat input. Controlling particulate matter emissions from steam generating units firing a mixture of these fuels presents no greater problems than controlling emissions from steam generating units firing these fuels separately. Consequently, ESP's can reduce particulate matter emissions from steam generating units firing mixtures of these fuels to less than 43 ng/J (0.10 lb/million Btu) heat input.

Visible Emissions. Data on the opacity of visible emissions from industrial-commercial-institutional steam generating units were gathered from units firing coal, wood, solid waste, and mixtures containing these fuels. These visible emissions data were gathered using both manual observations (Reference Method 9) and in-stack transmissometers. These data, which are summarized in Table 3, include coal-fired stoker steam generators controlled by ESP's, fabric filters, and sidestream separators; pulverized coal-fired steam generators controlled by ESP's and fabric filters; wood and wood/coal cofired steam generators controlled by ESP's and fabric filters; and solid waste-fired stoker steam generators controlled by ESP's. Visible emissions data from steam generating units equipped with wet scrubbers are not included because of the interference with opacity caused by water droplets in the flue gas. Such interference makes visible emission measurement ineffective as a technique for monitoring the performance and operation of a wet scrubbing system.

TABLE 3.—SUMMARY OF VISIBLE EMISSIONS DATA

Steam generator type	Control system	Test method	Emission level ng/J (lb/million Btu) heat input	Maximum 6-minute opacity observation	Average of all 6-minute opacity observations	Number of 6-minute observations *
Coal-fired stokers	Fabric filter	EPA method 9	4–22 (0.01–0.05)	0.6	01	30
	Fabric filter	Transmissometer	4–17 (0.01–0.04)	NR	010	NR
	ESP	EPA method 9	4 (0.01)	3	01	
	Sidestream separator	EPA method 9	43–69 (0.10–0.16)	15	01	61
	Sidestream separator	Transmissometer	52–77 (0.12–0.18)	NR	04	NR
Pulverized coal-fired	Fabric filter	EPA method 9	13–17 (0.03–0.04)	01	NR	10
		Transmissometer	4–13 (0.01–0.03)	NR	0	NR
Wood/coal cofired stoker	ESP	EPA method 9	9–26 (0.02–0.06)	18.8	01	76
Salt-laden wood dutch oven	Fabric filter	EPA method 9	4–13 (0.01–0.03)	13.5	04	89
Solid waste-fired stoker	ESP	EPA method 9	NR	14.4	04	60
Refuse derived fuel-fired stoker	ESP	EPA method 9	17–26 (0.04–0.06)	12.5	04	20

* No overlapping observations included. Twelve minutes of opacity data (48 observations) would provide 2 opacity observations (6 minute average).
NR = Not reported.

Analysis of these data focused on identification of a level of visible emissions which would provide a clear indication of a malfunction or improper operation and maintenance of the control device. Because of the relatively low opacity levels achieved at all facilities tested (individual 6-minute average levels approaching zero percent opacity for fabric filters on coal-fired stoker units and up to 18.8 percent for ESP's on combination wood/coal-fired stoker units), a single visible emissions level of 20 percent opacity would be appropriate to provide a clear indication of a malfunction or improper operation and maintenance or a particulate matter control device.

Summary. In summary, ESP's have been identified as a demonstrated control technology for particulate matter emissions from steam generating units firing coal, wood, solid waste, and mixtures of these fuels. In addition, fabric filters have been identified as a demonstrated technology for the control of particulate matter emissions from coal-fired steam generators, and wet scrubbers have been identified as a demonstrated technology for the control of particulate matter emissions from steam generators firing coal, wood, and mixtures of these fuels. Electrostatic granular filters are a demonstrated technology for wood and sidestream separators are a demonstrated control technology for coal-fired stoker steam generating units. Double mechanical collectors are a demonstrated technology for coal and for wood-fired units. These technologies and the emission reductions they are capable of achieving are summarized in Table 4.

TABLE 4.—SUMMARY OF DEMONSTRATED PARTICULATE MATTER TECHNOLOGIES AND ACHIEVABLE EMISSION LEVELS

Fuel	Demonstrated technology	Achievable emission levels	
		ng/J (lb/million Btu) heat input	Opacity percent (maximum 6-minute average)
Technical alternative I:			
Coal	Sidestream separator/	86 (0.20)	20
	Low efficiency ESP	86 (0.20)	20
	Double mechanical collector	129 (0.30)	20
Wood	Low pressure drop scrubber/	86 (0.20)	NA
	Low efficiency ESP	86 (0.20)	20
	Double mechanical collector	129 (0.30)	20
Solid waste	Low efficiency ESP	86 (0.20)	20
Fuel mixtures	Low pressure drop scrubber/	86 (0.20)	NA
	Low efficiency ESP	86 (0.20)	20
	Double mechanical collector	129 (0.30)	20
Technical alternative II:			
Coal	Fabric filter/	22 (0.05)	20
	High efficiency ESP	22 (0.05)	20
Wood	Medium pressure drop scrubber/	43 (0.10)	NA
	High efficiency ESP	43 (0.10)	20
	Electrostatic granular filters	43 (0.10)	20
Solid waste	High efficiency ESP	43 (0.10)	20
Fuel mixtures	High efficiency ESP	43 (0.10)	20

NA = Not applicable.

As shown in Table 4, these emission control technologies lead to two principal technical alternatives, either of which could serve as the basis for standards of performance. Technical Alternative I represents a lower cost, moderate level of emission control, and involves the use of sidestream separators, double mechanical collectors, low efficiency ESP's, and low pressure drop wet scrubbers for steam generating units in the 29 to 73 MW (100 to 250 million Btu/hour) heat input capacity range. Application of these control technologies would result in particulate emissions of 86 ng/J (0.20 lb/million Btu) heat input or less from steam generating units firing coal, wood, solid waste, or mixtures of these fuels, except in the case of double mechanical collectors where emissions of 129 ng/J (0.30 lb/million Btu) heat input or less would result.

Technical Alternative II represents a higher cost, higher degree of emission control, and involves the use of high efficiency ESP's, fabric filters, medium pressure drop wet scrubbers, or EGF's. Application of these control technologies would reduce particulate matter emissions to 22 ng/J (0.05 lb/million Btu) heat input or less from coal-fired steam generating units and 43 ng/J (0.10 lb/million Btu) heat input or less from steam generating units firing wood, solid waste, and mixtures of fuels containing coal, wood, and solid waste.

3. Consideration of Demonstrated Control Technology Costs

Control technology cost impacts on individual steam generating units were evaluated in three ways. The first analysis examined the increased capital cost resulting from application of each of the demonstrated technologies. The second analysis examined the increased annualized cost resulting from use of these technologies. This impact included annual fixed capital charges as well as annual operating and maintenance costs. The third way cost impacts were evaluated was in terms of cost-effectiveness, or the cost per ton of pollutant removed. In each of these three approaches, cost impacts were analyzed for each demonstrated technology in terms of the incremental difference between costs required under current regulations applicable to industrial steam generating units (i.e., the regulatory baseline) and costs required for each demonstrated control technology.

The financial parameters used in the analysis include an amortization period of 15 years for the steam generating unit and control systems and a "real" cost of capital of 10 percent in constant dollars. A "real" rather than a "nominal" cost of capital was used in the analysis in order to avoid having to make adjustments for varying inflation rates. For example, an assumed inflation rate of 8 percent and a 10 percent "real" cost of capital is equivalent to an 18 percent "nominal" cost of capital. All costs were calculated in mid-1982 dollars.

Nitrogen Oxides. With respect to the control of nitrogen oxides, industrial-commercial-institutional steam

generating units above 73 MW (250 million Btu/hour) heat input capacity are regulated by existing standards of performance under 40 CFR Part 60 (Subpart D). For coal- and residual oil-fired steam generating units above this size, the demonstrated NO_x control techniques discussed earlier are essentially the same as those currently required to comply with the existing Subpart D standards of performance. The proposed standards for natural gas-fired and distillate oil-fired steam generating units are based upon the application LEA/SC technology, which would represent a change in the current basis for the NO_x standards for units above 73 MW (250 million Btu/hour) heat input capacity. However, as discussed below, any cost increase would be minimal. As a result, there would be little or no cost associated with the application of the demonstrated NO_x control techniques to natural gas-, oil-, or coal-fired steam generating units above 73 MW (250 million Btu/hour) heat input capacity.

The analysis of the cost impacts of the demonstrated NO_x control techniques, therefore, focused on steam generating units above 73 MW (250 million Btu/hour) heat input capacity. In this size range, only five State implementation plans (SIP's) currently limit NO_x emissions from fossil fuel-fired steam generating units. Therefore, the regulatory baseline was assumed to be no NO_x control.

As discussed above, the control techniques considered to be demonstrated for the purpose of developing standards of performance for industrial-commercial-institutional steam generating units are LEA and LEA/SC. Rather than being add-on control technologies, LEA and LEA/SC are combustion modification NO_x control techniques which require continual monitoring and adjustment of steam generating unit operation. These demonstrated NO_x control techniques call for close and continued attention to steam generating unit operation and frequent adjustment of such parameters as excess air levels and the distribution of either combustion air or fuel between the primary and secondary combustion zones within the firebox (i.e., staging of the combustion process) to ensure effective NO_x emission reduction in response to changes in steam generating unit operation. As a result, the most effective means of ensuring operation in a manner consistent with optimal control of NO_x emissions is direct measurement of emissions in the flue gas with an NO_x monitor.

For the purpose of developing standards of performance, LEA is considered the only demonstrated NO_x control techniques for reducing NO_x emissions from mass-feed and spreader stoker coal-fired steam generating units. The cost associated with use of this control technique would not have a major impact on the total capital or annualized cost of a new steam generating unit using LEA controls. For example, the capital cost of an LEA combustion air trim system and a continuous NO_x monitoring system, including installation cost, is approximately $80,000. Use of LEA, therefore, would increase the $11.6 million capital cost of a new coal-fired 44 MW (150 million Btu/hour) heat input capacity spreader stoker steam generating unit about 0.7 percent.

The impact of the use of LEA to reduce NO_x emissions on the annualized costs of new spreader stoker steam generating units firing coal varies depending on the fuel saving achieved by LEA. Since LEA decreases stack gas heat losses by minimizing excess combustion air levels, it reduces fuel use. For example, the annualized cost of a 44 MW (150 million Btu/hour) heat input capacity spreader stoker coal-fired steam generating unit (including fuel costs) is about $6 million under the regulatory baseline. The annualized cost to operate and maintain an LEA combustion air trim system and an NO_x monitoring system is about $50,000. Without taking potential fuel savings into account, the use of LEA, therefore, would result in a 0.8 percent increase in the annualized costs of these steam generating units. If fuel savings are taken into account, however, the net annualized costs of the LEA combustion air trim system and the NO_x monitoring system decrease to about $25,000 for the spreader-stoker coal-fired steam generator. Thus, the overall impact of the proposed standards would be a 0.3 percent increase in the annualized costs associated with a 44 MW (150 million Btu/hour) heat input capacity spreader-stoker coal-fired steam generating unit.

For new steam generating units firing residual oil, the only NO_x control techniques considered demonstrated for the purpose of developing standards of performance are LEA/SC. In the case of LEA/SC, certain design modifications to the steam generating unit firebox in addition to installation of SC combustion air distribution systems may be necessary to accommodate SC in packaged high nitrogen residual oil-fired steam generating units.

In order to meet rail car shipping size limitations, packaged oil-fired steam generating units are constrained with respect to maximum firebox size. Use of LEA/SC, however, generally enlarges the size of the flame within a steam generating unit firebox. To accommodate the use of LEA/SC, some packaged residual oil-fired steam generating units may need to be redesigned or derated in order to avoid potential flame impingement problems. The extent of the redesign of the firebox or of the steam generating unit derating required will vary considerably depending on the existing steam generating unit designs. Based on a survey of packaged oil-fired steam generating unit manufacturers and vendors, in the absence of firebox redesign most steam generating units would need to be derated by 15 percent or less to accommodate SCA.

Assuming a derating of 15 percent, the use of LEA/SC, including the cost of LEA combustion air trim and staged combustion air distribution systems in addition to NO_x monitors, would increase the capital cost of a 44 MW (150 million Btu/hour) heat input capacity packaged residual oil-fired steam generating unit by about $266,000. This represents an increase of about 9 percent in the approximately $3.0 million cost of this steam generating unit. The annualized cost impact for this unit, however, would be much smaller. Taking into account the fuel savings associated with the use of LEA/SCA, the annualized costs of the steam generating units would be increased by about $32,000. Compared to annualized costs of about $5.8 million for this steam generating unit under the regulatory baseline, this represents an increase of only 0.5 percent.

Other alternatives, however, are available for packaged residual oil-fired steam generating units to reduce NO_x emissions to levels equivalent to the use of LEA/SC. One alternative is to minimize the adjustments needed in the firebox dimensions by using staged combustion burners (SCB's) rather than over-fire air (OFA) to incorporate LEA/SC into the steam generating unit. SCB's can in most instances be incorporated into steam generating unit designs with minimal increases in firebox dimensions. One manufacturer of small packaged steam generating units has indicated that currently available SCB's could be installed and operated with no modification to firebox dimensions. A second packaged steam generating unit manufacturer has indicated that minimal (30 to 60 cm (1 to 2 ft) increase in length) changes in firebox dimensions would be required.

The only NO_x control technique considered demonstrated for the purpose of developing standards of performance for new pulverized coal-fired steam generating units is also LEA/SC. The potential cost impacts of the use of LEA/SC on pulverized coal-fired steam generating units are less than those on residual oil-fired steam generating units. The primary reason for this is that pulverized coal-firing results in a large flame in all cases and requires a relatively large firebox even without SCA. In addition, most pulverized coal-fired steam generating units are larger than 73 MW (250 million Btu/hour) heat input capacity and consequently are subject to the existing standards of performance under 40 CFR Part 60 (Subpart D). These standards were adopted in 1971 and manufacturers and vendors of pulverized coal-fired steam generating units have long since incorporated the changes necessary to accommodate LEA/SC into their basic designs. As a result, the only additional costs associated with the use of SC on pulverized coal-fired steam generating units are the costs associated with the combustion air distribution system (i.e., ductwork, registers).

The use of LEA/SC, including the cost of LEA combustion air trim and SC combustion air distribution systems in addition to an NO_x monitor, would increase the capital costs of a 44 MW (150 million Btu/hour) heat input capacity pulverized coal-fired steam generating unit by about $117,000. This represents an increase in the $14 million capital cost of this steam generating unit under the regulatory baseline of about 0.8 percent. Taking into account the fuel savings associated with the use of LEA/SCA the annualized costs of this pulverized coal-fired steam generating unit would increase by about $52,000, which is equivalent to a 0.8 percent increase.

For new steam generating units firing natural gas and distillate oil, the NO_x control techniques considered demonstrated for the purpose of developing standards of performance are LEA and LEA/SC. Both techniques would require the use of oxygen trim to optimize performance. The use of LEA/SC would cost slightly more than the use of LEA alone since the application of LEA/SC to natural gas—and distillate oil-fired steam generating units would require the use of the more sophisticated staged combustion burners (SCB). Adjustments in firebox dimensions required to apply SC through use of SCB's would be minimal in most cases.

The use of LEA or SCB's including the cost of LEA combustion air trim, SCB's, and NO_x monitors would increase the capital cost of a 44 MW (150 million Btu/hour) heat input capacity packaged natural gas-fired steam generating unit by about $77,000. This represents an increase of about 2.6 percent in the approximately $2.9 million cost of this steam generating unit. When fuel savings are taken into account, the costs of the LEA trim, SCB's, and NO_x monitors are offset, resulting in negligible overall cost impacts. Similar impacts would occur in the case of distillate oil-fired steam generating units.

For all types of steam generating units, the impact of the proposed NO_x standards on both the capital costs and the annualized costs associated with LEA or LEA/SC varies with the size of the unit. The discussion above presents costs for steam generating units with heat input capacities of 44 MW (150 million Btu/hour). This represents the mean size of the range of steam generating unit sizes impacted by the proposed standards. For steam generating units above 44 MW (150 million Btu/hour) heat input capacity, the impact of the proposed standards on the capital costs and the annualized costs of the steam generating unity would represent a smaller percentage of steam generating unit costs. Similarly, for steam generating units at the lower end of the affected range, 29 MW (100 million Btu/hour) heat input capacity, the impact of the proposed standards on the capital costs and the annualized costs of the steam generating unit increases slightly from costs presented above. For example, capital and annualized cost increases associated with the use of LEA on a 29 MW (100 million Btu/hour) spreader stoker are 1.0 and 0.8 percent, respectively, as compared to increases of 0.8 and 0.3 percent, respectively, for a 44 MW (150 million Btu/hour) spreader stoker.

The cost-effectiveness associated with the use of the domonstrated NO_x control technologies was also examined. For a 44 MW (150 million Btu/hour) heat input capacity mass-feed or spreader-stoker steam generating unit firing coal, the cost-effectiveness of the use of LEA to reduce NO_x emissions is less than $510/Mg ($460/ton) of NO_x. The fuel savings associated with the use of LEA and the costs associated with the LEA combustion air trim system, SCB's and NO_x monitor are included in this value. The cost-effectiveness of the use of LEA/SC to reduce NO_x emissions from a 44 MW (150 million Btu/hour) steam generating unit firing residual oil or pulverized coal is about $790/Mg ($720/ton) of NO_x for residual oil and about $450/Mg ($10/ton) of NO_x for pulverized coal. As above, the fuel savings associated with the use of LEA and the costs associated with the LEA combustion air trim and the OFA system or SCB's, including the costs of an NO_x monitor, are incorporated in these values. The cost-effectiveness of the use of LEA or LEA/SC to reduce NO_x emissions from a 44 MW (150 million Btu/hour) steam generating unit firing natural gas or distillate oil is negligible. Included in this determination are fuel savings associated with the use of LEA and costs associated with the LEA combustion air trim system, the SCB's, and a NO_x monitor. Cost effectiveness is negligible because the fuel savings offset the costs of control.

The cost-effectiveness of applying these control techniques to reduce NO_x emissions also varies with steam generating unit size. As the size of the steam generating unit increases, the cost-effectiveness of these control techniques improves. Conversely, as the size of the steam generating unit decreases, the cost-effectiveness of these control techniques deteriorates. Consequently, for steam generating units above 44 MW (150 million Btu/hour) heat input capacity the cost-effectiveness of NO_x control associated with the demonstrated NO_x control techniques improves above the values cited above. For stream generating units below 44 MW (150 million Btu/hour) heat input capacity, however, the cost-effectiveness deteriorates from the values cited above.

The cost-effectiveness of applying these control techniques to reduce NO_x emissions also varies with the annual capacity factor of the steam generating unit. As the annual capacity factor increases, the cost-effectiveness of these control techniques improves and as the annual capacity factor decreases, the cost-effectiveness deteriorates. In particular, for steam generating units with annual capacity factors less than 30 percent (0.30), the cost-effectiveness of NO_x control deteriorates rapidly, with cost-effectiveness as high as $2,800/Mg ($2,500/ton) of NO_x reduction for 29 MW (100 million Btu/hr) heat input capacity coal—, oil—, or natural gas-fired units with annual capacity factors of less than 30 percent (0.30). The principal factor which would increase the cost-effectiveness would be the relatively constant cost for operation of the continuous NO_x monitoring system, independent of steam generating unit operating levels.

Since the cost-effectiveness appears to be significantly greater for low capacity factor steam generating units,

an alternative to the use of NO_x monitors is included in the proposed standards for steam generating units with low capacity factors. This alternative would allow low capacity factor steam generating units to monitor operating parameters of the steam generating unit, rather than NO_x emissions. Monitoring NO_x emissions directly assures optimal NO_x control and compliance with NO_x emission limits. Although the monitoring of operating parameters such as flue gas oxygen levels yields less exacting results, emission levels will be reduced by monitoring operating parameters and maintaining these parameters within certain narrow ranges. However, the full reductions in NO_x emissions will not be achieved by monitoring operating parameters. As a result, this alternative is only included in the proposed standards where the use of NO_x monitors leads to high cost-effectiveness values associated with NO_x control.

Pariculate Matter. Existing State implementation plans (SIP's) limit emissions of particulate matter from most steam generating units which would be covered by the proposed standards. The level of particulate matter control required by SIP's varies considerably by steam generator size and by State. The majority of States have emission control requirements which become more stringent as steam generator size increases. Compliance with SIP's however, requires the use of mechanical collectors as a minimum for combustion of solid fuels. To reflect the minimum level of control uniformly required by all States, the use of single mechanical collectors was selected as the regulatory baseline for considering the cost impacts of various control technologies on individual steam generating units.

This assumption illustrates the comparative costs of different control alternatives; however, it tends to overstate the true cost impact of the proposed standards in many instances. In the case of more stringent SIP's, use of fabric filters, ESP's, or medium pressure drop wet scrubbers is required at present. Also, many SIP's currently require new wood-fired steam generating units to install medium pressure drop wet scrubbers or ESP's in order to meet existing State requirements. For municipal-type solid waste, ESP's are being installed almost exclusively on all new steam generating units to meet existing particulate matter emission limits. Altogether, several hundred fabric filters, ESP's, and medium pressure drop wet scrubbers have already been installed on industrial-commercial-institutional steam generating units of the size and type covered by this proposal to meet State emission limits.

Site specific construction/operating permit requirements also limit emissions of particulate matter from steam generating units covered by the proposed standards. For example, site specific emission limits as determined through prevention of significant deterioration (PSD) and new source review (NSR) requirements are often more stringent than required under a SIP. Based upon a review of the data available for recent PSD and NSR permits for non-utility coal-fired steam generating units, nearly all new units are currently being required to install an emission control technology more effectve than single mechanical collectors, and many units are being required to meet emmission control requirments as stringent as, or more stringent than, the proposed standards.

As a reflection of actual permit determinations, control levels derived from PSD or NSR requirements could also be used as a baseline for considering the impacts of the proposed standards. A baseline control level based upon PSD or NSR requirements would reduce the projected cost impact of the proposed standards. In areas where site-specific PSD or NSR requirements have been at least as stringent as the proposed standards, negligible cost impacts would result from the proposed standards. In fact, the only significant cost impacts resulting from the proposed standards would be for those steam generating units having less then 73 MW (250 million Btu/hour) heat imput capacity where the use of fabric filters, ESP's, wet scrubbers, or sidestream separators would be required in lieu of mechanical collectors. In order to identify and appropriately consider the cost of the proposed standards, the mechanical collector baseline which is reflective of SIP regulations was used for the cost analysis.

As outlined earlier, two technical alternatives for the control of particulate matter emissions could serve as the basis for particulate matter standards, and the costs presented in this analysis reflect the costs associated with each alternative. Technical Alternative I is based on a moderate level of particulate matter emisison control as achieved by sidestream separators, low pressure drop wet scrubbers, or low efficiency ESP's and is associated with an 86 ng/J (0.20 lb/million Btu) heat input emission level. Technical Alternative II is based on a high level of particulate matter control as achieved by high efficiency ESP's, fabric filters, or medium pressure drop wet scrubbers, and is associated with a 22 ng/J (0.05 lb/million Btu) heat input emission level for coal-fired steam generating units and a 43 ng/J (0.10 lb/million Btu) heat imput emmission level for wood-fired steam generating units, solid waste-fired steam generating units, or mixed fuel-fired steam generating units.

A typical coal-fired 44 MW (150 million Btu/hour) heat input capacity steam generation unit costs approximately $11.9 million with minimum particulate matter controls under the regulatory baseline. A wood-fired 44 MW (150 million Btu/hour) heat input capacity steam generating unit costs approximately $8.9 million under the regulatory baseline. To comply with standards based on Technical Alternative I, a 44 MW (150 million Btu/hour) heat input capacity coal-fired spreader stoker steam generating unit would incur an addtitional captial cost of $240,000 to install a sidestream separator. A 44 MW (150 million Btu/hour) heat input capacity wood-fired steam generating unit would incur a capital cost of $732,000 for a low pressure drop wet scrubber. These increases represent a 2.0 percent and 8.2 percent increase, respectively, in the capital cost of these steam generating units as compared to the regulatory baseline.

To comply with standards based on Technical Alternative II, a $1.2 million capital cost (over baseline) would be incurred by a 44 MW (150 million Btu/hour) heat input capacity coal-fired spreader stoker steam generating unit for fabric filter control. This represent a 10.1 percent increase in the capital cost of the steam generating unit. In the case of a 44 MW (150 million Btu/hour) heat input capacity wood-fired steam generating unit, a capital cost of $871,000 would be incurred for a high energy wet scrubber and would represent a 9.7 percent increase in the capital cost of the steam generating unit as compared to the regulatory baseline.

In order to purchase and operate the emission control technology based upon Technical Alternative I, a 44 MW (150 million Btu/hour) heat input capacity coal-fired spreader stoker steam generating unit would incur an additional annualized cost of $71,000 per year, and a 44 MW (150 million Btu/hour) heat input capacity wood-fired steam generating unit would incur an additional annulized cost of $264,000 per year. For a coal-fired steam generating unit, this repersents a 1.2 percent increase in annualized costs over a

regulatory baseline cost of $5.8 million per year. For a wood-fired steam generating unit, this represents a 4.9 to 7.7 percent increase in annualized cost over a regulatory baseline cost of $3.4 to $5.4 million per year depending on the economic value of wood waste ($/million Btu).

To comply with standards based on Technical Aternative II, a 44 MW (150 million Btu/hour) heat input capacity coal-fired spreader stoker steam generating unit would incur increased annualized costs of $283,000 per year, which is an increase of 4.9 percent over the regulatory baseline. A 44 MW (150 million Btu/hour) heat input capacity wood-fired steam generating unit would incur increased annualized costs of $318,000 per year, which is an increase of 5.9 to 9.3 percent over the regulatory baseline, depending on the wood fuel value assumed.

The precentage increases in both capital and annualized costs cited above for Technical Alternative I and Technical Alternative II are relatively constant with respect to variations in steam generating unit size. Thus, the percentage increases presented above are representative of the range of steam generating unit sizes covered by the proposed particulate matter standards.

Even though the percentage increases in capital and annualized costs remain relatively constant for all steam generating unit sizes, the incremental cost-effectiveness of applying the demonstrated particulate matter control technologies to different size steam generating units varies significantly with steam generating unit size. This variance occurs because uncontrolled particulate matter emissons vary linearly with steam generator size for a given steam generator while the costs of particulate matter control do not. In addition, the cost-effectiveness of particulate matter control is influenced by the different steam generator designs representative of different size steam generating units.

In the range of 29 to 73 MW (100 to 250 million Btu/hour) heat input capacity, spreader stoker systems represents the predominant design for the combustion of solid fuel, although some mass-feed units may be present. Above 73 MW (250 million Btu/hour) heat input capacity, pulverized coal-fired steam generating units represent the predominate design for coal firing, although wood-fired steam generating units continue to utilize the spreader stoker design. With increasing steam generating unit size, the increased fuel consumption rate and fuel costs justify the use of more complicated, more expensive, and more efficient steam generator designs.

Due to the unique characteristics of each of these steam generator designs, particulate matter emissions differ, with the emissions from spreader stoker steam generating units being inherently lower than those from pulverized coal-fired steam generating units. Because the cost-effectiveness of air pollution control systems is measured in terms of the cost ($) per Mg (ton) of pollutant removed, the inherently different baseline emission characteristics of each of these steam generator designs lead to significant differences in the cost-effectiveness of particulate matter emission control.

The cost-effectiveness of particulate matter controls for various coal-fired steam generating units is given in Table 5 for each technical alternative. Table 5 also compares the relative cost-effectiveness for Technical Alternative I and Technical Alternative II. Except for steam generating units with heat input capacities greater than 73 MW (250 million Btu/hour), the cost per Mg (ton) of particulate matter removed is generally lower for the less effective and less costly control systems associated with Technical Alternative I. For pulverized coal-fired steam generating units, which are characteristic of steam generating units above 73 MW (250 million Btu/hour) heat input capacity, sidestream separators are not demonstrated. For this reason, Technical Alternative I assumes the use of an ESP, which is comparable in cost to a fabric filter. As a result, the cost effectiveness of Technical Alternative I and Technical Alternative II is essentially the same for this size range above 73 MW (250 million Btu/hour) heat input capacity.

TABLE 5.—INCREMENTAL COST-EFFECTIVENESS OF PARTICULATE MATTER CONTROLS ON COAL-FIRED STEAM GENERATING UNITS

Steam generator size MW (million Btu/hr) heat input capacity	Steam generator type	Technical alternative I (lower level of control)		Technical alternative II (higher level of control)	
		Cost-effectiveness		Cost-effectiveness	
		Dollars per million removed	Dollars per ton removed	Dollars per million removed	Dollars per ton removed
29 (100)	Spreader stoker	630	(570)	1,542	(1,400)
44 (150)	Spreader stoker	560	(510)	1,400	(1,300)
73 (250)	Spreader stoker	520	(470)	1,300	(1,200)
73 (250)	Pulverized coal-fired	750	(680)	740	(670)
117 (400)	Pulverized coal-fired	580	(530)	660	(600)

E. Selection of Regulatory Alternatives

The technology and cost considerations discussed above lead to two principal regulatory alternatives which could serve as the basis for standards of performance to limit particulate matter and NO_x emissions from industrial-commercial-institutional steam generating units.

The consideration of regulatory alternatives focused on the 29 to 73 MW (100 to 250 million Btu/hour) heat input capacity size range. This size range represents the "heart" of the coal-fired industrial-commercial-institutional steam generating unit population.

To illustrate clearly the differences between the regulatory alternatives which could be selected as the basis of the proposed standards of performance for industrial-commercial-institutional steam generating units, two specific regulatory alternatives were analyzed in depth for their environmental, energy, and economic impacts. The principal difference between these two alternatives is the technical basis selected for standards of performance limiting emissions of particulate matter from steam generating units between 29 MW (100 million Btu/hour) and 73 MW (250 million Btu/hour) heat input capacity. Regulatory Alternative A is the lower cost alternative and the standards limiting particulate matter emissions for steam generating units in this size range would be based primarily on Technical Alternative I (i.e., use of sidestream separators, low efficiency ESP's or low pressure drop wet scrubbers). Regulatory Alternative B is the higher cost alternative and the standards limiting particulate matter emissions from steam generating units between 29 MW (100 million Btu/hour) and 73 MW (250 million Btu/hour) heat input capacity would be based primarily on Technical Alternative II (i.e., use of fabric filters, high efficiency ESP's or high pressure drop scrubbers). In both regulatory alternatives, the standards for particulate matter would be based on Technical Alternative II for steam generating units of greater than 73 MW (250 million Btu/hour) heat unit capacity.

In addition to the variations in the cost-effectiveness of emission control with steam generating unit size and steam generating unit type that were

discussed earlier, the cost-effectiveness of emission control also varies with steam generating unit operating level. Some steam generating units are operated near full capacity while others are operated at low capacity. Higher fixed costs for emission control systems can lead to higher costs per Mg (ton) of pollutant removed for steam generating units with relatively low levels of operation.

For particulate matter control, some steam generating units may fire mixtures of fuels which contain only small amounts of fuels which generate particulate matter emissions, such as coal, wood, or solid waste, with fuels, such as natural gas or distilate oil, which do not generate significant particulate matter emissions. In each of these cases, the cost-effectiveness of emission control will vary. The cost-effectiveness of emission control on steam generating units operated near full capacity is more attractive than on steam generating units operated at low capacity. Similarly, the cost-effectiveness of particulate matter on steam generating units which fire substantial amounts of fuels which generate significant uncontrolled particulate matter emissions is more attractive than on steam generating units which only cofire limited amounts of these fuels with other fuels.

Steam generating unit use is generally expressed in terms of an annual capacity factor. This factor represents the amount of fuel actually fired in relation to the amount of fuel the steam generating unit is capable of firing on an annual basis. The overall average industrial-commercial-institutional steam generating unit annual capacity factor is about 60 percent (0.60). This average annual capacity factor was employed to estimate all the annualized costs and cost-effectiveness values included in the cost analysis discussion presented above.

Steam generating units which operate at less than 60 percent annual capacity factor will experience less favorable cost-effectiveness levels; steam generating units which operate above 60 percent annual capacity factor will experience improved cost-effectiveness levels. Steam generating unit operation at a 30 percent (0.30) annual capacity factor would approximately double the annualized cost per Mg (ton) of pollutant removed compared to unit operation at a 60 percent annual capacity factor. Additionally, the same doubling effect would occur in cases where an equal mix of a fuel that does not generate significant uncontrolled particulate matter emissions (natural gas) is fired with a fuel that does generate a significant uncontrolled particulate matter emissions (wood). That is, a steam generating unit was firing a fuel mixture of 50 percent natural gas and 50 percent coal and operated at an overall annual capacity factor of 60 percent based on total heat input, the "effective" capacity factor of this steam generating unit would appear to be 30 percent when considering only those fuels that generate significant uncontrolled particulate matter emissions.

Given the difference in cost-effectiveness of particulate matter control between steam generating units which operate at low annual capacity factors compared to steam generating units which operate at high annual capacity factors, regulatory alternatives have been developed which would provide special consideration for low capacity steam generating units between 29 and 73 MW (100 and 250 million Btu/hour) heat input capacity. Under both regulatory alternatives analyzed, coal-, wood-, solid waste-, and mixed fuel-fired steam generating units in this size range with an annual capacity factor of 30 percent or less would be subject to a less restrictive particulate matter emission limit. For Alternative A (the less stringent alternative), the alternative standard would be 129 ng/J (0.30 lb/million Btu) heat input, and for Alternative B (the more stringent alternative) would be of 86 ng/J (0.20 lb/million Btu) heat input. The 130 ng/J (0.30 lb/million Btu) heat input level would be based on the use of double mechanical collectors, low efficiency ESP's, or low pressure drop wet scrubbers to control particulate matter emissions. The 86 ng/J (0.20 lb/million Btu) heat input limit is based on the use of sidestream separators, low efficiency ESP's, or low pressure drop wet scrubbers to control particulate matter emissions.

The NO_x emissions limits are the same under both Regulatory Alternative A and Regulatory Alternative B. For residual oil and for coal-fired steam generating units, there is only one NO_x emission control technology which is demonstrated for each boiler type. For natural gas- and distillate coal-fired units, two technical alternatives are available in LEA alone or LEA/SC. LEA/SC technology however, would achieve significantly greater emission reductions compared to LEA alone at no significantly greater cost. Therefore, the environmental, energy, and economic impacts of only one NO_x regulatory alternative (based on LEA/SC technology) were analyzed.

The proposed standards for NO_x would be 301 ng/J (0.70 lb/million Btu) heat input for pulverized coal-fired steam generating units, based on the use of LEA/SC alone; to reduce emissions; 258 ng/J (0.60 lb/million Btu) heat input for spreader stoker coal-fired steam generating units, based on the use of low excess air (LEA); and 215 ng/J (0.5 lb/million Btu), for mass-feed stoker coal-fired steam generating units, based on the use of LEA alone.

The proposed NO_x standards for distillate oil- and natural gas-fired steam generating units would be 43 ng/J (0.10 lb/million Btu) heat input. The distillate oil and natural gas standards are based on the use of LEA/SC. The use of SCB technology would be expected for most package natural gas and distillate-fired steam generating units. The NO_x control standards for residual oils vary according to fuel nitrogen content. For low nitrogen residual oils (nitrogen content less than or equal to 0.35 weight percent), the standard would be 129 mg/J (0.30 lb/ million Btu) heat input, and for high nitrogen residual oils (nitrogen content greater than 0.35 weight percent), the standard would be 172 ng/J (0.40 lb/million Btu) heat input. The standards for low nitrogen and high nitrogen residual oils would be based on the use of LEA/SC.

NO_x standards would also apply to steam generating units firing mixtures of fossil fuels and wood, solid waste, or byproducts/wasted. Mixtures of wood, solid waste, or byproducts/wastes. Mixtures of wood, solid waste, and fossil fuel would be subject to NO_x emission limits if the heat input from the combustion of fossil fuel would exceed 5 percent on an annual basis. Mixtures of byproducts/wastes and fossil fuel would be subject to an NO_x emission limit determined through the use of a prorating formula. For the purpose of prorating, gaseous byproducts/wastes would be subject to the same NO_x emission limits as natural gas, and liquid byproducts/wastes would be subject to the same NO_x emission limits as residual oils, depending on their fuel nitrogen characteristics.

As with the control of particulate matter emissions, the cost-effectiveness of NO_x emissions control varies with steam generating unit operation. Some steam generating units operate at high capacity, while others operate of low capacity. The cost-effectiveness of emission control is less attractive for steam generating units operating at low capacities than for those operating at high capacities. Similarly, the cost-effectiveness of NO_x control (including emissions monitoring) is more attractive

for steam generators which cofire substantial amounts of fossil fuels than for steam generators which cofire limited amounts of fossil fuels in fossil-nonfossil fuel mixtures because of the higher uncontrolled emissions from the combustion of fossil fuels.

As discussed above, an average annual capacity factor of 60 percent was employed to estimate all the annualized costs and cost-effectiveness values included in the cost analysis discussed earlier. Steam generating units which operate with annual capacity factors above 60 percent would experience more attractive cost-effectiveness values than those discussed, and steam generating units which operate with annual capacity factors below 60 percent would experience less attractive cost effectiveness values. Operation at a capacity factor of 30 percent would approximately double the cost per ton of emission control compared to operation at an annual capacity factor of 60 percent.

Given the difference in the cost-effectiveness of NO_x emission control between steam generating units which operate at low annual capacity factors compared to those that operate at high annual capacity factors because of continuous NO_x monitoring costs, both regulatory alternatives would exempt units which operate at low annual capacity factors from the requirement to install and operate continuous NO_x monitors. Instead, steam generating units emissions which operate at an annual capacity factor of 30 percent or less based on fossil fuel consumption would be required to monitor various operating conditions in lieu of NO_x emissions monitoring. To monitor operating conditions rather than NO_x emissions, a plan would be submitted for approval outlining what conditions would be monitored and what records of these conditions would be maintained. The NO_x monitoring requirements for low capacity units is discussed further below in the *Performance Test Methods and Monitoring Requirement* section.

1. Consideration of Economic Impacts

Introduction. A detailed analysis was undertaken to assess the potential economic impacts associated with standards based on Regulatory Alternative B. This alternative is more stringent than Regulatory Alternative A. Consequently, while no analysis was undertaken to assess the potential economic impacts of standards based on Regulatory Alternative A, the impacts based on Alternative A would be less than those discussed below for standard based on Regulatory Alternative B.

Fossil Fuel Steam Generating Units. Because 700 fossil fuel-fired steam generating units could potentially be affected by the proposed standard, the economic impacts of standards based on Regulatory Alternative B on fossil fuel-fired steam generating units were analyzed in two phases. The first phase focused on aggregate economic impacts for major steam-using industries and estimated the potential impact on steam costs and product prices based on industrywide averages for eight large industry groups. The goups selected for analysis account for approximately 70 percent of the total industrial steam consumption. These eight industry groups were: Food; textiles; paper; chemicals; petroleum refining; stone, clay, and glass; stee; and aluminum.

To determine the potential product price impacts of standards based on Regulatory Alternative B, estimates were made of steam consumption per dollar of product sales by industry group. Projected growth in product sales and the resulting increased steam demands were then estimated by industry group. Next, steam cost increases attributable to standards based on Regulatory Alternative B were estimated based on annualized steam generating unit and pollution control costs. Assuming "full cost pass-through" of these increased costs to products prices, the potential impact of standards based on this regulatory alternative on product prices was estimated.

Growth projections indicate that about 1 to 9 percent of the steam consumption in the eight major steam-using industries would be generated in steam generating units subject to the proposed standards by 1990. The lowest percentage is projected for the paper industry with one percent being steam from affected facilities. The highest percentage is projected for the chemical industry with 9 percent being steam from affected facilities.

The analysis indicates that average steam costs in these industry groups would increase from about $9.43 to $9.54/GJ ($8.94 to $9.04/million Btu) of heat input, an increase of about 1 percent based on industrywide average annualized costs. Assuming "full cost pass-through" of increased steam costs, product prices in the major industry group would increase by less than 0.1 percent. This potential impact represents a maximum product price increase because of the "full cost pass-through" assumption with no cost adsorption. In some instances, increased steam costs would not be completely passed through to product prices, and, therefore, the impact on product prices would be less.

The second phase of the analysis of the potential economic impacts of standards based on Regulatory Alternative B focused on the selected industries which were considered likely to be most affected by proposed standards. Seven industries were selected due to the steam-intensive nature of their operation, the low utilization of their steam generating unit capacity, or their comparatively small industry size. These industries were: beet sugar refining, fruit and vegetable canning, rubber reclaiming, automobile manufacturing, petroleum refining, iron and steel manufacturing, and liquor distilling.

The economic impact analysis examined potential impacts on prices, profitability, and capital availability. This analysis was based on "model" plants and "model" firms representative of each industry.

Model plants were defined for each industry based on historical plant locations, fuel use, and steam generating unit construction patterns. Annual plant sales, plant product output, product costs, and return on assets were estimated for each model plant. Then, based on recent trends in each industry, a scenario was developed involving existing steam generating unit replacement, or construction of additional steam generating unit capacity for plant expansion at each model plant. Based on these scenarios, increased steam costs imposed on model plants by standards based on Regulatory Alternative B as the result of new steam generating unit construction were calculated.

Assuming "full cost pass-through" of steam cost increases, the potential impact of standards based on Regulatory Alternative B on product prices could be estimated. To estimate the potential impact on profitability, or return on assets, an analysis was also conducted assuming "full cost absorption" of increased steam costs with no pass-through.

Based on scenarios involving replacement of from 25 to 100 percent of existing steam generating unit capacity with new steam generating unit capacity at model plants for the seven industries selected, product prices were projected to increase by 0.001 to 0.15 percent in 1988, assuming "full cost pass-through" of increased steam costs. The lowest increase was projected for the automobile manufacturing industry based on an assumption that one of four existing coal-fired steam generating units at the model plant would be

replaced by a coal-fired steam generating unit subject to standards based on Regulatory Alternative B. The highest percentage increase was exhibited by the beet sugar refining industry based on an assumption that three of four existing oil-fired steam generating units at the model plant would be replaced by a new coal-fired steam generating units subject to standards based on Regulatory Alternative B.

Based on the same scenarios as above, but assuming "full cost absorption" of increased steam costs, return on assets was projected to decrease by less than 0.01 to 0.51 percentage points as a result of standards based on Regulatory Alternative B. Again, these potential impacts represent "worst case" projections because of the assumption of "full cost absorption" of the increased steam costs.

The analysis of potential impacts on capital availability examined the impact of standards based on Regulatory Alternative B on the ability of "model" firms to finance pollution control expenditures. Corporate annual reports and Securities and Exchange Commission Forms 10–K were reviewed to formulate a hypothetical financial position and to identify the number of operating plants for each model firm. Each plant operated by the model firm was assumed to be identical to the corresponding model plant used in the analysis discussed above. The potential impact of standards based on Regulatory Alternative B on each model firm's cash flow coverage ratio and debt/equity ratio under each of five debt/equity financing strategies was estimated based on the amount of financing needed to construct replacement or expansion steam generating units envisioned under the same scenarios used in the price and profitability analysis.

Cash flow coverage ratios and book debt/equity ratios showed essentially no change for any of the model firms under any of the five different debt/equity financing strategies. Consequently, standards based on this regulatory alternative would not impair the ability of firms to raise sufficient capital to construct fossil fuel-fired steam generating units.

Nonfossil Fuel-Fired Steam Generating Units. The economic impact analysis of standards based on Regulatory Alternative B for nonfossil fuel-fired steam generating units was essentially the same as that for the second phase of the analysis for fossil fuel-fired steam generating units. The principal difference is that the analysis for nonfossil fuel-fired steam generating units examined potential impacts on both model plants/model firms and municipalities. A number of municipalities are expected to construct solid waste-fired steam generating units in the future which would be covered by the proposed standards.

The industries selected for analysis reflected the major industry users of nonfossil fuel-generated steam. The four industries examined were: Wood furniture manufacturing, sawmill lumber products, plywood panel products, and paper and allied products manufacturing. Each of the industries selected presently burns nonfossil fuels for part or all of its steam requirements.

Based on various scenarios involving replacement of 25 to 75 percent of existing steam generating unit capacity at the model plants developed for each of the industries and assuming "full cost pass-through" of increased steam costs, product prices were estimated to increase by less than 0.5 percent in all cases. Based on an assumption of "full cost absorption," return on assets was estimated to decrease by 0.02 to 0.30 percentage points. Again, these estimates of potential impacts on product prices and return on assets represent "worst case" estimates because of the assumptions of "full cost pass-through" and "full cost absorption."

Based on model firms developed for each industry, incorporating the same model plant and steam generating unit construction scenarios, cash flow coverage ratios and book debt/equity ratios showed essentially no change under any of five different debt/equity financing strategies. Thus, standards based on Regulatory Alternative B would not impair the ability of firms to raise sufficient capital to construct nonfossil fuel-fired steam generating units.

Four municipalities representing different economic and steam generating unit ownership situations were selected for analysis. Municipalities were selected to represent the following categories: Publicly owned steam generating units in economically distressed cities financed by State funds; publicly owned steam generating units in economically distressed cities financed by municipal funds; publicly owned steam generating units in economically stable cities; and privately owned and operated steam generating units.

For the municipalities, the economic impact analysis focused on the increase in the cost of steam and on capital availability to finance the incremental costs imposed by standards based on Regulatory Alternative B. The increase in the average steam costs resulting from compliance with standards based on this alternative was estimated and compared to steam costs in the absence of such standards to determine if the increase would be significant. The incremental increase in capital requirements to finance new steam generating unit construction was also estimated and compared to capital requirements in the absence of such standards to determine if the increase was likely to cause deferral of the project or a change in the method of financing.

The analysis indicated little if any impact on municipal solid wastefired steam generating unit construction. Capital requirements would generally increase by about 0.3 percent and average steam costs would increase by about 1 percent. Neither of these increases is considered substantial, and the increased capital requirements would not result in a deferral of the project or a change in current methods of financing.

Conclusions. The economic impacts analysis indicates that standards based on Regulatory Alternative B would increase product prices by substantially less than 1 percent if all steam cost increases were passed through to product prices. In addition, assuming absorption of all steam cost increases, return on assets would decrease by substantially less than 1 percent for all firms. Cash flow coverage and book debt/equity ratios showed essentially no change as a result of standards based on this regulatory alternative. Therefore, standards based on this alternative would not impose any capital availabilty constraints on firms. Ffor municipalitfies, construction of solid waste-fired boilers would not be deferred or would not require different forms of financing due to standards based on Regulatory Alternative B.

As mentioned earlier, Regulatory Alternative B is more stringent than Regulatory Alternative A. Consequently, the economic impacts of standards based on Regulatory Alternative A would be less severe than those based on Regulatory Alternative B.

2. *Consideration of National Impacts*

The potential incremental national impacts associated with standards based on each regulatory alternative were analyzed. The analysis examined the potential incremental national environmental, energy, and cost impacts of these alternatives in the fifth year following proposal of standards. National enviornmental impacts were examined by projecting air pollutant

emissions and the level of solid and liquid waste products that would be generated under the regulatory baseline and under each regulatory alternative. In the case of particulate matter, the national impact of standards based on each regulatory alternative was examined in terms of both total mass emissions and inhalable particulate matter emissions (less than 10 microns diameter).

National incremental energy impacts were examined from two viewpoints. The first viewpoint was the potential impact of standards on coal use in new industrial-commercial-institutional steam generating units. This impact was estimated by projecting national coal demand for new units under the regulatory baseline and then under each r;egulatory alternative. The relative demand for coal versus that for natural gas and oil was then examined. The second viewpoint was the potential impact of standards on the national energy consumption of new steam generating unit pollution control systems. This impact was estimated by projecting the national electrical energy consumption of the pollution control equipment required for compliance under the regulatory baseline and then under each regulatory alternative.

The analysis of incremental national cost impact examined the potential impact of standards on the national capital and annualized costs for new steam generating units. These impacts were estimated by projecting the total national capital and annualized costs associated with installation and operation of the pollution control equipment required for compliance under the regulatory baseline and then under each regulatory alternative.

National impacts were analyzed for industrial steam generating units firing fossil fuel (coal, oil, and natural gas) through the use of a computer model, referred to as the Industrial Fuel Choic Analysis Model (IFCAM). IFCAM simulates fuel choice decisions at the steam generator level based ont he after-tax present value of the cost of generating steam over a 15-year investment period. The model selects the fuel/steam generator/emission control system combination with the lowest after-tax present value which is capable of complying with the applicable emission standard.

Because the assumptions used in the analysis to represent economic conditions in future years have a significant effect on the results obtained from IFCAM, national impacts were analyzed for two different economic scenarios. Table 6 presents the assumptions used under each scenario.

TABLE 6.—ASSUMPTIONS EMPLOYED IN IFCAM NATIONAL IMPACTS ANALYSIS FOR FOSSIL FUEL-FIRED INDUSTRIAL STEAM GENERATING UNITS

	Energy Scenario I (lower natural gas price)	Energy Scenario II (higher natural gas price)
Regulatory baseline.	State implementation plant (SIP) emission limits and existing New Source Performance Standards (NSPS)	State implementation plan (SIP) emission limits and existing New Source Performance Standards (NSPS).
Natural gas prices (1982 $/million Btu).	1985: 4.27 1990: 5.15 1995: 5.41	1985: 5.62. 1990: 7.23. 1995: 7.60.
Oil prices (1982 $/bbl).	1985: 25.90 1990: 31.90 1995: 46.50	1985: 25.90. 1990: 31.90. 1995: 46.50.
New boiler projections at baseline (number of units).	100 Coal 580 Oil/NG	415 Coal. 275 Oil/NG.

The effect of energy-related legislation is simulated in IFCAM by including provisions of various laws or proposed legislation relevant to steam generating unit fuel choice. Energy Scenarios I and II both include provisions of the Energy Tax Act of 1978 (ETA) and the Economic Recovery Tax Act of 1981 (ERTA). The ETA provides tax incentives for the use of coal and alternative fuels, and the ERTA revises the depreciation schedules for capital investment. Energy Scenario I reflects natural gas prices lower than, but which tend to track, the price of medium sulfur residual oil. Alternatively, the natural gas prices used in Energy Scenario II are higher than the price of distillate oil in most regions. The two energy scenarios reflect differing assumptions regarding contract re-negotiations between natural gas producers and pipeline companies.

The mix of fossil fuels selected by IFCAM, in conjunction with the requirements of alternative standards, determines the national incremental emission reduction as well as the national incremental cost impacts associated with standards. Under Energy Scenario II, (i.e., high natural gas prices relative to coal and oil) about 70 percent of the fossil fuel demand for new steam generating units is projected to be met by coal. Under Energy Scenario I, (i.e., low natural gas prices relative to coal and oil) only about 20 percent of the total fossil fuel demand is projected to be met by coal. Consequently, the national impacts under Scenario II will be much greater than those under Scenario I, both in terms of emissions reductions and in terms of costs. Because it is impossible to predict with certainty the economic and regulatory conditions of the future, the national impacts associated with both Scenario I and Scenario II are discussed below. The "real" national impacts most likely fall somewhere within the range predicted by the two scenarios.

The regulatory baseline in IFCAM consists of State implementation plan (SIP) requirements and the existing standards of performance applicable to large fossil fuel-fired steam generating units (i.e., Subpart D of 40 CFR Part 60). This means that in the absence of the proposed standards, new steam generating units with heat input capacities of 73 MW (250 million Btu/hour) or less are assumed to meet general SIP requirements. The national cost impacts projected to result from the proposed standards for these units are measured from the SIP baseline and, to the extent that new steam generating units would apply emission control technology which are more efficient (and more expensive) than required by SIP's, the national cost impacts projected by IFCAM may be overstated.

Other baseline control levels could be used for national impact analyses. For example, site-specific emission control requirements for new steam generating units as determined through prevention of significant deterioration (PSD) and new source review (NSR) regulations could be used to define a baseline control level for new units. Based on an initial review of the data available for recent PSD and NSR permits for non-utility coal-fired steam generating units, many units are being required to install emission control technology as stringent, or more stringent, than the proposed standards. A baseline control level based upon PSD and NSR requirements would reduce the projected national impacts of the proposed standards. In cases where site-specific PSD and NSR permit requirements are as stringent, or more stringent, than the proposed standards, negligible environmental, energy, and economic impacts would result from the proposed standards.

Although various baseline assumptions can be used to estimate national impacts that would result from the proposed standards, it is most appropriate to assume a SIP baseline control level for units with a heat input capacity of 73 MW (250 million Btu/hour) or less. The SIP baseline represents minimal requirements and thus will tend to estimate the total cost of air pollution control being experienced. In addition, since PSD and NSR permits are site-specific, they do not provide as clear a definition of the baseline as existing State regulations for

new steam generating units at other sites.

New industrial steam generating unit demand in IFCAM is a function of growth in industrial fossil fuel demand and replacement of existing capacity. The former depends on the projected growth in industry adjusted for projected conservation and projected switching by industry to increased use of nonfossil fuels and electricity. The latter depends on the projected retirement rate of existing capacity. IFCAM uses both historical steam generating unit population data and recent sales data to estimate the size distribution of new steam generators. Based on IFCAM predictions, a total of about 700 new fossil fuel-fired industrial steam generating units of more than 29 MW (100 million Btu/hour) heat input capacity are projected to initiate operation between 1983 and 1988.

For nonfossil fuel-fired steam generating units, national impacts were assessed through the use of model units of various sizes. Growth in nonfossil fuel-fired industrial steam generating unit capacity, in terms of both the number and the size distribution of these units, is based on historical sales data and industry and vendor projections for sales of new wood- and municipal-type solid waste-fired steam generators. A total of about 120 new wood- and municipal-type solid waste-fire steam generating units of more the 29 MW (100 million Btu/hour) heat input capacity are projected to be built by 1988.

Annualized costs of generating steam were calculated over a 15-year investment period. In addition, nonfossil fuels were assumed to represent waste fuels having no economic value. A cost credit was also included for burning municipal-type solid waste to reflect savings achieved by avoiding the cost of landfilling.

Unlike IFCAM, the national impacts analysis for nonfossil fuel-fired steam generating units is not affected by energy-related legislation. The regulatory baseline for nonfossil fuel-fired units is based on SIP requirements. As discussed previously, using SIP requirements as the regulatory baseline may tend to overstate the impacts presented here.

The total national impacts analysis projects that about 810 new fossil and nonfossil fuel fired industrial-commercial-institutional steam generating units having heat input capacities of greater than 29 MW (100 million Btu/hour) will be constructed over the next 5 years under the regulatory baseline. Under Energy Scenario I (i.e., low natural gas prices), this projected total would consist of about 580 natural gas- and oil-fired units, about 100 coal-fired units, about 80 wood-fired units, and about 50 solid waste-fired units. Under Energy Scenario II (i.e., high natural gas prices), the projected total would consist of about 270 natural gas- and oil-fired units, about 420 coal-fired units, 70 wood-fired units, and 50 solid waste-fired units.

Standards based on either Regulatory Alternative A or B would not have a large impact on the total projected numbers of new steam generating units expected although there would be a slight shift in the projected mix of coal-, oil-, and natural gas-fired units. Under the less restrictive Regulatory Alternative A, 90 to 415 coal-fired units and 600 to 275 natural gas- and oil-fired units are projected under Energy Scenarios I and II, respectively. Under the more restrictive Regulatory Alternative B, 75 to 380 coal-fired units and 615 to 315 natural gas- and oil-fired units are projected under Energy Scenarios I and II, respectively.

Similarly, standards based on either Regulatory Alternative A or B would not have a large impact on the coal penetration as a percentage of fossil fuel demand. Under Energy Scenario I, the coal penetration at the baseline is 24 percent of the total fossil fuel demand. Coal penetration is reduced to 21 percent and 19 percent, respectively, under Regulatory Alternatives A and B. Under Energy Scenario II, coal penetration at the baseline is 75 percent of the fossil fuel demand. Coal penetration is reduced to 74 and 70 percent, respectively, under Regulatory Alternatives A and B. The above discussion indicates that the greatest amount of fuel switching occurs under Energy Scenario I (low gas prices) and Regulatory Alternative B. The least fuel switching occurs under Energy Scenario II (high gas prices) and Regulatory Alternative A.

Table 7 summarizes the national incremental environmental and cost impacts of both Regulatory Alternatives A and B under Energy Scenario I. Table 8 summarizes the national impacts of each alternative under Energy Scenario II. As expected, the greatest reduction in particulate matter emissions under either scenario would be achieved by standards based on Regulatory Alternative B; however, standards based on this alternative would also result in the highest national cost impacts. For example, as shown in Table 7 for Energy Scenario I national particulate matter emissions would be reduced by about 22,000 Mg (24,000 tons) per year under Regulatory Alternative B, compared to a reduction of about 19,000 Mg (21,000 tons) under Regulatory Alternative A. Similarly, national NO_x emissions would be reduced by 28,000 Mg (31,000 tons) per year under Regulatory Alternative B, compared to a reduction of 26,000 Mg (29,000 tons) under Regulatory Alternative A. For Energy Scenario I, the total annualized cost would be $30 million under Regulatory Alternative B, compared to a cost of $28 million under Regulatory Alternative A.

TABLE 7.—NATIONAL INCREMENTAL ENVIRONMENTAL AND COSTS IMPACTS ANALYSIS UNDER ENERGY SCENARIO I (LOWER NATURAL GAS PRICES)[1]

	Regulatory Alternative A	Regulatory Alternative B
Environmental Impacts (thousand Mg (thousand tons))[2]		
NO_x emissions reduction	26 (29)	28 (31)
PM emission reduction	19 (21)	22 (24)
PM_{10} emissions reduction	16 (17)	19 (21)
Cost Impacts (million $/yr)[2,4]		
Total annualized cost	28	30
Cost Effectiveness ($/Mg ($/ton))[4]		
NO_x control	230 (210)	180 (170)
PM control	1,160 (1,050)	1,150 (1,040)

[1] Values presented indicate incremental impacts over regulatory baseline (i.e., emissions reductions, increased costs).
[2] Environmental impacts in the fifth year following proposal of standards.
[3] Annualized cost in the fifth year following proposal of standards.
[4] 1982 dollars.

TABLE 8.—NATIONAL INCREMENTAL ENVIRONMENTAL AND COSTS IMPACTS ANALYSIS UNDER ENERGY SCENARIO II (HIGHER NATURAL GAS PRICES)[1]

	Regulatory Alternative A	Regulatory Alternative B
Environmental Impacts (thousand Mg (thousand tons))[2]		
NO_x emissions reduction	8 (8)	11 (12)
PM emissions reduction	37 (41)	46 (51)
PM_{10} emissions reduction	30 (32)	37 (40)
Cost Impacts (million $/yr)[2,4]		
Total annualized cost	45	62
Cost Effectiveness ($/Mg ($/ton))[4]		
NO_x control	2,000 (1,900)	1,700 (1,500)
PM control	800 (730)	970 (890)

[1] Values presented indicate incremental impacts over regulatory baseline (i.e., emissions reductions, increased costs).
[2] Environmental impacts in the fifth year following proposal of standards.
[3] Annualized cost in the fifth year following proposal of standards.
[4] 1982 dollars.

As shown in Table 8, this same general contrast in national impacts between Regulatory Alternative A can be seen under Energy Scenario II. The magnitude of impacts under either regulatory alternative is sensitive to natural gas price assumptions and the resulting predictions of new coal-fired steam generating unit capacity versus natural gas- or oil-fired steam generator

capacity. Because of the relatively greater capacity and number of new coal-fired steam generating units predicted under Energy Scenario II (higher natural gas prices), the national particulate matter emission reductions and national costs of either regulatory alternative would generally be greater under Energy Scenario II than under Energy Scenario I. For example, for Regulatory Alternative B, reductions in particulate matter emissions under Energy Scenario II would be more than twice the reduction achieved under Energy Scenario I. This occurs because of greater potential for achieving emissions reductions from coal-fired steam generating units. Although the proposed NO_x standards are the same under both regulatory alternatives, greater NO_x emissions reductions are expected under Energy Scenario I. Energy Scenario I would result in the construction of a greater number of natural gas-fired steam generating units which would employ staged combustion burners for NO_x control. These units would yield greater NO_x emissions reductions than would be expected for comparable sized coal-fired boilers which would be constructed under Energy Scenario II and which would apply LEA/SCA.

Similarly, the total national annualized cost of particulate matter and NO_x control would be greater under Energy Scenario II than under Energy Scenario I due to the greater number of new coal-fired steam generators which would be required to install particulate matter control equipment. Since the cost of NO_x control techniques do not differ substantially between coal- and natural gas-fired units the total cost of NO_x control is essentially the same under either energy scenario.

Under each regulatory alternative and energy scenario, capital cost increases are less than would be expected. The total national capital cost for emissions control would be increased by less than $50 million under Regulatory Alternative A/Energy Scenario II and the capital cost increases would be negligible for the other three cases. Additional review indicates that these national impacts are realistic, however.

The small or negligible increases in capital cost resulting from adoption of standards can be explained by the fuel switching predicted by IFCAM. The capital cost of a coal-fired steam generating unit is approximately four times that of a natural gas- or oil-fired unit. Moreover, the cost of a fabric filter is only about one-sixth the cost of a coal-fired steam generating unit, and the cost of a sidestream separator is even a smaller fraction of the steam generator cost. Thus, the cost of particulate matter controls for the coal-fired steam generating units predicted by IFCAM is offset by the costs of other units switching to natural gas firing. Under Regulatory Alternative A and Energy Scenario II, the economics of fuel switching are least favorable due to the relatively high natural gas prices and relatively low cost of sidestream separators. In this case, impacts of fuel switching were not sufficient to offset the increase in capital costs associated with sidestream separators, thus resulting in an increased capital cost of $50 million over the baseline cost.

Solid and liquid waste impacts associated with standards based on Regulatory Alternatives A or B under either energy scenario are minimal. In some cases, solid waste generation actually decreases due to the fuel switching predicted by IFCAM. Similarly, the electrical energy demands of standards based on Regulatory Alternatives A or B under either energy scenario are minor, increasing the fossil fuel consumption for new industrial-commercial-institutional steam generating units by less than one half of one percent.

F. Selection of Best System of Continuous Emission Reduction

The regulatory alternatives examined for control of nitrogen oxides emissions is the same under both Regulatory Alternative A and Regulatory Alternative B. Under both alternatives, low excess air is considered the most effective NO_x emissions control technique for mass-feed and spreader stoker coal-fired units. A combination of low excess air and staged combustion is considered the most effective NO_x emissions control technique for industrial-commercial-institutional steam generators firing pulverized coal, residual oil, or natural gas. For coal- and residual oil-fired units a combination of LEA and overfire air (OFA) is considered the most effective NO_x emissions control technique. Staged combustion burners (SCB's) are considered the most effective NO_x emissions control technique for industrial-commercial-institutional steam generating units firing natural gas or distillate oil. The impacts of standards based on these control techniques on industrial-commercial-institutional steam generating units during the first 5 years following proposal of standards are shown in Tables 7 and 8. As stated above, the magnitude of emissions reductions and costs varies according to energy price assumptions.

The cost-effectiveness of control of nitrogen oxides would range from $180 to $2,000/Mg ($170 to $1,800/ton), depending on which energy scenario and regulatory alternative is assumed. The national average cost-effectiveness of particulate matter control for Energy Scenario I under either Alternative A or Alternative B is about $1,160/Mg ($1,050/ton). For Energy Scenario II, the national average cost-effectiveness of particulate matter control is about $800/Mg ($730/ton) under Regulatory Alternative A and about $970/Mg ($880/ton) under Regulatory Alternative B. This difference in the cost impacts associated with the two alternatives is not compelling. Under neither alternative does the cost of the installation and operation of pollution control equipment result in any significantly adverse economic impacts.

In addition to national impacts, a review of impacts on individual steam generating units was conducted through a model unit analysis. The cost impacts on individual steam generating units varied depending on a number of factors, including steam generating unit size, fuel type, fuel cost, potential fuel savings, regulatory requirements, and compliance methods. As discussed under the *Economic Impact Assessment* section and as presented in Tables 9 through 14 below, the cost effectiveness of particulate matter and nitrogen oxides control on a model unit basis varied from less than $110/Mg ($100/ton) to more than $2,200/Mg ($2,000/ton) of pollutant removed.

A comparison of the regulatory alternatives in reducing particulate matter emissions from industrial-commercial-institutional steam generating units shows that Regulatory Alternative B is superior in controlling both total particulate matter and the inhalable particulates smaller than 10 microns in diameter. In terms of total particulate matter control, standards based on Regulatory Alternative B would result in an approximate 20 percent greater emission reduction than standards based on Regulatory Alternative A. Similarly, for inhalable particulate matter emissions, standards based on Regulatory Alternative B would also result in an approximate 20 percent greater emissions reduction than standards based on Regulatory Alternative A. The greater reduction in emissions of particulate matter smaller than 10 microns in diameter which is achievable under Regulatory Alternative B is significant because particulate matter less than 10 microns in size is capable of being inhaled into the lungs. Therefore, the cost impacts between

Regulatory Alternatives A and B is a comparison between a less costly alternative which principally removes larger particles and a more costly alternative which effectively removes the inhalable particles which have the most direct impact on human health.

An additional benefit associated with the selection of Regulatory Alternative B as the best system of emission reduction is that this regulatory alternative is more consistent with the requirements of most existing Federal and State regulatory programs for controlling particulate matter emissions from steam generating units than is Regulatory alternative A. Based on a survey of SIP regulations, it is expected that over half of all new coal-, wood-, and solid waste-fired steam generating units above 29 MW (100 million Btu/hour) heat input capacity would be required by existing State regulations to install the same emission control technology as that which would be required by standards based on Regulatory Alternative B. In addition, well over 90 percent of the recent PSD determinations under Federal and State Prevention of Significant Deterioration and New Source Review procedures have required the use of the same emission control technologies as those required by Regulatory Alternative B for steam generating units larger than 29 MW (100 million Btu/hour) heat input capacity. The selection of Regulatory Alternative B, therefore, as the basis of the proposed standards is consistent with existing State and Federal regulatory programs. Regulatory Alternative B, therefore, has been selected as the basis of the proposed standards.

Performance Test Methods and Monitoring Requirements. The performance testing and emission monitoring requirements included in the proposed regulation would apply to each steam generating unit that is subject to either the proposed particulate matter or the proposed NO_x emission limits.

Particulate Matter. An initial performance test would be required for all steam generating units subject to the proposed particulate matter emission standard. For steam generating units firing a mixture of fuels, the performance test would be conducted while the steam generating unit is firing a fuel mixture representative of the "worst case" (from the viewpoint of the highest particulate matter emissions) the owner or operator reasonably anticipates might be fired in the future. The performance test would be conducted in accordance with Reference Method 5 or Reference Method 17 (40 CFR Part 60, Appendix A). Reference Methods 1 through 4 would be used for determining the number and location of sampling points, flue gas flow rates, flue gas composition, and flue gas moisture content. After the initial performance test, subsequent performance tests may be required by enforcement personnel. All performance tests would consist of a minimum of three Reference Method 5 or Reference Method 17 runs at or near full-load operating conditions. The average particulate matter emission rate of the three runs would be used to determine compliance. Reference Method 17 could be used in place of Reference Method 5 for facilities without wet FGD systems that have stack gas temperatures of less than 160°C (320°F).

Comments have been received which state that Reference Method 5 and Reference Method 17 are inappropriate for measuring particulate matter emissions from steam generating units equipped with wet FGD systems. The problems raised concerning the use of these methods stem from the condensation of sulfuric acid in the flue gas when cooled by a wet scrubber, and the inclusion of this acid mist in the measurement of particulate matter under Reference Method 5. This problem is being studied and if it is concluded that an amendment to Reference Method 5 would be appropriate, such a change will be proposed in the future.

Continuous monitoring methods do not presently exist for measuring particulate matter emission rates directly. Therefore, the proposed monitoring requirements include other methods to indicate if the particulate matter emission control system is properly operated and maintained. Opacity data would be recorded and reduced to 6-minute averages.

The use of a transmissometer to monitor continuously the opacity of visible emissions would serve as an indicator of proper operation and maintenance of the control device. Periods of high opacity would provide a strong indication that particulate matter emissions are in excess of the proposed emission limits. Periods of high opacity, therefore, would indicate that a performance test may be appropriate to determine if the steam generating unit is in compliance with the particulate matter standards.

Opacity standards are established at levels consistent with mass emission standards to provide an inexpensive indicator of a particulate matter control system's performance. To account for factors such as unusually large diameter stacks or unique fuel properties which can influence opacity, provisions are available [40 CFR 60.11(e)] to obtain site-specific opacity standards when a facility is unable to comply with the opacity standard but demonstrates compliance with the mass emission standard.

Nitrogen Oxides. Under the proposed standards, continuous NO_x emission monitoring would be required for all steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) and which have an annual capacity factor for coal, oil, or natural gas greater than 30 percent (0.30). The first 30-day average of NO_x emissions after initial unit startup would serve as the initial performance test required under § 60.8. Thereafter, the continuous monitoring data would be used to determine a 30-day rolling average NO_x emission rate calculated as the arithmetic average of the preceding 720 hourly NO_x values. Owners and operators of steam generating units would be required to submit excess emission reports semiannually if the NO_x standard was exceeded for any 30-day average during the reporting period and the data may be used for compliance purposes. Otherwise, no reports would be required. All continuous NO_x emission monitoring records would have to be maintained at the steam generating unit site for a period of two years.

For steam generating units which have an annual heat input capacity between 5 percent and 30 percent (0.05 to 0.30) for coal, oil, or natural gas, a continuous NO_x emission monitor would be used to conduct an initial 30-day compliance test. Thereafter, the owner or operator of the facility could elect to monitor either steam generating unit operating conditions or NO_x emissions. If operating conditions are monitored, operating conditions such as the level of excess oxygen or the degree of staging (i.e., ratio between primary air and secondary and/or tertiary air) may be selected for monitoring. Other steam generating unit operating conditions may be monitored. The proposed standards require that the owner or operator of the facility submit a plan to the Administrator with the notification of construction or reconstruction specifying what conditions are to be monitored, the variation expected in these conditions with operating load, the data used to determine that these conditions are indicative of nitrogen oxides emission control, and the procedures and formats to be followed in monitoring and recordkeeping. Upon receipt of the plan, the Administrator shall approve or disapprove of the plan within 45 days. Manufacturers of steam

generating units may develop and provide monitoring plans for common steam generating unit designs. Manufacturer developed plans would subsequently be submitted by the owner or operator of the steam generating unit. Following approval, the owner or operator of the facility shall maintain records of the operating conditions, including steam generating unit load, identified in the plan. These records shall be retained for 2 years.

IV. Modification and Reconstruction Provisions

Existing steam generating units that are modified or reconstructed would be subject to the requirements in the General Provisions (40 CFR 60.14 and 60.15) which apply to all new source performance standards, with the exception that modified steam generating units would not be required to meet the proposed NO_x standards. Few, if any, changes typically made to existing steam generating units would be expected to bring such steam generating units under the proposed particulate matter standards.

A modification is any physical or operational change to an existing facility which results in an increase in emissions. Changes to an existing facility which do not result in an increase in emissions, either because the nature of the change has no effect on emissions or because additional emission control technology is employed to offset an increase in emissions, are not considered modifications. In addition, certain changes have been exempted under the General Provisions (40 CFR 60.14). These exemptions include: routine maintenance, repair, and replacement; production increases achieved without any capital expenditure; production increases resulting from an increase in the hours of operation; addition or replacement of equipment for emission control (as long as the replacement does not increase emissions); relocation or change of ownership of an existing facility; and use of an alternative fuel or raw material if the existing facility was designed to accommodate it. In addition, both section 111 of the Clean Air Act asnd 40 CFR 60.14 of the General Provisions exempt mandatory conversions to coal.

Reconstruction of an existing facility could make that facility subject to a new source performance standard, regardless of any change in the emission rate, depending on the cost of the replaced components and the feasibility of meeting the standards. Rebuilt steam generating units would become subject to the proposed particulate matter standards under the reconstruction provisions, regardless of changes in emission rate, if the fixed capital cost of reconstruciton exceeds 50 percent of the cost of an entirely new steam generating unit of comparable design and if it is technologically and economically feasible to meet the applicable standards. Costs associated with steam generating unit maintenance are not included in determining reconstruction costs.

Steam generating units which would become subject to the standard as a result of modification would be exempt from the NO_x standards under the proposed standards. Because demonstrated NO_x control systems must be incorporated as part of the basic design of the steam generating unit, rather than installed as add-on flue gas controls, it is unreasonable to require that modified steam generating units be subject to the proposed NO_x control requirements. These units are not exempted from the proposed particulate matter standard because particulate matter control technologies, such as fabric filters and ESP's, may be added to existing facility, where appropriate, without requiring the alteration of the steam generating unit itself. Reconstructed units are not extended a general exemption from the proposed NO_x standards because the provisions of § 60.15 include a procedure for considering the technological and economic feasibility of achieving the standard in determining whether a reconstructed unit would become subject to the proposed standard.

V. Analysis of Information Requirements

The proposed standards would require that EPA be notified of the initial steam generating unit startup for all affected facilities and of the planned date for initial compliance testing. Following the initial compliance test, a report would be submitted summarizing the compliance test results and the performance evaluation of the continuous monitoring system (if applicable). Following startup, records of certain steam generating unit operating factors and emissions would be maintained. As proposed, the types of operational and emissions records required would depend primarily on the type of fuel fired. Records would be maintained on site for at least 2 years.

The notification requirements included in the General Provisions of 40 CFR Part 60 (i.e., §§ 60.7(a) and 60.8(a)), which apply to all standards of performance, would require submittal of two types of notifications. First, a notification would be required informing EPA of an owner or operator's intention to initiate operation of a new, modified, or reconstructed steam generating unit. This would include notification of construction or reconstruction, date of anticipated startup, and anticipated date of demonstration of the continuous emission monitoring systems (if applicable). In the case of steam generating units that are not field erected (i.e., packaged steam generating units), notification of the date when fabrication commences would be required. Following startup, a second notification would be required. This notification would be a report of the results of the initial particulate matter and NO_x performance test and initial performance evaluations of the continuous emission monitoring systems, if applicable.

The proposed standards require that the owner or operator of an affected facility which has an annual capacity factor between 5 percent and 30 percent (0.05 to 0.30) for coal, oil, or natural gas continuously monitor either nitrogen oxides emissions or other steam generating unit operating conditions which are indicative of the level of nitrogen oxides emission control. If the owner or operator elects to monitor steam generating unit operating conditions, the proposed standards require that a plan for monitoring be submitted with the notification of construction or reconstruction which specifies what conditions are to be monitored, the variation in those conditions expected with changes in boiler load, the data supporting the conclusion that those conditions are indicative of nitrogen oxides emission control, and the procedures and formats to be followed in monitoring and recordkeeping.

After initial startup, the proposed regulation would require that various records be kept and semiannual reports of excess NO_x emissions or opacity levels, as applicable, be submitted if any excess emissions occurred. The records would vary with the type of fuel fired. For example, minimal records would be required for natural gas-fired steam generating units and more extensive records would be required for pulverized coal-fired steam generating units. The proposed recordkeeping requirements would require that at least one and at most four types of records be maintained. First, the amount and type of fuel fired in each calendar year would be recorded. These data, in conjunction with the steam generating unit capacity rating, would be used to determine the annual capacity factor of the steam generating unit, and, thus, the

particulate matter standard to which the steam generating unit is subject.

The second recordkeeping requirement would require that records of the data output of the continuous emission monitoring systems, if applicable, be maintained for 2 years. Opacity data would be reduced to 6-minute averages. NO_x emission data would be reduced to 30-day rolling averages.

The third recordkeeping requirement would require that records of the amounts of fuels cofired in the steam generating unit be maintained for those fuels subject to the proposed NO_x standard. Additionally, for residual oil-fired steam generating units, records of the fuel specifications would be maintained to determine the residual oil fuel nitrogen content. Fuel specification sheets normally obtained with each shipment of oil would comply with this requirement. These records would be used to determine the application NO_x emission limits.

The fourth type of recordkeeping requirement would require that records be maintained on the operation and maintenance of the continuous emission monitoring systems. This provision would require that records be kept identifying any periods when continuous monitoring data were not available due to malfunction of the monitoring systems, when repair of the system was initiated, when repair of the system was completed, and what repairs were made. The records would also indicate if any changes were made in the operation of the emission control system during the period in which monitoring data were unavailable. These records would permit enforcement personnel to determine if the continuous monitoring system was being properly operated and maintained during enforcement inspections or audits.

All required records would be retained for 2 years following the date of such records, after which they could be discarded. The reporting and recordkeeping requirements in the proposed regulation are necessary to inform enforcement personnel as new steam generating units initiate operation. In addition, they would provide the data and information necessary to ensure continued compliance of these steam generating units with the proposed regulation. At the same time, these requirements would not impose an unreasonable burden on steam generating unit owners or operators.

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) before the reporting and recordkeeping requirements are promulgated as final. Reporting and recordkeeping requirements qualify as an ICR if they satisfy the criteria in the PRA's definition of "collection of information." For the purpose of accommodating OMB's 2-year approval period, a 2-year time period has been used in the impact analysis for estimating the burden on industry of the reporting and recordkeeping requirements included in the proposed regulation.

The information provisions associated with this proposed rule (40 CFR 60.7, 40 CFR 60.466) have been (or will be) submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB—marked Attention: Desk Office for EPA. The final rule package will respond to any OMB or public comments on the information collection provisions.

The average annual industrywide burden of the reporting and recordkeeping requirements associated with the proposed regulation would be 110 person-years, based on an average of 162 respondents per year.

VI Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires consideration of the impacts of proposed regulations on small entities including small businesses, organizations, and jurisdictions. A small business is defined as any business concern which is independently owned and operated and not dominant in its field as defined by the Small Business Administration regulations under section 3 of the Small Business Act. Similarly, a small organization is defined by the Small Business Administration as a not-for-profit enterprise, independently owned and operated, and not dominant in its field. A small jurisdiction is defined as any governmental district with a population of less than 50,000 people. Although the minimum steam generating unit size cutoff of 29 MW (100 million Btu/hour) heat input capacity included in the proposed regulation would exempt almost all small entities, it is possible that some small entities would be affected, especially in the commercial and institutional sectors.

If a substantial number of small entities would be affected by a proposed regulation, the Regulatory Flexibility Act requires an analysis of the potential impacts of the regulation. It is not feasible to identify the number of small businesses which could be affected by the proposed standards. Consequently, a number of specific industries were examined to determine whether a typical small business within that industry could be significantly impacted by the proposed regulations. These specific industries were judged those most likely to experience adverse cost-related impacts due to a high ratio of steam consumption to production costs in steam intensive production processes, seasonal steam requirements that result in operation of a plant's steam generating units at low capacity factors, and the likelihood of financial problems where small firms are involved. An additional criterion for selecting entities with nonfossil fuel-fired steam generating units for analysis was the amount of nonfossil fuel presently burned within the industry in relation to total steam generating unit fuel consumption. The municipalities were chosen for the nonfossil fuel-fire steam generating unit analysis based on the potential for adverse economic impact on the municipal finance structure posed by potential regulation. All of the municipalities chosen either operate or have the potential to operate municipal solid waste-fired steam generating units for the disposal of solid wastes and for the generation of steam or electric power for use by the municipality or for sale.

Eleven industries were selected to determine if the impacts on small businesses, as defined by the Small Business Administration (SBA), were significant. The eleven industries selected for analysis were: Beet sugar, reclaimed rubber, canneries, distilled liquor, automobile manufacturing, iron and steel, petroleum refining, furniture, sawmills, plywood, and paper. For municipalities were also analyzed. The SBA definition of small business firms within each industry is based on the number of employees per firm. The average number of employees for small business firms within each industry were determined using U.S. Census Bureau data.

The analysis indicates that small businesses within some of the selected industries would be excluded from the proposed regulation due to their small size and the 29 MW (100 million Btu/hour) heat input capacity minimum steam generating unit size cutoff included in the proposed regulation. The analysis also indicates that the impact on produce prices for small business in the remaining industries would not be significant. Product price increases of 5

percent or greater have been identified as significant in guidelines issued under Executive Order 12044, Improving Federal Regulations (now superceded by Executive Order 12291). These product price increases would be less than 5 percent. The cost impact for the typical small business is less then 1 percent. As discussed in the foregoing section of this preamble entitled "Consideration of Economic Impacts" a similar evaluation for municipalities leads to the same conclusion.

The analysis also considered capital availability. The potential impact of the proposed regulation on cash flow and debt/equity ratios under a variety of debt/equity financing strategies was examined. The analysis indicates that the proposed regulation would result in no significant changes in these ratios. Since the capital available to a business is at least equal to that required to construct the new steam generating unit, the proposed regulation would not adversely impact capital availability.

The proposed regulation would only apply to new steam generating units. No existing steam generating units are expected to be reconstructed or modified, and therefore existing units would not be affected by the proposed standards. Consequently, the proposed regulations would not result in any business closures.

Based on this analysis, the proposed regulation would have no significant adverse impacts on small entities. Consequently, alternative regulations under the Regulatory Flexibility Act are not necessary to minimize potential impacts on small entities.

VII. Public Hearing

A public hearing will be held to discuss the proposed standards in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations should be limited to 15 minutes each. Any member of the public may file a written statement before or within 30 days after the hearing. Written statements should be mailed to the Central Docket Section at the address given in the **ADDRESSES** section of the preamble.

A verbatim transcript of the hearing and written statement 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).

VIII. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in the development of this proposed rulemaking. The principal purposes of the docket are (1) to allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review.

IX. Request for Comments

As prescribed by section 111 of the Clean Air Act, proposal of standards of performance for industrial-commercial-institutional steam generating units was preceded by the Administrator's determination (40 CFR 50.15, 44 FR 49222, August 21, 1979) that industrial-commercial-institutional steam generating units contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the Act, publication of this proposal 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 regulation, including economic and technological issues, and on the proposed test methods.

Several issues raised during development of the proposed standards warrant special consideration. The background and a proposed approach to each of these issues is presented in the following discussion.

Cogeneration Steam Generators—Emission Credits

Following adoption of the Public Utility Regulatory Policies Act of 1978 (PURPA), there has been increasing interest in the cogeneration of electricity at industrial, commercial, and institutional sites. Under PURPA, qualifying cogenerators may sell their excess electrical power directly to electric utility companies at the utility's avoided cost, which makes on-site cogeneration economically attractive.

Cogeneration systems are defined as energy systems that simultaneously produce both electrical (or mechanical) energy and thermal energy from the same primary energy source. Cogeneration systems are an efficient electric/thermal energy production technology and a number of different types of cogeneration systems are available, while others are being developed. For the present, steam generator-based, gas turbine-based, and diesel-based cogeneration systems are the only available technologies. In the future, fuel cells and stirling engines may also become available for cogeneration systems.

In a steam generator-based cogeneration system, the simultaneous production of electric power and process heat is achieved by first supplying the steam produced by the steam generator to a steam turbine-electric generator set for electric power generation and then applying the steam turbine exhaust in a process to provide process heat. The actual steam generator used for an on-site cogeneration system would be slightly larger than the conventional process heat steam generator it replaced, but it would still be small enough so that the total fuel use during cogeneration would be less than the total of the displaced power plant fuel use and displaced process heat steam generator fuel use. One particularly desirable feature of steam generator-based cogeneration systems is their ability to fire a wide range of fuels, including coal, oil, natural gas, wood, and even municipal-type solid waste. Gas turbine- or diesel-based cogeneration systems are currently limited to firing either gaseous fuels or liquid fuels.

The potential for regional energy saving through the use of a steam generator-based cogeneration system, compared to the use of a separate steam generator for electric power generation and a separate steam generator for process heat production, can range from 5 percent to almost 30 percent depending on the specific industry using the cogeneration system.

Reduced regional fuel consumption achieved by cogeneration systems can result in regional emission reductions. For example, if a cogeneration system reduces regional fuel use by 15 percent and displaces a utility power plant and a process heat steam generator that were all subject to the same emission limitation, regional emissions would be similarly reduced by 15 percent. It has been suggested, therefore, that the proposed standards for industrial-commercial-institutional steam generating units should include some type of "emission credit" for the higher efficiencies achieved by cogeneration systems. Such a credit, according to its proponents, would reduce the cost of air pollution control at a cogeneration site, result in equivalent regional emissions, and encourage the use of cogeneration systems.

If an emission credit were allowed for cogeneration systems, it would adjust (increase) the emission limitation for cogeneration systems, and no regional emission reduction would occur. For a coal-fired steam generator subject to the

proposed emission limit of 22 ng/J (0.05 lb million Btu) heat input, a 15 percent emission credit reflecting the potential decrease in regional emissions would increase the emission limit in the proposed standards to 25 ng/J (0.06 million lb Btu) heat input.

In cases where different emission standards are applicable to the displaced power plant than to the cogeneration system, or different fuels are fired in the displaced power plant that in the cogeneration system, the environmental and fuel use impacts of cogeneration becomes less clear and the analysis becomes much more complex. For example, in cases where a new cogeneration system achieves emission levels lower than an older power plant which is being displayed by congeneration, a 15 percent regional energy savings may result in more than a 15 percent reduction in regional emissions. On the other hand, in cases where a new cogeneration system achieves emission levels higher than a new power plant which is being displaced by cogeneration, a 15 percent regional energy savings may result in less than a 15 percent reduction in regional emissions. If hydro-electric or nuclear power generation capacity is being displaced by cogeneration, regional emissions would increase.

Similary, a 15 percent reduction in regional energy use does not guarantee fuel savings of premium gaseous or liquid fuels. In cases where the cogeneration system is firing coal and displaces a coal-fired power plant, the 15 percent regional energy savings would translate in a 15 percent reduction in regional coal use. However, in cases where the new cogeneration system fires natural gas or fuel oil and displaces a coal-fired utility power plant (or nuclear or hydro-electric plant), the 15 percent reduction in regional energy use would result in an increase in natural gas or fuel oil consumption and a decrease in coal consumption.

Relative to local emission, it should be noted that a larger steam generator is used for cogeneration than would be used for process heat alone. Consequently, local emissions at the cogeneration site would increase in all cases.

Emission credits must also be considered in relation to the overall goals of new source performance standards. Under section 111 of the Clean Air Act, new source performance standards

> shall reflect the degree of emission limitation and the precentage reduction achieved through application of the best technological system of continuous emission reduction * * * (taking into consideration the cost of achieving such emission reductions, and any nonair quality health and environmental impact and energy requirements).

Emission credits for cogeneration systems would allow for the application of less than the best technological system of emission control without offsetting benefits in many cases and would reduce the environmental performance of cogeneration systems.

In summary, cogeneration systems would reduce total regional energy use; however, regional or local emission reductions are not guaranteed in all cases. Environmental benefits can result from cogeneration, but whether such benefits actually occur is totally dependent on site-specific conditions, and allowing emission credits for cogeneration may negate any potential environmental benefits.

The proposed standards, therefore, are neutral and neither encourage nor discourage cogeneration systems. The same standards would apply to steam generators whether they are used for cogeneration or not. Thus, the proposed standards would maintain any environmental benefits that result through the use of cogeneration.

Combined Cycle Steam Generators—Emission Credits

Combined cycle units represent another type of cogeneration technology and consist of a gas turbine connected to a steam generator. The steam generator is used to recover heat from the gas turbine exhaust. Steam generators used in combined cycle units fall into one of three categories depending on how much fuel is fired in the steam generator: unfired, supplementary-fired, and fully-fired arrangements.

In the unfired arrangement, all of the heat input to the steam generator is supplied by the gas turbine exhaust. In the supplementary-fired arrangement, the gas turbine exhaust provides approximately 70 percent of the heat input to the steam generator, with the remaining 30 percent being supplied by the fuel fired in the steam generator. Unfired or supplementally-fired units typically use modular finned-type heat exchangers to recover heat from the gas turbine exhaust. Because of thermal limitation of modular-type heat exchangers, the amount of supplementary fuel fired is necessarily limited. Also, because of potential fouling problems, only clean fuels such as natural gas or fuel oil are used for supplementary-fired steam generator fuels. The supplemental firing of natural gas or fuel oil is accomplished by the use of a "grid" burner installed in the gas turbine exhaust duct. The gas turbine exhaust with its high oxygen content (up to 15 percent oxygen by volume) is used to satisfy the combustion air requirements of the grid burner.

Fully-fired units employ a conventional steam generator for heat recovery and the fuel firing rate in the steam generator is not restricted by thermal limitations. Sufficient fuel is fired in the steam generator to reduce the oxygen content of the gas turbine exhaust to approximately 3 percent or less, as typically achieved in conventional steam generators. In the fully-fired arrangement, the gas turbine exhaust provides approximately 25 percent of the heat input to the steam generator, with the remaining 75 precent being supplied by fuel fired in the steam generator.

To date, as a result of both technical and economic considerations, both supplementary-fired and fully-fired combined cycle steam generators have been constructed to fire either natural gas or fuel oil. Coal has not been fired in a combined cycle steam generator. The combustion of coal in an atmosphere of 15 percent of less oxygen (gas turbine exhaust) could lead to combustion stability problems. Additionally, the handling, preparation, and firing of coal greatly increase the complexity and cost of the combined cycle steam generator. If coal were fired in a combined cycle steam generator, it would be fired in a fully-fired combined cycle steam generator rather than in a supplementary-fired steam generator because of the fouling and erosion problems that would be experienced by modular heat exchangers used in supplementary-fired units.

It has been suggested that an emission credit should be applied toward the proposed standards for combined cycle steam generators based on the heat input supplied to the steam generator by the gas turbine exhaust. Such credits would result in higher emission limits for combined cycle steam generators depending on the amount of gas turbine exhaust heat supplied to the steam generator.

The magnitude of this credit would be different for different fuels and pollutants. For particulate matter, the practical effect of such a credit would be negligible. First, natural gas and fuel oil are the only fuels which have been used to date in combined cycle steam generators. With the exception of high ash content residual oils, these fuels result in negligible particulate matter emissions. No particulate matter emission standards are proposed for

these fuels; therefore, emission credits would not apply in these cases.

For residual oil firing, where high ash contents could potentially necessitate particulate matter emission control, fuel oil pretreatment or fuel oil blending for sulfur dioxide emission control effectively reduces fuel ash content. This results in control of both sulfur dioxide and particulate matter emissions and post-combustion particulate matter emission control for oil-fired steam generators is closely associated with the development of standards for the control of sulfur dioxide emissions. Consequently, any decision on a particulate matter emission standard for residual oil-fired steam generators is being reserved for consideration at the time sulfur dioxide standards are developed. Thus, no particulate matter emission standard for residual oil-fried steam generating units is included in this proposal and emission credits would not be applicable.

If any coal-fired combined cycle steam generators were to be constructed, particulate emission control would be necessary. Although coal-fired combined cycle steam generators have not been built for both technical and economic reasons, an analysis was performed to determine the effects of allowing emission credits for gas turbine heat input toward particulate matter control requirements for coal-fired, fully-fired combined cycle steam generators. In fully-fired combined cycle steam generator applications, the gas turbine exhaust would provide approximately 25 percent of the heat input into the steam generator. The allowance of the suggested emission credits would increase the allowed particulate matter emissions from coal-fired combined cycle steam generators by approximately 25 percent. The emission credit would effectively increase the proposed particulate matter emission standard for coal-fired combined cycle steam generators from 22 ng/J (0.05 lb/million Btu) heat input up to approximately 29 ng/J (0.07 lb/million Btu) heat input. If an electrostatic precipitator were used for emission control, emission credits for coal-fired combined cycle steam generators would reduce the annual costs associated with emission control by less than 5 percent. This would improve the average cost-effectiveness of emission control by less than $45/Mg ($50/ton) of particulate matter removed.

For particulate matter standards, any benefit or cost savings resulting from the use of emission credits for gas turbine exhaust heat input appear to be theoretical, as natural gas or fuel oil will in all likelihood continue to be the fuels fired in combined cycle steam generators. Even if coal were to be fired in combined cycle steam generators, the average cost-effectiveness of particulate matter emission control to comply with the proposed standards is less than $450/Mg ($500/ton) of particulate matter collected with or without an emission credit and is considered reasonable in either case. The proposed standards for particulate matter, therefore, do not provide an emission credit for combined cycle generators.

The proposed stanards do include NO_x emission limits for natural gas-, oil-, and coal-fired steam generators. The allowed use of emission credits would effectively allow increased NO_x emissions from combined cycle steam generators. Available NO_x emissions data from combined cycle steam generators, however, suggests that NO_x emission rates from these types of units are less than what would be expected for conventional steam generators. The gas turbine exhaust with its low oxygen content appears to have an effect similar to flue gas recirculation in suppressing NO_x emissions resulting from thermal NO_x formation. Consequently, combined cycle steam generators firing natural gas or fuel oil appear to have NO_x emission levels comparable to or even lower than conventional steam generators with NO_x control. As a result, it appears that NO_x emission credits for combined cycle steam generators are unnecessary.

If the effect of the gas turbine exhaust on NO_x formation in the combined cycle steam generator is analogous to that of flue gas recirculation, NO_x emissions from firing residual oils or coal in the steam generator may require the additional use of staged combustion air (SC) to maintain low NO_x emission rates. While flue gas recirculation is effective in suppressing thermal NO_x formation, it is generally ineffective in suppressing fuel nitrogen NO_x formation. Thus, combined cycle steam generators firing higher nitrogen content residual oils or coal may have to employ SC to reduce NO_x emission. The limited NO_x emission data available for combined cycle units indicates that SC can be used in combined cycle steam generators and that the proposed NO_x emission limits are achievable with combined cycle steam generators.

Emission credits for NO_x emissions would not significantly reduce NO_x control costs. As discussed earlier, the principal cost of NO_x control is associated with the NO_x (or flue gas O_2) continuous monitoring system. Emission credits would not reduce these costs. Thus, emission credits would not result in any cost savings nor improve the cost-effectiveness of NO_x control.

In summary, the proposed standards for particulate matter and NO_x do not include an emission credit for combined cycle steam generators. This would have no adverse impact on continued applications of combined cycle gas turbines.

Staged Combustion Burners

Site-specific permits for NO_x control have resulted in the limited application of staged combustion burners (SCB). As decribed under the *Demonstrated Control Techniques—NO_x* section of this preamble, rapid strides have been made in development of SCB technology. Comments are requested on: (1) The current availability, performance, and level of commercial demonstration of SCB technology for natural gas-, distillate oil-, residual oil-, and pulverized coal-fired steam generating units and (2) on the reasonableness of considering SCB technology as a basis for NO_x emission standards for these fuels. The proposed NO_x emission standards for natural gas- and distillate oil-fired steam generating units are based on the use of SCB technology, but the proposed standards for residual oil- and pulverized coal-fired units are not based on SCB technology. If the data are submitted which support the application of SCB technology to residual oil- and pulverized coal-fired units, SCB technology will be considered for the basis of the final NO_x emission standards for residual oil- and pulverized coal-fired steam generating units. If SCB technology is selected for the basis of the final NO_x standards, then the effective date for the NO_x standards for residual oil- and pulverized coal-fired steam generating units would be the date of promulgation of the standards and not the date of today's proposal.

X. Miscellaneous

It should be noted that standards of performance for new sources established under section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emissions reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated (section 111(a)(1)).

Although there may be an emission control technology available that can reduce emissions below those levels required to comply with standards of

performance, this technology might not be selected as the basis of standards of performance due to costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the Act requires (or has the potential for requiring) the imposition of a more stringent emission standard in several situations. For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emission rate" for new or modified sources located in nonattainment areas (i.e., those areas where statutorily-mandated health and welfare standards are being violated). In this respect, section 173 of the Act requires that new or modified sources constructed in an area where ambient pollutant concentrations exceed the National Ambient Air Quality Standard (NAAQS) must reduce emissions to the level that reflects the "lowest achievable emission rate" (LAER), as defined in section 171(3) for such category of source. The statute defines LAER as the rate of emissions based on the following, whichever is more stringent:

(a) The most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source.

In no event can the emission rate exceed any applicable new source performance standard (section 171(3)).

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act (Part C). These provisions require that certain sources (referred to in section 169(1)) employ "best available control technology" (BACT) as defined in section 169(3) for all pollutants regulated under the Act. Best available control technology must be determined on a case-by-case basis, taking energy, environmental and economic impacts and other costs into account. In no event may the application of BACT result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 111 (or 112) of the Act.

In all events, State implementation plans (SIP's) approved or promulgated under Section 110 of the Act must provide for the attainment and maintenance of NAAQS designed to protect public health and welfare. For this purpose, SIP's must, in some cases, require greater emission reduction than those required by standards of performance for new sources.

Finally, States are free under section 116 of the Act to establish even more stringent emission limits than those established under section 111 or those necessary to attain or maintain the NAAQS under section 110. Accordingly, new sources may in some cases be subject to limitations more stringent than standards of performance under section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

The proposed standards would be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review would 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 reporting requirements. The reporting requirements in the proposed standards would be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Economic Impact Assessment

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for the proposed standards and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards to ensure that the proposed standards would represent the best system of emission reduction considering costs. Portions of the economic impact assessment are included in the Background Information Documents and additional information is included in the Docket.

Under Executive Order 12291, EPA is required to judge whether a regulation is judged to be a "major rule" and, therefore, it is subject to certain requirements of the Order. This regulation will result in none of the economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The net annualized costs through the first 5 years of implementation, including depreciation and interest, are projected to be below the threshold cost for defining a "major rule." Only negligible increases in product prices attributable to implementation of these standards are expected. Therefore, this regulation is not a "major rule" under Executive Order 12291.

The cost effectiveness of emission control for individual industrial steam generating units that would be subject to the proposed standards would differ from the national average cost-effectiveness levels. Tables 9 through 14 present particulate matter and nitrogen oxides emission control cost, emissions reduction, average cost effectiveness, and incremental cost-effectiveness data for a range of individual steam generating units that would be covered by the proposed standards.

Specifically, Tables 9 and 10 contain particulate matter emission control cost, emissions reduction, and cost-effectiveness data for five sizes of coal-fired steam generating units, two wood-fired units and two municipal type solid waste-fired units. Tables 11 through 14 contain nitrogen oxides emissions control cost, emissions reductions, and cost-effectiveness for three sizes of steam generating units, three residual oil-fired units, three distillate oil-fired units, and three natural gas-fired units. The cost-effectiveness levels of the proposed standards are generally higher than those experienced for previous standards of performance,. The Agency is examining what is an appropriate cost-effectiveness cut-off level for standards development purposes and will resolve this issue before this rule is finalized. Comments are specifically requested on the reasonableness of the cost-effectiveness levels associated with the proposed standards and on the accuracy of the various cost estimates presented in Tables 9 through 14.

A major component of NO_x control costs for the proposed NO_x standards is the continuous NO_x emission monitoring system cost (see Tables 11 through 13). In developing the proposed NO_x standards, a technical assumption was made that continuous NO_x emission monitoring systems are a necessary component of all optimal NO_x emission control systems. It may be possible that for steam generating units which apply NO_x control systems based upon low excess air (LEA) technology, much of the fuel savings and NO_x emissions reduction achieved by an optimal LEA system can be achieved through the application of other less costly monitoring techniques. The Agency requests data and comments on other alternative monitoring techniques that may be applicable to steam generating units applying LEA technology.

TABLE 9.—ANNUALIZED COSTS AND INCREMENTAL COST EFFECTIVENESS OF ALTERNATIVE PM CONTROLS FOR LOW SULFUR COAL-FIRED STEAM GENERATING UNITS ($1,982) [a b c]

Steam generating unit type/size (10^6 Btu/hr)	Annualized cost ($1,000)					Emissions reduction over baseline (tpy)			Cost effectiveness ($/Ton)				
									Average			Incremental	
	Uncontrolled steam generating unit	SM	DM	SSS	FF	DM	SSS	FF	DM	SSS	FF	SSS	FF
SPRD 100	4,020	89	109	141	296	79	91	145	254	570	1,430	2,580	2,910
SPRD 150	5,670	119	148	190	402	118	138	217	245	514	1,310	2,130	2,690
SPRD 200	7,290	148	187	239	501	158	184	289	247	495	1,220	1,980	2,490
SPRD 250	8,900	177	225	286	597	197	230	361	243	474	1,160	1,860	2,370
PLVR 150	6,390	107	137	[d]380	387	177	[d]296	375	169	[d]923	750	[d]2,000	90
PLVR 250	9,520	158	207	[d]495	573	296	[d]493	624	166	[d]684	670	[d]1,460	590
PLVR 400	13,980	234	310	[d]665	837	473	[d]788	999	161	[d]534	600	[d]1,090	860

[a] Low Sulfur Coal: HHV=9600 Btu/lb; S=0.6 wt.%; Ash=5.4 wt. %.
[b] Annual Capacity Factor=60%.
[c] Key to abbreviations: SPRD=spreader stoker, PLVR=pulverized coal, SM=single mechanical collector, DM=double mechanical collector, SSS=sidestream separator, FF=fabric filter, ESP=electrostatic precipitator.
[d] Values shown are for an ESP to achieve emissions level of 0.20 lb/10^6 Btu. SSS are not applicable to pulverized coal-fired steam generating units.

TABLE 10.—ANNUALIZED COSTS AND INCREMENTAL COST EFFECTIVENESS OF ALTERNATIVE PM CONTROLS FOR WOOD- AND MUNICIPAL SOLID WASTE-FIRED STEAM GENERATING UNITS ($1,982) [a b]

Steam generating unit type/size (10^6 Btu/hr)	Annualized cost ($1,000/yr)							Reduction over baseline (tpy)					Cost effectiveness $/ton								
													Average					Incremental			
	Uncontrolled steam generating unit	SM	DM	SM/WS1	SM/WS2	ESP1	ESP2	DM	SM/WS1	SM/WS2	ESP1	ESP2	DM	WS1	WS2	ESP1	ESP2	SM/WS1	SM/WS2	ESP1	ESP2
WOOD-150	8,520	171	238	435	489			99	158	197			680	1,670	1,610			3,710	1,190		
WOOD-400	18,770	381	538			805	885	263			421	526	600			1,010	960			1,690	760
MSW-150	22,940	144	189			398	423	158			315	355	290			800	790			1,330	630
MSW-400	49,070	321	435			703	835	420			841	946	270			450	540			640	1,260

[a] Annual capacity factor=60%.
[b] Key to abbreviations: WOOD=100% wood-fired steam generating unit, MSW=100% municipal solid waste-fired steam generating unit, SM=single mechanical collector, DM=double mechanical collector, WS1=wet scrubber with 7" pressure drop, WS2=wet scrubber with 12" pressure drop, ESP1=low efficiency electrostatic precipitator, ESP2=high efficiency electrostatic precipitator.

TABLE 11.—ANNUALIZED COSTS AND COST EFFECTIVENESS OF NO_x CONTROL FOR COAL- AND RESIDUAL OIL-FIRED STEAM GENERATING UNITS (1982) [a b]

Steam generating unit type/size 10^6 Btu/hr	Annualized cost ($1,000/yr)						Emissions reduction (TPY)	Cost effectiveness ($/ton)			
	Steam generating unit	Fuel savings	NO_x monitor	Other (O_2 trim, derate)	Gross (w/o fuel savings)	Net [b] (w/ fuel savings)		Net	Excluding fuel savings	Excluding NO_x monitor	Excluding fuel savings and NO_x monitor
Coal:											
SPRD-100	4,020	16.3	42.8	5.6	48.4	32.1	37	870	1,300	0	150
SPRD-150	5,670	24.4	42.8	6.9	49.7	25.3	55	460	900	0	130
SPRD-250	8,900	40.7	42.8	9.6	52.4	11.7	92	130	570	0	100
PLVR-150	6,390	24.4	42.8	33.4	76.2	51.8	126	410	600	70	260
PLVR-250	9,520	40.7	42.8	51.7	94.5	53.8	210	260	450	50	250
PLVR-400	13,980	65.1	42.8	79.2	122.0	56.9	336	170	360	40	240
Residual oil: [c]											
RES-100	4,010	55.1	42.8	29.0	71.8	16.7	48	350	1,500	0	600
RES-150	5,840	82.6	42.8	51.0	93.8	11.2	72	160	1,300	0	710

[a] Annual capacity factor=60% (coal) and 55% (residual oil).
[b] Key to abbreviations: SPRD=spreader stoker, PLVR=pulverized coal, RES=residual oil.
[c] Emission reduction based on a 0.4 wt. % nitrogen residual oil; costs assume a 7 percent derate.

TABLE 12.—ANNUALIZED COST AND COST EFFECTIVENESS OF NO_x CONTROL FOR PULVERIZED COAL- AND RESIDUAL OIL-FIRED STEAM GENERATING UNITS (1982)[a] [b]

Steam generating unit type/size (10^6 Btu/hr)	Annualized cost ($1,000/yr)				Emissions reduction (tpy)		Cost effectiveness ($/ton)						
	LEA						Including fuel savings		Excluding fuel savings		Excluding NO_x monitor		Incremental SCA vs. LEA
	Fuel savings	NO_x monitor	Other (O_2 trim, etc.)	SCA[c]	LEA	SCA	LEA	SCA	LEA	SCA	LEA	SCA	
Pulverized coal:													
PLVR-150	24.4	42.8	6.9	26.5	55.2	126.1	460	410	900	600	.....	70	370
Residual oil: [d] [e]													
RES-150 [d]	82.6	42.8	5.0	46.0	12.8	72.3	.....	160	3,700	1,300	.....	.....	770
RES-150 [e]	82.6	42.8	5.0	46.0	12.8	123.0	.....	90	3,700	760	.....	.....	420

[a] Annual capacity factor=60 percent for coal; annual capacity factor=55 percent for oil.
[b] Key to abbreviations: PLVR=pulverized coal; RES=residual oil; LEA=low excess air; SCA=staged combustion air.
[c] SCA technology incorporates both LEA and staged combustion (SC) technology. Costs shown for SCA are incremental costs above LEA costs.
[d] Based on a 0.4 wt. % nitrogen oil.
[e] Based on a 0.6 wt. % nitrogen oil.

TABLE 13. ANNUALIZED COST AND COST EFFECTIVENESS OF NO_x CONTROL FOR NATURAL GAS- AND DISTILLATE OIL-FIRED STEAM GENERATING UNIT ($1982)[a]

Steam generating unit type/size (10^6 Btu/hr)	Annualized cost ($1,000/yr)					Emissions reduction (tpy)		Cost Effectiveness ($/ton)					
	Uncontrolled steam generating unit	Fuel savings	LEA NO_x monitor	(Other O_2 trim, etc.)	LNB [b] staged burner	LEA	LNB	Including fuel savings		Excluding fuel savings		Excluding NO_x monitor	Incremental LNB vs. LEA
								LEA	LNB	LEA	LNB		
Natural gas:													
NG-100	4,010	52.2	42.8	4.2	1.7	10	36	0	0	4,700	1,400	0	70
NG-150	5,830	78.3	42.8	5.0	1.7	15	54	0	0	3,190	920	0	40
NG-250	9,460	130.6	42.8	6.6	1.7	25	90	0	0	1,980	570	0	30
Distillate oil:													
DIST-100	4,820	66.8	42.8	4.2	1.7	22	41	0	0	2,140	1,200	0	90
DIST-150	7,060	103.3	42.8	5.0	1.7	33	61	0	0	1,450	810	0	60
DIST-250	10,820	172.1	42.8	6.6	1.7	55	102	0	0	900	500	0	40

[a] Annual capacity factor=55 percent
[b] Key to abbreviations: NG=natural gas, DIST=distillate oil, LEA=low excess air, LNB=low NO_x burner. LNB technology incorporates both LEA and staged combustion (SC) technology.

TABLE 14. ANNUALIZED COST AND COST EFFECTIVENESS OF NO_x CONTROL FOR LOW CAPACITY FACTOR (20 PERCENT) NATURAL GAS- AND DISTILLATE OIL-FIRED STEAM GENERATING UNITS ($1982) [a]

Steam generating unit type/size (10^6 Btu/hr)	Annualized cost ($1,000/yr)			Emissions reduction (tpy)		Cost Effectiveness ($/ton)				
	Fuel savings	LEA (Other O_2 trim, etc.)	LNB [b] staged burner	LEA	LNB	Including fuel savings		Excluding fuel savings		Incremental LNB vs. LEA
						LEA	LNB	LEA	LNB	
Natural gas:										
NG-100	19.0	4.2	1.7	4	13	0	0	1,050	450	190
NG-150	28.5	5.0	1.7	5	20	0	0	1,000	340	110
NG-250	47.5	6.6	1.7	9	33	0	0	730	250	70
Distillate oil:										
DIST-100	25.0	4.2	1.7	8	15	0	0	530	390	240
DIST-150	37.6	5.0	1.7	12	22	0	0	420	310	170
DIST-250	62.6	6.6	1.7	20	37	0	0	330	220	100

[a] Annual capacity factor=22%
[b] Key to abbreviations: NG=Natural gas, DIST=distillate oil, LEA=low excess air, LNB=low NO_x burner. LNB technology incorporates both LEA and staged combustion technology.

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, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

Dated: June 7, 1984.

Alvin L. Alm,

Acting Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

It is proposed that 40 CFR Part 60 be amended by adding a new Subpart Db as follows:

Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

Sec.

60.40b Applicability and definition of affected facility.
60.41b Definitions.
60.42b Standards for particulate matter.
60.43b Standards for nitrogen oxides.
60.44b Compliance and performance testing.
60.45b Emission monitoring.
60.46b Reporting and recordkeeping requirements.

Authority.—Sec. 111 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7411, 7601(a)], and additional authority as noted below.

Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

§ 60.40b Applicability and definition of affected facility.

(a) The affected facility to which this subpart applies is each industrial-commercial-institutional steam generating unit for which construction, modification, or reconstruction is commenced after June 19, 1984 and which has a heat input capacity from fuels combusted in the steam generating unit of more than 29 MW (100 million Btu/hour).

(b) Coal-fired industrial-commercial-institutional steam generating units meeting both the applicability requirements under this subpart and the applicability requirements under Subpart D (Standards of performance for fossil fuel-fired steam generators; § 60.40) are subject to the particulate matter and nitrogen oxides standards under this subpart and the sulfur dioxide standards under Subpart D (§ 60.43).

(c) Oil-fired industrial-commercial-institutional steam generating units meeting both the applicability requirements under this subpart and the applicability requirements under Subpart D (Standards of performance for fossil fuel-fired steam generators; § 60.40) are subject to the nitrogen oxides standards under this subpart and the sulfur dioxide and particulate matter standards under Subpart D (§ 60.42 and § 60.43).

(d) Industrial-commercial-institutional steam generating units meeting the applicability requirements under this subpart and the applicability requirements under Subpart J (Standards of performance for petroleum refineries; § 60.104) are subject to the particulate matter and nitrogen oxides standards under this subpart and the sulfur dioxide standards under Subpart J (§ 60.104).

(e) Steam generating units meeting the applicability requirements under Subpart Da (Standards of performance for electric utility steam generating units; § 60.40a) are not subject to this subpart.

§ 60.41b Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in Subpart A of this part.

"Annual capacity factor" means the ratio between the actual heat input to a steam generating unit from the fuels listed in § 60.42b(a) or § 60.43b(a), as applicable, during a calendar year and the potential heat input to the steam generating unit from all fuels had it been operated for 8,760 hours at the maximum design heat input capacity.

"By-product/waste" means any substance produced during an industrial process which is not produced for the primary purpose of being combusted, but which is ultimately combusted in a steam generating unit for heat recovery or for disposal.

"Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials (ASTM Specification D 388–66). Coal-derived synthetic fuels, including but not limited to solvent refined coal, gasified coal and coal-water mixtures, are included in this definition for the purposes of this subpart.

"Combined cycle steam generating unit" means a steam generation unit in which exhaust gases from a gas turbine are introduced into a steam generating unit.

"Distillate oil" means fuel oils number 1 and 2, as defined by the American Society of Testing and Materials (ASTM burner fuel specification D 396).

"Fluidized bed combustion steam generating unit" means a steam generating unit which combusts fuel on a bed of sorbent or inert material which is suspended or fluidized by a stream of air.

"Full capacity" means operation of the steam generating unit at 90 percent or more of the maximum design heat input capacity.

"Heat input" means heat derived from combustion of fuel in a steam generating unit and does not include the heat input from preheated gases, such as gas turbine exhaust supplied to a steam generator for heat recovery.

"Heat input capacity" means the ability of a steam generating unit to combust a stated maximum amount of fuel, as determined by the physical design and characteristics of the steam generating unit.

"Industrial-commercial-institutional steam generating unit" means any steam generating unit not covered under Subpart Da (Standards of performance for electric utility steam generating units).

"Lignite" means a type of coal classified as lignite A or lignite B by the American Society of Testing and Materials (ASTM Specification D 388–66).

"Mass-feed stoker steam generating unit" means a steam generating unit where solid fuel is introduced directly into a retort or is fed directly onto a grate where it is combusted.

"Municipal-type waste" means paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials, and noncombustible materials such as glass and rock, or any mixture of these materials.

"Natural gas" means natural gas and all gaseous byproducts/wastes which contain less than 10 percent carbon monoxide (by volume).

"Oil" means a liquid fuel derived from petroleum, including distillate and residual oil.

"Pulverized coal-fired steam generating unit" means a steam generating unit in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the steam generating unit where it is fired in suspension.

"Residual oil" means fuel oils number 4, 5 and 6, as defined by the American Society of Testing and Materials (ASTM burner fuel specification D 396). For the purposes of this subpart, residual oil also includes all liquid by-products/wastes.

"Solid waste" means any fuel which contains more than 50 weight percent municipal-type waste or combustible material derived from municipal-type waste.

"Spreader stoker steam generating unit" means a steam generating unit in which solid fuel is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion take place both in suspension and on the grate.

"Steam generating unit" means a device which combusts fuel to produce steam or heated water, including steam generating units which combust fuel and are part of a cogeneration system, a combined cycle system, or an incinerator with a heat recovery steam generating unit.

"Steam generating unit operating day" means a 24-hour period between 12:01 a.m. and 12:00 midnight during which any fuel is combusted in the steam generating unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

"Wet scrubber system" means any emission control device which uses an aqueous stream or slurry injected into the scrubbing chamber to control emissions of particulate matter or sulfur dioxide.

"Wood" means wood, wood residue, bark, or any derivative fuel or residue thereof, in any form, including but not limited to, sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

§ 60.42b Standards for particulate matter.

(a) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator of an affected facility which combusts coal, wood, or solid waste, or simultaneously combusts mixtures of these fuels with or without other fuels, shall cause to be discharged into the atmosphere from that affected facility any gases which contain particulate matter in excess of the following emission limits, except as provided under paragraph (b) of this section:

Steam generating unit fuel type	Particulate matter emission limit nanograms per joule heat input (lb/million Btu heat input)
(1) Coal	22 (0.05)
(2) Wood or solid waste	43 (0.10)
(3) Mixtures including wood, coal, or solid waste, with or without other fuels, as provided under paragraph (c) of this section	43 (0.10)

(b) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator of an affected facility which has a heat input capacity of 73 MW (250 million Btu/hour) or less and which combusts coal, wood, or solid waste, or simultaneously combusts mixtures of these fuels with or without other fuels and which has an annual capacity factor for coal, wood, or solid waste, or any mixtures of these fuels of 30 percent (0.30) or less, and who has a Federal, State, or local permit which limits operation of the facility to an annual capacity factor of 30 percent (0.30) or less for these fuels or fuel mixtures, shall cause to be discharged into the atmosphere from that facility any gases which contain particulate matter in excess of 86 nanograms per joule (0.20 lb/million Btu) heat input.

(c) Except as provided under paragraph (b) of this section, on and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator of an affected facility which combusts coal with wood, solid waste or other fuels, which has an annual capacity factor for wood, solid waste or other fuels of more than 5 percent (0.05), and which is subject to a Federal, State or local permit which specifies that during the operation of the affected facility, the affected facility will achieve an annual capacity factor for wood, solid waste, or other fuels of more than 5 percent (0.05), shall cause to be discharged from that affected facility any gases which contain particulate matter in excess of 43 nanograms per joule (0.10 lb/million Btu) heat input, as required by paragraph (a)(3) of this section. An affected facility which combusts coal with wood, solid waste or other fuels and which either has an annual capacity factor for wood, solid waste or other fuels of 5 percent (0.05) or less, or which is not subject to a Federal, State or local permit which specifies that during the operation of the affected facility, the affected facility will achieve an annual capacity factor for wood, solid waste, or other fuels of more than 5 percent (0.05), is subject to the 22 nanograms per joule (0.05 lb/million Btu) heat input emission limit under paragraph (a)(1) of this section.

(d) For the purposes of this section, the annual capacity factor shall be determined by dividing the actual heat input to the steam generating unit during the calendar year from the combustion of coal, wood, or solid waste, or any mixture of these fuels, by the potential heat input from all fuels if the steam generating unit had been operated for 8,760 hours at the maximum design heat input capacity.

(e) On and after the date the particulate matter performance test required to be conducted under § 60.8 is completed, no owner or operator of an affected facility subject to the particulate matter emission limits under paragraphs (a) or (b) of this section shall cause to be discharged into the atmosphere any gases which exhibit greater than 20 percent opacity (6-minute average).

§ 60.43b Standards for nitrogen oxides.

(a) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator of an affected facility subject to the provisions of this section which combusts coal, oil, or natural gas, or simultaneously combusts mixtures of these fuels with or without other fuels, shall cause to be discharged into the atmosphere from that affected facility any gases which contain nitrogen oxides in excess of the following emission limits, except as provided under paragraph (e) of this section:

Fuel/steam generating unit type	Nitrogen oxide emission limits nanograms per joule heat input (lb/million Btu heat input)
(1) Natural gas and distillate oil	43 (0.10).
(2) Residual oil:	
(i) 0.35 weight percent nitrogen or less.	129 (0.30).
(ii) Greater than 0.35 weight percent nitrogen.	172 (0.40).
(3) Coal (other than lignite):	
(i) Mass-feed stoker	215 (0.50).
(ii) Spreader stoker and fluidized bed combustion.	258 (0.60).
(iii) Pulverized coal	301 (0.70).
(4) Lignite, all units except (5)	258 (0.60).
(5) Lignite mined in North Dakota, South Dakota, or Montana and combusted in a slag tap furnace.	340 (0.80).
(6) Mixtures of natural gas or distillate oil with wood or solid waste.	129 (0.30).
(7) Mixtures of coal, oil, or natural gas with wood, solid waste, or any other fuel (other than (5)).	Applicable emission limit for coal, oil, or natural gas as listed above or as determined pursuant to paragraph (b).

(b) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator of an affected facility which simultaneously combusts mixtures of coal, oil, or natural gas, with or without any other fuel, shall cause to be discharged into the atmosphere from that affected facility any gases which contain nitrogen oxides in excess of a limit determined by use of the following formula:

$$E_{NOx} = (43Hs + 129Hu + 172Hv + 215Hw + 258Hx + 301Hy + 340Hz)/Ht$$

where:

E_{NOx} is the nitrogen oxides emission limit (nanograms per joule),

Hs is the heat input from combustion of natural gas or oil subject to the 43 nanogram per joule standard.

Hu is the heat input from combustion of oil or mixtures of natural gas with wood or solid waste subject to the 129 nanogram per joule standard.

Hv is the heat input from combustion of oil subject to the 172 nanogram per joule standard.

Hw is the heat input from combustion of coal subject to the 215 nanogram per joule standard.

Hx is the heat input from combustion of coal subject to the 258 nanogram per joule standard.

Hy is the heat input from combustion of pulverized coal subject to the 301 nanogram per joule standard.

Hz is the heat input from combustion of lignite subject to the 340 nanogram per joule standard.

Ht is the total heat input to the steam generating unit from combustion of coal, oil, or natural gas.

(c) On and after the date on which the performance test required to be conducted under § 60.8 is completed, any owner or operator of an affected facility which simultaneously combusts coal, oil or natural gas in a mixture with a liquid by-product/waste or with a toxic, corrosive or reactive hazardous waste (as defined by 40 CFR Part 261) may petition the Administrator to establish a nitrogen oxides emission limit which shall apply specifically to

that affected facility when the liquid by-product waste or the hazardous waste is combusted. The petition submitted by the owner or operator of the affected facility shall include sufficient and appropriate data on nitrogen oxides emissions from the affected facility, waste destruction efficiencies, waste composition (including nitrogen content), and combustion conditions to allow the Administrator to determine if the affected facility is able to comply with the nitrogen oxides emission limits under paragraphs (a) and (b) of this section when coal, oil or natural gas are combusted in the steam generating unit, but is unable to comply with the emission limits in paragraphs (a) and (b) of this section when:

(1) Liquid by-product/waste with a high nitrogen content is combusted under the same combustion conditions which were used to achieve compliance with the emission limits under paragraphs (a) and (b) of this section when coal, oil, or natural gas was fired; or

(2) Toxic, corrosive, or reactive hazardous waste is combusted in the affected facility, pursuant to thermal destruction efficiency requirements for hazardous waste as specified in an applicable Federal, State or local permit which requires combustion conditions which preclude compliance with the nitrogen oxides emission limits under paragraphs (a) and (b) of this section.

If a site specific nitrogen oxide emission limit is approved by the Administrator, it will be established at the nitrogen oxide emission level achieved when the affected facility was firing liquid by-product/waste at combustion conditions which were used to achieve compliance with the emision limits under paragraph (a) or (b) of this sectrion when coal, oil or natural gas is fired, or at the nitrogen oxide emission level achieved when toxic, corrosive, or reactive hazardous waste is combusted in the affected facility during a test burn to determine the thermal destruction efficiency of hazardous waste as specified in an applicable Federal, State, or local permit which requires thermal destruction of hazardous waste.

(d) Modification of a facility, as defined in § 60.15, shall not, by itself, subject the facility to the requirements of this section limiting nitrogen oxides emissions.

(e) Any affected facility which has an annual capacity utilization factor for coal, oil, or natural gas or any mixture of these fuels of 5 percent (0.05) or less, and which is subject to a Federal, State, or local permit which limits operation of the facility to an annual capacity factor of 5 percent (0.05) or less for these fuels is not subject to the requirements of this section.

§ 60.44b Compliance and performance testing.

(a) The particulate matter emission standards under § 60.42b and the nitrogen oxides emission standards under § 60.42b apply at all times except during periods of startup, shutdown, or malfunction.

(b) Compliance with the particulate matter emission standards under § 60.42b shall be determined through performance testing as described in paragraph (d) of this section.

(c) Compliance with the nitrogen oxides emission limits under § 60.43b shall be determined through performance testing as described in paragraph (e)(1) or (e)(2) of this section, as applicable.

(d) The following procedures and reference methods are used to determine compliance with the standards for particulate matter emissions under § 60.42b.

(1) Reference Method 3 is used for gas analysis when applying Reference Method 5 or Reference Method 17.

(2) Reference Method 5 or Reference Method 17 shall be used to measure the concentration of particulate matter and the associated moisture content as follows:

(i) Reference Method 5 shall be used at affected facilities without wet scrubber systems; and

(ii) Reference Method 17 shall be used at facilities with or without wet scrubber systems provided that the stack gas temperature at the sampling location does not exceed an average temperature of 160°C (320°F).

(3) Reference Method 1 is used to select the sampling site and the number of traverse sampling points. The sampling time for each run is at least 120 minutes and the minimum sampling volume is 1.7 dscm (60 dscf) except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the Administrator.

(4) For Reference Method 5 the temperature of the sample gas in the probe and filter holder is monitored and is maintained at 160°C (320°F).

(5) For determination of particulate emissions, the oxygen or carbon dioxide sample is obtained simultaneously with each run of Reference Method 5 or Reference Method 17 by traversing the duct at the sampling location.

(6) For each run using Reference Method 5 or Reference Method 17, the emission rate expressed in nanograms per joule heat input is determined using:

(i) The oxygen or carbon dioxide measurements and particulate matter measurements obtained under this section,

(ii) The dry basis F_c factor, and

(iii) The dry basis emission rate calculation procedure contained in Reference Method 19 (Appendix A).

(7) Reference Method 9 is used for determining the opacity of stack emissions.

(e) The following procedures are used in performance testing to determine compliance with the emission limits for nitrogen oxides required under § 60.43b:

(1) For affected facilities having an annual capacity factor for the fuels listed in § 60.43b(a) of 30 percent (0.30) or less, the owner or operator shall conduct a 30-day performance test using a chemiluminescent nitrogen oxides monitor following the procedures prescribed in § 60.8;

(2) For affected facilities having an annual capacity factor for the fuels listed in § 60.43b(a) greater than 30 percent (0.30), the owner or operator shall conduct the performance test as required under § 60.8 using the continuous system for monitoring nitrogen oxides under § 60.45b(b). The nitrogen oxides emissions from the steam generating unit shall be monitored for 30 successive steam generating unit operating days after initial startup and a 30-day average nitrogen oxide emission rate is calculated based on the hourly nitrogen oxide emissions recorded by the monitoring system for the preceding 720 hours of boiler operation.

§ 60.45b Emission monitoring.

(a) The owner or operator of an affected facility subject to the opacity standard under § 60.42b shall install, calibrate, maintain and operate a continuous monitoring system for measuring the opacity of emissions discharged to the atmosphere and record the output of the system.

(b) Except as provided in paragraph (g) of this section, the owner or operator of an affected facility subject to the nitrogen oxides standard of § 60.43b shall install, calibrate, maintain, and operate a continuous monitoring system for measuring nitrogen oxides emissions discharged to the atmosphere and record the output of the system.

(c) The continuous monitoring systems required under paragraph (b) of this section shall be operated and data recorded during all periods of operation of the affected facility, including periods of startup, shutdown, or malfunction, except for continuous monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments.

(d) The 1-hour average nitrogen oxide emission rates measured by the continuous nitrogen oxides monitor required by paragraph (b) of this section and required under § 60.13(h) shall be expressed in nanograms per joule or lb/million Btu heat input and shall be used to calculate the average emission rates under § 60.43b. The 1-hour averages shall be calculated using the data points required under § 60.13(b). At least 4 data points must be used to calculate each 1-hour average.

(e) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the continuous monitoring systems.

(1) For affected facilities burning coal, wood or solid waste, the span value for a continuous monitoring system for measuring opacity shall be between 60 and 80 percent.

(2) For affected facilities burning coal, oil, or natural gas, the span value for nitrogen oxides is determined as follows:

Fossil fuel	Span values for nitrogen oxides (ppm)
Natural gas	500
Oil	500
Coal	1,000
Combination	500 (x+y)+1,000z

where:
x is the fraction of total heat input derived from natural gas,
y is the fraction of total heat input derived from oil, and
z is the fraction of total heat input derived from coal

(3) All span values computed under paragraph (h)(2) of this section for burning combinations of regulated fuels are rounded to the nearest 500 ppm.

(f) If emission data are not available for more than one successive steam generating unit operating day the owner or operator of the affected facility shall initiate servicing of the continuous emission monitoring system within 5 calendar days and return the monitor to operation in no more than 15 calendar days from initial data loss. (Sec. 114, Clean Air Act as amended (42 U.S.C. 7414).)

(g) The owner or operator of an affected facility subject to the nitrogen oxides standard of § 60.43b and which is subject to a Federal, State or local permit requirement which limits operation of the facility to an annual capacity factor of 30 percent (0.30) or less for coal, oil, or natural gas shall:

(1) Comply with the provisions of paragraph (b) of this section, or

(2) Monitor steam generating unit operation conditions specified in a plan submitted under § 60.46b(c).

§ 60.46b Reporting and recordkeeping requirements.

(a) The owner or operator of each affected facility shall submit notification of the date of initial startup, as provided by § 60.11. This notification shall include:

(1) Identification of the fuels to be combusted in the affected facility, and

(2) The design heat input capacity and the annual capacity factor at which the owner or operator anticipates operating the facility, and, if applicable, a copy of any Federal, State or local permit which limits the annual capacity factor for any fuel or mixture of fuels listed in § 60.42b(a) to 30 percent (0.30) or less, or for any fuel or mixture of fuels listed in § 60.43b(a) to 5 percent (0.05) or less.

(b) For facilities subject to the particulate matter and nitrogen oxides emission limits under § 60.42b and § 60.43b, the performance test data from the initial performance test and the performance evaluation of the continuous monitors shall be submitted to the Administrator by the owner or operator of the affected facility.

(c) The owner or operator of each affected facility subject to the nitrogen oxides standard of § 60.43b who seeks to demonstrate compliance with those standards through the monitoring of steam generating unit operating conditions pursuant to the provisions of § 60.45b(g)(2) shall submit to the Administrator for approval a plan which identifies the operating conditions to be monitored under § 60.45b(g)(2) and the records to be maintained under § 60.45b(i). This plan shall be submitted to the Administrator for approval with the notification of initial startup required under paragraph (a) of this section. The plan shall:

(1) Identify the specific operating conditions to be monitored (and, if appropriate, the variation in these operating conditions with steam generating unit load over the range of 30 to 100 percent of the maximum design heat input capacity of the steam generating unit) which are consistent with maintaining nitrogen oxides emissions below the limits included in § 60.43b. Steam generating unit operating conditions include, but are not limited to, degree of staged combustion (i.e., the ratio of primary air to secondary and/or tertiary air) and the level of excess air (i.e., flue gas oxygen level).

(2) Include the data and information which the owner or operator used to identify these operating conditions and the relationship between these operating conditions and nitrogen oxides emissions; and

(3) Identify how these operating conditions, including steam generating unit load, will be monitored under § 60.45b(g) on an hourly basis by the owner or operator during the period of operation of the steam generating unit, and the type and format of the records of these operating conditions, including steam generating unit load, that will be maintained by the owner or operator under § 60.46b(i).

The Administrator shall approve or disapprove of the plan within 45 calendar days following the submission of the plan. Following approval of the plan, the owner or operator shall maintain records of the operating conditions, including steam generating unit load, identified in the plan.

(d) The owner or operator of an affected facility shall record and maintain records of the amounts of all fuels fired each calendar quarter and calculate the annual capacity factor for coal, oil, natural gas, wood and solid waste.

(e) For facilities firing residual oil and subject to § 60.43b(a)(2)(ii), the owner or operator shall maintain records of the fuel oil nitrogen content fired in the steam generating unit and calculate the average fuel nitrogen content on a per calendar quarter basis. Fuel specification data obtained from fuel suppliers may be used.

(f) For facilities subject to the opacity standard under § 60.42b, the owner or operator shall maintain records of opacity.

(g) For facilities subject to nitrogen oxides standards under § 60.43b, the owner or operator shall maintain records of the following information for each steam generating unit operating day:

(1) Calendar date.

(2) The average hourly nitrogen oxides emission rates (nanograms per joule or lb per million Btu heat input).

(3) The average nitrogen oxide emission rates (nanogram per joule or lb per million Btu heat input) calculated at the end of the steam generating unit operating day from the average hourly nitrogen oxide emission rates for the preceding 720 hours of steam generating unit operation.

(4) Identification of the steam generating unit operating days when the average nitrogen oxide emission rates determined under paragraph (g)(3) are in excess of the nitrogen oxides emissions standards under § 60.43b, with the reasons for such excess emissions as well as a description of corrective actions taken.

(5) Identification of the steam generating unit operating days for which

pollutant data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken.

(6) Identification of the times when emissions data have been excluded from the calculation of average emission rates because of startup, shutdown, malfunction, or other reasons, and the reasons for excluding data at times other than startup, shutdown, or malfunction.

(7) Identification of "F" factor used for calculations, method of determination, and type of fuel combusted.

(8) Identification of the times when the pollutant concentration exceeded full span of the continuous monitoring system.

(9) Description of any modifications to the continuous monitoring system which could affect the ability of the continuous monitoring system to comply with Performance Specifications 2 or 3.

(h) The owner of operator of any affected facility subject to the opacity standards under § 60.43b(e) or the nitrogen oxides emissions limits under § 60.43b shall submit a report for each semiannual period during which excess emissions occur. No excess emissions report shall be submitted for any semiannual reporting period during which the affected facility did not exceed either the opacity standards under § 60.42b(e) or the nitrogen oxides emissions standards under § 60.43b, notwithstanding the provisions of § 60.7(c)(4).

(i) All records required under this section shall be maintained by the owner or operator of the affected facility for a period of 2 years following the date of such record.

(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414))

[FR Doc. 84-16069 Filed 6-18-84; 8:45 am]

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federal register

Tuesday
June 19, 1984

Part IV

Environmental Protection Agency

40 CFR Part 60

New Source Performance Standard; Steam Generating Units; Advance Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2489-2]

New Source Performance Standard; Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In today's Federal Register, performance standards are being proposed for the control of particulate matter and nitrogen oxides (NO_x) emissions from industrial-commercial-institutional steam generating units of greater than 29 MW (100 million Btu/hour) heat input capacity. The purpose of this advance notice is to advise the public that regulatory activities are being initiated for three other categories of steam generating units. The first category of regulatory activity is the development of performance standards to limit the emission of sulfur dioxide (SO_2) from industrial-commercial-institutional steam generating units. The second category of regulatory activity is the development of performance standards for steam generators of less than 29 MW (100 million Btu/hour) heat input capacity. The third category of regulatory activity is a review of performance standards for electric utility steam generating units (§ 60.40a; Subpart Da) which were adopted in 1979. Technical data and comments on these activities are requested.

DATES: Comments must be received on or before September 17, 1984.

ADDRESS: Comments should be submitted to the Central Docket Section (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460. Comments and data related to development of (SO_2) performance standards for industrial-commercial-institutional steam generating units larger than 29 MW (100 million Btu/hour) heat input capacity should be addressed to Docket Number A–83–27.

Comments and data related to development of performance standards for steam generating units of less than 29 MW (100 million Btu/hour) heat input capacity should be addressed to Docket Number A–83–46.

Comments and data related to review of performance standards for electric utility steam generating units (§ 60.40a; Subpart Da) should be addressed to Docket Number A–83–45.

FOR FURTHER INFORMATION CONTACT: Fred L. Porter, Walter H. Stevenson, or Larry G. Jones, Standards Development Branch (MD–13), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5624.

SUPPLEMENTARY INFORMATION:

Background

In addition to today's proposal of performance standards for the control of particulate matter and nitrogen oxides (NO_x) emissions from industrial-commercial-institutional steam generating units of greater than 29 MW (100 million Btu/hour) heat input capacity, this advance notice is to advise the public of regulatory activities in three other categories of steam generating units.

The first category of regulatory activity is the development of performance standards to limit the emissions of sulfur dioxide (SO_2) from industrial-commercial-institutional steam generating units of greater than 29 MW (100 million Btu/hour) heat input capacity. In developing the standards, a wide range of NO_2 control alternatives are being investigated for basis of the SO_2 standards including, but not limited to, low sulfur fuel, fuel pretreatment, "dry" flue gas desulfurization, "wet" flue gas desulfurization, and fluidized bed combustion technology. The final selection of the technological basis of the standard will be made in accordance with the requirements of section 111 of the Clean Air Act as amended. Drafts of background documents describing SO_2 emission control techniques and their performance and costs are scheduled to be available for public review and comment in the fall of 1984.

The second category of regulatory activity includes the development of performance standards for steam generating units of less than 29 MW (100 million Btu/hour) heat input capacity. Steam generating units in this size range would be expected to be principally commercial-institutional in character and to principally fire natural gas or fuel oil. A limited amount of solid fuel would be expected to be fired in this source category. The development of performance standards for this category will consider the control of particulate matter, SO_2 and NO_x emissions. As development work is completed for this category of steam generating units, documents describing the category, emission control techniques, performance level, and cost are expected to become available for review and comment in the spring of 1986.

The third category of regulatory activity is the 4-year review of the performance standard for electric utility steam generating units (40 CFR 60.40a; Subpart Da). This standard was adopted in 1979 and, as required by section 111 of the Clean Air Act, a 4-year review is being initiated. Because of the typical 5 to 7 year time period necessary to design and construct a new electric utility steam generating unit, new utility units subject to Subpart Da are just now initiating operation. Thus, the review will be constrained to some extent by limitation in operating data available from units subject to Subpart Da. However, the review will address both the particulate matter, SO_2, and NO_x standards and the applicable emission control technologies. Areas of particular interest would include a review of the progress that has been made in "dry" flue gas desulfurization system since 1979, particularly spray-dryer systems, the use of adipic acid to improve flue gas desulfurization system operability, and the status of development of "low-NO_x" burners (staged combustion burners) for pulverized coal applications. The review of Subpart Da will also include an investigation of technical adjustments to the standards such as performance test methods and recordkeeping and reporting requirements. As progress is made in the review of this standard, documents will be made available for public review and comment.

Request for Information

A substantial amount of information on control of particulate matter, SO_2, and NO_x emissions from steam generating units was gathered in 1977–1980; however, this information may need to be updated to reflect recent developments. Relative to the development or review of standards of performance for the three categories of steam generating units, data and comments are requested. Specifically, performance and cost data are requested for the application of flue gas desulfurization technology to industrial-commercial-institutional steam generating units of greater than 29 MW (100 million Btu/hour) heat input capacity. Information on all types of flue gas desulfurization systems, including dry injection, spray-dryer, wet scrubbing systems, and fluidized bed combustor systems, are solicited.

For steam generating units of less than 29 MW (100 million Btu/hour) heat input capacity, technical and cost data are requested on the control of particulate matter, SO_2 and NO_x. Specifically, performance and cost information on the use of combustion air oxygen trim systems and on the application of staged combustion burners (SCB) for NO_x

control is requested. Within the last 3 years, significant advancements appear to have been made with these technologies.

For electric utility steam generating units (Subpart Da), performance and cost data are specifically requested on dry injection, spray-dryer, and wet scrubbing flue gas desulfurization systems for SO_2 control and on the application of SCB technology for NO_x control of pulverized coal-fired steam generating units. Comments on technical amendments to general requirements under Subpart Da, (such as monitoring, recordkeeping, and reporting) are also requested.

In summary, regulatory development (or review) of standards of performance for three categories of steam generating units is being announced. Interested individuals are invited to submit information or comments relating to the current status, performance, and costs associated with various emission control techniques for controlling emissions from these categories of steam generating units.

Miscellaneous

A regulatory flexibility analysis under 5 U.S.C. 601, et seq., is not required for this notice. This notice would not impose any new regulatory requirements, nor would it impose any additional costs. This notice is also considered nonmajor under Executive Order 12291.

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, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

Dated: June 7, 1984.

Alvin L. Alm,

Acting Administrator.

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federal register

Tuesday
June 19, 1984

Part V

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Proposed Amendment

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2488-8]

Standards of Performance for New Stationary Sources; Industrial Fossil Fuel-Fired Steam Generators

AGENCY: Environmental Protection Agency.

ACTION: Proposed amendment.

SUMMARY: This proposal would amend the priority list for regulation of new sources under section 111 of the Clean Air Act by expanding the source category of industrial fossil fuel-fired steam generators to cover all steam generators, including both fossil fuel-fired and nonfossil fuel-fired steam generators, as well as steam generators used in industrial, commercial, and institutional applications. This amendment is based on the Administrator's determination that steam generating units contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

DATES: *Comments.* Comments must be received on or before September 17, 1984. *Public Hearing.* A public hearing will be held, if requested. Persons wishing to request a public hearing must contact EPA by June 28, 1984. If a hearing is requested, an announcement of the date and place will appear in a separate **Federal Register** notice.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Attention: Docket No. OAQPS A-79-02, U.S. Environmental Protection Agency, 401 M Street, Washington, D.C. 20460.

Public Hearing. Persons wishing to request a public hearing should notify Ms. Shelby Journigan, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5624.

Background Information Documents. Docket Number OAQPS A-79-02, containing information used in development of the standards of performance for steam generating units 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, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. Included in the docket is a background information document for fossil fuel-fired steam generators, EPA-450/3-82-007, and a background information document for nonfossil fuel-fired steam generators, EPA-150/3-83-007. These documents provide a review of emission control technologies and emission data for steam generators. They are available as a set from the Superintendent of Documents, U.S.G.P.O., Washington, D.C. 20402, telephone (202) 783-3238, for a purchase price of $28. The GPO stock number is 055-000-00216-9.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter or Mr. Walter Stevenson, Standards Development Branch (MD-13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5624.

SUPPLEMENTARY INFORMATION: The Clean Air Act establishes a program under section 111 to develop standards of performance for new stationary sources which the Administrator determines may contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Section 111(f) of the Clean Air Act, added by the 1977 Clean Air Act Amendments, requires that the Administrator publish, and from time to time revise, a list of categories of major stationary sources for which standards of performance for new sources are to be promulgated.

This list, which identifies major source categories in order of priority for development of regulations, was proposed in the **Federal Register** on August 31, 1978, and promulgated on August 21, 1979 (40 CFR 60.16, 44 FR 49222). Of the 59 source categories on the list, the category "Industrial Fossil Fuel-Fired Steam Generators: Industrial Boilers" is listed as number 11.

During the development of new source performance standards for this source category, it became apparent that substantial similarities exist between steam generators (boilers) which fire fossil fuels and those which fire nonfossil fuels or mixtures of these fuels. For instance, the design of steam generators which fire solid nonfossil fuels, such as wood or solid waste, is substantially the same as the design of boilers which fire solid fossil fuels, such as coal. Also, since nonfossil fuel-fired boilers are as large as fossil fuel-fired boilers, their potential emission rates for certain pollutants can be comparable. Because of the similarity in design and emissions, the emission control techniques which are applicable to fossil fuel-fired boilers are generally applicable to nonfossil fuel-fired boilers as well. In fact, any practical difference between fossil and nonfossil fuel-fired boilers has virtually disappeared as many new boilers have interchangeable fossil fuel, nonfossil fuel, and mixed fuel capability.

Therefore, the source category for "Fossil Fuel-Fired Steam Generators: Industrial Boilers" is being expanded to include steam generators firing nonfossil fuels in recognition of the similarities between fossil and nonfossil fuel-fired boilers.

The Administrator has also determined that sufficient similarities exist between boilers serving industrial plants and those supplying steam to commercial and institutional facilities to support the inclusion of steam generators serving these latter types of facilities as a sub-class of the steam generating unit source category. As with nonfossil fuel-fired boilers, there are important similarities between the operation and design of industrial boilers and boilers serving commercial and institutional facilities. These boilers emit similar pollutants, fire the same fuels, and may employ the same emission control techniques. Their impacts on human health and welfare are similar, and the Administrator has determined, pursuant to the provisions of section 111(b)(1)(A), that the inclusion of industrial, commercial, and institutional boilers in one source category is warranted.

Although the Administrator has determined that industrial, commercial, and institutional boilers should be classified together as one source category for the purpose of the priority listing, the Administrator may also distinguish among classes, types, and sizes of sources within categories for the purpose of establishing standards. In this instance, there are three distinctions which are frequently cited in order to differentiate between industrial boilers and commercial and institutional boilers. The first distinction is that commercial and institutional boilers are generally more common in the smaller boiler size ranges. The second is that a larger percentage of commercial and institutional boilers fire less-polluting fuels, such as natural gas and distillate oil, than do industrial boilers, which are predominantly coal-fired. Finally, the financial structure of a commercial or institutional entity differs significantly from that of an industrial concern, and thus the economic impacts of a performance standard may differ significantly. In all three instances, these distinctions are of the type which are more appropriately addressed in the development of performance standards for these classes, types, and sizes of steam generating units than in the

definition of the scope of a source category.

It should be noted that this proposed revision to the priority listing would result in this source category including all steam (and hot water) generating units except electric utility steam generating units larger than 73 MW (250 million Btu/hour) heat input capacity which are subject to Subpart Da of 40 CFR Part 60. As proposed, the source category would cover fossil fuel-fired and nonfossil fuel-fired steam (and hot water) generating units used in industrial, commercial, or institutional installations, including steam generating units used for onsite electrical power production or cogeneration facilities not covered by Subpart Da. Specifically, small electric utility steam generating units (73 MW (250 million Btu/hour) heat input capacity or less) would be included in this source category.

It is also intended that this amendment will clarify the scope of this source category with regard to steam generating units. As amended, this source category will include any device or system which combusts fuel which results in the production of steam (or hot water), including incinerators with heat recovery, combined cycle steam generators, cogeneration systems and small electric utility steam generating units. These types of steam generators exhibit emission characteristics which are similar in quantity and type to the emissions from boilers. Furthermore, the emission control devices which have been found to be effective on boilers are also effective in reducing emissions from other steam generators. Therefore, the scope of the source category is being expanded to include all types of steam generating units except those covered under Subpart Da.

The Administrator previously found that the source catgory "Fossil Fuel-Fired Steam Generators: Industrial Boilers" meets the significant contributor test in section 111(b)(1)(A). 40 CFR 60.16. The Administrator hereby proposes to find that the source category "Industrial-Commercial-Institutional Steam Generating Units" meets the same test.

In order to provide a coherent, integrated regulatory structure for these groups of boilers, the title of the source category is being changed to "Industrial-Commercial-Institutional Steam Generating Units." This changes deletes the reference to the type of fuel combusted, to the distinction between boiler applications, and to the type of steam generator.

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, Incorporation by reference, can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

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

Dated: June 7, 1984.

Alvin Alm,

Acting Administrator.

It is proposed to amend 40 CFR Part 60, Subpart A, § 60.16 by revising item 11 as follows:

§ 60.16 Priority list.

* * * * * *

11. Industrial-Commercial-Institutional Steam Generating Units.

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[FR Doc. 84-16071 Filed 6-18-84; 8:45 am]

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federal register

Tuesday
June 19, 1984

Part VI

Department of Labor

48 CFR Chapter 29
Acquisition Regulations; Proposed Rule

DEPARTMENT OF LABOR

48 CFR Ch. 29

Acquisition Regulations

AGENCY: Department of Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor (DOL) proposes to issue a new rule to be known as the Department of Labor Acquisition Regulation (DOLAR). This new rule would be codified as 48 CFR, Chapter 29. The purpose of the DOLAR is to implement and supplement the Federal Acquisition Regulation (FAR) which has been separately promulgated by the General Services Administration, Department of Defense, and National Aeronautics and Space Administration as Chapter 1 of Title 48 of the Code of Federal Regulations. The FAR was published in the September 19, 1983 (48 FR 42101) issue of the **Federal Register**. The FAR is being promulgated as the uniform, simplified, acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms.

The FAR will supersede the Defense Acquisition Regulation, the Federal Procurement Regulations, and the National Aeronautics and Space Administration Procurement Regulation. The Department of Labor Procurement Regulations (DOLPR), codified at Chapter 29 of Title 41 of the Code of Federal Regulations, will remain in full force and effect for contracts issued prior to the effective date of the FAR and the DOLAR (April 1, 1984). The DOLPR will be applicable only to active Department of Labor contracts in effect on April 1, 1984, and will be applicable to those contracts until such time as they are completed, terminated or modified to comply with the provisions of the FAR and DOLAR.

The intended effect of the FAR is to simplify the Federal procurement process by adopting a uniform regulation for all agencies. The uniform regulation will eliminate the confusion caused contractors by differing policies among the various Federal agencies. The intended effect of the DOLAR is to implement the FAR where required and to supplement the FAR in areas where there is no FAR coverage of policies unique to DOL.

DATE: Written comments must be reveived no later than July 19, 1984 to be considered.

ADDRESS: Comments should be addressed to: U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Directorate of Procurement and Grant Management, Office of Procurement and Grant Policy, 200 Constitution Avenue, NW., Washington, D.C. 20210, Attn: Adam W. Hare.

FOR FURTHER INFORMATION CONTACT: Mr. Adam W. Hare, Telephone: (202) 523–9174.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Order 12291
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
III. Public Comments

I. Background

The policies and procedures of the Federal government regarding the procurement of supplies and services have been developed in a largely independent fashion. Many statutes bearing on Federal contracting have been directed toward specific agencies. Federal agencies have traditionally developed their own contracting procedures with limted attention to uniformity among agencies. The result of this is a system of procurement policies which vary from agency to agency and cause confusion within the contracting community. In 1972, the Commission on Government Procurement recommended that there be a standard Government-wide procurement regulatory system. The Office of Federal Procurement Policy, created in 1974, has worked with the Agencies and the public to create a uniform procurement regulation to be known as the Federal Acquisition Regulation (FAR).

The FAR is to be codified as Chapter 1 of Title 48 of the Code of Federal Regulations with a scheduled effective date of April 1, 1984. The FAR was published in the September 19, 1983, edition of the **Federal Register.**

Because of differing statutory authorities among Federal agencies and because as a practical matter the FAR cannot contain all the procedural details of how to implement a particular policy, the FAR authorizes the agencies to issue implementing regulations. The regulation being proposed here represents the Department's necessary implementation and supplementation of the FAR.

Generally, the proposed rule does not establish new policy. To a large extent, it is the result of reformatting the existing DOL Procurement Regulations, Chapter 29 of Title 41 of the Code of Federal Regulations; deleting old portions which would duplicate new FAR coverage of subject matter not previously contained in Federal Procurement Regulations; Chapter 1 of Title 41 of the Code of Federal Regulations; and inserting necessary Departmental procedures at those places the FAR requires agency implementation.

Since the FAR is to be a uniform Government-wide acquisition regulation, reviewers of this proposed rule must remember that lack of coverage of a particular topic in the DOLAR means that the Department accepts the FAR coverage of the topic without need for further implementation.

II. Procedural Requirements

A. Executive Order 12291

In accordance with the memorandum from David Stockman, Director, Office of Management and Budget, to Donald Sowle, Administrator, Office of Federal Procurement Policy, and Christopher DeMuth, Administrator, Information and Regulatory Affairs, dated October 4, 1982, this proposed rule is exempt from the provisions of Executive Order 12291. The application of this exemption to this proposed rule has been agreed to by the Office of Management and Budget.

B. Regulatory Flexibility Act

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

This proposed rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3501 *et seq.* The proposed rule does not impose additional recordkeeping or reporting requirements beyond those contained in the FAR for which OMB control numbers have been assigned. (See 49 FR 12973, Friday, March 30, 1984, for listing of OMB approval numbers by FAR segment.) This rule provides uniformity with other Federal agencies and reduces the administrative impact on bidders as set forth in OFPP Policy Letter 83–2.

III. Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed DOLAR set forth in this notice. Comments should be submitted to the address indicated by the "**ADDRESS**" section of this notice. All comments received will be available for public inspection in the Department of Labor, Office of the Assistant Secretary for Administration and Management,

Directorate of Procurement and Grant Management, Office of Procurement and Grant Policy, Room C–4311, 200 Constitution Avenue, NW., Washington, D.C. 20210, between the hours of 8:15 and 4:45 p.m., Monday through Friday, except Federal holidays. All written comments received not later than thirty days after publication of this notice will be fully considered prior to publication of the proposed amendment as a final rule.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. The Department does not plan to hold a public hearing on this proposed rule. Interested persons are invited to participate in this rulemaking by submitting in writing, any data, views, or arguments with respect to the proposals set forth in this notice.

List of Subjects in 48 CFR Ch. 29

Government procurement.

For the reasons set out in the preamble, Chapter 29 of Title 48 of the Code of Federal Regulations is proposed to be established as set forth below.

Signed in Washington, D.C., this 8th day of June, 1984.

Raymond J. Donovan,
Secretary of Labor.

CHAPTER 29—DEPARTMENT OF LABOR

SUBCHAPTER A—GENERAL

Part 2901—Department of Labor Acquisition Regulation System
Part 2902—Definition of Words and Terms
Part 2903—Improper Business Practices and Personal Conflicts of Interest
Part 2904—Administrative Matters
Part 2905—Publicizing Contract Actions

SUBCHAPTER B—ACQUISITION PLANNING

Part 2907—Acquisition Planning
Part 2908—Required Sources of Supplies and Services
Part 2909—Contractor Qualifications
Part 2910—Specifications, Standards, and other Purchase Descriptions

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 2913—Small Purchase and other Simplified Purchase Procedures
Part 2914—Formal Advertising
Part 2915—Contracting by Negotiation
Part 2916—Type of Contracts
Part 2917—Special Contracting Methods

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 2919—Small Business and Small Disadvantaged Business Concerns
Part 2920—Labor Surplus Area Concerns
Part 2922—Application of Labor Laws to Government Acquisitions
Part 2923—Environment, Conservation, and Occupational Safety
Part 2924—Protection of Privacy and Freedom of Information
Part 2925—Foreign Acquisition

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 2928—Bonds and Insurance
Part 2929—Taxes
Part 2930—Cost Accounting Standards
Part 2931—Contract Cost Principles and Procedures
Part 2932—Contract Financing
Part 2933—Disputes and Appeals

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

Part 2935—Research and Development Contracting
Part 2936—Construction and Architect-Engineer Contracts
Part 2937—Service Contracting

SUBCHAPTER G—CONTRACT MANAGEMENT

Part 2942—Contract Administration
Part 2943—Contract Modifications
Part 2945—Government Property
Part 2948—Value Engineering
Part 2949—Termination of Contracts
Part 2951—Use of Government Sources by Contractors

SUBCHAPTER H—CLAUSES AND FORMS

Part 2952—Solicitation Provisions and Contract Clauses
Part 2953—Forms

SUBCHAPTER A—GENERAL

PART 2901—DEPARTMENT OF LABOR ACQUISITION SYSTEM

Subpart 2901.1—Regulation System

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2901.304 Agency control and compliance procedures.

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2901.404 Class deviations.
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Subpart 2901.6—Contracting Authority and Responsibilities

2901.601 General.
2901.602 Contracting officers.
2901.602–1 Authority.
2901.603 Selection, appointment, and termination of appointment.
2901.603–1 General.
2901.603–70 Modification of appointment.
2901.603–71 Ratification of unauthorized contract awards.
2901.603–72 Responsbility of other Government personnel.
2901.603–73 Contracting officer's representatives.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2901.1—Regulation System

2901.100 Scope of subpart.

This subpart sets forth introductory information pertaining to the Department of Labor Acquisition Regulation, referred to as the DOLAR. This subpart explains the relations of the DOLAR to the Federal Acquisition Regulation (FAR) and explains the DOLAR's purpose, authority, applicability, exclusions, and issuance.

2901.101 Purpose.

(a) This subpart establishes Chapter 29, the Department of Labor Acquisition Regulation, within Title 48, the Federal Acquisition Regulations System, of the Code of Federal Regulations.

(b) The purpose of the DOLAR is to implement the FAR, where further implementation is needed, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The DOLAR is not by itself a complete document as it must be used in conjunction with the FAR.

2901.102 Authority.

The DOLAR and amendments thereto are issued by the Procurement Executive pursuant to a delegation from the Secretary in accordance with the authority of DOL Temporary Regulation Number 44, dated February 18, 1983, in accordance with section 1 of the Act of March 4, 1913 (29 U.S.C. 551, 37 Stat. 736), as amended; 5 U.S.C. 301, and the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law.

2901.103 Applicability.

The FAR and DOLAR apply to all DOL acquisitions of supplies and services which obligate appropriated

funds unless otherwise specified in this regulation.

2901.103-70 Exclusions.

Certain DOL policies and procedures which might otherwise come within the scope of this regulation may be excluded from the DOLAR where there is appropriate justification, such as:

(a) Subject matter that is procedural in nature and internal to the operation of the Department. These matters are contained in the Department of Labor Manual Series (DLMS).

(b) Instructional or training material that more fully explains matters covered in the FAR and DOLAR.

(c) Unless otherwise specifically stated, subject matter which deals with assistance programs where the award instruments are other than acquisition contracts. Administrative requirements governing all grants and agreements by which Department of Labor agencies award funds to State and Federal Governments, Indian and Native American entities, public and private institutions of higher education and hospitals, and other quasi-public and private nonprofit organizations are codified separately at Part 29-70 of Title 41 of the Code of Federal Regulations.

2901.104 Issuance.

2901.104-1 Publication and code arrangement.

(a) The DOLAR and its subsequent changes are published when issued in daily issues of the **Federal Register** and in cumulative form in the Code of Federal Regulations.

(b) The DOLAR is issued as Chapter 29 of Title 48 of the Code of Federal Regulations.

2901.104-2 Arrangement of regulations.

(a) *General.* The DOLAR is divided into the same parts, subparts, sections, subsections and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself, there will be no corresponding DOLAR part, subpart, etc.

(b) *Numbering.* Where DOLAR implements the FAR, the implementing part, subpart, section or subsection of the DOLAR will be numbered and captioned, to the extent feasible, the same as the FAR part, subpart, section or subsection being implemented except that the implementation will be preceded with a 29 or a 290 such that there will always be four numbers to the left of the first decimal. For example, the DOLAR implementation of FAR 1.104-1 is shown as 2901.104-1 and DOLAR implementation of FAR subpart 24.1 is shown as subpart 2924.1. Material which supplements the FAR will be assigned the numbers 70 and up. For example, DOL regulations governing appointment and termination of appointment of contracting officers' representatives is identified as 2901.603-70.

(c) *References and citations.* (1) This regulation may be referred to as the Department of Labor Acquisition Regulation or the DOLAR.

(2) References to FAR materials within this regulation will include FAR and the identifying number, for example, FAR 1.104-2(c)(2). References to DOLAR materials within the regulation will simply cite the identifying number, for example, 2901.104-2(c)(2).

2901.104-3 Copies.

Copies of the DOLAR published in the **Federal Register** or Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Requests should reference the DOLAR as Chapter 29 of Title 48. The Code of Federal Regulations is printed in paperback edition with updates as needed, and revised as of October 1 of each year. Requests for the CFR version of the DOLAR should reference Chapter 29 of Title 48.

Subpart 2901.2—Administration

2901.201 Maintenance of the FAR.

2901.201-1 The Civilian Agency Acquisition Council.

(a) The Department of Labor shall be represented on the Civilian Agency Acquisition Council by a staff member of the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, Office of the Assistant Secretary for Administration and Management, appointed for that purpose by the Director, Directorate of Procurement and Grant Management.

(b) The Office of Procurement and Grant Policy will be responsible for coordination with all interested DOL elements regarding proposed FAR revisions and advocating revisions sought by DOL.

Subpart 2901.3—Agency Acquisition Regulations

2901.301 Policy.

(a) The Department of Labor Acquisition Regulation (DOLAR) System consists of policies, procedures and regulations which implement or supplement the FAR at specific levels within the Department of Labor. The Federal Acquisition Regulation (FAR) and the DOLAR System govern the contracting process and control contracting relationships between contractors and the Departments' agencies and offices.

(b) The DOLAR is issued pursuant to the authority of the Secretary of Labor under 5 U.S.C. 301, 29 U.S.C. 551, 40 U.S.C. 486(c), and other authority specifically stated, and is subject to the overall authority of the Administrator of General Services. See FAR 1.301(c)(3).

2901.302 Limitations.

DOLAR System issuances are limited to:

(a) Published, codified, Department-wide regulations which implement or supplement FAR policies and procedures and which affect organizations or individuals seeking to contract with the Department;

(b) Published, codified, lower-level regulations of agencies and offices which contain additional policies and procedures that supplement the FAR to satisfy the specific and unique needs of the agency or office;

(c) Unpublished, Department-wide directives related to the acquisition process which are used for internal administrative guidance and which do not affect contractors; and

(d) Unpublished directives of agencies and offices which contain detailed and specific instructions on internal acquisition matters related to the FAR and the DOLAR System which do not affect contractors.

2901.303 Codification and public participation.

(a) Published issuances under the DOLAR are codified under Chapter 29 in Title 48, Code of Federal Regulations and parallel the FAR in format, arrangement and numbering system.

(b) Regulations codified under Chapter 29 are limited to those affecting private or public, profit or not for profit concerns, organizations or individuals desiring to enter into contracts with the Department. Public participation procedures used in the promulgation of codified regulations under the DOLAR System will follow procedures of FAR Subpart 1.5.

2901.304 Agency control and compliance procedures.

(a) The DOLAR System is under the direct oversight and control of the Director, Directorate of Procurement and Grant Management. Procedures for review and approval of issuances under the DOLAR System comply with FAR Subparts 1.3 and 1.4. These procedures are contained in 2901.6.

(b) DOLAR System issuances shall comply with the restrictions in FAR 1.304(b) and the limitations in 2901.302. DOL Agencies and offices may

implement or supplement the FAR or DOLAR with internal instructions not applicable DOL-wide. Additionally, they may request publication in the DOLAR of procurement instructions and other procurement material considered of interest to the general public. Such instructions shall not duplicate higher-level coverage and shall be numbered in accordance with FAR 1.104–2 except that the numbers prescribed there and in 2901.104–2 shall be suffixed by the alphabetic abbreviation or other symbol of the respective Agency issuing the instructions. Each DOL Agency and office shall establish, at the headquarters level, review and approval procedures for maintaining oversight and control of all DOLAR System issuances for their respective Agency or office. These procedures shall include methods to prevent unnecessary duplication of higher-level coverage; ensure consistency and uniformity among issuances; control the number of directives issued; update directives; and distribute copies.

(c) DOL Agencies and offices shall submit all proposed instructions and materials that implement or supplement the DOLAR to the Director, Directorate of Procurement and Grant Management, for review in conjunction with the Solicitor prior to their publication. All issuances, whether or not published as a part of the DOLAR System, shall be submitted for review. In the case of internal procurement instructions, the purpose of the review is to ascertain that such instructions are consistent with the FAR and the DOLAR and that they do not contain information which should be issued as the DOLAR. In the case of instructions or other material submitted for inclusion in the DOLAR, after concurrence by interested DOL Agencies and offices, the necessary arrangements will be made for publication of such instructions or other material in the Federal Register.

Subpart 2901.4—Deviations From the FAR and DOLAR

2901.403 Individual deviations.

(a) The Director, Directorate of Procurement and Grant Management, Is authorized to approve deviations from FAR provisions (see FAR 1.401) or DOLAR provisions which affect only one contracting action.

(b) Requests for deviations under (a) above shall be submitted by the head of the contracting activity and include justification as to why the deviation is required.

(c) A copy of the approved deviation shall be included in the contract file.

(d) The Director, Directorate of Procurement and Grant Management, shall transmit a copy of each approved FAR deviation to the FAR Secretariat as required in FAR 1.403.

2901.404 Class deviations.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to approve class deviations of FAR or DOLAR provisions which affect more than one contracting action.

(b) Requests for deviations under (a) above shall be submitted by the head of the contracting activity and include justification as to why the deviation is required and the number of contracting actions which will be affected.

(c) For FAR class deviations requests, the Director, Directorate of Procurement and Grant Management, shall consult with the Civilian Agency Acquisition Council, as required in FAR 1.404(a)(1), before authorizing the deviation, unless urgency precludes such consultation.

(d) A copy of each approved class deviation shall be referenced in the contract file.

(e) Recommended revisions to the FAR and a copy of each approved class FAR deviation shall be transmitted to the FAR Secretariat by the Director, Directorate of Procurement and Grant Management, as required in FAR 1.404.

2901.405 Deviations pertaining to treaties and executive agreements.

(a) The Director, Directorate of Procurement and Grant Management, is responsible for transmitting to the FAR Secretariat the information required in FAR 1.405(d).

(b) For deviations not authorized by FAR 1.405, the Director, Directorate of Procurement and Grant Management, shall process the request for deviation through the FAR Secretariat.

(c) Deviations authorized or requested under (a) or (b) above shall be submitted by the head of the contracting activity to the Director, Directorate of Procurement and Grant Management, for further action.

Subpart 2901.6—Contracting Authority and Responsibilities

2901.601 General.

This subpart deals with contracting authority and responsibilities of the head of the agency as defined in 2901.1 and 2902.1, FAR Subpart 1.6 and this Subpart.

2901.602 Contracting officers.

2901.602–1 Authority.

Information on the limits of contracting officers' authority shall be maintained by the head of each contracting activity as required in FAR 1.601–1. The Directorate of Procurement and Grant Management shall also maintain this information.

2901.603 Selection, appointment, and termination of appointment.

2901.603–1 General.

(a) *First tier delegation.* The Assistant Secretary for Administration and Management (ASAM), acting through the Procurement Executive, is the chief departmental official for all acquisition and grant matters as outlined in Secretary's Order 4–76, for:

(1) Prescribing policies, procedures, and standards regarding the solicitation, award, and administration of all DOL acquisitions and grants for financial assistance (*e.g.*, cooperative agreements, grants, and similar instruments) obligating Federal funds for the purpose of:

(i) Obtaining property and services for the DOL and/or third parties.

(ii) Promoting DOL programs and objectives through financial assistance.

(2) Acquiring property and services for the United States Government under Title I of the Federal Property and Administrative Services Act of 1949 (63 Stat. 379).

(3) Establishing reporting requirements necessary for effective departmental acquisitions and grant management and for complying with data needs promulgated by the Office of Management and Budget (OMB), the General Services Administration (GSA), the General Accounting Office (GAO), and other agencies. This includes the SF–1099 report, "Income Other Than Wages," and imput for "Federal Procurement Data System" (FPDS) and "Federal Assistance Award Data System" (FAADS) input.

(b) In the Department of Labor, contracting officer and grant officer authority and responsibility have been delegated from the Secretary of Labor through the Assistant Secretary for Administration and Management (ASAM) to the following officials or officers acting in their behalf:

(1) The Assistant Secretary for Employment and Training.

(2) The Assistant Secretary for Occupational Safety and Health.

(3) The Deputy Under Secretary for Employment Standards.

(4) The Assistant Secretary for Mine Safety and Health.

(5) The Assistant Secretary for Labor-Management Relations.

(6) The Deputy Under Secretary for International Affairs.

(7) The Commissioner of Labor Statistics.

(8) The Inspector General.

(9) The Regional Administrators—OASAM.

(10) The Director, Directorate of Procurement and Grant Management, OASAM.

(c) *Delegations and limitations.* Subject to the limitations set forth in this paragraph and paragraph (g), the officials designated in paragraph (b) possess full authority to obligate the U.S. Government through the use of contracts, agreements, orders, grants, and/or other similar instruments. This authority includes obligating Federal funds for the purpose of obtaining property and services for the government and/or third parties, or for the purpose of promoting DOL programs or objectives through financial assistance. Each official designated in paragraph (b) (except the Inspector General), is delegated authority and responsibility for issuing purchase orders for purchases under GSA Federal Supply Schedules, FEDSTRIP, and from open-market sources not to exceed the small purchases limitation. Acquisition of typewriters, office copiers, adding machines, and calculators must be written against blanket purchase orders maintained for such equipment by the Directorate of Procurement and Grant Management, OASAM. Acquisitions of copier equipment require prior approval of the Directorate of Administrative Services and Safety and Health Programs. Paragraph (g)(2) outlines limitations on the purchase, lease and renewal of lease(s) of ADP equipment, software and services. Approval authority for competitive acquisition of consulting and related services costing less than $50,000 cannot be redelegated by the head of the contracting activity. Other delegations in this section may be further redelegated by the designated officials within their areas of assigned responsibility, except that small purchase authority delegated to the Assistant Secretary for Employment and Training, the Assistant Secretary for Occupational Safety and Health, the Deputy Under Secretary for Employment Standards, the Assistant Secretary for Labor-Management Relations, and the Commissioner of Labor Statistics is limited to the National Office only and may not be redelegated to the Regional Offices. Before issuing redelegations, contracting officers should consider the following factors to determine the extent to which authority shall be redelegated: Volume of contracting programs; presence of, or capability of obtaining adequately trained personnel; consolidation of smaller contracting programs and offices on a geographical basis; and the overall strengthening of the acquisition process by the selection of qualified personnel. An information copy of every further redelegation must be furnished to the OASAM, Directorate of Procurement and Grant Management, Office of Procurement and Grant Policy.

(d) *Responsibilities.* The following redelegations are made subject to the requirements and exceptions outlined in paragraph (g) regarding prior approval requirements and the limitations on authority to issue purchase orders and contracts for the purchase, lease and renewal of lease(s) for ADP equipment, software and services; and acquisition of consulting and related services.

(1) The Assistant Secretary for Employment and Training, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Obtaining all program property and services required to fulfill the statutory and regulatory responsibilities imposed on the Assistant Secretary for Employment and Training

(ii) Approval of all grantee acquisitions of ADP equipment, software and services using grants-in-aid to State and local governments.

(iii) Establishing and maintaining an imprest fund.

(2) The Assistant Secretary for Occupational Safety and Health, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Issuance of grant agreements with States as required under the statutory and regulatory requirements imposed on the Assistant Secretary for Occupational Safety and Health.

(ii) Reimbursements to States, pursuant to section 7(c)(1) of the Occupational Safety and Health Act of 1970 (OSH Act of 1970) (29 U.S.C. 656(c)(1)) for State services, facilities, and personnel used to carry out the statutory and regulatory responsibilities imposed on the Assistant Secretary for Occupational Safety and Health.

(iii) Issuance of grants, pursuant to section 21(b) of the OSH Act of 1970 (29 U.S.C. 670(b)) for short term training of personnel.

(iv) Issuance of grants to nonprofit organizations for implementation of the expanded Employer-Employee Training Program under section 21(c) of the OSH Act of 1970 (29 U.S.C. 670(c)).

(3) The Deputy Under Secretary for Employment Standards, or an officer acting in that capacity, is delegated authority and responsibility for entering into agreements with States to enhance Federal/State cooperative efforts for the administration of comparable employment standards programs.

(4) The Assistant Secretary for Mine Safety and Health, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Acquisition of all program property and services required to fulfill the statutory and regulatory responsibilities imposed on the Assistant Secretary for Mine Safety and Health.

(ii) Issuing grants as required by the Mine Safety and Health Act of 1977 (30 U.S.C. 801 *et seq.*).

(iii) The purchase, lease, or renewal of lease(s) of ADP equipment and software costing $50,000 or less without prior approval of the Director, Information Technology (DIT), OASAM. ADP equipment of software costing more than $50,000, and requests for all ADP services require prior approval of DIT. Prior approval of ADP services costing less than $50,000 is also required whenever a Delegation of Procurement Authority (DPA) or sharing clearance is required from the General Services Administration (GSA).

(5) The Deputy Under Secretary for International Affairs, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Acquisition of supplies and services required in support of training and orientation of foreign nationals.

(ii) Acquisition of supplies and services required in support of overseas exhibitions required under statutory and regulatory responsibilities imposed on the Deputy Under Secretary for International Affairs.

(iii) International responsibilities not funded by an annual appropriation.

(6) The Commissioner of Labor Statistics, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Acquisition of supporting statistical economic research services, required under the statutory and regulatory responsibilities imposed on the Commissioner of Labor Statistics.

(ii) Selling special statistics developed by the Bureau of Labor Statistics in accordance with the Act of April 13, 1934 (29 U.S.C. 9 *et seq.*).

(7) The Inspector General, or an officer acting in that capacity, is delegated authority and responsibility for contracting with State and local agencies for audit services in accordance with section 4 of the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 503).

(8) The Regional Administrators—OASAM, or officers acting in that capacity, are delegated authority and responsibility within their respective regions, for:

(i) The acquisition of property and services required for the Regional Offices, including all imprest fund purchases, GSA Federal Supply Schedule purchases, and open-market purchases. The acquisition of records equipment when the cost does not exceed the small purchases limitation for a single system. Purchases for typewriters, office copiers, adding machines, and calculators must be written against blanket purchase orders maintained for such equipment by the Directorate of Procurement and Grant Management, OASAM. The purchase of copier equipment requires prior approval of the Office of Printing Management, Directorate of Administrative Services and Safety and Health Programs.

(ii) Contracting for ADP operational services to support regional remote job entry capabilities. This authority does not include the purchase, lease, or renewal of lease(s) for ADP equipment or software. Prior approval of ADP operational services is required from DIT whenever a Delegation of Procurement Authority (DPA) or sharing clearance is required from the General Services Administration (GSA).

(9) The Director, Directorate of Procurement and Grant Management, OASAM, or an officer acting in that capacity, is delegated authority and responsibility for acquisition of all property and services on behalf of DOL activities except for those contracting and grant responsibilities designated above. This includes (except for the Mine Safety and Health Administration (MSHA) acquisition authority for the purchase, lease, and renewal of lease(s) of all ADP equipment, software and all ADP services where Agencies have obtained prior approval from the Directorate of Information Technology (DIT), OASAM, as appropriate.

(e) *Compliance responsibilities.* Each official designated in paragraph (b) is responsible for:

(1) Complying with the policies, procedures and reporting requirements established by the ASAM.

(2) Complying with the policies, procedures and other requirements prescribed by OMB, GSA, and other central agencies, and such implementing instructions as the Department may issue. This specifically includes competition for services and products estimated to cost $10,000 or less and restrictions on the use of consultant contracts, audiovisual productions, etc.

(3) Within the limitations specified in this subpart, obtaining all property and services required to fulfill the statutory and regulatory responsibilities of the Agency or Office.

(f) *Policy responsibilities.* The following officials have acquisition policy responsibilities within the DOL:

(1) The Director, Directorate of Procurement and Grant Management, OASAM, or an officer acting in that capacity, is responsible for:

(i) Developing and publishing guidelines, polices, and regulations for DOL acquisition and grant operations.

(ii) Reviewing and evaluating administrative procedures for DOL and grant operations.

(iii) Providing technical advice and assistance to those DOL officials and officers with acquisition and grant responsibilities. This includes interpreting the Federal Acquisition Regulations and the Department of Labor Acquisition Regulations and obtaining legal advice and assistance from the Solicitor of Labor as required.

(iv) Providing continuous coordination with appropriate DOL and Federal Agencies to ensure compliance with procurement and grant regulations.

(v) Providing technical advice and support to the ASAM in complying with the reporting requirements outlined in paragraph (a)(3).

(2) The Director, Information Technology (DIT), OASAM, or an officer acting in that capacity, is responsible for:

(i) Reviewing and providing prior approval for the purchase, lease or renewal of lease(s) of ADP equipment, software and services costing $50,000 or more (the purchase price is to be used to determine inclusion in this paragraph regardless of whether the item is to be purchased or leased), and for all ADP services. Prior approval of ADP services costing less than $50,000 is required whenever a Delegation of Procurement Authority (DPA) or sharing clearance is required from the General Services Administration (GSA).

(ii) Providing oversight, including periodic system reviews, to ensure sound DOL-wide ADP methodologies and developmental practices.

(iii) Reviewing ADP procurement requests for conformance with procurement policies, standards, and regulations.

(iv) Reviewing, on a periodic basis, the scope and technical merit of ADP proposals and recommending approval or disapproval, as appropriate.

(v) Representing the Department and Agencies in the Department in liaison with GSA and OMB on ADP matters.

(vi) Developing and publishing guidelines, policies and regulations for DOL ADP activities.

(3) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for:

(i) Assuring participation of the Department in the Federal Small and Disadvantaged Business Program as specified in section 8(a) small disadvantaged business set-asides) and section 15 (procurement in labor surplus areas) of the Small Business Act, as amended (15 U.S.C. 637(a) and 644), and Executive Orders 11625 (Minority Business Enterprises) and 12138 (Women-Owned Business Enterprises).

(ii) Assuring participation and input of each Program Agency in establishing DOL goals for increased opportunities for small and disadvantaged business concerns to participate in the Department's procurement and grant activities.

(iii) Providing technical advice and assistance to Program Agencies in establishing Agency goals for utilizing small and disadvantaged businesses.

(iv) Developing systematics procedures, guidelines and regulations for assuring the effective implementation of the provisions of the Small Business Act, as amended, and Executive Orders 11625 and 12138.

(v) Maintaining liaison with the Small Business Administration (SBA) on matters regrading sections 8 and 15 of the Small Business Act, as amended 15 U.S.C. 637(a) and 644), and Executive Order 12138, and the Department of Commerce on matters relating to Executive Order 11625.

(4) The Director, Office of Information and Public Affairs (OIPA), is responsible for:

(i) Reviewing all purchase orders, requisitions and contracts for audiovisual productions including those which contain an audiovisual component along with other activities before the request is processed and approved by OASAM or another Agency to assure compliance with DOL and OMB requirements. All types of audiovisual productions are covered, including projects for training, education, internal communications, and/or public information purchases. Training and education products will not be reviewed for content but rather for the professional quality, effectiveness and cost of the communications material being produced. (See Guidelines for Management of Departmental Audiovisual Activities, issued pursuant to OMB Circular A–114 and Secretary's Order 5–79.)

(ii) Reviewing all purchase orders, requisitions, and contracts for the rental or purchase of major audiovisual equipment to be used in production work before the request is processed and approved by OASAM or another

DOL Agency to assure compliance with DOL and OMB requirements. Production equipment includes motion picture and videotape cameras, editing equipment and duplication equipment for videotape and film. Review is not necessary for such equipment as still cameras, projectors and tape players, cassette tape players, *etc.*

(5) The Procurement Review Board is responsible for:

(i) Reviewing all requests to award contracts, grants, agreements, or modifications thereto (as described in this paragraph (f)(5)) and recommending approval or disapproval to the ASAM:

(A) Requests for noncompetitive procurements, discretionary grants and agreements costing $10,000 or more;

(B) Noncompetitive consulting and related services requests, including purchase orders, and personnel appointments of consultants and experts;

(C) Competitive procurements for consulting and related services costing $50,000 or more and modifications thereto as described in paragraph (g), below;

(D) Major procurements and those with high waste vulnerability; and

(E) Requests for noncompetitive research, evaluation and demonstration projects after prior review by the Assistant Secretary for Policy.

(ii) Assuring compliance with the scope of the Board's authority, with OMB and DOL guidelines for use of consulting and related services and other special acquisitions.

(iii) Approval by the ASAM of requests identified in this paragraph (f)(5) do not constitute award of a contract. The contracting officer has final approval authority.

(g) *Exceptions to delegations of authority.* The assignment of procurement responsibilities described in paragraph (b) are subject to the exclusions listed below:

(1) *Procurement of consulting and related services.* (i) The ASAM retains authority and responsibility for approval of requests for consulting and related services for individuals and organizations under the following circumstances:

(A) When acquisitions by either contract or purchase order are to be awarded without competition, regardless of amount, of for those competitive actions costing $50,000 or more; and

(B) When modifications involving changes in dollar amounts, deliverables under contracts or (under rate circumstances) extensions to existing consulting and related services contracts are required.

(ii) The heads of the contracting activities retain approval authority for the acquisition of consulting and related services costing less than $50,000 which are obtained through competitive procedures.

(2) *Automated data processing (ADP).* The following requirements and limitations exist for the purchase or lease of ADP equipment, software and services.

(i) Authority to issue purchase orders and contracts is limited only to those officials in paragraph (b) whose procurement responsibility explicitly includes this authority.

(ii) Acquisition of ADP equipment and software costing $50,000 or more and all ADP services requires prior approval of DIT, OASAM, before the request can be forwarded to the Directorate of Procurement and Grant Management, OASAM (except for MSHA).

(iii) Agencies can forward requisitions for ADP equipment and software costing less than $50,000 to the Directorate of Procurement and Grant Management, OASAM (except for MSHA), without prior approval of DIT, OASAM, provided that records are maintained in accordance with procedures prescribed by DIT.

(3) *Sole source procurements.* Sole source acquisitions exceeding the small purchases limitation are subject to review by the Procurement Review Board prior to award.

(4) Budget limitations. In furtherance ot its own needs or in conformity with Congressional or OMB directives, the ASAM may limit all or certain categories of acquisitions to ceilings established in the budget and appropriations process.

(5) *Records equipment.* The purchase of records equipment; defined as file cabinets, shelf files, visible files, mechanized files, files guides, folders jackets, wallets, and similar items used in the creation and maintenance of records and in mail handling requires special authority. Federal Property Management Regulation 101–11.306 requires that: Form DL 1–194 be completed by the Agency Records Officer and forwarded to the Departmental Records Officer Directorate of Management Policy and Systems, OASAM, for approval prior to acquisition. Regional Administrators—OASAM are delegated this approval authority for their respective regions. In keeping with GSA Bulletins FPMR B–120 and B–122 which discourage the use of legal-size files, no new legal size records equipment is to be purchased.

(6) The OSDBU will periodically monitor DOL Agency acquisition and grant functions which relate to the preferential programs to determine their effectiveness and adherence to Federal and DOL requirements.

(7) The Assistant Inspector General for Audit will periodically audit Agency acquisitions and grant functions to determine compliance with governing regulations, policies and procedures.

(h) *Rescission of authority.* The ASAM acting through the Director, Directorate of Procurement and Grant Management, reserves the right to rescind the acquisition and grant authority delegated herein if it is determined that such action is in the best interest of the Government.

2901.603–70 Modification of appointment.

To modify a contracting officer's authority, the present appointment shall be revoked and a new certificate issued.

2901.603–71 Ratification of unauthorized contract awards.

(a) The Government is not generally bound by agreements or contractual commitments made to contractors or prospective contractors by persons to whom acquisition authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act of 1949, other Federal laws, the FAR, the DOLAR, and good acquisition practice; *e.g.*, certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met, such as certification of the availability of funds, determinations and findings, competition of sources, determination of contractor responsibility, price/cost analysis, administrative approvals, negotiations of appropriate contract clauses, *etc.*

(b) Unauthorized commitments shall not be ratified unless it would have been otherwise proper to enter into a contract prior to the commitment. As used herein, the phrase "otherwise proper" means that a ratification of an unauthorized commitment can be made only if there occurred no violation of any substantive legal requirements; *e.g.*, there can be no ratification unless a sole source can be justified; a determination made that the contractor is not debarred or otherwise ineligible for award; the Organizational Conflict of Interest reviews and determinations, if required, are completed; and where all other substantive legal requirements have been met. Whenever it is discovered that any person is performing work as a result of an unauthorized commitment, that person shall be advised that such work is being performed at their own risk pending establishment of valid

contractual coverage. The Head of the Contracting Activity (HCA) shall then be notified of the circumstances. If the HCA agrees that the work appears to be without valid authorization, the Director, Directorate of Procurement and Grant Management, shall be notified by the HCA in accordance with the procedures outlined in (c) below.

(c) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(1) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to, a statement as to why the acquisition officer was not used, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed contract price, citation of appropriation available, and a statement as to whether the contractor has commenced performance. Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the Director, Directorate of Procurement and Grant Management, may waive the requirement that the responsible employee initiate and document the request; *Provided*, the cognizant Assistant Secretary or the Head of the Contracting Activity determines in writing that the commitment was in fact made by an employee who shall be identified in the determination.

(2) The request for ratification, an approved justification for noncompetitive acquisition, and the information required by (c)(1) above must be forwarded to the cognizant program Assistant Secretary, or HCA, based on the source of funds for the proposed contract, for that person's concurrence, together with recommended corrective actions to preclude recurrence.

(3) If the Assistant Secretary or HCA concurs with the request for ratification, the request and concurrence shall be forwarded to the Director, Directorate of Procurement and Grant Management, for review by the Procurement Review Board (PRB). The PRB will review the request, the Justification for Non-Competitive Acquisition, any comments or information submitted by the contracting officer which should be considered in evaluation of the request, and the information submitted in accordance with (c)(2) above. Based upon this review and advice from the Office of the Solicitor, the PRB will proceed as follows:

(i) If the request submitted does not appear to be justified, it will be returned to the concurring Assistant Secretary or equivalent official without approval with an explanation of the decision not to ratify.

(ii) If the request and the recommended corrective actions appear justified and adequate, the PRB may ratify the action, return the file to the contracting officer for action, and monitor the implementation of the corrective action plan. The contracting officer shall direct the disposition of all products and deliverables received by the Government as a result of an unauthorized commitment.

(iii) A detailed record of the review shall be maintained for audit purposes.

2901.603–72 Responsibility of other Government personnel.

(a) Responsibility for the decision of what to buy and when to buy rests with program and certain staff offices and the head of the agency or designee. Responsibility for determining how to buy, the conduct of the buying process, and execution of the contract rests with the contracting activity, the contracting officer in particular.

(b) Personnel responsible for making decisions to buy should maintain a close and continuous relationship with their acquisition activity to ensure that acquisition personnel are made aware of contemplated acquisition actions. This will be mutually beneficial in terms of better planning for acquisition action and more timely, efficient and economical acquisition.

(c) Personnel not delegated contracting authority may not commit the Government, formally or informally, to any type of contractual obligation. However, program personnel who must use the contracting process to accomplish their programs, must support the contracting officer in ensuring that:

(1) Requirements are clearly defined and specified;

(2) Competitive sources are solicited, evaluated, and selected;

(3) Quality standards are prescribed, and met;

(4) Performance or delivery is timely;

(5) Files are documented to substantiate the judgments, decisions, and actions taken.

2901.603–73 Contracting officer's representatives.

(a) A contracting officer may designate other Government personnel to act as authorized representatives for such functions as technical monitoring, inspection, approval of shop drawings, testing, approval of samples, and other functions of a technical nature not involving a change in the scope, price, terms or conditions of the contract or order. Such designation shall be in writing and shall contain specific instructions as to the extent to which the representative may take action for the contracting officer, but will not contain authority to sign contract documents. The responsibilities and limitations of the contracting officer's representatives may be set forth in the contract or in a separate letter, a copy of which shall be furnished to the contractor.

(b) A person assigned to a contracting office and performing primary duties in a position within a contracting office, and under the supervision of a contracting officer, does not require written designation as a representative of the contracting officer nor designation in a contractual document to perform assigned duties. Such a person is considered to be an employee of the contracting officer, acting in the latter's behalf and, as such, has the authority and responsibility to perform, under the terms and conditions of employment, and to act as assigned by the contracting officer. The contracting officer, however, shall not authorize such as employee, acting as a representative for the contracting officer, to sign any contractual documents or letter in those instances where the signature of a contracting officer is required.

PART 2902—DEFINITIONS OF WORDS AND TERMS

Subpart 2902.1—Definitions

2902.101 Definitions.

As used throughout this regulation, the following words and terms are used as defined in this subpart unless (a) the context in which they are used clearly requires a different meaning, or (b) a defferent definition is prescribed for a particular part or portion of a part:

"Automated Data Processing (ADP)" means equipment, related services and software. Equipment includes computers and auxiliary equipment, such as terminals, printers, plotters, modems, data conversion equipment, source data automation recording equipment (optical character recognition devices), word processing equipment, computer input/output microfilm, and computer performance evaluation equipment. It also includes data transmission or communications equipment, including front-end processors, terminals, and other similar devices, designed primarily

for use with a configuration of ADP equipment.

"Contracting activity" means an agency or office within the Department with delegated procurement authority to manage contracting functions associated with its mission. Within the Office of the Assistant Secretary for Administration and Management, the Directorate of Procurement and Grant Management is the contracting activity.

"Head of the agency" (also called "agency head") means the Assistant Secretary for Administration and Management.

"Head of the contracting activity (HCA)" means the Assistant Secretary for Administration and Management; the Director, Directorate of Procurement and Grant Management, and the head of each DOL Agency and Office who has overall responsibility for managing the contracting activity.

"Procurement Executive" means the Director, Directorate of Procurement and Grant Management.

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART 2903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2903.1—Safeguards

Sec.
2903.101 Standards of conduct.
2903.101–3 Agency regulations.

Subpart 2903.2—Contractor Gratuities to Government Personnel

2903.203 Reporting suspected violations of the gratuities clause.
2903.204 Treatment of violations.

Subpart 2903.3—Reports of Identical Bids and Suspected Antitrust Violations

2903.302 Reporting identical bids.
2903.302–2 Reporting requirements.

Subpart 2903.4—Contingent Fees

2903.409 Misrepresentation or violation of the Covenant against Contingent Fees.

Subpart 2903.5—Other Improper Business Practices

2903.502 Subcontractor kickbacks.

Subpart 2903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2903.602 Exceptions.
2903.603 Responsibilities of the Contracting officer.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2903.1—Safeguards

2903.101 Standards of conduct.

2903.101–3 Agency regulations.

All DOL personnel engaged in acquisition related activities shall conduct such activities in a manner above reproach in every respect. See Part 0 of Title 29, CFR. Transactions relating to expenditure of public funds require the highest degree of public trust to protect the interests of the Government. See 2903.6 for requirements concerning contracting with current or former DOL employees.

Subpart 2903.2—Contractor Gratuities to Government Personnel

2903.203 Reporting suspected violations of the Gratuities clause.

(a) *Action official.* The Director, Directorate of Procurement and Grant Management, is the DOL official authorized to take action pursuant to FAR 3.204(c) against a contractor if it is determined that a violation of the clause at FAR 52.203–3, Gratuities, has occurred. This authority may not be redelegated.

(b) *Referral.* Whenever a suspected violation of the clause at FAR 52.203–3, Gratuities, becomes know to a DOL employee, the matter shall be reported to the cognizant contracting officer. The report shall be in writing and shall clearly state the circumstances surrounding the incident or incidences where it is alleged that the contractor offered or gave a gratuity to a DOL employee and intended by the gratuity to obtain a contract or favorable treatment under a contract. The date(s), location(s), and name(s) of all parties involved in the incident shall be included in the report. The report shall also include a recommended course of action in accordance with FAR 3.204(c) and shall be submitted through the head of the contracting activity to the Director, Directorate of Procurement and Grant Management for disposition.

2903.204 Treatment of violations.

(a) *Notice of contractor.* After review of the report and consultation with the Office of the Solicitor and Office of the Inspector General, as appropriate, the Director, Directorate of Procurement and Grant Management shall determine further action to be taken. If requested, the contractor shall be provided with a formal notice which summarizes the events involving the suspected violations and affords the contractor the opportunity to take the action(s) listed under FAR 3.204(b). The notice shall contain a time limit for reply and shall be sent by certified mail, return receipt requested.

(b) *Action.* Based on the contractor's response to the notice; the results of any further discussions with the contractor, the counsel, or witnesses; the review of additional documentary evidence; and other pertinent information, the Director, Directorate of Procurement and Grant Management, shall make a final and binding decision on the action to be taken in accordance with FAR 3.204(c) and shall provide the contractor with a formal notice of such action.

Subpart 2903.3—Reports of Identical Bids and Suspected Antitrust Violations

2903.302 Reporting identical bids.

2903.302–2 Reporting requirements.

Potential anti-competitive practices, such as described in FAR 3.301, and antitrust law violations as described in FAR 3.303, evidenced in bids or proposals shall be reported to the Office of the Solicitor through the Head of the Contracting Activity with a copy to the Director, Directorate of Procurement and Grant Management. The Office of the Solicitor will provide reports to the Attorney General as appropriate.

Subpart 2903.4—Contingent Fees

2903.409 Misrepresentation or violation of the Convenant Against Contingent Fees.

(a) Suspected misrepresentation or violations of the Convenant Against Contingent Fees shall be documented and reported promptly to the contracting officer for review and action under FAR 3.409.

(b) Suspected fraudulent or criminal violations shall be documented in a report and submitted by the contracting officer to the Office of the Solicitor prior to initiation of any actions outlined in FAR 3.409(b).

Subpart 2903.5—Other Improper Business Practices

2903.502 Subcontractor kickbacks.

(a) Reports on suspected violations of the Antikickback Act as required by FAR 3.502(b) shall be prepared by the contracting officer and submitted by the head of the contracting activity to the Office of the Solicitor for further action.

(b) The head of the contracting activity may initiate debarment or suspension action in accordance with FAR 9.406–2 or 9.407–2 and 2909.4 of this chapter.

Subpart 2903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2903.602 Exceptions.

(a) The Assistant Secretary for Administration and Management is authorized to except a contract from the policy in FAR 3.601.

(b) Negotiated contracts or grants or amendments to existing contracts or

grants which constitute new acquisition (including those for the rental of real or personal property) may be entered into with former employees of DOL or with firms in which former employees are known to have a substantial interest, within a period of 1 year subsequent to the termination of the individual's employment by DOL, only with the prior written approval of the Assistant Secretary for Administration and Management.

2903.603 Responsibilities of the contracting officer.

Approval of a decision to grant an exception as provided in 2903.602 shall be documented by a written determination and findings prepared by the contracting officer for signature by the Assistant Secretary for Administration and Management. The determination and findings shall document compliance with FAR 3.603 and 2909.5; specify the compelling reason(s) for award; and be placed in the contract file.

PART 2904—ADMINISTRATIVE MATTERS

Subpart 2904.6—Contract Reporting

2904.601 Federal Procurement Data System.

(a) DOL's data collection point is the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(b) The SF 279, Individual Contract Action Report (over $10,000), and SF 281, Summary of Contract Actions of $10,000 or less, are due monthly on the tenth day of the month.

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART 2905—PUBLICIZING CONTRACT ACTIONS

Subpart 2905.4—Release of Information

Sec.
2905.403 Requests from Members of Congress.
2905.404 Release of long-range acquisition estimates.
2905.404–1 Release procedures.

Subpart 2905.5—Paid Advertisements

2905.502 Authority.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2905.4—Release of Information

2905.403 Requests from Members of Congress.

In addition to having access to the information available to the general public, Members of Congress shall, upon their request, be given full and detailed information regarding any particular DOL procurement. The information provided shall be fully responsive to the member's request unless such a response would disclose classified matter, information not to be released pursuant to law, business confidential information or information which would be prejudicial to the competitive process. The contracting officer shall promptly consult with the Office of the Solicitor and the Office of Legislative and Intergovernmental Affairs to determine whether circumstances exist which will allow the release of additional information. In such instances, the Congressional requestor shall be furnished an interim reply providing the information which is readily releasable. The interim reply shall describe the problem which precludes release of any requested materials and describe generally what steps, if any, are being taken to make such information available.

2905.404 Release of long-range acquisition estimates.

2905.404–1 Release procedures.

(a) Heads of contracting activities are authorized to release long-range acquistion estimates under the conditions in FAR 5.404–1.

(b) Offices contemplating the release of long-range acquisition planning estimates shall coordinate with the Office of Information and Public Affairs in advance of the release of such planning estimates.

Subpart 2905.5—Paid Advertisements

2905.502 Authority.

When it is deemed necessary to use paid advertisements in newspapers and trade journals, written authority for such publication shall be obtained from the Head of the Contracting Activity or designee.

SUBCHAPTER B—ACQUISITION PLANNING

PART 2907—ACQUISITION PLANNING

Subpart 2907.1—Acquisition Plans

Sec.
2907.102 Policy.

Subpart 2907.3—Contractor Versus Government Performance

2907.307 Appeals.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2907.1—Acquisition Plans

2907.102 Policy.

DOL Agencies and Offices shall develop acquisition plans for major system acquisitions and major projects in accordance with FAR Subpart 7.1 when the potential benefit justifies their development. The Directorate of Procurement and Grant Management and the Procurement Review Board will review each DOL Agency/Office Annual Advance Procurement Plan to ensure compliance with this subpart.

Subpart 2907.3—Contractor Versus Government Performance

2907.307 Appeals.

An appeal of a decision to convert to contract or to continue in-house performance may be made by an affected party. Appeals shall be made in writing, be based only on specific alleged material deviation (or deviations), from OMB Circular A–76, and be supported by appropriate documentation. Appeals must be delivered within 15 working days of the announced decision, through the contracting officer and the Director, Directorate of Procurement and Grant Management, to the Under Secretary.

PART 2908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 2908.8—Acquisition of Printing and Related Supplies

2908.802 Policy.

(a) The Office of Printing, Directorate of Administrative Services and Safety and Health Programs, has been designated as the DOL liaison with the Joint Committee on Printing (JCP) and the Public Printer, Government Printing Office (GPO), on all matters related to printing.

(b) Except as provided in paragraphs 35–2 through 35–4 of the "Government Printing and Binding Regulations" of the Congressional Joint Committee on Printing, inclusion of printing as defined in FAR 8.801 in contracts for supplies and services is prohibited unless specifically approved in writing by the Director, Office of Printing.

(5 U.S.C. 301; 40 U.S.C. 486 (c))

PART 2909—CONTRACTOR QUALIFICATIONS

Subpart 2909.1—Responsible Prospective Contractors

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Subpart 2909.5—Organizational Conflicts of Interest

2909.503 Waiver.
2909.507 Procedures.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2909.1—Responsible Prospective Contractors

2909.105 Procedures.

2909.105-1 Obtaining information.

(a) In addition to the sources of information listed in FAR 9.105-1(c) to support determinations of responsibility or nonresponsibility, the contracting officer shall use, if available, performance evaluation reports on section 8(a) contractors (section 8(a) of the Small Business Act as amended (15 U.S.C. 637(a)) and construction and architect-engineer contractors (see 2936.201 and 2936.604).

(b) Using on-line terminals, contracting officers may obtain credit reports prior to the issuance of any loan, loan guarantee, contract or grant through the credit bureau system. The Office of Procurement Operations, Directorate of Procurement and Grant Management, will award and administer a contract for the credit bureau service for use by all DOL contracting offices or will establish a procedure to obtain the services through an established GSA Federal Supply Schedule.

Subpart 2909.4—Debarment, Suspension, and Ineligibility

2909.400 Scope of subpart.

This subpart prescribes DOL policies and procedures governing the debarment and suspension of contractors, the listing of debarred and suspended contractors, contractors declared ineligible (see FAR 9.403) and distribution of the list.

2909.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

(a) The Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, is responsible for accomplishing the actions required in FAR 9.404(c).

(b) The Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, upon receipt of monthly issues of the consolidated list from GSA, shall distribute the issues to the heads of contracting activities.

(c) Weekly supplements to monthly lists shall be furnished to the heads of contracting activities by the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management. Each DOL Agency/Office shall maintain list supplements at a central location and issue instructions requiring contracting officers to contact that location in order to obtain current information and ensure effective use of the list as required by FAR 9.405.

2909.405 Effect of listing.

The Director, Directorate of Procurement and Grant Management, is authorized to make the determinations listed in FAR 9.405(a). Requests for such determinations shall be submitted by the head of the contracting activity to the Director, Directorate of Procurement and Grant Management.

2909.405-1 Continuation of current contracts.

The Director, Directorate of Procurement and Grant Management, is authorized to take the actions listed in FAR 9.405-1.

2909.406 Debarment.

2909.406-1 General.

(a) The Director, Directorate of Procurement and Grant Management, is the debarring official for DOL and is authorized to debar a contractor for any of the causes in FAR 9.406-2, using the procedures in 2909.406-3.

(b) The Director, Directorate of Procurement and Grant Management, is authorized to make the statement regarding debarment by another agency debarring official under the conditions in FAR 9.406-1(c).

2909.406-3 Procedures.

(a) *Investigation and referral.* Whenever a cause for debarment, as listed in FAR 9.406-2, becomes known to a DOL employee, the head of the contracting activity affected shall be notified. The head of the contracting activity shall consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation which documents the cause for debarment to the Director, Directorate of Procurement and Grant Management.

(b) *Notice of proposal to debar.* Based upon review of the recommendation to debar and consultation with the Office of the Solicitor and Office of the Inspector General, as appropriate, the Director, Directorate of Procurement and Grant Management, shall initiate proposed debarment by taking the actions listed in FAR 9.406-3(c) and advising the contractor of DOL's rules under 2909.4.

(c) *Factfinding proceedings.* For actions listed under FAR 9.406-3(b)(2), the Director, Directorate of Procurement and Grant Management, shall afford the contractor the opportunity to appear at an informal factfinding as required by FAR 9.406-3(b)(2)(i). The hearing shall be conducted by the Office of Administrative Law Judges and shall be held at a date and location convenient to the parties concerned. Subject to the provisions of 29 CFR Part 18, the contractor and any specifically named affiliates, may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the proposed debarment. A transcript of the proceedings shall be made available to the contractor under the conditions in FAR 9.406-3(b)(2)(ii).

(d) *Decision and notice.* The Director, Directorate of Procurement and Grant Management, shall make a decision on imposing debarment in accordance with the procedures in FAR 9.406-3(d), findings of fact of the Administrative Law Judge, and the conditions in FAR 9.406-4 and 9.406-5. Notice of the decision shall be provided to the contractor and any affiliates involved in accordance with the procedures in FAR 9.406-3(e).

2909.407 Suspension.

2909.407-1 General.

(a) The Director, Directorate of Procurement and Grant Management, is the suspending official for DOL and is authorized to suspend a contractor for any of the causes in FAR 9.407-2, using the procedures in 2909.407-3.

(b) The Director, Directorate of Procurement and Grant Management, is authorized to make the statement regarding suspension by another agency suspending official under the conditions in FAR 9.407-1(d).

2909.407-3 Procedures.

(a) *Investigation and referral.* Whenever a cause for suspension, as listed in FAR 9.406-2, becomes known to a DOL employee, the head of the contracting activity affected shall be notified. The head of the contracting activity shall consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation, which documents the cause for suspension, to

the Director, Directorate of Procurement and Grant Management.

(b) *Notice of suspension.* Based upon review of the recommendation to suspend and consultation with the Office of the Solicitor and the Office of the Inspector General, as required, the Director, Directorate of Procurement and Grant Management, shall initiate suspension by taking the actions listed in FAR 9.407–3(c) and advising the contractor of DOL's rules under 2909.4.

(c) *Factfinding proceedings.* For actions listed under FAR 9.407–3(b)(2), the Director, Directorate of Procurement and Grant Management, shall afford the contractor the opportunity to appear at an informal hearing as required by FAR 9.407–3(b)(2)(i). The hearing shall be conducted under the conditions in 2909.407–3(c).

(d) *Suspension decisions.* The Director, Directorate of Procurement and Grant Management, shall make a final decision on suspension as prescribed in FAR 9.407–3(d). Notice of the decision shall be provided to the contractor and any affiliates involved in accordance with the provisions in FAR 9.407–3(d)(4).

Subpart 2909.5—Organizational Conflicts of Interest

2909.503 Waiver.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to waive any general rule or procedure in FAR 9.5 when its application in a particular situation would not be in the Government's interest. Pursuant to FAR 9.503, this authority may not be redelegated.

(b) Requests for waivers shall be made by the head of the contracting activity to the Director, Directorate of Procurement and Grant Management. Each request shall include:

(1) An analysis of the facts involving the potential or actual conflict including benefits and detriments to the Government and prospective contractors;

(2) A discussion of the factors which preclude avoiding, neutralizing, or mitigating the conflict; and

(3) Identification of the provision(s) in FAR Subpart 9.5 to be waived.

(c) In making determinations under 2909.503(a), the Director, Directorate of Procurement and Grant Management, may request the opinion of the Office of the Solicitor.

2909.507 Procedures.

(a) If a prospective contractor disagrees with the decision of a contracting officer regarding an organizational conflict of interest provision and requests higher level review in accordance with FAR 9.507(c)(4) the matter shall be referred to the Director, Directorate of Procurement and Grant Management for review and final decision.

(b) Referrals shall be made by the head of the contracting agency concerned and include the contracting officer's decision and the position of the prospective contractor.

(c) In making determinations under 2909.507(a), the Director, Directorate of Procurement and Grant Management, may request the opinion of the Office of the Solicitor.

PART 2910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

2910.004 Selecting specifications or descriptions for use.
2910.004–70 Brand name products or equal.
2910.007 Deviations.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2910.004 Selecting specifications or descriptions for use.

(a) In accordance with FAR 10.1004(b)(2), purchase descriptions shall not specify a product, or specific feature of a product, peculiar to a manufacturer unless it is determined in writing by the Office initiating the purchase request that the product, or specific product feature, is essential to the Government's requirements and other similar products will not meet these requirements. This determination shall be in writing and shall accompany the purchase requisition.

(b) A "brand name or equal" purchase description shall be used only under the conditions listed in FAR 10.004(b)(3) and in accordance with the policies and procedures in 2910.004–70.

2910.004–70 Brand name products or equal.

(a) *Limitations on use.* The identification of a requirement in a purchase description by use of one or more brand name products followed by the words "or equal" shall be used only under the conditions listed in FAR 10.004(b)(3). A "brand name product" means a current commercial product of a manufacturer described by its brand name, make, model number, catalog designation, or other description by which it is regularly offered for sale to the public in the commercial market place.

(b) *Invitation requirements.* (1) "Brand name or equal" purchase descriptions in invitations shall identify salient characteristics of the product (see 2910.004–70(b)(2)) and contain the following information to describe the specific item:

(i) Identification of the item by generic descriptions;

(ii) Make, model number, catalog designation (or other description), and identification of commercial catalog where it is listed; and

(iii) Name of manufacturer, producer, or distributor of the item and complete address.

(2) In accordance with the policy in FAR 10.002, whenever a "brand name or equal" purchase description is used, offerors shall be given the opportunity to offer products equal to the brand name if those products (including modifications thereto) satisfy the minimum needs of the Government. Therefore, all salient characteristics of the "brand name or equal" product which are determined by the office initiating the purchase request to be essential to the Government's minimum needs shall be identified separately under the hearing of "Salient Characteristics" and included in the purchase description contained in the solicitation so the offeror understands the information to be submitted with its bid when offering an "equal" product for evaluation. In addition, the following certification shall be included at the end of each "brand name or equal" description in a solicitation for an offeror to identify its "equal" product:

Offerors proposing to furnish an "equal" product, in accordance with the "Brand Name or Equal" provision of this solicitation, shall insert the following description for the product.

Bidding on: _____

Manufacturer's Name: _____

Address: _____

Product Name (if any): _____

Product make, model, or catalog description:

_____

Offerors shall also be responsible for submitting all additional information on the above product necessary for the Government to determine whether the product offered meets the salient characteristics of the "brand name" as listed in the solicitation.

2910.007 Deviations.

(a) Heads of contracting activities are authorized to approve deviations and exceptions to specifications or standards listed in the Index of Federal Specifications and Standards when the exceptions listed under FAR 10.006 do not apply. The Director, Directorate of Procurement and Grant Management, shall be notified formally and provided a copy of each deviation or exception approved.

(b) Heads of contracting activities are responsible for accomplishing the actions required under FAR 10.007.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2913—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 2913.1—General

Sec.
2913.106 Competition and price reasonableness.
2913.107 Solicitation and evaluation of quotations.

Subpart 2913.3—Fast Payment Procedure

2913.301 General.

Subpart 2913.4—Imprest Fund

2913.403 Agency responsibilities.

Subpart 2913.5—Purchase Orders

2913.503 Obtaining contractor acceptance and modifying purchase orders.
2913.503–70 Duplicate purchase orders.
2913.505 Purchase order and related forms.
2913.505–2 Agency order forms in lieu of optional forms 347 and 348.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2913.1—General

2913.106 Competition and price reasonableness.

When other than the lowest responsive quotation from a responsible supplier is used as the basis for the purchase, the Contracting Officer shall include in the purchase file documentation of the reason(s) for rejecting any lower quotation and the name of the individual responsible for making the determination to reject such quotation.

2913.107 Solicitation and evaluation of quotations.

Standard Form 18, Request for Quotations, shall be used as prescribed in FAR 13.107(a) unless an agency equivalent form has been authorized for use by the Director, Directorate of Procurement and Grant Management.

Subpart 2913.3—Fast Payment Procedure

2913.301 General.

The fast payment procedure delineated in FAR Subpart 13.3 is not to be utilized by DOL.

Subpart 2913.4—Imprest Fund

2913.403 Agency responsibilities.

The DOL "Imprest Fund Handbook" incorporated in the Department of Labor Manual System (DLMS 6, Chapter 1900, Handbook DLMS 6–5) contains internal DOL procedures for establishment, maintenance and use of imprest funds. Copies of the handbook may be obtained upon written request from the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Subpart 2913.5—Purchase Orders

2913.503 Obtaining contractor acceptance and modifying purchase orders.

2913.503–70 Duplicate purchase orders.

If the vendor reports non-receipt, loss or other inability to locate an orginal purchase order and requests another copy, the purchasing officer may issue to the vendor a duplicate copy as the vendor's basis of performance. This second issue should be conspicuously marked "Duplicate Copy." To avoid the possibility of a duplicate shipment, a letter of transmittal or a notation on the purchase order should read as follows:

This is a duplicate copy of the lost orginal purchase order, furnished in accordance with your request of ———— (Date). The Government will not be responsible for duplicate shipment.

2913.505 Purchase order and related forms.

2913.505–2 Agency order forms in lieu of optional forms 347 and 348.

Department of Labor Form 1–90 (DL Form 1–90), entitled "Purchase Order" may be used by DOL in lieu of Optional Forms 347 and 348 prescribed in FAR 13.505.

PART 2914—FORMAL ADVERTISING

Subpart 2914.2—Solicitation of Bids

Sec.
2914.203 Methods of soliciting bids.
2914.203–2 Disemination of information concerning invitation for bids.
2914.205 Solicitation mailing lists.
2914.205–1 Establishment of lists.

Subpart 2914.4—Opening of Bids and Award of Contract

2914.406 Mistakes in bids.
2914.406–3 Other mistakes disclosed before award.
2914.406–4 Disclosure of mistakes after award.
2914.407 Award.
2914.407–8 Protests against award.
2914.407–70 Award when only one bid is received.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2914.2—Solicitation of Bids

2914.203 Methods of soliciting bids.

2914.203–2 Dissemination of information concerning invitation for bids.

Procedures for obtaining approval for paid advertisements in newspapers are contained in 2905.502.

2914.205 Solicitation mailing lists.

2914.205–1 Establishment of lists.

In accordance with FAR 14.205–1(b), prospective bidders which submit solicitation mailing list applications shall be notified when added to a mailing list unless the bidder is expected to be provided a solicitation issued within thirty days after Government receipt of the application.

Subpart 2914.4—Opening of Bids and Award of Contract

2914.406 Mistakes in bids.

2914.406–3 Other mistakes disclosed before award.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to make the administrative determinations under FAR 14.406–3. This authority may not be redelegated except as set forth in paragraph (b) of 2914.406–3.

(b) If (1) a bidder requests permission to withdraw a bid rather than correct it, and (2) the evidence is determined convincing as to the mistake or (3) the evidence reasonably supports the existence of a mistake but is not clear and convincing, the head of the contracting office is authorized to make a written determination permitting the bidder to withdraw the bid after review, in acordance with established procedures, and concurrence by the appropriate Office of the Solicitor. Copies of all determinations made pursuant to this authority shall be promptly transmitted to the Director, Directorate of Procurement and Grant Management. If evidence of the intended bid is clear and convincing, even though the bidder has not requested permission to correct the bid, the case shall be processed in accordance with paragraph (c) of 2914.406–3.

(c) Suspected or alleged mistakes in bids shall be processed in accordance with the requirements of FAR 14.406–3(g). The contracting officer shall submit a report together with the supporting data described in FAR 14.406–3(g)(3) through the head of the contracting activity to the Director, Directorate of Procurement and Grant Management. Incomplete reports may result in a delay in obtaining a determination.

(d) The Director, Directorate of Procurement and Grant Management, is responsible for maintaining records of administrative determinations as required in FAR 14.406-3(h).

2914.406-4 Disclosure of mistakes after award.

(a) The head of the contracting activity is authorized to make the administrative determinations in FAR 14.406-4 after concurrence is received from the Office of the Solicitor as required by FAR 14.406-4(d). This authority may not be redelegated.

(b) The contracting officer shall process a mistake and prepare a case file in accordance with the requirements of FAR 14.604-4(e). The file shall be submitted to the head of the contracting activity for determination.

2914.407 Award.

2914.407-8 Protests against award.

(a) *Responsibility.* The Director, Office of Procurement and Grant Policy, shall be responsible for handling bid protests lodged with the General Accounting Office (GAO). All communications relative to protests at the GAO shall be coordinated with the Office of Procurement and Grant Policy.

(b) *Determination to make award.* (1) If a written protest before award has been lodged with the procuring activity only, the appropriate procedures of FAR 14.407-8 (a) and (b) shall be followed. Prior to making an award of a contract under the circumstances in FAR 14.407-8(b)(4), the contracting officer shall obtain the advice of the Director, Office of Procurement and Grant Policy.

(2) If a protest before award has been lodged directly with the GAO and the contracting officer determines in writing that it is necessary to make an award under the circumstances in FAR 14.407-8(b)(4), such determination must be submitted by the head of the contracting activity concerned to the Director, Office of Procurement and Grant Policy, for approval before award of the contract. The Director, Office of Procurement and Grant Policy, shall be responsible for coordination with GAO as required in FAR 14.407-8(b)(3).

(c) *Notice of protest.* Upon being advised by the GAO of the receipt of a protest before or after award, the Office of Procurement and Grant Policy will inform the appropriate procuring activity which will immediately notify the contracting officer. As required by FAR 14.407-8(a)(3), the contracting officer shall then promptly notify all interested persons, including bidders (or the contractor if the protest is after award) involved in or affected by the protest, that a protest has been lodged with the GAO and the basis for the protest. A written record of such telephonic notices shall be placed in the procurement file. After receiving a copy of the protest from GAO and its request for an administrative report, the Office of Procurement and Grant Policy, will promptly furnish the same to the procuring activity involved which shall, in turn, promptly transmit copies to the contracting officer and request a written report. The contracting officer shall promptly transmit by letter a copy of the protest to all interested persons previously notified and include a statement requiring furnishing of views and information directly to the GAO. Copies of such cover letters shall be sent concurrently to the director, Office of Procurement and Grant Policy. Cover letters shall contain the advice contained in FAR 14.407-8(a)(3), including instructions that any comments submitted to GAO should also be submitted to the contracting officer and the Director, Office of Procurement and Grant Policy.

(d) *Submission of report.* All personnel shall handle protests on a priority basis. The administrative report responsive to the protest shall be appropriately titled and dated, shall cite the GAO file number, shall include the documents and statements required by FAR 14.407-8(a)(2) and shall be signed by the contracting officer. Reports shall be prepared with the assistance of the local attorney/advisor of the Office of the Solicitor. If appropriate, the report shall contain a statement regarding any urgency for the procurement and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. If award is not urgent, a statement shall be included giving an estimate of the length of time an award may be delayed without significant expense or difficulty in performance. The procuring activity shall submit an original and one complete copy of the contracting officer's report to the Director, Office of Procurement and Grant Policy, plus one complete copy for each interested person. Contracting officers must assure that no trade secrets or commercial or financial information which is privileged or confidential is disclosed to unauthorized parties. Transmittal letters forwarding the report to the GAO and to interested persons will be prepared by the Office of Procurement and Grant Policy. Draft copies of transmittal letters should be provided to the Office of Procurement and Grant Policy by the contracting officer.

2914.407-70 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if the contracting officer makes a written determination that (a) the specifications used in the invitation were not unduly restrictive, (b) adequate competition was solicited and it could have been reasonably assumed that more than one bid would have been submitted, (c) the price is reasonable, and (d) the bid is otherwise in accordance with the invitation for bids. Such a determination shall be placed in the file.

PART 2915—CONTRACTING BY NEGOTIATION

Subpart 2915.1—General Requirements for Negotiation

Sec.
2915.105 Competition.

Subpart 2915.2—Negotiation Authorities

2915.213 Technical equipment requiring standardization and interchangeability of parts.
2915.270 Use of negotiation authorities.

Subpart 2915.3—Determinations and Findings to Justify Negotiations

2915.304 Content.
2915.307 Signatory authority.

Subpart 2915.4—Solicitation and Receipt of Proposals and Quotations

2915.404 Presolicitation notices and conferences.
2915.405 Solicitations for information or planning purposes.
2915.405-1 General.
2915.413 Disclosure and use of information before award.
2915.413-1 Alternate I.

Subpart 2915.5—Unsolicited Proposals

2915.505 Content of unsolicited proposals.
2915.505-1 Unsolicited research proposals.
2915.506 Agency procedures.

Subpart 2915.6—Source Selection

2915.607 Disclosure of mistakes before award.
2915.612 Formal source selection.

Subpart 2915.8—Price Negotiation

2915.803 General.
2915.804 Cost or pricing data.
2915.804-3 Exemptions from or waiver of submission of certified cost of pricing data.
2915.805 Proposal analysis.
2915.805-5 Field pricing support.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2915.1—General Requirements for Negotiation

§ 2915.105 Competition.

(a)(1) Negotiated acquisition shall be on a competitive basis to the maximum

practical extent (FAR 15.105) and reasonable competition shall be obtained in making small purchases over $1,000 (FAR 13.106). There are, however, circumstances where one source (or group fo sources) has exclusive capability to perform the work within the time required and at reasonable prices; e.g., by reasons of experience, specialized facilities, or technical competence. In such a circumstance, the initiating program office may conclude that only one source (or groups of sources) is qualified to perform the work, and therefore, may recommend that a contract be negotiated only with that source or group. (In the case of a "group sole source" situation, a justification is required for limiting competition to that group and for the allocation of work among members of the group.) The recommendation, in writing, shall be contained in a separate document entitled "Justification for Noncompetitive Procurement," and shall examine the reasons for the acquisition being noncompetitive in accordance with paragraph (c) below.

(2) For noncompetitive acquisition, a recommended justification shall be attached in the acquisition request when the request is sent to a contracting officer for action.

(3) A justification for noncompetitive acquisition is also required where "new" acquisitions (i.e., outside the contractual scope of work) are initiated through modifications to existing contracts. Such justification shall be made a part of the permanent contract file (see FAR 4.8).

(b) The provisions of this regulation do not apply to:

(1) Acquisitions of electric power or energy, gas (natural or manufactured), water or other utility;

(2) Acquisitions of educational services from nonprofit institutions; and

(3) Acquisitions from or through other Government agencies.

(c) Justification for noncompetitive procurement.

(1) The document entitled "Justification for Noncompetitive Procurement" shall examine the reasons for the acquisition being noncompetitive and shall contain, in the first sentence of the document, an appropriate recommendation (e.g., "I recommend that negotiations be conducted only with (name of entity) for the supplies and services described herein.") For small purchases the justification for noncompetitive acquisitions should be in accordance with small purchase procedures as defined in FAR 13.106.

(2) Each justification shall set forth enough facts and circumstances to clearly and convincingly establish that competition would not have been feasible or practicable. The following considerations shall be made in preparing the justification.

(i) Description of supplies or services to be procured.

(A) A brief, general nontechnical description and statement of the general application and particular significance or specialized character of the acquisition.

(B) A description of all associated supplies or services, and so forth, to be procured.

(ii) Acquisition history, estimated future requirements, and long-range acquisition objectives.

(A) A brief statement of the technical and contractual evolution of the supplies or services being procured from initiation to present status.

(B) A brief statement as to whether the work is a continuation of previous effort performed by the proposed contractor.

(C) A reference should be made to any advance planning information previously prepared or furnished, together with information with respect to any changes proposed in the present justification which represent a departure or modification of prior acquisition plans, including a statement of the effect of the changes, if any, on scheduled milestones.

(D) A brief statement as to what actions have been taken to develop competition and elimination of a noncompetitive situation in future acquisitions of the proposed supplies or services.

(iii) Estimated costs.

(A) The estimated cost of the acquisition and brief description of the assumptions made and data used by the initiating program office to develop the estimate.

(B) The estimated cost listed by fiscal year.

(C) Whether the proposed contractor has a substantial investment of some kind that would have to be duplicated at Government expense by another source.

(iv) Schedule requirements.

(A) The basis for establishing schedule requirements.

(B) An explanation of the urgency, if any, of the requirement. Describe why the schedules are critical any why only the proposed contractor can meet them.

(C) Describe what significant cost savings or other benefits could result if schedules could be relaxed and whether competition could thus be obtained.

(v) Exclusive capability.

(A) Does the proposed contractor have personnel considered unquestionably predominant experts in the particular field?

(B) What prior experience of a highly specialized nature does the source exclusively have that is complex or specialized and vital to the effort?

(C) What facilities and test equipment does the source exclusively have that are complex or specialized and vital to the effort?

(D) Is competition precluded because of the existence of patent rights, copyrights, secret processes, trade secrets, technical data, or other proprietary data?

(E) What other capacity does the proposed contractor have that is necessary for the specific effort and makes it clearly the only source that can perform the work on the required time schedule without incurring clearly unreasonable costs?

(vi) Other.

(A) If lack of drawings and/or specifications is a constraining factor, why is the proposed contractor clearly best able to perform under these circumstances? Why are the drawings and specifications lacking? What is the lead time required to get drawings and specifications suitable for competition?

(B) Are parts or components being procured as replacement parts in support of equipment specially designed by a manufacturer, where data available is not adequate to assure that the parts or components obtained from another source would perform the same function?

(d) Review and approval. The justification shall contain a recommendation, concurrence (when needed), and approval as follows: (In the case of cost-shared contracts, review levels shall be based on the sum of the contractor and Government shares.)

(1) Concurrences in the recommendation shall be obtained within the initiating office at such levels as are deemed appropriate by the Head of the Contracting Activity. The objective of maximizing the use of competitive acquisition procedures as well as the complexity or cost of an acquisition should be used as a guide in establishing the appropriate level of resonsibility for approval of noncompetitive recommendations.

(2) To ensure that DOL conform fully with the basic policy prescribing competition, any proposed noncompetitive acquisitions is excess of the small purchases limitation must be fully justified, submitted to the Procurement Review Board and approved by the Assistant Secretary for Administration and Management and, in the case of research contracts, by the

Assistant Secretary for Policy. The contracting officer is responsible for assuring that proposed noncompetitive acquisitions below these dollar levels are in compliance with FAR and DOLAR requirements regarding maximum competition.

Subpart 2915.2—Negotiation Authorities

2915.213 Technical equipment requiring standardization and interchangeability of parts.

The Directorate of Procurement and Grant Management is responsible for the reviews required in FAR 15.213(b)(5) and maintenance of the lists required in FAR 15.213(c)(4).

2915.270 Use of negotiation authorities.

Negotiation authorities under FAR Subpart 15.2 requiring written D&F's shall be exercised in accordance with the signatory levels in 2915.307 and Appendix A—Signatory Authoity Matrix.

Subpart 2915.3—Determinations and Findings to Justify Negotiations

2915.304 Content.

2915.307 Signatory authority.

(a) When a written D&F is required under FAR Subpart 15.2, it shall be signed by the authority listed in Appendix A.

(b) For D&F's requiring the signature of the Head of the Agency under Appendix A the D&F shall be submitted by the Head of the Contracting Activity to the Directorate of Procurement and Grant Management for review and further action.

APPENDIX A.—SIGNATORY AUTHORITY MATRIX

Negotiation authority (FAR Subpart 15.2)	Signatory authority	
	Individual D&F	Class D&F
Public Exigency (FAR 15.202).	Contracting Officer	Head of Contracting Activity.
Medicines of Medical Supplies (FAR 15.207).	Contracting Officer	Head of Contracting Activity.
Supplies purchased for authorized resale (FAR 15.208).	Contracting Officer	Head of Contracting Activity.

APPENDIX A.—SIGNATORY AUTHORITY MATRIX—Continued

Negotiation authority (FAR Subpart 15.2)	Signatory authority	
	Individual D&F	Class D&F
Impractical to secure competition by formal advertising (FAR 15.210).	Contracting Officer	Head of Contracting Activity.
Experimental, developmental or research work (FAR 15.211).	Contracts and Modifications over $25,000, Assistant Secretary for Administration and Management.	Assistant Secretary for Administration and Management.
	Contracts and Modifications $25,000 or less, Head of Contracting Activity or other official designated in Agency or office procedures.	
Purchases not to be publicly disclosed (FAR 15.212).	Assistant Secretary for Administration and Management.	Assistant Secretary for Administration and Management.
Technical equipment requiring standardization and interchangeability or parts (FAR 15.213).	Assistant Secretary for Administration and Management.	Assistant Secretary for Administration and Management.
Negotiation after advertising (FAR 15.214).	Head of Contracting activity.	Head of Contracting Activity.

Subpart 2915.4—Solicitation and Receipt of Proposals and Quotations

2915.404 Presolicitation notices and conferences.

A presolicitation conference (see FAR 15.404) shall not be used unless approved by the Head of the Contracting Activity or designee in accordance with Agency or Office procedures.

2915.405 Solicitations for information or planning purposes.

2915.405.1 General.

The written determination justifying use of a solicitation for information or planning purposes under FAR 15.405–1 shall be approved by the Head of the Contracting Activity before issuance of the solicitation.

2915.413 Disclosure and use of information before award.

2915.413–1 Alternate I.

The Department of Labor shall employ the procedures in FAR Alternate I regarding disclosure and use of information.

Subpart 2915.5—Unsolicited Proposals

2915.505 Content of Unsolicited proposals.

2915.505–1 Unsolicited research proposals.

In addition to the contents required by FAR 15.505, unsolicited proposals for research should contain a commitment to provide cost-sharing.

2915.506 Agency procedures.

(a) The contact points shall assure that unsolicited proposals are controlled, evaluated, safeguarded and disposed of in accordance with FAR Subpart 15.5

(b) The contact points for submission of unsolicited proposals are those officials with program responsibility listed in Subpart 2901.6.

Subpart 2915.6—Source Selection

2915.607 Disclosure of mistakes before award.

The Head of the Contracting Activity is authorized to make the determination permitting proposal correction in accordance with the conditions in FAR 15.607(c)(3) after approval of the determination by the Office of the Solicitor has been obtained.

2915.612 Formal source selection.

(a) The Head of the Contracting Activity shall determine when a formal source selection process shall be used and shall establish procedures for implementing the requirements in FAR 15.612.

(b) The procedures established under (a) above shall be forwarded for the review and approval of the Director, Directorate of Procurement and Grant Management.

Subpart 2915.8—Price Negotiation

2915.803 General

(a) Where the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable, and the contracting officer has taken all authorized actions to resolve the matter (see FAR 15.803), the contract action shall be referred to the Head of the Contracting Activity for final resolution.

(b) Resolution under (a) above shall be documented and signed by the Head of the Contracting Activity, and included in the contract file.

2915.804 Cost or pricing data.

2915.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) The Head of the Contracting Activity is authorized to approve the contracting officer's finding supporting the unreasonableness of the lowest price (see FAR 15.804-3(b)(2)(iii).

(b) The Director, Directorate of Procurement and Grant Management, is authorized to waive the requirement for submission of certified cost or pricing data.

(c) Requests for waiver under (b) above shall be submitted in writing by the Head of the Contracting Activity and shall contain a statement as to the reasons the waiver is necessary and the efforts made to obtain the data from the contractor or prospective contractor.

2915.805 Proposal analysis.

2915.805-5 Field pricing support.

(a) As prescribed in FAR 15.805-5(c), the contracting officer shall initiate an audit by sending a written request to the Assistant Inspector General for Audit, Office of the Inspector General. The contracting officer shall allow at least 30 days when assigning a deadline for receipt of the audit report.

(b) Upon receipt of a written request for audit, the Office of the Inspector General will conduct the audit or arrange for its conduct by the cognizant audit agency.

(c) Upon receipt of the audit report, the contracting officer and the price analyst (if assigned) shall discuss any questions regarding the contents of the report with the cognizant auditor. If a question cannot be resolved, or agreement cannot be reached on a recommendation in the report, the contracting officer shall prepare a written statement for the contract file which discusses the issue(s) in question and supports a final decision on the matter. An information copy of the statement shall be promptly forwarded to the Assistant Inspector General for Audit, Office of the Inspector General.

PART 2916—TYPES OF CONTRACTS

Subpart 2916.2—Fixed Price Contracts

Sec.
2916.203 Fixed-price contracts with economic price adjustment.
2916.203-4 Contract clauses.

Subpart 2916.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2916.603 Letter contracts.
2916.603-2 Application.

Subpart 2916.7—Agreements

2916.702 Basic agreements.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2916.2—Fixed Price Contracts

2916.203 Fixed-price contracts with economic price adjustment.

2916.203-4 Contract clauses.

An economic price adjustment clause based on cost indexes of labor or material may be used under the conditions listed in FAR 16.203-4(d) after approval by the Director, Directorate of Procurement and Grant Management, is obtained.

Subpart 2916.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2916.603 Letter contracts

2916.603-2 Application

The Head of the Contracting Activity is authorized to extend the period for definitization of a letter contract required by FAR 16.603-2(c) in extreme cases where it is determined in writing that such action is in the best interest of the Government.

Subpart 2916.7—Agreements

2916.702 Basic agreements

Copies of basic agreements negotiated with contractors in accordance with FAR 16.702 shall be furnished by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, promptly after execution by the Government.

PART 2917—SPECIAL CONTRACTING METHODS

Subpart 2917.2—Options

Sec.
2917.203 Solicitations.
2917.206 Evaluation.

Subpart 2917.4—Leader Company Contracting

2917.402 Limitations.

Subpart 2917.5—Interagency Acquisitions Under the Economy Act

2917.502 General.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2917.2—Options

2917.203 Solicitations.

Option quantities in excess of the 50 percent limit prescribed in FAR 17.203(g)(2) may, in unusual circumstances, be approved by the Head of the Contracting Activity. The documentation required by FAR 17.205(a) shall include a written justification to fully support the need for such action.

2917.206 Evaluation.

The Head of the Contracting Activity shall make the written determination required by FAR 17.206(a). This determination is required before use of the solicitation provision at FAR 52.217-5, Evaluation of Options, is authorized. See FAR 17.208(c).

Subpart 2917.4—Leader Company Contracting

2917.402 Limitations.

Use of leader company contracting for a product, subject to the limitations in FAR 17.402, shall require the advance authorization of the Director, Directorate of Procurement and Grant Management. Authorization requests shall document the circumstances requiring such action and shall be submitted by the Head of the Contracting Activity.

Subpart 2917.5—Interagency Acquisitions Under the Economy Act

2917.502 General.

The Head of the Contracting Activity is authorized to make the determinations prescribed in FAR 17.502 in accordance with the requirements in FAR 17.503. The contracting officer shall prepare the determination and obtain the review and approval of the Office of the Solicitor before submission to the Head of the Contracting Activity for signature.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 2919.2—Policies

Sec.
2919.201 General policy.
2919.202 Specific policies.
2919.201-1 Encouraging small business participation in acquisitions.
2919.202-2 Locating small business sources.
2919.202-5 Data collection and reporting requirements.
2919.202-70 Annual plans and program goals.

Subpart 2919.5—Set-Asides for Small Business

2919.501 General.
2919.503 Setting aside a class of acquisitions.
2919.503-70 Class set-aside for construction acquisitions.
2919.505 Rejection of set-aside recommendations.
2919.506 Withdrawal or modification of set-asides.

Subpart 2919.6—Certificates of Competency and Determinations of Eligibility

2919.602 Procedures.
2919.602-1 Referrals.

Subpart 2919.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

2919.705 Responsibilities of the contracting officer under the subcontracting assistance program.
2919.705–3 Solicitations.
2919.705–4 Reviewing the subcontracting plan.
2919.705–5 Awards involving subcontracting plans.
2919.705–6 Postaward responsibilities of the contracting officer.
2919.708 Solicitation provisions and contract clauses.

Subpart 2919.8—Contracting With the Small Business Administration

2919.802 Selecting firms for DOL acquisitions.
2919.803 Selecting acquisitions for the 8(a) program.
2919.810 Contract administration.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2919.2—Policies

2919.201 General policy.

(a) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for performing all functions and duties prescribed in FAR 19–201(c) and for:

(1) Developing and monitoring policies, procedures and regulations for effective administration of the Department's small business and small disadvantaged business program;

(2) Coordinating issues with the small and disadvantaged business specialist (SDBS) relating to the Department's small and small disadvantaged business program;

(3) Conducting surveys and reviews of DOL contracting offices related to the small business and small disadvantaged business program, recommending changes and corrective action, as appropriate; and

(4) Representing the Department before other Government agencies on matters primarily affecting small business, small disadvantaged business, women-owned business, historically black colleges and universities (HBCU), and advising the Under Secretary and other officials on matters relating to the program.

(b) The Head of the Contracting Activity, or designee, in addition to the requirements of FAR 19.201(b), shall be responsible for:

(1) Establishing annual goals for the small disadvantaged business programs; and

(2) Appointing, as prescribed in FAR 19.201(d), a small and disadvantaged business specialist (SDBS) for each contract office. The OSDBU shall be notified, in writing, of each appointment and termination.

(c) The small and disadvantaged business specialist (SDBS) shall serve as advisor to the Head of the Contracting Activity, and shall be the contracting activity's central point of contact for inquiries and advice pertaining to the small business and small disadvantaged business program. The SDBS shall be responsible for:

(1) Maintaining a program to locate capable small business, small disadvantaged business, and women-owned business sources to fulfill the Department's acquisition requirements;

(2) Coordinating inquiries and requests for advice from small business, small disadvantaged business, women-owned business concerns and HBCU on DOL contracting and subcontracting opportunities and other acquisition matters;

(3) Ensuring that contracting offices are kept abreast of new or revised small business, small disadvantaged business, women-owned business and HBCU regulations, policies, procedures and other related information;

(4) Assisting in the Agency's advance acquisition planning process;

(5) Reviewing all requirements to assure that small business, small disadvantaged business, women-owned business, businesses located in labor surplus areas (LSA) and HBCU will be afforded an equitable opportunity to compete, and as appropriate, initiating recommendations for small business set-asides;

(6) Reviewing proposed requirements for possible breakout of items or services suitable for acquisition from participants of the small and disadvantaged business programs;

(7) Attending, as appropriate, debriefings to unsuccessful small business and small disadvantaged business concerns to assist those firms in understanding requirements for responsiveness and responsibility so that the firm may be able to better qualify for future awards;

(8) Participating in the evaluation of small business and small disadvantaged business subcontracting plans for prime contractors and other evaluation activities, as appropriate;

(9) Maintaining a list of products and services which have been placed as repetitive small business set-asides;

(10) Developing and maintaining records necessary to demonstrate maximum support for DOL's preferential programs, ensuring compilation of current, accurate, and complete data; and preparing all reports pertaining to program activities;

(11) Participating in the development, implementation, and review of automated source systems to assure that the interest of small business, small disadvantaged business, women-owned business, and HBCU are fully considered;

(12) Participating, as required, in governmental-industry conferences to assist small business, disadvantaged business, women-owned business, and HBCU, including Congressionally-sponsored Federal acquisition conferences, minority business enterprises acquisition seminars, and business opportunity committee meetings;

(13) Initiating action, in writing, with appropriate personnel to assure the availability of adequate specifications and drawings, when necessary, to obtain small business, small disadvantaged business, women-owned business and HBCU participation in current and future acquisitions.

2919.202 Specific policies.

2919.202–1 Encouraging small business participation in acquisitions.

In addition to the requirements prescribed by FAR 19.202–1, contracting officers shall:

(a) Afford the SBA Procurement Center Representative (PCR) an opportunity to review all solicitations expected to exceed $2,500 which have not been set aside for small business, prior to release to the public. The SBA PCR shall be allowed a period of two working days to review the solicitation, depending on the complexity of the individual acquisition;

(b) Synopsize all proposed acquisitions expected to exceed $10,000 in the Commerce Business Daily (CBD) in accordance with the requirements of Pub. L. 98–72 and FAR Subpart 5.2;

(c) Synopsize subcontract opportunities in the CBD in accordance with the requirements in FAR 5.206, where applicable, including Numbered Note 65 or 100, when appropriate, in the CBD synopsis message; and

(d) Ensure that the DOL as well as DOL Agency titles are cited in the text of each CBD release and provide OSDBU with a copy of the synopsis message when it is submitted.

2919.202–2 Locating small business sources.

(a) It is the policy of the DOL to utilize the services of the SBA Procurement Automatic Source System (PASS) to identify small and small disadvantaged business sources. PASS is capable of identifying businesses, by geographical location, that are small, disdavantaged, women-owned, veteran owned, or any combination thereof. Obtaining sources from PASS or from local mailing lists

does not negate the requirement that the contracting officer advertise the acquisition in accordance with FAR 5.

(b) Historically black colleges and universities shall be considered as sources for fulfilling requirements except for small business set-asides.

2919.202-5 Data collection and reporting requirements.

In addition to the requirements of FAR 19.202-5, DOL Agencies/Offices shall accurately measure the extent of participation by historically black colleges and universities in their acquistions in terms of the total value of contracts placed with such organizations during each fiscal year, and report data to the OSDBU at the end of the second and fourth quarters of each fiscal year. The OSDBU shall forward the Department's consolidated data to the Department of Education.

2919.202-70 Annual plans and program goals.

(a) The Head of the Contracting Activity, in coordination with the planning team as prescribed in FAR 7.14(a), shall develop a tentative annual advance procurement plan which shall project acquisitions for the forthcoming fiscal year for each category of the preferential programs. The tentative plans shall be forwarded to the Director, OSDBU, by July 1 of each fiscal year to coordinate and support the Agency's preferential goals.

(b) Heads of Contracting Activities shall develop annual goals for each category of the small business and small disadvantaged business utilization programs, which shall include projected acquisition awards to small businesses, minority businesses, 8(a) concerns, women-owned businesses, and HBCU.

(1) To the greatest extent possible, the goals shall be based on advance procurement plans, budget justifications, and past performance.

(2) Goals must comply with the criteria established by OSDBU.

(c) Goals are to be submitted to the OSDBU upon request of the Director. OSDBU shall analyze and evaluate proposed goals, consolidate departmental goals and forward such to the Small Business Administration (SBA), the General Services Administration (GSA), and the Minority Business Development Agency (MBDA), Department of Commerce.

(d) OSDBU may be required to negotiate final departmental goals, depending on SBA, GSA, and/or MBDA concurrence or nonconcurrence.

Subpart 2919.5—Set-Asides for Small Business

2919.501 General.

(a) The SDBS shall review individual requirements prior to issuance of solicitations to determine the suitability of the acquistion for award to the SBA under the section 8(a) Program (see FAR 19.803).

(b) When the requirement cannot be awarded under section 8(a) procedures, the SDBS shall review individual requirements to determine the feasibility of small business set-asides in the order of precedence set forth in FAR 19.504. The SDBS recommendation shall be entered on Form DL1-2004, "Small Business Determination," with the reasons for the "pro" or "con" set-aside recommendation. The form shall be placed in the contract file.

(c) Upon receipt of the SDBS recommendation, the contracting officer shall promptly approve or disapprove the SDBS recommendation, stating in writing the reasons for any disapproval. If the contracting officer disapproves the SDBS recommendation, the proposed acquisition shall be promptly referred to the SBA PCR where available, for review; or where no SBA PCR is available, to the Head of the Contracting Activity. All negative recommendations shall be forwarded concurrently to the OSDBU.

(d) All requirements expected to exceed $2,500 which have not been set-aside for small business shall be further reviewed by the SBA PCR, who shall indicate approval or disapproval of the SDBS/contracting officer's negative recommendation on Form DL 1-2004. If the SBA disapproves the SDBS/contracting officer's recommendation, the proposed action shall be appealed as provided in FAR 19.402(c)(3).

(e) All future requirements for products or services previously acquired on a small business set-aside basis and which are not subject to simplified small purchase procedures, shall be acquired on the basis of a repetitive set-aside.

2919.503 Setting aside a class of acquisitions.

2919.503-70 Class set-aside for construction acquisitions.

(a) Each requirement for construction, alterations, maintenance, and repair (including architect-engineer services), estimated to cost up to $2 million shall be set aside for exclusive small business participation. Such set-asides shall be considered to be unilateral small business set-asides, and shall be withdrawn only in accordance with the procedures of FAR 19.506 and 2919.506 if found not to serve the best interest of the Government.

(b) Small business set-aside preferences for construction acquisitions in excess of $2 million shall be considered on a case-by-case basis under conditions prescribed in FAR 19.502-2.

2919.505 Rejection of set-aside recommendations.

The Under Secretary of Labor shall make final decisions on any appeals of the Administrator of SBA concerning a DOL contracting officer's adverse set-aside recommendation. The contracting officer's written justification in support of the decision to reject the set-aside recommendation shall be approved by the Head of the Contracting Activity. The justification shall then be forwarded for review through the Director, Directorate of Procurement and Grant Management, and the Director, OSDBU, to the Under Secretary of Labor.

2919.506 Withdrawal or modification of set-asides.

Disagreements between the contracting officer and the SDBS concerning withdrawals or modifications of individual or class set-asides shall be resolved by the SBA PCR in the National Office, or by the Head of the Contracting Activity where no SBA PCR is available. The SDBS shall concurrently notify the OSDBU of such disagreements.

Subpart 2919.6—Certificates of Competency and Determinations of Eligibility

2919.602 Procedures.

2919.602-1 Referrals.

Referrals by the contracting officer in accordance with FAR 19.602-1 shall be approved at a level above the Contracting Officer prior to submission to the appropriate SBA office. The contracting officer shall forward copies of each referral to the Director, OSDBU.

Subpart 2919.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

2919.705 Responsibilities of the contracting officer under the subcontracting assistance program.

2919.705-3 Solicitations.

The contracting officer shall forward to the OSDBU any solicitation expected to result in a contract exceeding $500,000 ($1 million for construction of a public facility) prior to release to the public to ensure that appropriate subcontracting provisions are included

in the Request for Proposals or Invitations for Bids. The OSDBU shall be allowed a period of five working days for review of the solicitation, depending on the circumstances and complexity of the individual procurement.

2919.705-4 Reviewing the subcontracting plan.

The OSDBU shall be afforded the opportunity to review subcontracting plans submitted by apparent successful offerors to determine if small and small disadvantaged businesses are afforded the maximum practicable opportunity to participate as subcontractors. OSDBU shall recommend to the contracting officer needed changes to subcontracting plans determined to be unacceptable.

2919.705-5 Awards involving subcontracting plans.

The contracting officer shall forward for review, upon request of the Director, OSDBU, any acquisition package prior to execution of any negotiated contractual document requiring subcontracting plans.

2919.705-6 Postaward responsibilities of the contracting officer.

(a) The contracting officer shall forward to the Director, OSDBU, a copy of any subcontracting plan that was incorporated into a contract or contract modification.

(b) The contracting officer shall maintain a list of active prime contracts containing a subcontracting plan.

(c) Contracting officers shall collect quarterly and semi-annually subcontracting data from contractors required to establish subcontracting plans in support of small and small disadvantaged business concerns. Copies of the semi-annual report, Standard Form 294 (Subcontracting Report for Individual Contracts), and the quarterly report, Standard Form 295 (Summary Subcontracting Report), shall be forwarded to the Director, OSDBU, not later than the 30th day of the month following the close of the reporting period.

2919.708 Solicitation provisions and contract clauses.

Advance approval is required prior to including any small and small disadvantaged business concerns incentive subcontracting provisions in any contract. Requests for approval shall be submitted by the Head of the Contracting Activity through the Director, Directorate of Procurement and Grant Management, to the Director, OSDBU.

Subpart 2919.8—Contracting With the Small Business Administration

2919.802 Selecting firms for DOL acquisitions.

Contracting opportunities marketed by individual 8(a) firms may be reserved for the firm or group of firms which identified the opportunity; however, each 8(a) firm or group of firms nominated by DOL for a specific requirement must be approved by SBA for that particular requirement prior to any DOL technical discussions with the firm(s).

2919.803 Selecting acquisitions for the 8(a) program.

(a) Each DOL Agency shall identify in tentative Annual Advance Procurement Plans acquisitions to be fulfilled by 8(a) firms. Such tentative plans shall provide detailed descriptions of the nature of the services or work, or any other information pertinent to the requirement.

(b) Project officers shall also be responsible for cooperating with the OSDBU to actively locate and identify qualified 8(a) sources and to structure and tailor acquisitions to permit their participation.

2919.810 Contract administration.

(a) Contracting officers, or designees, shall conduct periodic evaluations relative to the performance of an 8(a) contract at various stages of the contract period of performance. Any problems encountered during the performance evaluation which cannot be resolved shall be made available to OSDBU for subsequent review and discussion with the appropriate SBA official.

(b) The OSDBU and SBA are to be notified at least 45 days prior to initiating final action to terminate a section 8(a) contract.

PART 2920—LABOR SURPLUS AREA CONCERNS

Subpart 2920.1—General

Sec.
2920.102 General policy.

Subpart 2920.2—Set-Asides

2920.201 Set-asides for labor surplus area concerns.
2920.201-1 Total set-asides.
2920.201-70 Set-asides for construction acquisitions.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2920.1—General

2920.102 General policy.

It is the policy of the Department of Labor (DOL) to award acquisitions with eligible labor-surplus area (LSA) concerns in accordance with FAR Part 20. Responsibility for implementing the DOL LSA program is assigned to the Office of Small and Disadvantaged Business Utilization.

Subpart 2920.2—Set-Asides

2920.201 Set-asides for labor surplus area concerns.

2920.201-1 Total set-asides.

Acquisitions shall be reviewed for potential combined small business/LSA set-aside consideration in accordance with FAR 19.501 and 2919.501.

2920.201-70 Set-asides for construction acquisitions.

(a) As prescribed in 2919.503-70, all acquisitions for construction, alterations, maintenance and repair (including architect-engineer services) estimated to cost up to $2 million shall be set-aside on a class basis for combined small business/LSA concern when the construction site is located in a LSA.

(b) Small business/LSA set-aside preference for construction acquisitions in excess of $2 million shall be considered on a case-by-case basis under conditions prescribed in FAR 20.201-1.

PART 2922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2922.1—Basic Labor Policies

Sec.
2922.101 Labor relations.
2922.101-3 Reporting labor disputes.
2922.101-4 Removal of items from contractor facilities affected by work stoppage.
2922.103 Overtime.
2922.103-4 Approvals.

Subpart 2922.6—Walsh-Healy Public Contracts Act

2922.604 Exemptions.
2922.604-2 Regulatory exemptions.
2922.608 Procedures.
2922.608-2 Determination of eligibility.
2922.608-3 Protests against eligibility.
2922.608-4 Award pending final determination.
2922.608-6 Post award.

Subpart 2922.8—Equal Employment Opportunity

2922.803 Responsibilities.
2922.804 Affirmative action programs.
2922.804-2 Construction.
2922.805 Procedures.
2922.807 Exemptions.

Subpart 2922.10—Service Contract Act of 1965

2922.1003 Applicability.

Subpart 2922.13—Special Disabled and Vietnam Era Veterans

2922.1303 Waivers.
2922.1306 Complaint procedures.

Subpart 2922.14—Employment of the Handicapped

2922.1403 Waivers.
2922.1406 Complaint procedures.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2922.1—Basic Labor Policies

2922.101 Labor relations.

2922.101-3 Reporting labor disputes.

Potential or actual labor disputes that may interfere with contract performance shall be reported by the contracting activity to the Office of the Solicitor for legal advice or assistance.

2922.101-4 Removal of items from contractor facilities affected by work stoppage.

Prior to initiating any action under FAR 22.101-4 for removal of items from contractors' facilities, the contracting officer shall obtain legal advice from the Office of the Solicitor.

2922.103 Overtime.

2922.103-4 Approvals.

The Head of the Contracting Activity is authorized to approve the use of overtime in accordance with the limitations in FAR 22.103-4(a).

Subpart 2922.6—Walsh-Healy Public Contracts Act

2922.604 Exemptions.

2922.604-2 Regulatory exemptions.

The Secretary of Labor may exempt contracts from the Walsh Healy Public Contracts Act under FAR 22.604(c). A written finding justifying the exemption (see FAR 22.604-2(c)) shall be submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2922.608 Procedures.

2922.608-2 Determination of eligibility.

If, after review of the offeror's evidence submitted pursuant to FAR 22.608-2(f)(1)(i)(B), the contracting officer still determines that an offeror that is not a small business concern is ineligible as a regular manufacturer or dealer (see FAR 22.606), the offeror's protest and all pertinent material shall be submitted directly to the DOL, Administrator of the Wage and Hour Division, for a final determination.

2922.608-3 Protests against eligibility.

Under the conditions set forth in FAR 22.608-3, the contracting officer shall forward the determination of eligibility and entire record directly to the DOL, Administrator of the Wage and Hour Division, when the offeror in question is not a small business concern, or to the Administrator of the Small Business Administration if the offeror is a small business concern.

2922.608-4 Award pending final determination.

The contracting officer's certification for award under FAR 22.608-4(a) shall be approved by the Head of the Contracting Activity.

2922.608-6 Post award.

The contracting officer shall, under the conditions in FAR 22.608-6(c), directly notify the appropriate regional office of the DOL, Wage and Hour Division (see FAR 22.609) and furnish any information available.

Subpart 2922.8—Equal Employment Opportunity

2922.803 Responsibilities.

(a) The Director, Office of Federal Contract Compliance Programs, (OFCCP) has been delegated authority and responsibility for carrying out the requirements of Executive Order 11246, as amended. In conjunction with the delegation, contracting officers shall be familiar with existing and any updated provisions of 41 CFR Chapter 60, and assist OFCCP in its compliance responsibilities. Contracting officers will include the applicable EEO and AAP (Affirmative Action Program) requirements in their solicitations and obtain the applicable reports of compliance from OFCCP (when required) prior to awarding of contracts. The provisions of 41 CFR Chapter 60, are applicable to all existing and prospective DOL contractors.

(b) Matters involving the applicability of Executive Order 11246 and implementing regulations of the Secretary of Labor to an acquisition or a class of acquisitions shall be reduced to writing by the contracting officer and forwarded through the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for resolution.

2922.804 Affirmative action programs.

2922.804-2 Construction.

(a) Heads of Contracting Activities are responsible for maintaining lists of geographical areas subject to affirmative action requirements under FAR 22.804-2. Lists of areas for which OFCCP has designated specific affirmative action requirements are available through OFCCP. The list, including updates or revisions, shall be distributed to all contract offices which acquire construction.

(b) Contracting officers shall request instructions directly from the OFCCP Regional Office prior to issuance of a solicitation for construction acquisition in excess of $10,000 within a geographical area not included on the list in (a) above.

2922.805 Procedures.

(a) The contracting officer is authorized to make requests for preaward review directly to the appropriate OFCCP regional office in accordance with FAR 22.805(a) (4) and (5).

(b) The contract office shall maintain ample supplies of the poster (OFCCP-1420) entitled, "Equal Opportunity is the Law" for use as required in FAR 22-805(b). The poster (stock number 7690-00-926-8988) may be ordered from the nearest regional GSA Supply Depot.

2922.807 Exemptions.

(a) The Assistant Secretary for Administration and Management shall make the determinations in FAR 22.807(a)(1).

(b) Requests for exemptions under FAR 22.807 (a)(1), (a)(2), and (b)(5) shall be submitted in writing in accordance with FAR 22.807(c) by the contracting officer, through the Head of the Contracting Activity, to the Director, Directorate of Procurement and Grant Management, for further action.

Subpart 2922.10—Service Contract Act of 1965

2922.1003 Applicability.

The contracting officer shall submit requests for determinations regarding applications of the Service Contract Act and exemptions directly to the DOL, Administrator of the Wage and Hour Division.

Subpart 2922.13—Special Disabled and Vietnam Era Veterans

2922.1303 Waivers.

(a) The Assistant Secretary for Administration and Management is authorized to (1) waive any or all terms of the clause at FAR 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, under the conditions prescribed in FAR 22.1303(a) and (2) waive any requirement in FAR Subpart 22.13 as prescribed in FAR 22.1303(b).

(b) Requests for waivers under (a) above shall be made in writing by the contracting officer and submitted through the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2922.1306 Complaint procedures.

The contracting office shall forward complaints received about the Administration of the Vietnam Era Veterans Readjustment Assistance Act of 1972 directly to the Veteran's Employment Service, DOL, as prescribed in FAR 22.1306.

Subpart 2922.14—Employment of the Handicapped

2922.1403 Waivers.

(a) The Assistant Secretary for Administration and Management is authorized to (1) waive any or all of the terms of the clause at FAR 52.222-36, Affirmative Action for Handicapped Workers, under the conditions prescribed in FAR 22.1403(a) and (2) waive any requirement in FAR Subpart 22.14 as prescribed in FAR 22.1403(b).

(b) Requests for waivers under (a) above shall be made in writing by the contracting officer and submitted through the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management.

2922.1406 Complaint procedures.

The contracting office shall forward complaints received about administration of section 503 of the Rehabilitation Act of 1973, as amended, directly to the OFCCP as prescribed in FAR 22.1406.

PART 2923—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 2923.1—Pollution Control and Clean Air and Water

Sec.
2923.104 Exemptions.
2923.107 Compliance responsibilities.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2923.1—Pollution Control and Clean Air and Water

2923.104 Exemptions.

(a) The Assistant Secretary for Administration and Management is authorized to exempt controls from the requirements of FAR Subpart 23.1 under the conditions in FAR 23.104(c).

(b) Requests for exemption shall be made in writing by the contracting officer and forwarded through the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2923.107 Compliance responsibilities.

Conditions involving noncompliance with clean air or water standards in facilities used in performing nonexempt contracts shall be reported in writing by the contracting officer to the Head of the Contracting Activity for transmittal directly to the EPA Administrator in accordance with FAR 23.107. A copy of the report shall be promptly sent to the Director, Directorate of Procurement and Grant Management.

PART 2924—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2924.1—Protection of Individual Privacy

Sec.
2924.103 Procedures.

Subpart 2924.2—Freedom of Information Act

2924.202 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2924.1—Protection of Individual Privacy

2924.103 Procedures.

See 29 CFR Part 70a.—Protection of Individual Privacy on Records, for the DOL Regulations relating to the maintenance or disclosure of information from systems of records on individuals.

Subpart 2924.2—Freedom of Information Act

2924.202 Policy.

See 29 CFR Part 70—Examination and Copying of Department of Labor Records, for the DOL regulations implementing the Freedom of Information Act.

PART 2925—FOREIGN ACQUISITION

Subpart 2925.1—Buy American Act—Supplies

Sec.
2925.102 Policy.
2925.105 Evaluating offers.
2925.108 Excepted articles, materials, and supplies.

Subpart 2925.2—Buy American Act—Construction Materials

2925.202 Policy.
2925.203 Evaluating offers.
2925.204 Violations.

Subpart 2925.3—Balance of Payments Program

2925.302 Policy.
2925.304 Excess and non-excess foreign currencies.

Subpart 2925.7—Restrictions on Certain Foreign Purchases

2925.703 Exceptions.

Subpart 2925.9—Omission of the Examination of Records Clause

2925.903 Conditions for omission.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2925.1—Buy American Act—Supplies

2925.102 Policy.

(a) The Assistant Secretary for Administration and Management shall make the determinations prescribed in FAR 25.102 (a)(2) and (a)(3).

(b) The Director, Directorate of Procurement and Grant Management, shall make the determination prescribed in FAR 25.102(a)(4) in accordance with the procedures in 2925.108.

(c) Determinations under (a) above shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2925.105 Evaluating offers.

(a) In unusual circumstances, the Assistant Secretary for Administration and Management may determine to use evaluation differentials other than those prescribed in FAR 25.105 for a particular acquisition.

(b) Requests for use of other evalution differentials shall be directed by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management for further action.

2925.108 Excepted articles, materials, and supplies.

(a) Determinations for additional articles, materials, and supplies not included in the list under FAR 25.108(d) shall be made by the Director, Directorate of Procurement and Grant Management.

(b) Determinations shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity for approval.

(c) Contracting activities which have information justifying the removal of an item from the list under FAR 25.108(d) shall submit such information to the Director, Directorate of Procurement and Grant Management, for further disposition as prescribed in FAR 25.108(c).

Subpart 2925.2—Buy American Act—Construction Materials

2925.202 Policy.

(a) The Assistant Secretary for Administration and Management shall

make the determinations prescribed in FAR 25.202(a)(2) and 2925.203.

(b) The Director, Directorate of Procurement and Grant Management, shall make the determination prescribed in FAR 25.202(a)(3) in accordance with the procedures in 2925.108.

(c) Determinations under (a) above shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

(d) Determinations approved under FAR 25.202(a)(2) shall require listing of excepted materials in the contract as prescribed in FAR 25.202(c).

2925.203 Evaluating offers.

Unless the Assistant Secretary for Administration and Management determines otherwise, when the cost of a comparable domestic construction material exceeds by more than 6 percent for large business or 12 percent for small business or labor surplus area set-aside the cost of a foreign construction material proposed in an offer, use of the domestic construction material would unreasonably increase the cost of the contract and use of the foreign construction material is authorized and acceptable. This evaluation shall be made for each foreign construction material proposed in an offer and not specifically excepted by the solicitation. The cost of construction material shall be computed to include all delivery costs to the construction site, and the cost of foreign construction material shall also include any applicable duty (whether or not a duty-free entry certificate may be issued). The acceptable offer that remains low after adding (for evaluation purposes only) 6 percent or 12 percent, as applicable, of the cost of all foreign construction materials shall be considered the successful offer. The contract awarded under these circumstances shall contain a list of the authorized foreign construction materials as required by FAR 25.202(c) and the clause at FAR 52.225-5, Buy American Act—Construction Materials.

2925.204 Violations.

Failure of the contractor to comply with the clause at FAR 52.225-5, Buy American Act—Construction Materials, shall be documented in a report by the contracting officer and submitted to the Head of the Contracting Activity for initiation of debarment action in accordance with Subpart 2909.4.

Subpart 2925.3—Balance of Payments Program

2925.302 Policy.

(a) The Director, Directorate of Procurement and Grant Management, shall make the determination prescribed in FAR 25.302(b)(3) amd 25.304(c). Differentials greater than 50 percent may be authorized as prescribed in FAR 25.302(c).

(b) Determinations under (a) above shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2925.304 Excess and non-excess foreign currencies.

The Director, Directorate of Procurement and Grant Management, shall consult with the Office of Management and Budget as required in FAR 25.304(c) prior to making the determination in 2925.302(a).

Subpart 2925.7—Restrictions on Certain Foreign Purchases

2925.703 Exceptions.

(a) The Assistant Secretary for Administration and Management is authorized to approve exceptions, as prescribed in FAR 25.703, for all contracts other than small purchases.

(b) Determinations under (a) above shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

Subpart 2925.9—Omission of the Examination of Records Clause

2925.903 Conditions for omission.

(a) The Assistant Secretary for Administration and Management shall make the determination prescribed in FAR 25.903 (a)(1) and (a)(2).

(b) Determinations under (a) above shall be prepared by the contracting officer in accordance with the requirements of FAR 25.904 and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

(c) The report required by FAR 25.903(b) shall be prepared and forwarded by the Directorate of Procurement and Grant Management.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2928—BONDS AND INSURANCE

Subpart 2928.2—Sureties

2928.203 Options in lieu of sureties.

Upon receipt of any of the types of securities listed in FAR 28.203-1 (except bonds or notes received in the District of Columbia) or FAR 28.203-2, the contracting officer shall turn the securities over to the finance office.

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART 2929—TAXES

Subpart 2929.1—General

Sec.
2929.101 Resolving tax problems.

Subpart 2929.3—State and Local Taxes

2929.303 Applications of State and local taxes to Government contractors and subcontractors.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2929.1—General

2929.101 Resolving tax problems.

Contract tax problems or questions shall be referred by the contracting officer to the Office of the Solicitor for resolution.

Subpart 2929.3—State and Local Taxes

2929.303 Applications of State and local taxes to Government contractors and subcontractors.

(a) Contractors to be treated as agents of the Government for the purposes set forth in FAR 29.303(a) shall require the written review and approval of the Assistant Secretary for Administration and Management.

(b) Requests for approval under (a) above shall be submitted by the Head of the Contracting Activity, through the Office of the Solicitor, to the Director, Directorate of Procurement and Grant Management, for further action.

PART 2930—COST ACCOUNTING STANDARDS

Subpart 2930.3—CAS Contract Requirements

2930.304 Waiver.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to waive CASB requirements as provided in FAR 30.304(c).

(b) Requests for waivers under (a) above shall be prepared by the contracting officer as prescribed in FAR

30.304(a) and submitted by the Head of the Contracting Activity.

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART 2931—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 2931.1—Applicability

2931.101 Objectives.

Individual and class deviations concerning cost principles in FAR Part 31 shall be processed as prescribed in Subpart 2901.4.

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART 2932—CONTRACT FINANCING

Subpart 2932.1—General

Sec.

2932.102 Description of contract financing methods.

Subpart 2932.4—Advance Payments

2932.402 General.

Subpart 2932.5—Progress Payments Based on Costs

2932.502 Preaward matters.

2932.502–2 Contract finance office clearance.

Subpart 2932.6—Contract Debts

2932.605 Responsibilities and cooperation among Government officials.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2932.1—General

2932.102 Description of contract financing methods.

(a) Progress payments based on a percentage or stage of completion accomplished are authorized for use in contracts for construction, alteration, or repair.

(b) The Head of the Contracting Activity, or designee, is authorized to approve the use of progress payments based on percentage or stage of completion accomplished for contracts other than those listed in (a) above.

(c) Requests for approval under (b) above shall be in the form of a written determination by the contracting officer that:

(1) Use of progress payments based on costs (see FAR Subpart 32.5) is impracticable; and

(2) Adequate measures exist for determining percentage or stage of completion as a basis for determining payment.

Subpart 2932.4—Advance Payments

2932.402 General.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to approve findings and determinations and contract terms for advance payments as prescribed in FAR Subpart 32.4.

(b) The contracting officer shall review and analyze the contractor's application for advance payments to determine if it meets the information requirements of FAR 32.408. Applications which do not contain the required information shall not be processed until such information is obtained from the contractor.

(c) The contracting officer shall submit a recommendation for approval or disapproval of the contractor's request through the Head of the Servicing Finance Office (see FAR 32.402(e)(2)) to the Head of the Contracting Activity for transmittal to the Director, Directorate of Procurement and Grant Management, under (a) above. Recommendations which do not contain the information required by FAR 32.409–1 or FAR 32.409–2 will not be processed by the Directorate of Procurement and Grant Management.

Subpart 2932.5—Progress Payments Based on Costs

2932.502 Preaward matters.

2932.502–2 Contract finance office clearance.

(a) The contracting officer shall obtain the approval of the Head of the Contracting Activity before providing a progress payment rate higher than the customary rates prescribed in FAR 32.501–1.

(b) For deviations to progress payment terms prescribed under FAR Part 32, the contracting officer shall obtain approval as prescribed in 2901.403.

(c) The contracting officer shall obtain the approval of the servicing finance office for the contract before taking the action in FAR 32.502–2.

Subpart 2932.6—Contract Debts

2932.605 Responsibilities and cooperation among Government officials.

(a) The DOL contracting officer has primary responsibility for determining the amount of contract debt and notifying the cognizant finance office of such debt due the Government. The servicing DOL finance office making payments under the contract has primary responsibility for debt collection.

(b) Each DOL Agency/Office is responsible for developing an internal debt collection system and prescribing internal procedures for collection of debts, including contract debts covered under FAR Subpart 32.6. Agency/Office procedures should be in conformance with policies and procedures issued by DOL.

PART 2933—DISPUTES AND APPEALS

Sec.

2933.003 Applicability.

2933.003–70 Department of Labor Board of Contract Appeals.

2933.009 Suspected fraudulent claims.

2933.011 Contracting officer's decision.

2933.012 Contracting officer's duties upon appeal.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2933.003 Applicability.

(a) The Assistant Secretary for Administration and Management shall make the determination prescribed under FAR 33.003(b).

(b) Determinations under (a) above shall be submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2933.003–70 Department of Labor Board of Contract Appeals.

(a) The Department of Labor Board of Contract Appeals (LBCA) is authorized by the Secretary to consider and determine appeals from decisions of contracting officers arising under a contract or relating to a contract made by the Department or any other executive agency when such agency or the Administrator of the Office of Federal Procurement Policy has designated the LBCA to decide the appeal.

(b) The address of the LBCA is 1111 20th Street, NW., Washington, DC 20036.

(c) The LBCA rules of procedure are contained in 41 CFR Part 29–60.

2933.009 Suspected fraudulent claims.

The contracting officer shall refer all matters relating to suspected fraudulent claims by a contractor under the conditions in FAR 33.009 to the office of the Inspector General for further action or investigation.

2933.011 Contracting officer's decision.

The written decision required by FAR 33.011(a)(4) shall include, in the paragraph listed under FAR 33.011(a)(4)(v), specific reference to the Department of Labor Board of Contract Appeals (LBCA), 1111 20th Street, NW., Washington, DC 20036, and its procedures under 41 CFR Part 29–60. The LBCA optional small claims (expedited) procedures and accelerated procedures under 41 CFR 29–60.211 shall also be referenced as required by FAR.

2933.012 Contracting officer's duties upon appeal.

(a) When a notice of appeal has been received, the contracting officer shall endorse on the appeal the date of mailing (or the date of receipt if the notice was not mailed) and forward it to the LBCA by certified mail within five (5) days of receipt. The Solicitor of Labor shall also be notified of the appeal by the contracting officer. See 41 CFR 29–60.203.

(b) The contracting officer shall prepare and transmit the data, documentation, and information required by 41 CFR 29–60.205 in the form of an appeal file and appellant or appellants counsel within 30 days after receipt of a notice of appeal or advice that an appeal has been docketed by the LBCA.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2935—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

2935.003 Policy.
2935.015 Contracts for research with educational institutions and nonprofit organizations.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2935.003 Policy.

Cost sharing under a research and development (R&D) contract shall only be used after the determinations and findings prescribed in 2916.301–3 has been approved.

2935.015 Contracts for research with educational institutions and nonprofit organizations.

(a) Heads of contracting activities shall furnish to the Director, Directorate of Procurement and Grant Management, copies of basic agreements pertaining to R&D with educational institutions and nonprofit organizations in accordance with 2916.702.

(b) The Director, Directorage of Procurement and Grant Management, shall furnish the list required under FAR 35.015(b)(3) to the FAR Secretariat.

PART 2936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 2936.2—Special Aspects of Contracting for Construction

Sec.

2936.201 Evaluation of contractor performance.
2936.202 Specifications.
2936.209 Construction contracts with architect-engineer firms.

Subpart 2936.5—Contract Clauses

2936.516 Quantity surveys.

Subpart 2936.6—Architect-Engineer Services

2936.602 Selection of firms for architect-engineer contracts.
2936.602–1 Selection criteria.
2936.602–2 Evaluation boards.
2936.602–3 Evaluation based functions.
2936.602–4 Selection authority.
2936.602–5 Short selection processes for contracts not to exceed $10,000.
2936.603 Collecting data on and appraising firms' qualifications.
2936.604 Performance evaluation.
2936.606 Negotiations.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2936.2—Special Aspects of Contracting for Construction

2936.201 Evaluation of contractor performance.

(a) The Head of the Contracting Activity shall establish procedures to evaluate construction contractor performance and prepare performance reports as required by FAR 36.201. Normally, the performance report shall be prepared by the contracting officer's authorized representative or other official who was responsible for monitoring contract performance and who is qualified to evaluate overall performance. DOL Agency/Office procedures shall prescribe instructions for review of the report, prior to distribution, as prescribed in FAR 36.201(b).

(b) Performance reports shall be made using Standard Form 1420, Performance Evaluation (Construction), as prescribed in FAR 36.701(e). Details concerning unsatisfactory performance including Government notification to the contractor as required by FAR 36.201(a)(3), and written comments by the contractor, shall also be included in the report.

(c) Performance reports shall be distributed to the Heads of Contracting Activities or designee for filing and other points required by DOL Agency/Office procedures. Copies of all reports shall also be promptly forwarded to the Director, Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, for central filing. All reports shall be retained for six years after the date of the report by the Office of Procurement and Grant Policy.

(d) Before making a determination of prospective contractor responsibility, the contracting officer may contact the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, for information regarding performance evaluation reports on file, unless other procedures are prescribed in DOL Agency/Office instructions.

2936.202 Specifications.

When "brand name or equal" product descriptions are necessary, the requirements of 2910.004–70 shall be followed.

2936.209 Construction contracts with architect-engineer firms.

(a) As required by FAR 36.209, no contract for construction of a project shall be awarded to the firm that designed the project or its subsidiaries or affiliates without the written approval of the Director, Directorate of Procurement and Grant Management.

(b) Requests for approval under (a) above shall be made by the Head of the Contracting Activity, through the appropriate Office of the Solicitor, to the Director, Directorate of Procurement and Grant Management. The request shall include the reason(s) why award to the design firm is required; an analysis of the facts involving potential or actual organizational conflicts of interest including benefits and detriments to the Government and the prospective contractor; and the measures which are to be taken to avoid, neutralize, or mitigate conflicts of interest.

Subpart 2936.5—Contract Clauses

2936.516 Quantity surveys.

The Head of the Contracting Activity is authorized to make the determination regarding the impracticability of Government performance of original and final surveys as prescribed in FAR 36.516.

Subpart 2936.6—Architect-Engineer Services

2936.602 Selection of firms for architect-engineer contracts.

2936.602–1 Selection criteria.

Heads of contracting activities are authorized to approve the use of design competition under the conditions in FAR 36.602–1(b).

2936.602–2 Evaluation boards.

Heads of Contracting Activities shall establish procedures for providing permanent or ad hoc architect-engineer evaluation boards as prescribed in FAR 36.602–2. DOL Agency/Office procedures shall provide for the appointment of private practitioners of architecture, engineering, or related professions when such action is determined by the Head of the Contracting Activity to be essential to meet the Government's minimum needs.

2936.602–3 Evaluation based functions.

The selection report required in FAR 36.602–3(d) shall be prepared for the

approval of the Head of the Contracting Activity.

2936.602-4 Selection authority.

The Head of the Contracting Activity is authorized to serve as the designated selection authority in accordance with FAR 36.602-4.

2936.602-5 Short selection processes for contracts not to exceed $10,000.

The selection process prescribed in FAR 36.602-5(b) shall be used for architect-engineer contracts not expected to exceed $10,000.

2936.603 Collecting data on and appraising firms' qualifications.

(a) Heads of Contracting Activities which acquire architect-engineer services shall establish procedures to comply with the requirements of FAR 36.603.

(b) Copies of procedures established under (a) above shall be submitted to the Director, Directorate of Procurement and Grant Management, for review and approval. These procedures shall include a list of names, addresses, and telephone numbers of offices or boards assigned to maintain architect-engineer qualification data files. The list shall be updated annually and submitted to the Director, Directorate of Procurement and Grant Management, no later than 30 days after the beginning of each fiscal year.

2936.604 Performance evaluation.

(a) The Head of the Contracting Activity shall establish procedures to evaluate architect-engineer contractor performance as required in FAR 36.604. Normally, the performance report shall be prepared by the contracting officer's authorized representative or other official who was responsible for monitoring contract performance and who is qualified to evaluate overall performance. DOL Agency/Office procedures shall prescribe instructions for review of the report, prior to distribution, as prescribed in FAR 36.604(b).

(b) Performance reports shall be made using Standard Form 1421, Performance Evaluation (Architect-Engineer) as prescribed in FAR 36.702(c). Details covering unsatisfactory performance including Government notification to the contractor as required by FAR 36.604(a)(3) and written comments by the contractor shall also be included in the report.

(c) Performance reports shall be distributed to the Head of Contracting Activities for filing, distribution points in FAR 36.604(c), and other points required by DOL Agency/Office procedures. Copies of all reports shall also be promptly forwarded to the Director, Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, for central filing. All reports shall be retained by the Office of Procurement and Grant Policy for six years after date of the report.

(d) Evaluation boards or contracting offices may contact the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, for information regarding performance evaluation reports on file, unless other procedures are prescribed in DOL Agency/Office instructions.

2936.606 Negotiations.

When a proposal is solicited from an architect-engineer firm selected for negotiations, the contracting officer shall include in the request for proposals a reference to 2936.209 of this title as required by FAR 36.606(c).

PART 2937—SERVICE CONTRACTING

Subpart 2937.1—Service Contracts—General

Sec.

2937.103 Contracting officer responsibility.

Subpart 2937.2—Consulting Services

2937.205 Management controls.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2937.1—Service Contracts—General

2937.103 Contracting officer responsibility.

Personal services contracts (see FAR 37.104) are not authorized.

Subpart 2937.2—Consulting Services

2937.205 Management controls.

(a) Heads of contracting activities having a requirement for consulting or related services by either contract or purchase order to be awarded without competion (regardless of dollar amount) and competitive actions ($50,000 or more) are required to prepare a written justification for such services. This written justification shall be submitted to the Procurement Review Board (PRB) at least 60 days prior to the proposed effective date of the contract. Generally, requests for such services will be scheduled for review by the PRB within 21 working days. Heads of Contracting Activities retain final approval authority for all competitive acquisitions under $50,000. However, a copy of the justification for competitive acquisitions under $50,000 must be forwarded to the Assistant Secretary for Administration and Management and the Inspector General within ten days of approval. Regardless of the type of action planned, the justification shall include the following:

(1) A statement of need which certifies that the requested services do not unnecessarily duplicate any previously performed work.

(2) Nature and scope of the problem, the results expected, and the manner in which the project will relate to an impact on the Contracting Activity administration and/or program management.

(3) That the services described in the request are not prohibited by OMB Circular A-120.

(4) Extent to which in-house staff availability was assessed, and the reasons why procurement of outside services are necessary.

(5) Any additional information or data which support the requirement for a contract.

(6) Name(s) and title(s) of official(s) who will be assigned as project officer(s) to work with the contractor, and who can be contacted for additional information.

(b) In accordance with FAR 37.205(b)(7), all purchase requests for consulting services initiated in the fourth quarter of the fiscal year must be submitted to the Procurement Review Board for action and subsequent approval by the Assistant Secretary for Administration and Management.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2942—CONTRACT ADMINISTRATION

Subpart 2942.2—Assignment of Contract Administration

Sec.

2942.202 Assignment of contract administration.

2942.203 Retention of contract administration.

Subpart 2942.6—Corporate Administrative Contracting Officer

2942.602 Assignment and location.

Subpart 2942.7—Indirect Cost Rates

2942.703 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2942.2—Assignment of Contract Administration

2942.202 Assignment of contract administration.

Unless otherwise prescribed in DOL Agency/Office procedures, the Head of the Contracting Activity is authorized to make the decision on withholding functions in FAR 42.202(b)(2).

2942.203 Retention of contract administration.

Unless otherwise prescribed in DOL Agency/Office procedures, the Head of the Contracting Activity is authorized to perform the review in FAR 42.203(b).

Subpart 2942.6—Corporate Administrative Contracting Officer

2942.602 Assignment and location.

The Head of the Contracting Activity is authorized to approve the need for a corporate administrative contracting officer as prescribed in FAR 42.602(a)(2).

Subpart 2942.7—Indirect Cost Rates

2942.703 Policy.

The Office of Cost Determination, Directorate of Procurement and Grant Management, is responsible for establishing billing rates and indirect cost rates as prescribed in FAR Subpart 42.7.

PART 2943—CONTRACT MODIFICATIONS

Subpart 2943.2—Change Orders

2943.205 Contract clauses.

Heads of Contracting Activities may establish procedures, when appropriate, for authorizing the contracting officer to vary the 30-day period for submission of adjustment proposals to the clauses prescribed by FAR 43.205 (a)(1), (b)(1), (c), and (d).

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART 2945—GOVERNMENT PROPERTY

Subpart 2945.3—Providing Government Property to Contractors

Sec.

2945.302 Providing facilities.
2945.302-1 Policy.

Subpart 2945.4—Contractor Use and Rental of Government Property

2945.403 Rental—Use and Charges clause.
2945.405 Contracts with foreign governments or international organizations.
2945.407 Non-Government use of plant equipment.

Subpart 2945.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2945.608 Screening of contractor inventory.
2945.608-6 Waiver of screening requirements.
2945.610 Sale of surplus contractor inventory.
2945.610-2 Exemptions from sale by GSA.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2945.3—Providing Government Property to Contractors

2945.302 Providing facilities.

2945.302-1 Policy.

The Head of the Contracting Activity is authorized to make the determination for providing facilities to a contractor as prescribed in FAR 45.302-1(a)(4).

Subpart 2945.4—Contractor Use and Rental of Government Property

2945.403 Rental—Use and Charges Clause.

The Head of the Contracting Activity is authorized to make the determination for changing rent on the basis of use under the clause at FAR 52.245-9 as prescribed in FAR 45.403(a).

2945.405 Contracts with foreign governments or international organizations.

The Head of the Contracting Activity shall establish procedures, when required, for processing requests of foreign governments or international organizations to use Government property and for recovering costs for such use (see FAR 45.405).

2945.407 Non-Government use of plant equipment.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to approve the non-Government use of plant equipment as prescribed in FAR 45.407.

(b) Requests for approval under (a) above shall be submitted by the Head of the Contracting Activity.

Subpart 2945.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2945.608 Screening of contractor inventory.

2945.608-6 Waiver of screening requirements.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to waive screening requirements as prescribed in FAR 45.608-6.

(b) Requests for waiver shall be submitted by the Head of the Contracting Activity.

2945.610 Sale of surplus contractor inventory.

2945.610-2 Exemptions from sale by GSA.

(a) The Assistant Secretary for Administration and Management is authorized to seek exemptions from sale as prescribed in FAR 45.610-2.

(b) Requests for exemptions shall be submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

PART 2948—VALUE ENGINEERING

Subpart 2948.1—Policies and Procedures

2948.102 Policies.

(a) The Head of the Contracting Activity is authorized to make the determination to extend the sharing base of a value engineering change proposal (VECP) as prescribed in FAR 48.102(e).

(b) The Head of the Contracting activity is authorized to extend the sharing base of a VECP to include the entire contracting activity or any part of it (see FAR 48.102(e)).

(c) When the sharing base is extended under (a) or (b) above, the contracting officer shall specify the base in the contract schedule as required in FAR 48.104-1(a).

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART 2949—TERMINATION OF CONTRACTS

Subpart 2949.1—General Principles

Sec.

49.106 Fraud or other criminal conduct.
49.111 Review of proposed settlements..
49.111-70 Settlement review boards

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2941.1—General Principles

2949.106 Fraud or other criminal conduct.

(a) Whenever fraud, such as falsified documents, false statements, or other criminal conduct related to the settlement of a terminated contract is suspected, the contracting officer shall discontinue negotiations and prepare a report of the facts. The report shall be submitted by the Head of the Contracting Activity to the Assistant Inspector General for Investigations along with copies of documents or other information connected with the suspected violation(s). A copy of the report shall also be submitted to the Director, Directorate of Procurement and Grant Management.

(b) Depending on the findings of the Assistant Inspector General for Investigations, the Head of the Contracting Activity may initiate suspension or debarment action as prescribed in FAR Subpart 9.4 and Supart 2909.4.

2949.111 Review of proposed settlements.

All proposed settlement agreements shall be reviewed by the Office of the

Solicitor and approved at a level higher than the contracting officer in accordance with DOL Agency procedures. Settlement agreements of $50,000 or more shall be approved by the Head of the Contracting Activity.

2949.111-70 Settlement review boards.

(a) Heads of Contracting Activities shall establish settlement review boards for the review of each termination settlement or determination of amount due under the termination clause of a contract or approval or ratification of a subcontract settlement when the action involves $50,000 or more.

(b) Settlement review boards may be established for actions below $50,000 when considered desirable by the Head of the Contracting Activity or when specifically requested by the contracting officer.

PART 2951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 2951.1—Contractor Use of Government Supply Sources

Sec.
2951.101 Policy.
2951.102 Authorization to use Government supply sources.
2951.102-70 Exclusive use on Government work.

Subpart 2951.2—Contractor Use of Interagency Motor Pool Vehicles

2951.201 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2951.1—Contractor Use of Government Supply Sources

2951.101 Policy.

It is DOL policy that cost-type contractors should meet their requirements from Government sources of supply when these sources are available to them, and if it is economically advantageous or otherwise in the best interest of the Government.

2951.102 Authorization to use Government supply sources.

(a) The Head of the Contracting Activity may authorize cost-type contractors and subcontractors, where all higher tier contracts and subcontracts are cost-type, to use Government supply sources in accordance with the requirements and procedures in FAR Subpart 51. This authority may be redelegated to the level of contracting officer.

(b) If the contracting officer decides to authorize a contractor to use Government supply sources under the conditions prescribed in FAR 51.102, a written request for a FEDSTRIP activity address code (see FPMR 101-26.203) shall be made directly to the DOL Agency, Headquarters Property Management Office.

2951.102-70 Exclusive use on Government work.

Materials, supplies, and equipment acquired from Government sources of supply under the procedures described herein must be used exclusively in connection with Government work, except as otherwise authorized by the Head of the Contracting Activity.

Subpart 2951.2—Contractor Use of Interagency Motor Pool Vehicles

2951.201 Policy.

If it is in the Government's interest, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, as defined in FAR 51.201(a), interagency motor pool vehicles and related services for short-term use under Federal Supply Schedule Industrial Group 751.

SUBCHAPTER H—CLAUSES AND FORMS.

PART 2952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
2952.000 Scope of part.

Subpart 2952.1—Instructions for Using Provisions and Clauses

2952.102-1 Incorporation by reference.
2952.170 Deviations.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2952.000 Scope of part.

This part implements FAR Part 52 which sets forth contract clauses for use in connection with the acquisition of personal property and nonpersonal services (including construction).

Subpart 2952.1—Instructions for Using Provisions and Clauses

2952.102-1 Incorporation by reference.

(a) Preprinted standard general provisions sets will be maintained by the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, and distributed to DOL contracting activities for use during the initial FAR and DOLAR familiarization period. Contracting activities will be responsible for inserting necessary additions and alterations into individual contracts to ascertain that the general provisions are current and appropriate to the circumstances of the individual contract.

(b) At a later date, when the FAR general provisions are familiar to both DOL personnel and the Department's contractors, the general provisions will be incorporated by reference.

2952.170 Deviations.

(a) Individual or class deviations of provisions and clauses in FAR Part 52 shall be authorized by the Director, Directorate of Procurement and Grant Management, as prescribed in Subpart 2901.4.

(b) Any FAR provision or clause used with a deviation authorized in accordance with (a) above shall be identified as prescribed in FAR 52.103.

PART 2953—FORMS

Sec.
2953.000 Scope of part.

Subpart 2953.1—General

2953.103 Exceptions.
2953.108 Recommendations concerning forms.
2953.170 Forms for collection of information.

Subpart 2953.2—Prescription of Forms

2953.200 Department of Labor forms.

Subpart 2953.3—Illustration of Forms

2953.300 Scope of subpart.
2953.303 Agency forms.
2953.303-DL 1-1 Department of Labor Form DL 1-1, Requisition for Equipment, Supplies, or Services
2953.303-DL 1-90 Department of Labor Form DL 1-90, Purchase Order
2953.303-DL 1-194 Department of Labor Form DL 1-194, Certification Prior to Acquisition of Filing Equipment
2953.303-DL 1-2004 Department of Labor Form DL 1-2004, Small Business Procurement Determination.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2953.000 Scope of part.

This part (a) prescribes Department of Labor (DL) forms for use in acquisition, (b) illustrates these forms, and (c) contains procedures for exceptions to forms prescribed in FAR Part 53 or this Part 2953.

Subpart 2953.1—General

2953.103 Exceptions.

(a) Requests for exceptions to standard forms in FAR Part 53 shall be submitted, as prescribed in FAR 53.103, to the Director, Directorate of Procurement and Grant Management, for further action.

(b) Requests for exceptions to Department of Labor (DL) forms in Part 2953 shall be handled as deviations (see Subpart 2901.4).

2953.108 Recommendations concerning forms.

Recommendations concerning forms (see FAR 53.108) shall be made as prescribed in 2901.304(e).

2953.170 Forms for collection of information.

In accordance with the Paperwork Reduction Act of 1980 and 5 CFR Part 1320, DOL Agencies/Offices imposing forms under contracts or subcontracts requiring the collection of information on identical items from 10 or more members of the public must obtain approval from the Office of Management and Budget.

Subpart 2953.2—Prescription of Forms

2953.200 Department of Labor forms.

This subpart prescribes Department of Labor (DL) forms for use in acquisition. Consistent with the approach used in FAR Subpart 53.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the DOLAR in which the form usage requirements are addressed.

Subpart 2953.3—Illustrations of Forms

2953.300 Scope of subpart.

This subpart contains illustrations of Department of Labor (DL) forms used in acquisition.

2953.303 Agency forms.

This section illustrates Department of Labor (DL) forms specified by the DOLAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the DL form numbers.

BILLING CODE 4510-23-M

2953.303-DL 1-1 Department of Labor Form DL 1-1 Requisition for Equipment, Supplies, or Services.

Requisition for Equipment, Supplies, or Services

U.S. Department of Labor
Office of the Assistant Secretary for Administration and Management

1 Requisition No | 2 Bureau | 3 Page No ___ of ___ pages | 4 Date

5 Allotment and Appropriation | 6 Deliver to: (Specify if inside delivery is required)

7 For Information Call (Name, Extension)

8 Signature and Title of Approving Officer

9 Item No	10 Stock No	11 Description of Articles or Services (Please Double Space)	12 Quantity	13 Unit Price	14 Unit of Issue	15 Amount

To be completed by supply activity

16 Shipped Via ☐ Freight ☐ Parcel Post ☐ Mail | 17 Filled by Date | 18 Packed by Date | 19 Checked by Date

20 Date of Shipment | 21 Bill of Lading No | 22 Estimated Cost of Shipment

To be completed by receiving activity (Optional)

23 Signature | Title | Date

1. Procurement Copy

DL Form 1-1
Rev June 1983

2953.303-DL 1-90 Department of Labor
Form DL 1-90, Purchase Order.

Purchase Order

U.S. Department of Labor

Method of Purchase
Form Approved
Budget Bureau No. 48-R101

(See F.S.S. Cir. Ltr. No. B-89)

1. Federal Supply Schedule
2. Federal Supply Service Stock
3. Excess Property Transfer
4. Advertising (RS 3709)
5. War Powers Negotiations
6. Other Exemptions from RS 3709
7. Miscellaneous

This number must appear on all packages and papers relating to this order!

Order No. (33-40)

Date

Requisition No.	Agency	Form 1099 Required . . . . . No ☐ Soc. Sec. # Yes ☐	Page	of

To

Ship To

Invitation No.	Contract No.	Time for Delivery	Discount Terms
FOB Point	Ship Via		Gov't B/L No.

Item No.		Quantity	Unit	Unit Price	Amount
				Total	

22-DIGIT ACCOUNTING CODE
10-31

Payment will be made after receipt of articles ordered and upon proper completion and submission of Invoice in triplicate to:

Signature

Name

Title

(Authorized Purchasing Officer)

Original

DL Form 1-90
(Rev. Jan. 1976)

TERMS AND CONDITIONS OF PURCHASE ORDER

1. INSPECTION AND ACCEPTANCE:—Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejection, risk of loss will be on the Contractor unless loss results from negligence of the Government.

2. VARIATION IN QUANTITY:—No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or of packing, or allowances in manufacturing process, and then only to the extent, if any, specified elsewhere in this contract.

3. DISCOUNTS:—Discount time will be computed from date of delivery at place of acceptance or from receipt of correct invoice at the office specified by the Government, whichever is later. Payment is made, for discount purposes, when check is mailed.

4. DISPUTES:—(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the contracting officer, who shall mail or otherwise furnish a copy thereof to the Contractor. This decision shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the contractor mails or otherwise furnishes to the contracting officer a written appeal addressed to the Head of the Agency. The decision of the Head of the Agency or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. The Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the contracting officer's decision. (b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in (a) above: provided, that nothing in this contract shall be construed as making final the decision of any administrative official, representative or board on a question of law.

5. FOREIGN SUPPLIES:—The contract is subject to the Buy American Act (41 U.S.C. 10 a-d) as implemented by E.O. 10582 of December 17, 1954, as amended by Executive Order No. 11051, September 27, 1962, and any restrictions in appropriation acts on the procurement of foreign supplies.

6. CONVICT LABOR:—In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)) and E.O. 11755, December 29, 1973.

7. OFFICIALS NOT TO BENEFIT:—No member of Congress or resident commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but his provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

8. COVENANT AGAINST CONTINGENT FEES:—The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fees, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

9. FEDERAL, STATE AND LOCAL TAXES:—Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State and local taxes and duties in effect on the date of this contract, but does not include any taxes from which the Government, the Contractor, or this transaction is exempt. Upon request of the Contractor, the Government shall furnish a tax exemption certificate or similar evidence of exemption with respect to any such tax not included in the contract price pursuant to this clause. For the purpose of this clause, the term "date of this contract" means the date of the Contractor's quotation or, if no quotation, the date of this purchase order.

10. PAYMENTS AND BILLING INSTRUCTIONS:—Invoices shall be submitted in the ORIGINAL only, unless otherwise specified, and shall contain the following information: contract number (if any), order number, item number(s), description of supplies or services, sizes, quantities, unit prices, and extended totals. Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading. If prepaid parcel post charges are billed, the gross weight and shipping point must be shown. NOTE.—If desired, this order (or a copy thereof) may be used by the Contractor as his invoice, provided the following statement, (signed and dated) is entered on (or attached to) the front of the order: "Payment is requested in the amount of $_____, no other invoice will be submitted." When several orders are to be invoiced to an ordering activity during the same billing period, consolidated periodic billings are encouraged.

11. If this purchase order exceeds $2500 then the following clauses are incorporated by reference.

a. Affirmative Action for Handicapped Workers 48 CFR 1-52.226-36.

b. Contract Work Hours and Safety Standards Act—Overtime Compensation--General 48 CFR 1-52.222-4.

2953.303-DL 1-194 Department of Labor Form DL 1-194, Certification Prior to Acquisition of Filing Equipment.

Certification Prior to Acquisition of Filing Equipment

U.S. Department of Labor

1 Requisition Number

DLMS Instructions:
For standards and procedures pertaining to the disposition of records and utilization of filing equipment, refer to Chapter 1-400 Records Operation Program. Prepare original and attach to requisition. Requests originating in the National Office will be routed to Division of Records & Reports Management, DMP, OASAM. Field locations will route requests to the RA-OASAM.

2 To

3 From: [*requesting office*]

4 This request pertains to: [*check one*] ☐ A. Acquisition of filing cabinets

☐ B. Acquisition of other filing equipment

A. Acquisition of Filing Cabinets

I hereby certify that actions prerequisite to requesting excess, rehabilitated, or new correspondence filing cabinets have been completed as indicated below.

a Agency records have been disposed of in accordance with approved Agency Records Schedules.
b Retention periods for records no longer required have been reduced to the absolute minimum.
c Inactive records have been retired to the Federal Records Centers.
d Contents of filing cabinets have been rehoused in more economical equipment where appropriate. [*For example: shelf filing for records; shelving, storage cabinets, and similar equipment for stocks of forms, publications, and office supplies.*]
e Filing cabinets are being fully utilized, including top and bottom drawers, for housing records. [*Drawers filled to optimum extent - usually 3/4 full to permit ready filing and finding; contents of cabinets that are less than half full have been consolidated.*]
f Filing cabinets have been redistributed within the Agency to meet needs for special types and sizes of cabinets.
g Stocks of filing cabinets have been reduced to immediate needs and any unneeded cabinets have been re-assigned to points of shortage within the Agency or reported as excess to OASAM.
h Advice and assistance as needed have been requested from the Departmental Records Officer.

B. Acquisition of Other Filing Equipment

I hereby certify that the requested equipment will *not* be used to house records that are eligible for disposition or retirement.

Signature of Agency Records Officer [*or Agency Regional Administrator*] Date

Approved

Signature of Departmental Records Officer or Regional Administrator Date

DL Form 1-194 (Rev. August 1979)

2953.303-DL 1-2004 Department of Labor
Form DL 1-2004, Small Business
Procurement Determination.

Small Business
Procurement Determination

U.S. Department of Labor

Procurement Office

Name and address of Contracting Officer | Telephone Number

Number and Date of Requisition

Procurement Control Number

1. Description of proposed product and/or service

3. Estimated Cost

4. Proposed period of performance

5. Has exact item/service been procured previously?

2. Proposed method of procurement

(a) _____ 8(a) Procedures
(b) _____ 100% Small business/labor surplus area set-aside
(c) _____ 100% Small business set-aside
(d) _____ Partial small business/labor surplus area set-aside
(e) _____ Partial small business set-aside
(f) _____ 100% Labor surplus area set-aside/large business
(g) _____ Unrestricted—proprietary item (explain below)
(h) _____ Unrestricted—Insufficient small business competition (explain below)
(i) _____ Other (specify)

Comments:

6. Previous contract number:

7. Date of previous award:

8. Previous method of procurement:

9. Total number of responses received:

10. Number of responses from small business:

11. Name and location of previous contractor:

☐ Small business
☐ Large business

12. Total price:

Signature of Contracting Officer | Date

Review by Small and Disadvantaged Business Specialists

_____ I concur with the recommendations of the Contracting Officer
_____ I do not concur with the recommendations of the Contracting Officer

Comments:

Signature of Small and Disadvantaged Business Specialist | Date

Review by the Small Business Administration's Procurement Center Representative

_____ I concur with the recommendations
_____ Please solicit additional sources attached
_____ I do not concur with the recommendations and request suspension of this procurement action pending an appeal under FPR 1-1.706-2 (a) (1). SBA Form 70 is attached.

Signature of Small Business Administration's Procurement Center Representative | Date

[FR Doc. 84-15858 Filed 6-18-84; 8:45 am]
BILLING CODE 4510-23-C

DL 1-2004
7/82

federal register

Tuesday
June 19, 1984

Part VII

Department of Transportation

Coast Guard

33 CFR Parts 151 and 158
Reception Facilities; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 151 and 158

[CGD 78-035]

Reception Facilities

AGENCY: Coast Guard, DOT

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal solicits public comment on regulations implementing the reception facility requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78). MARPOL 73/78 controls the amount of waste materials ships can discharge at sea, and requires reception facilities at ports and terminals to receive materials retained on board as a result of compliance with MARPOL 73/78. The proposed regulations provide criteria for determining the adequacy of reception facilities, and administrative procedures for granting Certificates of Adequacy to ports and terminals.

DATE: Comments must be submitted on or before August 20, 1984.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/44) (CGD 78-035), U.S. Coast Guard, Washington, D.C. 20593. The comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMC/TP 44), Room 4402, Coast Guard Headquarters Building, 2100 2nd St., SW., Washington, D.C. 20593. Normal working hours are between 7:00 a.m. and 5:00 p.m., Monday through Friday, except holidays. Copies of the draft evaluation and the environmental assessment may also be inspected or copied at that address or obtained by a written request to the same address. To expedite processing, it is asked that requests for the draft evaluation and the environmental assessment not be included in the comments submitted.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ellis H. Davison, II, Project Manager, Office of Marine Environment and Systems, (G-WPE-3), telephone 202-426-9578. Normal working hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 78-035) and the specific proposals of this Notice to which their comments apply, and give reasons for each comment. If acknowledgement is desired, a self-addressed, stamped post card shoud be enclosed. All comments received before expiration of the comment period will be considered before final action is taken on this proposal. Public meetings will be held at places and times to be announced in a future notice.

An advance notice of proposed rulemaking (ANPRM) was published in the March 24, 1983 issue of the **Federal Register** (48 FR 12395) that invited comments for 90 days, ending on June 22, 1983. Comments were received from 69 sources, including individuals, businesses, industry organizations, other Federal agencies, and state and local governments. Comments, suggestions and actions taken are summarized following the "Background" below.

Drafting Information

The principal persons involved in drafting this proposed rulemaking are Lieutenant Ellis H. Davison, II, Project Manager, of the Office of Marine Environment and Systems, and Mr. Stanley M. Colby, Project Counsel, of the Office of Chief Counsel.

Background

The purpose of MARPOL 73/78 (the Convention) is the reduction of accidental and operational pollution from ships. In order to reduce operational pollution, the Convention requires that some ship wastes be discharged to reception facilities. It contains two annexes, concerning Oil (Annex I) and Noxious Liquid Substances (Annex II), that must be implemented by countries ratifying the Convention when it enters into force. MARPOL 73/78, including Annex I, entered into force on October 2, 1983. The requirements for reception facilities in Annex I must be in effect no later than October 2, 1984. Annex II will enter into force on October 2, 1986, unless the parties to the Convention postpone that date, and the requirements for reception facilities in Annex II will be effective when it enters into force.

Annex I limits the amount of oily wastes that can be discharged into the sea. Waste which may require disposal as a consequence of Annex I will be derived from the bulk shipment of oil and from the use of oil as a fuel and lubricant in ships' propulsion systems. Reception facilities must be available to receive oily ballast water, oil-contaminated wash water and concentrated bilge slops which cannot be discharged in accordance with the Annex.

Oil tankers may have a need to dispose of oily ballast water and tank cleaning water. All self-propelled vessels accumulate bilge water in their engine rooms, and this bilge water often contains high concentrations of oil resulting from lubricant drippings and other routine losses. Under Annex I, vessels may either process this contaminated bilge water to remove the oil, which is then retained onboard as a residue for discharge to a reception facility, or they may discharge the contaminated water itself to a reception facility. Fuel oils for diesel propulsion systems and lubricants for both steam and diesel propulsion systems when processed onboard ship usually produce an oily residue. Such residues which cannot be discharged into the sea in compliance with Annex I must be retained onboard or discharged to reception facilities.

Regulation 12 of Annex I requires that adequate reception facilities be provided for residues and mixtures containing oil in—

(a) All ports and terminals in which crude oil is loaded into oil tankers where such tankers have immediately prior to arrival completed a ballast voyage of not more than 72 hours or of not more than 1,200 nautical miles;

(b) All ports and terminals in which oil other than crude oil in bulk (product) is loaded at an average quantity of more than 1,000 metric tons (7,000 barrels) per day;

(c) All ports having ship repair yards or tank cleaning facilities;

(d) All ports and terminals in which handle ships provided with sludge tanks;

(e) All ports and terminals in which handle ships retaining oily bilge water and other residues; and

(f) All loading ports handling combination carriers retaining oily residue onboard.

This notice addresses only the need for facilities to receive wastes from ships, not how those wastes are disposed of. Regulation of disposal falls primarily to the Environmental Protection Agency (EPA) and to state and local governments. The Coast Guard is working with the EPA to coordinate that aspect of reception facilities.

It is proposed that the term "reception facility" be used instead of the term "waste reception facility" which was used in the advance notice, in order to be more consistent with international usage and the Act to Prevent Pollution from Ships (94 Stat. 2297, 33 U.S.C. 1901).

Annex II—Noxious Liquid Substances

The ANPRM addressed Annex II of MARPOL 73/78, and many comments concerned issues related to this Annex. Changes to Annex II are being made by the International Maritime Organization (IMO) Sub-committee on Bulk Chemicals. Uncertainty as to the outcome of these changes makes a detailed approach to Annex II reception facilities impractical at this time. Therefore, the detailed proposal for implementing Annex II will not be made in this document but will be made in a separate notice of proposed rulemaking at a later date.

Need

This rulemaking will implement those parts of MARPOL 73/78 which require contracting states to ensure that reception facilities are available to receive wastes from ships, as described above. The Act to Prevent Pollution from Ships (supra), which is the implementing legislation for MARPOL 73/78, specifically directed the establishment of regulations setting criteria for determining the adequacy of reception facilities and procedures for certifying a port or terminal as having adequate reception facilities. The Act applies only to "seagoing" ships (33 U.S.C. 1903(a)). In order to be consistent with other regulations implementing MARPOL 73/78, as published in the Federal Register of October 6, 1983 (48 FR 45704), this notice proposes that the term "oceangoing" ship be used instead of "seagoing" ship. In defining the term "oceangoing" ship proposed § 158.120 refers to 33 CFR 151.05(j) which reads as follows:

"Oceangoing" ship means a ship that—

(1) Is operated under the authority of the United States and engages in international voyages;

(2) Is operated under the authority of the United States and is certificated for ocean service;

(3) Is operated under the authority of the United States and is certificated for coastwise service beyond three miles from land;

(4) Is operated under the authority of the United States and operates at any time seaward of the territorial sea of the United States as defined in § 2.05 of this chapter; or

(5) Is operated under the authority of a country other than the United States.

Note.—A Canadian or U.S. ship being operated exclusively on the Great Lakes of North America or their connecting and tributary waters, or exclusively on the internal waters of the United States and Canada; is not an "oceangoing" ship.

One commenter suggested that regulations for a Certificate of Adequacy are unnecessaty because of existing permitting programs under the Clean Water Act, as amended (71 Stat. 1567, 33 U.S.C. 1251), which prevent the disposal of wastes into harbors. The Coast Guard agrees that existing permitting programs are adequate to prevent disposal of wastes into harbors and other navigable waters of the United states, and proposes reliance on these permitting systems to assure the environmental sufficiency of reception facilities. However, it is the intention of MARPOL 73/78 to control disposal of wastes on the high seas, and it is necessary that reception facilities be available at ports and terminals to receive these wastes. Existing permitting systems do not address this issue.

Another commenter stated that reception facilities should not be necessary for ports and terminals handling dry bulk ships since these ships will be required by MARPOL 73/78 to be equipped with separators. While separators will allow ships to concentrate engineroom waste, reception facilities are still required to receive the concentrated wastes.

Two commenters, including the EPA, recommended that this program be extended to include the Great Lakes and other inland waters. This topic is covered by House Report 96–1224 on page 13 and again under the analysis of section 3 on page 15. Ships operating exclusively on the Great Lakes and other inland waters are under a more restrictive regime that makes MARPOL 73/78 unnecessary. Reception facilities will still need to be available for ports and terminals in these waters handling oceangoing ships. Further expansion of this program would be contrary to clear Congressional intent.

The National Oceanic and Atmospheric Administration expressed concern over the possible consequences of discharges from reception facilities of both low-level contaminants and highly saline ocean waters. These considerations must be dealt with under permitting programs such as National Pollutant Discharge Elimination System (NPDES).

Regulatory Scheme

As announced in the ANPRM, the Coast Guard proposes considering the adequacy of reception facilities at each terminal that is visited by tankers or oceangoing ships of 400 gross tons or more. This document also proposes to allow groups of terminals to apply for certification as a "port". In applying this concept, terminals, including ship repair yards, would be allowed to apply either individually or as part of a port. The definition proposed in § 158.120 would also allow organizations such as port authorities to apply for a Certificate of Adequacy for a group of terminals. In order to avoid the denial of entry to tankers and other oceangoing ships of 400 gross tons or more, each person in charge of a terminal would have to apply to the Captain of the Port (COTP) for a Certificate of Adequacy unless that terminal was included in the Certificate of Adequacy of a port.

Three commenters suggested that adequacy should be considered only on a port-wide basis. Two of these commenters suggested that government agencies should have the responsibility of providing reception facilities. The first suggestion would be allowed as an option under § 158.140(a) of the proposed rules, in that terminals within a commercial port area could combine and apply as a port which could be issued a Certificate of Adequacy. The second suggestion is not adopted because the Coast Guard has no authority to impose an obligation on state or local governments to provide reception facilities nor does it have the authority to provide these facilities to ports and terminals.

Two commenters addressed the question of a definition of "port". One endorsed the concept of a Coast Guard Captain of the Port Zone as encompassing a port. The other felt that allowing terminals to aggregate as a "port" only if they were commonly considered as a unitary commercial port, as implied in the language of the ANPRM, was to restrictive. The definition of "port" proposed in § 158.120 has been left broad. This definition and § 158.140(a) of the proposed rules would allow any number of terminals within a Captain of the Port Zone that share one or more reception facilities to combine and apply as a "port", without regard as to whether or not they operate as a unitary commercial port.

The proposed definition of "port" is intended to accomplish two things. The first two subsections are intended to allow entities within the port community the maximum flexibility in combining their reception needs. The third subsection, along with § 158.130(d), is intended to allow a COTP to designate a "terminal" in situations where the reception needs of oceangoing ships under MARPOL 73/78 are not being met by terminals complying with the criteria of Subpart B, individually or as voluntary "ports". The Coast Guard expects that this option would be used very rarely. Establishing a definition of "port" that meets the intent of MARPOL 73/78 and is consistent with the U.S. port industry has proven very difficult. The following is a list of elements that

was considered in establishing the definition of "port" as proposed in this notice:

1. The uncertainty of the boundaries of U.S. ports.

2. Uncertainty as to who, under the Act, would be considered a "person in charge" of a U.S port.

3. The problems of small ports in remote areas, where installation of reception facilities would be particularly burdensome.

4. The problem of applying the denial of entry sanction, required by the Act, within a U.S. port.

5. The problem of segregating the individual responsibilities of a terminal from the overall responsibilities of a port with regard to reception facilities, particularly with regard to product oil loading terminals and ship repair yards.

6. Maintaining sufficient flexibility that the port industry can seek the most economical solution to the problem of providing reception facilities.

7. The problem of maintaining consistency with the definition of "thermal" contained in the Act.

8. The problem of establishing the appropriate cutoff level, under this regulatory scheme, for ports serving only small ships. (400 gross tons is proposed).

Further comment is specifically requested on this issue.

One commenter opposed the option of certifying groups, based on the perception that this might result in increased hazard from shifting a ship from one berth to another for the purpose of waste discharge. There may be cases where the expense and possible hazard of shifting berths is offset by the advantages obtained from large, central reception facilities, and the Coast Guard proposes retaining this broad concept.

Two commenters expressed concern that ports and terminals having reception facilities available might be required to receive wastes from ships handled at other ports and terminals. Under this proposal, a port or terminal need only have reception facilities available for the needs of the oceangoing ships it services, although it may agree to make its reception facilities available to another port or terminal.

Three commenters opposed any requirement that a port or terminal be required to receive waste in excess of that allowed by an NPDES permit, or wastes that are incompatable with installed treatment systems. An individual reception facility would not be required to take a particular batch of waste, but, to be issued a Certificate of Adequacy, a port or terminal would have to provide reception facilities for the usual MARPOL 73/78-related wastes of the oceangoing ships it services. For example, and oil loading port or terminal might have a fixed treatment system for oily ballast water that is incapable of processing oily bilge water or sludge. In that case, to be considered adequate, the port or terminal might have to provide separate facilities for those wastes. A ship with unusual quantities or types of waste would have to make its own arrangements, which could be with the loading port or terminal or another port or terminal.

Addressing a related issued, four commenters expressed concern over whether they, as terminal operators, might have to assume responsibility for the ultimate disposal of wastes received at their terminal from ships. The assignment of responsibility or liability for waste disposal is not under Coast Guard control and will depend on the particular Federal, state and local waste management programs applicable to the port, terminal, or reception facility and the types of waste. The Coast Guard is working with the EPA to coordinate this rulemaking with other waste management programs. Two commenters, including the Independent Liquid Terminals Association (ILTA), suggested that reception facilities available at ports and terminals should not necessarily have to dispose of the wastes received. This comment and the ILTA comments mentioned below were endorsed by nineteen other commenters. While § 158.140(b)(7) would require that ultimate disposal be accounted for in the application, there is no proposal that treatment and disposal be accomplished at the port or terminal.

Four commenters suggested that reception facilities would be impractical in smaller ports in Alaska due to the costs of construction and of hauling wastes to areas where they could be recycled or be disposed. It is in the best interests of the ships and ports and terminals operating in a particular trade that total expenses be minimized by the use of reception facilities located where they are most economical to all concerned. Before this kind of option can be accepted, ships calling at a port or terminal choosing the option of a surrogate reception facility must be capable of retaining wastes until they reach the port or terminal where reception facilities are to be made available, without discharging wastes at sea in contravention of MARPOL 73/78. Under the proposed regulations this would be considered an "alternative", and the COTP could grant a waiver under § 158.150 if these considerations were met.

One commenter questioned the basis for limiting the program to ports and terminals handling ships over 400 gross tons. One commenter endorsed this limit. Section 158.110 of the proposed regulations would maintain this limit for oceangoing ships other than tankers for two reasons:

a. The regulatory scheme developed for larger ports and terminals would be unnecessarily complex and burdensome for smaller ports and terminals.

b. The 400 gross ton demarcation for equipment requirements on non-tankers contained in Regulation 9 of Annex I of MARPOL 73/78 provides a logical demarcation line between "large" and "small" oceangoing ships.

The Coast Guard will consider further rulemaking for ports and terminals used exclusively by non-tankers of less than 400 gross tons after an appropriate regulatory scheme can be developed.

One commenter, the Honorable Don Young of the House of Representatives, referred to House Report 96–1224, page 16, with regard to smaller ports. The following statement is contained in the analysis of section 6:

> In the exercise of the Secretary's broad power under this section, it is contemplated that may of the smaller ports will not require certification but will nevertheless be permitted to transfer oil and hazardous substances in those cases in which the vessels have no present need to discharge oil or hazardous substance wastes.

This statement of Congressional policy is accommodated by the waiver provisions of proposed § 158.150. The alternatives required to meet the needs of oceangoing ships without undue burden on smaller ports would have to be determined on a case by case basis.

Seven commenters addressed the use of denial of entry of oceangoing vessels to ports and terminals not holding valid Certificates of Adequacy. Three commenters opposed this provision, one supported it and three sought clarification. Denial of entry is mandated by the Act (33 U.S.C. 1905(e)) and the Coast Guard may not modify this provision by regulation. Denial of entry to an entire geographic port area would only be invoked if none of the ports and terminals within the area were certified as having adequate reception facilities. Denial of entry would only be invoked against individual ports and terminals that were not certified. Since the broad definition of reception facilities would include mobile facilities that need not be continuously present at a port or terminal, and proposed § 158.150 would allow a waiver based on reception facilities provided at locations other than the port or terminal

applying for a certificate, the Coast Guard believes that there is enough flexibility provided for applicants to meet the requirements for certification.

One commenter suggested that any necessary enforcement action should be taken against an operator of a reception facility rather than against an operator of a port or terminal. The Act clearly requires the Certificate of Adequacy to be issued to the port or terminal. It is the responsibility of the person in charge to ensure that the port or terminal operates in accordance with that certificate. The person who is in charge of a reception facility is only responsible for ensuring that the facility meets the criteria of proposed § 158.200.

Many commenters expressed concern over the lead time necessary to acquire permits or licenses under the various waste management programs, or to modify the terms of permits or licenses already in effect. The COTP would have the authority to consider these factors under the waiver authority of proposed § 158.150. Additionally, the applicant could use facilities located elsewhere as an interim measure under the waiver provision proposed in § 158.150.

One commenter requested that the effective date of th proposed regulations be fixed. Section 158.180 of the proposed regulations would require that, to avoid denial of entry of oceangoing ships, a port or terminal obtain a Certificate of Adequacy by October 2, 1984. Many commenters expressed concern that there would be insufficient time to fund, plan and construct reception facilities by October 2, 1984. This date is fixed by MARPOL 73/78, and the Coast Guard cannot extend it.

The accompanying discussion follows the same order as the subject matter is discussed in the ANPRM:

(1) *Reception Facilities.* Twelve commenters including the ILTA favored a broad definition of reception facilities to include mobile facilities such as tank trucks, railroad tank cars, and tank barges. Proposed § 158.120 adopts this comment.

(2) *Adequacy.* Three commenters suggested that the Coast Guard consider the adequacy of the capacity of reception facilities on a case-by-case basis rather than establishing fixed guidelines. Guidelines are considered necessary to establish the minimum criteria required by law. Section 158.150 of the proposed rules would allow the person in charge of a port or terminal to propose alternatives to the requirements.

Eight commenters addressed the issue of response time, in terms of how much advance notice of need for reception facilities oceangoing ships should have to give. Three commenters recommended twenty-four hours, one recommended forty-eight hours and the ILTA recommended seventy-two hours. Three commenter recommended that it be determined by the COTP on a case-by-case basis. Twenty-four hours is proposed in § 158.200(a) and § 151.09(f). In many cases, particularly in coastwise voyages, it woud be difficult for oceangoing ships to give accurate estimated times of arrival for more than twenty-four hours in advance. Section 158.150 of the proposed rules would allow an alternative. If mobile facilities are not based in the immediate port area, a longer response time may be considered by the COTP. In addition, the ILTA suggested that advance notice should include the quantity and characterization of waste. The Coast Guard agrees with this comment and included it in proposed § 151.09(f).

Seven commenters addressed the issue of transfer time. The statutory allowance of compensation for unreasonable delay mandates that reception facilities have the capacity and ability to avoid such a circumstance. One commenter suggested that this was an economic matter that should not be subject to regulation. Three commenters suggested that transfer time should be determined on a case-by-case basis. One commenter suggested overall time limits for "undue delay"; eight hours for normal working hours, 8:00 a.m. to 4:00 p.m. Mondays through Fridays except for holidays, and sixteen hours at other times. One commenter suggested a six to eight hour limit for transfer of wastes, and another suggested a twelve hour time limit for oily ballast and an unspecified lesser time for other wastes. Section 158.200(b) proposes a ten hour limit for reception of oily ballast, and § 158.200(c) proposes a four hour limit for other wastes; however, alternatives could be considered on a case-by-case basis under proposed § 158.150.

(3) *Reception Needs for Terminals.* Sections 158.210—158.240 of the proposed rules reflect, for the most part, the guidelines suggested by the International Maritime Organization (IMO). The IMO Guidelines do not detail functions of ship traffic density to individual ports and terminals. This factor has been added into the criteria proposed under §§ 158.210 through 158.230 basd on the assumptions of the IMO Guidelines, data received from commenters, and Coast Guard estimates. The traffic volume of ship repair yards is not great enough for the traffic density to be a factor. The public is requested to provide further data to refine the proposed criteria.

There is an interaction between the proposed regulations and Subpart F of 33 CFR Part 157, applying to tankers of over 40,000 gross tons. Subpart F provides for an exemption, based on availability of reception facilities, from requirements in 33 CFR 157.10a to retrofit segregated ballast, dedicated clean ballast, and crude oil washing on existing tankers. A notice of proposed rulemaking published in the **Federal Register** (49 FR 2998) of January 24, 1984 proposes applying similar requirements to existing tankers of between 20,000 and 40,000 gross tons, retaining the provision for an exemption. The exemption would be available to an existing tanker that can document the availability of reception facilities at those loading terminals that the tanker agrees to use exclusively. The regulations proposed for Part 158 in this document may have the effect of making an exemption under Part 157 more widely available by increasing the availability of reception facilities.

The Coast Guard proposes retaining the regulations in Part 157, Subpart F, separate from those proposed for Subpart 158 in this document. The two sets of regulations would meet two separate needs. Those in Part 157 assure the Coast Guard, by certification of the owner, that reception facilities with sufficient capacity to handle oily-ballast water discharges are available at the loading terminals used by a tanker that would otherwise have to meet segregated ballast, dedicated clean ballast, and crude oil washing requirements. Those proposed for Part 158 would assure the Coast Guard that reception facilities are available at a specific port or terminal for those ships complying with the segregated ballast, dedicated clean ballast and crude oil washing requirements of MARPOL 73/78 normally using the port or terminal. A Certificate of Adequacy for reception facilities issued under the provisions of the proposed rules would not necessarily assure that a terminal has sufficient capacity to process the large quantities of oily ballast that would be generated by a tanker for which an exemption under Part 157 is sought.

(a) *Crude Oil Loading Ports and Terminals.* Two commenters suggested that the 30% of deadweight tonnage criteria for reception of oily ballast from crude and product tankers was excessive. They suggested that 10%—15% of deadweight tonnage is a more reasonable range. The proposed rules use the 30% figure for each tanker loaded daily in § 158.210 but we will consider reducing this criteria if additional comments can support a

reduced level. In addition, waivers of this criteria would be considered on a case-by-case basis under § 158.150.

(b) *Product Oil Loading Ports and Terminals.* One commenter suggested that the criteria for requiring reception facilities of 1,000 metric-ton-per-day was too low, encompassing comparatively small product loading ports and terminals for which reception facilities for oily ballast should not be required. This criteria is set by MARPOL 73/78, Annex I, Regulation 12(2)(b). The Coast Guard must apply this criteria, however some flexibility exists in determining whether a port or terminal is loading this amount of product on ships to which the convention applies. One commenter suggested that product oil transferred to tank barges should not be considered in the 1,000 metric-tons-per-day criteria. The Coast Guard agrees with this suggestion and is proposing § 158.220 accordingly. Product oil transferred to oceangoing tank barges that cannot ballast cargo tanks or wash cargo tanks while proceeding en route would not be included. Two commenters endorsed the Coast Guard proposal that the 1,000 metric tons per day criteria be calculated on the basis of annual data. The Coast Guard agrees with this comment and included it in the proposal.

A criteria of 30% capacity for oily ballast for each tanker loaded daily is proposed in § 158.220(d) but the Coast Guard will consider reducing the standards if commenters can support a reduced level. In addition, waivers of this criteria would be considered on a case-by-case basis under § 158.150.

Two commenters suggested that reception facilities should not be necessary for sludge and bilge residue at all oil ports and terminals since ships do not typically offload these wastes at each port or terminal. These facilities must be made available because Regulation 12(2)(e) of Annex I of MARPOL 73/78 requires adequate reception facilities for these wastes at all terminals. The proposed rules would provide enough flexibility to reduce the burden on individual ports and terminals in meeting this criteria.

The ILTA suggested that ports and terminals in this category be allowed to handle tankers that have no need for oily ballast water reception without certification, presumably because these tankers are equipped with segregated ballast tanks or dedicated clean ballast tanks. Under proposed § 158.220, a port or terminal handling exclusively segregated ballast and clean ballast tankers would be certified as having adequate reception facilities even if it had no capacity for receiving oily ballast water. It should be noted that ports and terminals in this category would need reception facilities for cargo residues regardless of the ballasting system of tankers using them.

One commenter suggested that tankers equipped with segregated ballast or clean ballast tanks should be excluded from the calculations of the 1,000 metric-tons-per-day threshold. This could allow large ports or terminals handling a mix of tankers to have no reception facilities for oily ballast water or cargo residue. Small tankers without segregated ballast or clean ballast systems loading at these ports and terminals would be placed in the position of having to arrange their own reception facilities for oily ballast water on a case-by-case basis, a fairly substantial operational hardship. Segregated ballast and clean ballast product carriers need reception facilities for the residues from tank cleaning operations. The reception facility threshold in MARPOL 73/78 was established with the understanding that most tankers would have segregated ballast or dedicated clean ballast tanks. For this reason, the proposal would apply this cutoff to a few small ports and terminals, and products loaded on segregated ballast and clean ballast tankers would be counted toward the 1,000 metric-ton-per-day criteria.

(c) *Ship Repair Yards and Tank Cleaning Facilities.* Several commenters raised issues concerning reception of chemical wastes in ship repair yards. These issues will be addressed in detail in a later notice of proposed rulemaking dealing with Annex II of MARPOL 73/78. The criteria for ship repair yard reception facilities proposed in § 158.240 were derived from the IMO Guidelines.

(d) *Terminals Handling Combination Carriers.* Two commenters addressed the proposal that reception facilities provided for oily bilge water be considered adequate for oily residues from tank cleaning on combination carriers changing from liquid to dry cargo. One commenter supported this proposal, and the other opposed it. The Coast Guard proposes to maintain the original concept. If it appears that reception facilities provided for oily bilge water are in fact inadequate for oily residues from combination carriers, the concept may be reconsidered and additional rulemaking may have to be pursued.

(e) *Terminals Handling Ships with Sludge Tanks and Bilge Water Residues.* The criteria for sludge reception proposed in §§ 158.210(a) and 158.220(a) is based on the IMO assumption that an individual tanker may have up to 10 metric tons of sludge to discharge. Most sludge is generated by diesel powered-ships burning residual fuel oils. In the U.S., loading ports and terminals for both crude oil and product oil predominantly serve U.S. flag tankers. According to Lloyd's Register of Shipping Statistical Tables for 1981, Table 7, the number of U.S. flag steam-powered tankers outnumber U.S. flag diesel-powered (motor) tankers by 3 to 1, and the gross tonnage of U.S.flag steam-powered tankers is greater than that of U.S. flag diesel-powered (motor) tankers by 12 to 1. Since steam-powered ships generate sludge at a far lower rate than diesel-powered ships, U.S. oil loading ports and terminals will only occasionally receive sludge; therefore, the criteria for sludge in this proposal is not based on the number of vessels using the port or terminal.

The criteria for sludge reception proposed in § 158.230(a) and (b) are based on the IMO assumption that diesel-powered oceangoing ships will generate approximately .25 tons of sludge per day. The Coast Guard assumes that the average oceangoing ship will arrive at a port or terminal after a five-day voyage, and will accumulate ten metric tons of sludge prior to dicharging these residues at a reception facility. Based on these assumptions, one diesel-powered ship out of eight arriving at a port or terminal will utilize recepton facilities. Steam-powered ships will utilize reception facilities for sludge far less frequently. Since most of the oceangoing ships serviced by ports and terminals, other than oil loading ports and terminals, are foreign flag and diesel-powered, the Coast Guard proposes that a standard of ten metric tons for each ten oceangoing ships using the port or terminal daily would have to be met for the reception facility to be considered adequate.

The IMO Guidelines suggest that 100 metric tons of capacity should be available at a port for reception of oily bilge wastes. Once again, this figure does not account for vessel traffic density and 100 metric tons may be excessive for small ports and inadequate for large ones. Two commenters suggested that the average oceangoing ship will have ten metric tons of bilge residues to discharge. Accumulation of oily bilge wastes does not vary significantly between diesel-powered ships and steam-powered ships. The Coast Guard estimates that one oceangoing ship out of every five arrivals will desire to discharge oily bilge wastes. Sections 158.210—158.230 propose that a minimum of ten metric tons capacity should be adequate for ports and terminals handling up to five

oceangoing ships daily, and that two metric tons for each oceangoing ship should be adequate for ports and terminals handling over five oceangoing ships daily.

In developing the criteria for sludge and bilge water residues, the Coast Guard considered not only the information sources mentioned above, but also the capacities of the types of mobile equipment commonly available in ports to serve as reception facilities.

(f) *Chemical Terminals and Shipyards Repairing Chemical Tankers.* Comments addressing issues raised by these paragraphs of the ANPRM will be addressed in a subsequent notice of proposed rulemaking dealing with Annex II of MARPOL 73/78.

(g) *Standard Discharge Connection.* It should be noted that proposed § 158.250 would require reception facilities, in order to be certified as adequate, to have a standard discharge connection for oily bilge water compatable with those required of oceangoing ships by 33 CFR 155.430.

Summary of Analysis

The costs, benefits, and other impacts of Federal regulation of reception facilities are best viewed in context with the entire MARPOL 73/78 Annex I scheme. When fully implemented, Annex I is expected to reduce the discharge of oil from ships into the sea from the present 280 million gallons per year to approximately 50 million gallons per year. While the costs of various aspects of the Annex I scheme can be attributed to the various implementing regulatory programs with reasonable accuracy, it is virtually impossible to apportion the benefit of reduction of discharge. The principal aspects of the Annex I scheme are as follows:

a. *Ship Equipment and Operational Requirements* (MARPOL 73/78, Annex I, Regulations 13 through 26; 33 CFR Parts 155 and 157). This aspect includes equipment and procedures to minimize the need for discharging oily wastes at sea and to minimize accidental discharges during casualties such as collisions and groundings.

b. *Ship Discharge Limits* (MARPOL 73/78, Annex I, Regulations 9 and 10; 33 CFR Parts 151 and 157). This aspect includes the limits placed on the amount of oily wastes ships can discharge at sea, and the circumstances in which allowable wastes may be discharged.

c. *Reception Facilities* (MARPOL 73/78, Annex I, Regulation 12; proposed 33 CFR Part 158). This aspect includes regulations to minimize the impact of the discharge limits on ships. The intent is to avoid the expense of delay from ships having to arrange for reception facilities on a case-by-case basis, and to avoid ships being placed in the position of having to contravene discharge requirements because of lack of reception facilities.

The analysis below is limited to the costs, benefits, and impacts that can be directly attributed to reception facility regulation. It should be borne in mind, however, that a portion of the economic benefit of conservation of recyclable energy resources, and of the environmental benefit of reduction of pollution at sea, is attributable to reception facility regulation as part of the overall Annex I scheme.

Draft Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft regulatory evaluation has been prepared and placed in the rulemaking docket and may be inspected or copied as detailed under ADDRESSES above. Copies may also be obtained from LT Davison as detailed under "**FOR FURTHER INFORMATION CONTACT**" above.

The draft evaluation projects cost to the Federal Government and the private sector. These costs include administrative costs associated with the preparation and processing of a Certificate of Adequacy, and the costs of providing reception facilities where they are not presently available. The Coast Guard assumes that two oil loading ports and terminals, one private and one Federal Government, would have to install ballast reception facilities. The Coast Guard further assumes that ten ports would have to purchase and operate tank trucks to serve as mobile reception facilities for oily bilge waste and sludge. Cost information was solicited from commenters to the ANPRM and independent waste haulers. Based on multiple cost estimates that were received, the high estimate of a total annual cost of $7.8 million is projected. Using averages of cost estimates would result in a total projected annual cost of $5.4 million.

Economic benefits could not be accurately quantified; environmental benefits are discussed below. The primary economic benefit would be in the avoidance of delay of oceangoing ships. The Coast Guard projects that an average of 10,938 oceangoing ships would use reception facilities annually. Based on an unweighted average of the demurrage rates provided by one commenter, each average hour of delay for reception facilities would result in an overall cost of $7.5 million in ship operating expenses annually. While the Coast Guard cannot at this time estimate how many hours, on the average, would be saved by Federal regulation of reception facilities, the costs and benefits would balance if an average of 1.04 hours were saved per ship using reception facilities.

As noted under **Summary of Analysis**, above, the proposed reception facility regulations are part of the overall MARPOL 73/78 scheme which is expected to result in a net reduction of 230 million gallons per year of oily wastes discharged into the seas. This will result in an economic benefits in reduction in waste of energy resources and in an increase in recycling of those oily wastes that are produced by ships. A portion of this economic benefit should be attributable to reception facility regulation, although the Coast Guard has not devised a method to accurately determine what portion should be attributed in this manner. The public is invited to submit further information to form the basis of a more accurate final evaluation.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, an initial regulatory flexibility analysis which discusses the impact of the proposal on small entities has been made part of the Draft Regulatory Evaluation. A copy of the Draft Regulatory Evaluation has been placed in the rulemaking docket and a copy may be obtained from LT Davison as detailed under "**FOR FURTHER INFORMATION CONTACT**" above.

In the advance notice of proposed rulemaking the Coast Guard proposed considering ports and terminals handling less than $50,000 worth of cargo annually as "small entities" for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601–612). Those commenters addressing this issue thought this cutoff was too low. One commenter thought that a "small entity" should be those ports and terminals with annual receipts of $112,000 or less. Two commenters proposed that "small entity" be defined in terms of barrels of liquid cargo handled or tons of dry cargo handled. Volume of cargo handled is not an accurate criteria because of the variety of business arrangements of ports and terminals.

In light of the comments the Coast Guard proposes using the Small Business Administration's (SBA) definition of "small business" for SBA loans for concerns engaging in transportation and warehousing (13 CFR 12.3–10(f)). Under this definition, a

concern is considered small if its annual receipts do not exceed $1.5 million.

The Coast Guard does not have any information that would indicate how many of the estimated 1,348 ports and terminals affected by the proposed regulations would be considered small entities under the SBA definition. Some small ports and terminals are affiliated with large corporations having a substantial monetary interest in the cargo while others are independent contractors for wharfage and warehousing. For this reason the analysis was limited to expected impact on an individual small port or terminal. For purposes of meeting the Regulatory Flexibility Act the Coast Guard, therefore assumes that a "substantial" number of small entities are affected.

The Coast Guard expects that many small entities will either use existing mobile reception facilities or will be able to use reception facilities located elsewhere with a waiver under proposed § 158.150. Costs to small entities would consist of the administrative costs of application for a certificate of adequacy. In many cases these costs will be substantially reduced, since many small entities will combine their efforts and apply as a port. The cost of this one-time effort is expected to be $780.00 per small entity, and is not considered to be significant.

Paperwork Reduction Act

This proposed rulemaking contains information collection requirements in the following proposed rules: § 151.09, § 158.140, § 158.150, § 158.165 and § 158.190. They have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980. (44 U.S.C. 3501 *et seq.*). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503, ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under **"ADDRESSES"**.

Environmental Impact

The Coast Guard does not expect this program to have an adverse impact on the environment. Other laws and regulations currently in effect or pending restrict the amount of waste that can be discharged into the ocean, and require that wastes not legally discharged be retained for disposal ashore. Implementation of MARPOL 73/78 Regulation 12 formalizes the indirect requirement that shore reception facilities be provided in order for ships to comply with the discharge restrictions. The proposed regulations would not change the demand for reception facilities because they would neither reduce the generation of oily waste nor further restrict discharges to the ocean. They would not affect the type or volume of oily waste coming ashore for processing and disposal.

The proposed regulations would affect the locations that these wastes come ashore since, under the status quo, ports might not make reception facilities available just because of a market demand. Without the proposed regulations ship wastes would be concentrated at ports where reception facilities are already available and at those where they would be provided in response to market demand. As to the environmental significance of this effect, one commenter indicated that industrialized areas are already overloaded with waste disposal problems, while several others thought that the industrialized ports would be better equipped to handle wastes than remote ports. The Coast Guard estimates that approximately 400,000 metric tons of oily wastes might be dispersed to local reception facilities under the proposed regulations. However, the Coast Guard considers that this dispersal would be environmentally neutral since oily wastes can be readily transported and recycled or disposed of.

As noted under **Summary of Analysis**, above, the proposed reception facility regulations are part of the overall MARPOL 73/78 scheme which is expected to result in a net reduction 230 million gallons per year of oily wastes discharged into the seas. While it is impractical to accurately apportion the amount of this reduction attributable to reception facility regulation, the Coast Guard considers that this environmental benefit more than compensates for any negative environmental impact that might be attributed to this regulatory program.

An environmental assessment and a Finding of No Significant Impact have been prepared and are available as detailed under **"ADDRESSES"** above.

List of Subjects

33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 158

Hazardous waste, Oil pollution, Ports, Reception facilities, Terminals, Vessels.

In consideration of the preceding, it is proposed to amend Subchapter O, Chapter I, Title 33 of the Code of Federal Regulations as follows:

PART 151—[AMENDED]

1. By revising § 151.09(f) to read as follows:

§ 151.09 Control of discharge of oil.

* * * * *

(f) The person in charge of an oceangoing ship that cannot discharge oil residues into the sea in compliance with paragraphs (a), (b), (c) or (d) of this section shall ensure that those residues are—

(1) Retained on board; or

(2) Discharged to a reception facility. If the reception facility is in a port or terminal in the United States, each person in charge of each tanker or other oceangoing ship of 400 gross tons or more shall notify the port or terminal, at least 24 hours before entering the port or terminal, of—

(i) The estimated time for discharging oil residues or oily mixtures;

(ii) The type of oil residues or oily mixtures to be discharged; and

(iii) The volume of oil residues or oily mixtures to be discharged.

* * * * *

2. By adding a new Part 158 to read as follows:

PART 158—RECEPTION FACILITIES

Subpart A—General

Sec.

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158.110 Applicability.
158.120 Definitions and acronyms.
158.130 Delegations.
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Subpart B—Criteria for Reception Facilities: Oil Residues and Mixtures

158.200 General.
158.210 Ports and terminals loading crude oil.
158.220 Ports and terminals transferring more than 1,000 metric tons of oil, except crude oil.
158.230 Ports and terminals, except ports and terminals under §§ 158.210, 158.220, and 158.240.
158.240 Ship repair yards.
158.250 Standard discharge connection.

Subpart C—Criteria for Reception Facilities: Noxious Liquid Substances [Reserved]

Authority: Sec. 4, 94 Stat. 2298 (33 U.S.C. 1903(b)), 49 CFR 1.46(hh).

Subpart A—General

§ 158.100 Purpose.

This part establishes criteria for determining the adequacy of reception facilities and procedures for certifying that those reception facilities are adequate for receiving residues and mixtures containing oil from tankers and other oceangoing ships of 400 gross tons or more.

§ 158.110 Applicability.

This part applies to each port and each terminal in the United States or under the jurisdiction of the United States that is used by a tanker or other oceangoing ship of 400 gross tons or more.

§ 158.120 Definitions and acronyms.

As used in this part:

"Captain of the Port" (COTP) means the U.S. Coast Guard officer commanding a Captain of the Port Zone described in Part 3 of this Chapter.

"Clean ballast" has the same meaning as contained in § 157.03(e) of this subchapter.

"Commandant" means Commandant, U.S. Coast Guard.

"MARPOL Protocol" (MARPOL 73/78) stands for the International Convention for the Prevention of Pollution from Ships, 1973 (done at London, November 2, 1973), as modified by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships 1973 (done at London on February 17, 1978).

"Oceangoing" ship has the same meaning as contained in § 151.05(j) of this subchapter.

"Person" has the same meaning as contained in § 151.05(n) of this subchapter.

"Person in charge" means an owner of, an operator of, or a person authorized to act in behalf of a port or terminal.

"Port" means—

(a) A voluntary group of terminals;

(b) A port authority or other organization that elects to be considered a port for the purposes of this part; or

(c) A place or facility that has been specifically designated as a terminal by the COTP.

"Reception facility" means anything capable of receiving shipboard oil or chemical wastes, that includes, but is not limited to—

(a) Fixed piping that conveys wastes from the ship to a storage or treatment system;

(b) Mobile facilities, including tank barges, railroad cars or tank trucks; and

(c) Any combination of fixed and mobile facilities.

"Segregated ballast" has the same meaning as contained in § 157.03(r) of this subchapter.

"Ship" has the same meaning as contained in § 151.05(q) of this subchapter.

"Tank barge" has the same meaning as contained in 46 CFR 30.10–65.

"Tanker" means an oceangoing ship constructed or adapted primarily to carry oil or hazardous materials in bulk in the cargo spaces.

"Terminal" means an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

Note.—A ship repair yard is a terminal.

§ 158.130 Delegations.

Each COTP is delegated the authority to—

(a) Conduct an inspection of each reception facility for which an application is submitted under § 158.140 to determine if it meets the requirements of—

(1) MARPOL 73/78; and

(2) The requirements of Subpart B of this part;

(b) After determining that the reception facility passes the inspection under paragraph (a) of this section, issue a Certificate of Adequacy to the applicant;

(c) Grant waivers under § 158.150 that do not violate MARPOL 73/78 or the Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq*);

(d) Designate terminals; and

(e) Deny entry to each oceangoing ship to each port, terminal, or group of ports and terminals (group) not holding a valid Certificate of Adequacy issued by the COTP under this delegation.

§ 158.140 Applications for Certificates of Adequacy.

(a) The person in charge may request the Coast Guard to certify that the port's or terminal's facilities for receiving residues and mixtures containing oil from tankers or other oceangoing ships of 400 gross tons or more are adequate by applying to the COTP of the Zone in which the port or terminal is located.

(b) Each application for a Certificate of Adequacy must be in writing and contain the following:

(1) The name, mailing address, and telephone number of the person in charge.

(2) The geographic location of each terminal.

(3) The number, types, and principal trades of tankers and other oceangoing ships of 400 gross tons or more using each port and terminal.

(4) The following information for each reception facility:

(i) The total volume of residues and mixtures containing oil that it can receive each day.

(ii) The transfer rates.

(iii) The name, address, and telephone number of the person who is in charge of the reception facility.

(iv) If the reception facility is not under the control of the person in charge of the port or terminal, a statement from the person who is in charge of the reception facility of the maximum daily volume of residues and mixtures containing oil that will be accepted from oceangoing ships using the port or terminal.

(5) A copy of each license, permit, and document held by the reception facility that is required by any Federal, state, or local environmental law or regulation for the storage, handling, transporting processing, and disposal of the residues and mixtures containing oil.

§ 158.150 Waivers.

(a) If the person in charge believes that a requirement in this part is unreasonable or impracticable for the port's or terminal's operations, the person in charge may submit an application for a waiver to the COTP. This application must—

(1) Be in writing; and

(2) Include the—

(i) Reasons for the waiver;

(ii) Proposed alternatives; and

(iii) Any additional information requested by the COTP.

(b) If the COTP grants a waiver under this section, the waiver—

(1) Is in writing; and

(2) Specifies each alternative that applies and the requirement under this part for which the alternative is substituted.

(c) The waiver issued under paragraph (b) of this section must be attached to the Certificate of Adequacy issued under § 158.160.

§ 158.160 Issuing the Certificate of Adequacy.

(a) After reviewing the application, conducting an inspection, and consulting with the Administrator of the Environmental Protection Agency (EPA), the COTP—

(1) Issues a Certificate of Adequacy to the applicant; or

(2) Denies the application for the Certificate of Adequacy and informs the applicant in writing of the reasons for the denial.

(b) The Certificate of Adequacy shows any waivers that are granted under § 158.150.

§ 158.163 Reception facility operations.

(a) Each person in charge who holds a Certificate of Adequacy shall ensure that the reception facility does not operate in a manner that violates any requirement under this part.

(b) A copy of the Certificate of Adequacy must be—

(1) At each port and terminal; and

(2) Available for inspection by the COTP and the master, person who is in charge, or the agent of an oceangoing ship.

(c) Ports and terminals required to have a Coast Guard Operations Manual must have a copy of the Certificate of Adequacy, including any waivers, attached to that operations manual.

§ 158.165 Certificate of Adequacy: Validity.

(a) Each Certificate of Adequacy remains valid unless suspended or revoked under § 158.170.

(b) A Certificate of Adequacy which has been suspended or revoked must be returned to the COTP.

(c) The person in charge shall notify the COTP in writing of each change within 10 days after any of the information supplied under § 158.140 changes.

(d) Failure to notify the COTP in writing of each change within 30 days after any of the information supplied under § 158.140 changes is grounds for revocation of a Certificate of Adequacy.

§ 158.170 Suspension and revocation of Certificates of Adequacy: Procedure.

(a) If the COTP has evidence that the reception facility does not operate in accordance with § 158.165, the COTP notifies the person in charge of the grounds for suspension or revocation. After notification, the COTP may immediately suspend the Certificate of Adequacy if continued operations will result in undue delay to oceangoing ships.

(b) Evidence or arguments for the retention of the Certificate of Adequacy that are submitted to the COTP within thirty days after notice or suspension occurs under paragraph (a) of this section are considered before further action is taken. If the person in charge fails to meet any measures ordered by the COTP, the COTP may do the following:

(1) Suspend or revoke the Certificate of Adequacy.

(2) Initiate penalty action under Subpart 1.07 of this chapter.

(c) The suspension or revocation of the Certificate of Adequacy by the COTP may be appealed under the procedure in § 158.190.

§ 158.180 Denial of entry.

After October 2, 1984, no tanker, or other oceangoing ship of 400 gross tons or more, required by Regulation 9 of Annex I of MARPOL 73/78 to retain onboard while at sea, oil or oily mixtures, may enter any port or terminal to which this part applies unless—

(a) The port or terminal holds a valid Certificate of Adequacy; or

(b) The ship is entering under force majeure.

§ 158.190 Appeals.

(a) Any person directly affected by an action taken under this part may request reconsideration by the Coast Guard officer responsible for that action.

(b) Except as provided under paragraph (d) of this section, any person not satisfied with a ruling made under the procedure contained in paragraph (a) of this section may—

(1) Appeal that ruling in writing to the Coast Guard District Commander of the district in which the action was taken; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(c) The District Commander issues a ruling after reviewing the appeal submitted under paragraph (b) of this section, which is final agency action.

(d) If the delay in presenting a written appeal has an adverse impact on the operations of the appellant, the appeal under paragraph (b) of this section—

(1) May be presented orally; and

(2) Must be submitted in writing within five days after the oral presentation—

(i) With the basis for the appeal and a summary of the material presented orally; and

(ii) To the same Coast Guard official who heard the oral presentation.

Subpart B—Criteria for Reception Facilities: Oil Residues and Mixtures

§ 158.200 General.

The reception facility used to meet Subpart A must—

(a) Be prepared to receive oily wastes and mixtures from the ship within 24 hours after notice by that ship;

(b) Complete the reception of oily ballast from the ship in less than 10 hours after waste transfer operations begin;

(c) Complete the reception of other oily residues and mixtures in less than 4 hours after the transfer operation begins; and

(d) Hold each state, local, and Federal permit and license required by law and regulation.

§ 158.210 Ports and terminals loading crude oil.

The reception facility for a crude oil loading port or terminal must have the capacity for receiving—

(a) At least 10 metric tons (11 short tons) of sludge from on-board fuel and lubricating oil processing;

(b) If an average of 5 tankers or less, based on annual data, use the port or terminal each day, at least 10 metric tons (11 short tons) of oily bilge water;

(c) If an average of more than 5 tankers, based on annual data, use the port or terminal each day, at least 2 metric tons (2.2 short tons) of oily bilge water for each tanker; and

(d) A total amount of oily ballast equal to 30% of the deadweight tonnage of the largest tanker that uses the port or terminal and that is not equipped with dedicated clean ballast tanks or segregated ballast tanks that meet Part 157 of this subchapter, multipled by the average number of tankers, based on annual data, using the port or terminal each day.

§ 158.220 Ports and terminals transferring more than 1,000 metric tons of oil, except crude oil.

The reception facility for an oil loading port or terminal other than a crude oil loading port or terminal that transfers an average of more than 1,000 metric tons (1,100 short tons) each day, based on annual data, to tankers, other than tank barges that do not ballast or wash cargo tanks while proceeding en route, must have the capacity for receiving—

(a) At least 10 metric tons (11 short tons) of sludge from on-board fuel and lubricating oil processing;

(b) If an average of 5 tankers or less, based on annual data, use the port or terminal each day, at least 10 metric tons (11 short tons) of oily bilge water;

(c) If an average of more than 5 tankers, based on annual data, use the port or terminal each day, at least 2 metric tons (2.2 short tons) of oily bilge water for each tanker;

(d) A total amount of oily ballast equal to 30% of the deadweight tonnage of the largest tanker that uses the port or terminal and that is not equipped with dedicated clean ballast tanks or segregated ballast tanks that meet Part 157 of this subchapter, multiplied by the average daily number of tankers, based on annual data; and

(e) A total amount of cargo residue equal to 0.2% of the total cargo capacity of the largest tanker using the port or terminal multiplied by the average daily number of tankers, based on annual data.

§ 158.230 Ports and terminals, except ports and terminals under §§ 158.210, 158.220 and 158.240.

Reception facilities except those under §§ 158.210, 158.220, and 158.240 of this subpart, must have the capacity for receiving—

(a) If an average of 10 oceangoing ships or less, based on annual data, use the port or terminal each day, at least 10 metric tons (11 short tons) of sludge from on-board fuel and lubricating oil processing;

(b) If an average of more than 10 oceangoing ships, based on annual data, use the port or terminal each day, at least 1 metric ton (1.1 short tons) of sludge for each oceangoing ship;

(c) If an average of 5 oceangoing ships or less, based on annual data, use the port or terminal each day, at least 10 metric tons (11 short tons) of oily bilge water; and

(d) If an average of more than 5 oceangoing ships based on annual data, use the port or terminal each day, at least 2 metric tons (2.2 short tons) of oily bilge water for each oceangoing ship.

§ 158.240 Ship repair yards.

The reception facility that services oceangoing ships using a ship repair yard must have a capacity for receiving—

(a) An amount of ballast from bunker tanks, and the wash water and residues from the cleaning of bunker tanks and sludge tanks, equal to 8% of the bunker capacity of the largest oceangoing ship serviced;

(b) An amount of oily ballast equal to 30% of the deadweight tonnage of the largest tanker serviced that is not equipped with dedicated clean ballast tanks or segregated ballast tanks that meet Part 157 of this subchapter;

(c) An amount of oily solids from cargo tanks equal to 0.1% of the deadweight tonnage of the largest tanker serviced;

(d) An amount of wash water from in-port tank washing equal to 8% of the deadweight tonage of the largest tanker serviced; and

(e) An amount of liquid cargo residues based on the following percentages of deadweight tonnage of the largest tanker serviced:

(i) For crude oil tankers, 1%.

(ii) For black product tankers, 0.5%.

(iii) For white product tankers, 0.2%.

§ 158.250 Standard discharge connection.

Each reception facility that receives oily bilge water must have a standard discharge connection that—

(a) Meets § 155.430 of this subchapter; and

(b) Attaches to each hose and pipe that removes oily bilge water from oceangoing ships.

Subpart C—Criteria for Reception Facilities: Noxious Liquid Substances [Reserved]

Dated: March 9, 1984.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 84-16287 Filed 6-18-84; 8:45 am]

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Tuesday
June 19, 1984

Part VIII

Department of Energy

Bonneville Power Administration

Filing of Average System Cost Methodology; Notice

DEPARTMENT OF ENERGY

Bonneville Power Administration

Filing of Average System Cost Methodology

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice. BPA File No.: ASC-83; FERC Docket No. RM84-16-000.

SUMMARY: Take notice that on June 5, 1984, he Bonneville Power Administration, United States Department of Energy, tendered for filing with the Federal Energy Regulatory Commission (Commission) a proposed Average System Cost (ASC) methodology, together with a Record of Decision supporting adoption of that methodology and a request for final approval, pursuant to section 5(c)(7) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839c(c)(7). The filing follows the completion of a statutory "consultation" proceeding during which an extensive record was compiled by the BPA Administrator. The ASC methodology is virtually identical to the proposed methodology disseminated for public comment by the BPA staff on May 15, 1984. In its filing with the Commission, BPA requests that the ASC methodology be approved on a final basis to become effective as of July 1, 1984. In the alternative, BPA requests interim approval of the ASC methodology as of the same date. The Commission has assigned this filing Docket No. RM84-16-000.

Responsible Official:

John A. Cameron, Jr., Assistant General Counsel, Bonneville Power Administration, APR, P.O. Box 3621, Portland, Oregon 97208; 503-230-4201.

ADDRESS: For further information contact Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212; 503-230-3478. Oregon callers outside Portland may use the toll-free number 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800-547-6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE Irving Street, Portland, Oregon 97208, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952.

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Richard D. Casad, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington, 99362, 509-522-6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main St., Boise, Idaho 83707, 208-334-9138.

SUPPLEMENTARY INFORMATION: The ASC methodology determines the average system cost of resources for Pacific Northwest electric utilities that participate in the "residential exchange" authorized by section 5(c) of the Northwest Power Act. The ASC methodology determines the level of subsidy paid by BPA to each utility participating in the residential exchange. The Northwest Power Act gives the BPA Administrator discretionary authority to determine ASC based on a methodology to be developed by BPA in consultation with the Pacific Northwest Electric Power and Conservation Planning Council, BPA customers and state regulatory agencies in the Pacific Northwest. The initial ASC methodolgy was adopted by BPA and first approved by the Commission in 1981.

By letter dated May 25, 1984, the BPA Administration requested expeditious review by the Commission so that the ASC methodology can become effective on a final or interim basis as of July 1, 1984. The BPA Administrator requests interim or final approval by July 1, 1984, for three principal reasons.

First, section 5 (c)(2) of the Northwest Power Act specifies that Pacific Northwest utility loads eligible for the residential exchange will increase by 10 percent on July 1, 1984, thus increasing the subsidy provided to utilities under the residential exchange. Any reduction in the subsidy under the revised methodology will tend to be offset by this increase in eligible loads if the Commission grants interim approval by July 1, 1984. This offset will minimize the effects of the revised methodology on participating utilities and their ratepayers.

Second, BPA's next general rate proceeding begins in August of this year and BPA must know by about July 1, 1984, the level of subsidy payments to include in BPA's revenue requirements. Delays in ascertaining the level of the ASC subsidy will necessarily delay the rest of the process.

Third, section 7(c)(2) of the Northwest Power Act states that the minimum rate BPA can charge its direct service industrial (DSI) customers after July 1, 1985, is determined by the rates in effect during the preceding 12 months. The DSI rate is materially affected by the level of the residential exchange subsidy. If the revised ASC methodology is implemented by July 1, 1984, this will cause the statutory minimum rate to reflect the level of the subsidy to be paid by BPA over the effective period for BPA's post-1985 rates.

Any person desiring to be heard or to protest this filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with 18 CFR 385.211 and 385.214. The Commission has established a June 22, 1984, deadline for public comments regarding BPA's reasons for requesting approval effective July 1, 1984. Comments on whether the methodology should be approved must be received by July 16, 1984. Protests or comments 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.

Copies of the filing are also available for inspection at BPA headquarters and BPA field offices throughout the Northwest. BPA is distributing the ASC methodology to parties who participated in the consultation proceeding. Copies of the methodology and the Administrator's decision may be requested from the BPA Public Involvement Office, P.O. Box 12999, Portland, OR 97212. The methodology is also attached to this notice.

The reporting requirements of the ASC methodology are being submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act, 44 U.S.C. 3501-3502 (1982), and pertinent regulations, 5 CFR 1320.13 (1983). OMB may approve, modify, or disapprove these reporting requirements. If OMB approval is

received, the Commission will publish the OMB Control Number assigned to the ASC methodology. Comments relating to the reporting requirements of the ASC methodology can be made to: Office of Management and Budget, Attention FERC Desk Officer, Room 3228, 726 Jackson Place, NW., Washington, D.C. 20503. All comments should be received at OMB by June 22, 1984. Copies of submissions to OMB should be sent to the Commission and to BPA.

Issued in Portland, Oregon on June 12, 1984.

Marvin Klinger,

Acting Administrator.

DEPARTMENT OF ENERGY

Bonneville Power Administration

Methodology for Determining the Average System Cost of Resources for Electric Utilities Participating in the Residential Exchange Established by Section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act

June 1984.

Review Procedure—Bonneville Power Administration

The following rule sets forth the procedures by which an Average System Cost (ASC) filing is to be submitted to Bonneville Power Administration (BPA) and by which the BPA review process will be conducted. BPA's review is to determine the ASC for the purpose of the residential exchange between BPA and participating utilities pursuant to section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839, *et seq.* (Northwest Power Act).

I. Definitions

For purposes of BPA's review procedures for Appendix 1, the following definitions apply:

A. "Average system cost" or "ASC" means for each Jurisdiction and each exchange period the quotient obtained by dividing Contract System Costs by Contract System Load.

B. "Commission" means the Federal Energy Regulatory Commission.

C. "Contract System Costs" means the Utility's Costs for production and transmission resources, including power purchases and conservation measures, which Costs are includable in, jurisdictionally allocated by, and subject to the provisions of Appendix 1. Contract System Costs do not include Costs excluded from ASC by section 5(c)(7) of the Northwest Power Act.

D. "Contract System Load" means the firm energy load used by the State Commission for the purpose of establishing retail rates, adjusted pursuant to the Average System Cost Methodology rule.

E. "Costs" means the aggregate dollar amount or any portion of the amount allowed or relied upon by the State Commission to determine the test period revenue requirement for the Utility in a Jurisdiction.

F. "Exchange Period" means the period of time during which a Utility's jurisdictional retail rate schedules are in effect, commencing with the effective date of these schedules and ending with the effective date of new retail rate schedules in the Jurisdiction; provided that no Exchange Period shall commence prior to or extend beyond the term of the Utility's Residential Purchase and Sale Agreement. For the purposes of any initial Appendix 1 filing, the Exchange Period shall commence on the date such Appendix 1 is filed and end with the effective date of the next retail rate change.

G. "Jurisdiction" means the service territory of the exchanging Utility within which a State Commission has authority to approve the retail rates.

H. "New Large Single Load" means that load defined in section 3(13) of the Northwest Power Act, and as determined by BPA as specified in power sales contracts with its customers.

I. "Regional Power Sales Customer" means any entity that contracts directly with BPA for the purchase of power for delivery in the region as defined by section 3(14) of the Northwest Power Act.

J. "Test Period" means the time period (not less than 12 months) used by the State Commission to determine Costs for retail ratemaking.

K. "State Commission" means a state regulatory body, preference utility governing body, or other entity authorized to establish retail electric rates in a Jurisdiction.

L. "File" or "Filed" means that the Appendix 1 has been:

(1) Hand delivered to the Division of Financial Requirements; Bonneville Power Administration; Portland, Oregon; or

(2) Mailed to BPA by certified mail, return receipt requested, to the following address:

Bonneville Power Administration,
Division of Financial Requirements,
Routing: DN,
P.O. Box 3621,
Portland, Oregon 97208

and has been received by BPA. An Appendix 1 shall be considered to be filed as of the date of the postmark on the certified mailing.

M. "Review Period" means that period of time during which a Utility's Appendix 1 is under review by Bonneville. The review period begins when an Appendix 1 is Filed and ends two hundred and ten (210) days after the Utility Filed its Appendix 1.

II. Filing Procedures

The procedures set forth in this section state the filing requirements for all Utilities which File an Appendix 1. The procedures are as follows:

A. Appendix 1 is a form that identifies Contract System Costs and Contract System Load and permits the calculation of ASC.

B. For each Exchange Period and for each regional Jurisdiction in which a Utility provides service, the Utility shall complete and File three copies of Appendix 1 as follows:

1. (a) Within twenty (20) working days after the date the Commission grants interim approval, or final approval in the event no interim approval is granted to any revised ASC Methodology, the Utility shall File an Appendix 1, which includes a loss study, reflecting its Costs for the test period for the rate schedule(s) then in effect for each Jurisdiction. Subject to the Provisions of section III, the ASC determined from each Appendix 1 shall be the rate applicable to exchange power from that Jurisdiction during the initial Exchange Period. For purposes of this subsection, the initial Exchange Period shall commence on the date the Commission grants interim approval, or final approval in the event no interim approval is granted to any revised Methodology; provided that if a Utility Files an initial Appendix 1 after the twenty-day deadline, BPA may make the new ASC payable only from the date the initial Appendix 1 was actually Filed. However, BPA shall not delay as a result of a late filing of an Appendix 1, the effective date of any change in the ASC if the late filing was the result of unavoidable delay or excusable neglect, and the Utility proceeded to File its initial Appendix 1 as soon as practicable. If a Utility fails to file its initial Appendix 1 within the twenty-day deadline, the ASC of that Utility for the initial Exchange Period shall be zero (0) until the Utility files its initial Appendix 1.

(b) For those Utilities that are parties to an Exchange Transmission Credit Agreement (ETCA), within twenty (20) working days after the date the ETCA is terminated, the Utility shall File an Appendix 1, which includes a loss study,

reflecting its Costs for the Test Period for the rate schedule then in effect for each Jurisdiction. Subject to the provisions of section III of this rule, the ASC determined from each Appendix 1 shall be the rate applicable to exchange power from that Jurisdiction during the initial Exchange Period. For purposes of this subsection, the initial Exchange Period shall commence on the date the ETCA is terminated; provided that if a Utility Files an initial Appendix 1 after the twenty-day deadline, BPA may make the new ASC payable only from the date the initial Appendix 1 was actually Filed. However, BPA shall not delay as a result of a late filing of an Appendix 1, the effective date of any change in the ASC if the late filing was the result of unavoidable delay or excusable neglect, and the Utility proceeded to File its initial Appendix 1 as soon as practicable.

2. Thereafter, not later than five (5) working days after filing for a jurisdictional rate change or otherwise commencing a rate change proceeding, the Utility shall File a preliminary Appendix 1, setting forth the Costs proposed by the Utility and shall deliver to BPA all information initially provided to the State Commission.

3. Not later than twenty (20) days following the commencement date of a new Exchange Period, the Utility shall File a revised Appendix 1, which includes a loss study, reflecting its Costs as approved by the State Commission and a reconciliation of all Costs included on the revised Appendix 1 to the rate order issued by that Utility's State Commission. Subject to the provisions of section III of this rule, the ASC included in the revised Appendix 1 will be the ASC applicable to exchange power for that Jurisdiction during the Exchange Period, Provided that if a Utility Files a revised Appendix 1 after the twenty-day deadline, BPA may make the new ASC payable only from the date the revised Appendix 1 was actually Filed. However, BPA shall not delay as a result of a late filing of an Appendix 1, the effective date of any change in the ASC if the late filing was the result of unavoidable delay or excusable neglect, and the Utility proceeded to File its revised Appendix 1 as soon as practicable.

4. (a) A Utility filing a preliminary Appendix 1 shall mail written notice thereof to each of BPA's Regional Power Sales Customers or their designee notice of any ASC filing.

(b) A Utility filing a revised Appendix 1 shall mail written notice thereof to each of BPA's Regional Power Sales Customers or their designates notice of any ASC filing. This notice shall make reference to the right to comment thereon and shall state the date the Utility Filed its revised Appendix 1.

C. If BPA or any of its regional power sales customers have been denied the right to participate in a jurisdictional rate review proceeding or with rights equivalent to any retail customer of the Utility, no change in ASC based on a change of Costs authorized in that proceeding shall be effective until BPA has completed its review pursuant to section III of this rule.

III. BPA Review Process

A. BPA may intervene in each jurisdictional rate proceeding for each Utility participating in the Residential Purchase and Sale Agreement.

B. Each Appendix 1, except those required by section II(B)(2) of this rule, shall be reviewed by BPA or its designee to determine whether the Costs are consistent with generally accepted accounting principles for electric utilities, whether Contract System Costs contains only allowed Costs, and whether the revised Appendix 1 complies with the requirements of this Methodology including applicable definitions and requirements incorporated from the Commission's Uniform System of Accounts. In addition, each Appendix 1 shall be reviewed by BPA or its designee to determine whether the Contract System Load used by the Utility is an appropriate load for purpose of the Utility's ASC computation.

BPA will make an independent determination for ASC computation of (1) the appropriateness of the inclusion of Costs; (2) the reasonableness of the Costs included in Contract System Cost; and (3) the appropriatness of Contract System Loads. BPA shall not be obligated to pay an ASC different than the ASC based on Contract System Costs and Contract System Load as determined by BPA; provided that if a final order of the Commission or a reviewing court rejects BPA's ASC determination, then the ASC payable by BPA shall be the ASC as revised by BPA on remand.

C. The review period for each Appendix 1 required by section II(B)(1) of this rule shall commence no later than one hundred (100) days from the date the Utility Files the Appendix 1 required by section II(B)(1). BPA shall mail written notice of the date BPA's review period commences to the Utility, to each of BPA's Regional Power Sales Customers or their designee notice of any Appendix 1 filing. The Appendix 1 required by section II(B)(1) of this rule shall then be subject to review as set forth in section III(D). For purposes of the review process, the Appendix 1 referred to in section II(B)(1) shall be deemed to be a "revised Appendix 1" as used in III(D) below and the date the review period commences shall be deemed the date the Utility Filed its revised Appendix 1.

D. The revised Appendix 1 described in section II(B)(3) of this rule shall be subject to review as follows:

1. Not later than 80 days following the date a Utility Files a revised Appendix 1, only Regional Power Sales Customers or their designee may submit written challenges to Costs included in the Utility's Contract System Costs. The challenge shall identify the specific Cost and state the nature of the challenge. Any of BPA's Regional Power Sales Customers who submit challenges will be accorded automatic party status for purposes of the review process on that Utility's filing. To be considered by BPA, challenges must be received by BPA no later than eighty (80) days following the date a Utility Files its revised Appendix 1. In addition to those of BPA's Regional Power Sales Customers who so request will be accorded party status for a specific filing if said request is received no later than eighty (80) days following the date a Utility Files its revised Appendix 1. For purposes of the review process, the Utility is a party to any review of any Appendix 1 which is submitted by the Utility.

2. (a) Not later than ninety (90) days following the date the Utility Files its revised Appendix 1, BPA shall mail to the Utility and all parties a notice (1) listing each challenged Cost and that nature of the challenge; (2) listing all parties for the review process for the revised Appendix 1; and (3) requesting comments by all parties on challenged Costs.

(b) Comments shall be submitted in writing to BPA and to all parties. Written comments, to be considered, must be *received* by BPA and must be mailed to all parties within thirty (30) days of the date of the notice.

(c) Parties may submit written cross comments in response to the previously submitted comments. Cross comments must be in writing and must be *received* by BPA and must be mailed to all parties not later than fifteen (15) days following the date the parties submit written comments.

3. Requests for oral argument before the Administrator or his designate must be submitted in writing to BPA with a statement setting forth reasons why the party believes the review process will be enhanced thereby. The written requests for oral arguments must be submitted no later than one hundred

and fifty (150) days following the date the Utility Files its revised Appendix 1. BPA may, in its sole discretion, grant the request for oral argument. Requests for oral argument shall be served on all parties.

4. (a) Not later than one hundred and thirty-five (135) days following the date a Utility Files it s revised Appendix 1, BPA may, in its sole discretion, issue a notice to all parties requesting comments on Costs that have not been challenged previously, on Contract System Loads, and on other issues that have not been raised previously. Any challenge to the Contract System Load used by the Utility in computing ASC may be raised at this time only, and only by BPA. All comments responding to this notice must be received in writing no later than one hundred and fifty (150) days following the date the Utility Files its revised Appendix 1. In addition to providing the written comments to BPA, any party commenting shall provide all parties with a copy of the comment not later than one hundred and fifty (150) days following the date the Utility Files its revised Appendix 1.

(b) Parties may submit written cross comments in response to the comments submitted in response to the notice in section III(D)(4)(a) of this rule. Cross comments from all parties must be *received* in writing by BPA and must be mailed to all other parties not later than one hunderd and sixty-five (165) days following the date the Utility Files its revised Appendix 1.

5. In the event a request for oral argument is granted, any party shall be permitted to present oral argument. The presentation of the Utility shall be last. Oral argument shall be presented no later than one hundred and eighty (180) days from the date a Utility Files its revised Appendix 1.

6. The Review Period will end two hundred and ten (210) days from the date the Utility Files its revised Appendix 1. BPA will issue its final determination not later than two hundred ten (210) days from the date the Utility Files its revised Appendix 1.

If the date of BPA's final determination or any other deadline contained in these review procedures falls on a Saturday, a Sunday, or a legal public holiday, then the deadline or BPA's final determination shall fall on the first day following that is not a Saturday, a Sunday or a legal public holiday. Legal public holiday means legal holiday as defined in 5 U.S.C. 6103(a).

E. (1) BPA may request data from the Utility at any time during the Review Period. Each Utility shall respond to reasonable data requests for information relevant to Appendix 1 from BPA, provided that the furnishing of proprietary or confidential information to any party to the review proceedings may be made contingent on the granting of proper safeguards to prevent unauthorized use or disclosure. The Utility shall provide all the data requested no later than thirty (30) days from the date of BPA's data request. If the Utility objects to the data request, it shall state in writing to BPA the specific basis for its objection no later than twenty-five (25) days from the date of BPA's data request. BPA will issue a ruling as to whether the Utility's objection will be sustained or overruled. If BPA rules that the Utility must comply with the data request, the Utility has fifteen (15) days from the date of BPA's ruling to comply. If the Utility does not provide the data requested, BPA may, in its discretion, remove from Contract System Costs all Costs that are associated with the data not provided.

(2) Date requests from persons or entities other than BPA shall be limited as follows. Each Utility shall respond to reasonable data requests for information relevant to Appendix 1 from any party in the review process for the Utility's Appendix 1, provided that the furnishing of proprietary or confidential information to any party to the review proceeding may be made contingent on the granting of proper safegurds to prevent unauthorized use or disclosure. A Utility which provides data to any party in response to a data request by that party shall also provide the same data to BPA. Date requests must be received by the Utility no later than forty (40) days from the date the Utility Filed its revised Appendix 1. The data request must identify the specific Cost(s) that is associated with the information requested. The Utility shall provide all the data requested no later than sixty-five (65) days from the date the Utility Filed its revised Appendix 1. If the Utility objects to the data request, it shall state with specificity in writing to BPA basis for its objection. BPA will issue a ruling as to whether the Utility's objection will be sustained or overruled. The Utility must submit its objection no later than sixty (60) days from the date the Utility Filed its revised Appendix 1. If BPA rules that the Utility must comply with the data request, the Utility has fifteen (15) days from the data or BPA's ruling to comply. If the Utility does not provide the date requested, BPA may, in its discretion, remove from Contract System Costs all Costs that are associated with the data not provided.

(3) All written comments and written cross comments received by BPA by the deadlines set forth above will be included as part of the record supporting the ASC determined by BPA. In addition, all data provided by the Utility as part of its filing in response to data requests from BPA or from any party shall be included as part of the record supporting the ASC determined by BPA. For any jurisdictional rate, proceeding in which BPA has intervened, all data received by BPA by virtue of its intervenor status shall also be included as part of the record supporting the ASC determined by BPA.

F. If BPA has not issued a report as of the last date of the review period, the ASC rate show on the revised Appendix 1 described in section II(B) of this rule Filed by the Utility shall be the ASC from the commencement of the relevant Exchange Period unitil the date BPA issues its report. The ASC, as determined by BPA, shall then be the ASC rate from the date of BPA's determination until the commencement of the Utility's next Exchange Period.

IV. Change in Average System Cost Methodology

The Administrator, at his or her discretion, or upon written request from three-quarters of the Utilities that are parties to contracts authorized by section 5(C) of the Northwest Power Act, or from three-quarters of BPA's preference customers, or from three-quarters of BPA's direct-service industrial customers, may initiate a consultation process as provided for in section 5(c) of the Northwest Power Act. After completion of this process, the Administrator may propose a new ASC Methodology to the Commission. However, the Administrator shall not initiate any consultation process until one year of experience has been gained under the then-existing ASC Methodology, *viz*, one year after the then-existing Methodology has been adopted by BPA and implemented by the Commission through interim or final approval, whichever occurs first.

TIMELINE

Review Procedure—Bonneville Power Administration

Day and Event

−20—Commencement of New Exchange Period.
0—Utility Files Revised Appendix 1. Utility Mails Notice of Filing.
40—Deadline for Data Requests to Utility From Parties.
60—Deadline for Utility To Object to Data Request From Parties.
65—Deadline To Respond to Data Request From Parties.
80—Deadline To Raise Issues in the Utility's ASC Filing (Submit Written Challenges

to Costs Included in the Utility's Appendix 1).

Deadline To Request Party Status for All Persons or Entities Not Submitting Challenges to the Costs Included in the Utility's Appendix 1.

90—BPA Mails Notice of Issues, List of Parties, and Request for Comments.

120—Deadline for Submission of Written Comments on First Round Issues.

135—Deadline for Submitting Written Cross Comments on First Round Issues.

BPA Mails Notice of Second Round Issues.

150—Deadline for Submission of Written Comments of Second Round Issues.

150—Deadline for Requesting Oral Argument.

165—Deadline for Submission of Written Cross Comments on Second Round Issues.

180—Deadline for Presentation of Oral Argument.

210—Review Periods Ends. BPA Issues Final Determination.

Instructions

Exhibit C—Appendix 1 is the form on which a Utility participating in a Residential Purchase and Sale Agreement shall report its Contract System Costs and other necessary data for the calculation of ASC.

The form consists of four schedules that shall be completed by the Utility in accord with these instructions and the provisions of the footnotes following the schedules. Any items not applicable to the Utility shall be so identified.

The schedules are as follows:

Schedule 1—Plant Investment/Rate Base/Rate of Return

Schedule 2—Weighted Average Cost of Long Term Debt

Schedule 3—Expenses

Schedule 4—Average System Cost

The filing Utility shall reference and attach workpapers that support Costs, including details of allocation and functionalization.

All references to the Commision accounts are to the Commission Uniform System of Accounts as of July 1, 1984. The Costs includable in the attached schedules are those includable by reason of the definitions in the Commission accounts. If the Commission accounts are later revised or renumbered, any changes shall be incorporated into this form by reference, except to the extent that BPA determines that a particular change results in a change in the type of Costs allowable for exchange purposes. If the Utility does not follows the Commission accounts, its filing must include a reconciliation between its accounts and the item allowed as Contract System Costs.

BPA may require the Utility to account for purchased power transactions with affiliated entities as though the affiliated entities were owned in whole or in part by the Utility, if necesary to properly determine and/or functionalize the Utility's Costs.

A Utility operating in more than one Jurisdiction shall allocate its total system Costs among Jurisdictions in accord with the same allocation methods and procedures used by the State Commission to establish jurisdictional Costs and resulting revenue requirements. Appendix 1 shall include details of the allocation. This allocation also accomplishes the exclusion of the Costs of additional resources to meet loads outside the region, as required by section 5(c)(7) of the Northwest Power Act.

All schedule entries and supporting data shall be in accord with generally accepted accounting principles and practices as these principles and practices apply to the electric utility industry.

Exhibit C

Appendix 1

SCHEDULE 1.—BONNEVILLE POWER ADMINISTRATION RESIDENTIAL PURCHASE AND SALE AGREEMENT, AVERAGE SYSTEM COST METHODOLOGY TEST PERIOD

[Plant investment/rate base/rate of return (thousands)]

Line No.	Items	Functionalization			Other
		Total to be functionalized	Production	Transmission	
	(1)	(2)	(3)	(4)	(5)
	Production plant:				
1	Steam Production 310–316				
2	Nuclear Production 320–325				
3	Hydraulic Production 330–336				
4	Other Production Plant 340–346				
5	Total Production Plant				
6	Transmission Plant 350–359 [a]				
7	Distribution Plant 360–373 [b]				
8	Intangible Plant 301–303 [j]				
9	General Plant 389–399 [j]				
10	Electric Plant-in-Service				
	Less:				
11	Depreciation Reserve 108				
12	Steam Plant				
13	Nuclear Plant				
14	Hydraulic Plant				
15	Other Plant				
16	Transmission Plant [a]				
17	Distribution Plant [b]				
18	General Plant [j]				
19	Amortization Reserve 111 [j]				
20	Total Depreciation & Amortization				
21	Total net plant				
22	Nuclear Fuel 120.2–120.4 Less 120.5				
23	Accumulated Deferred Debits 182 [j]				
24	Cash Working Capital [k]				
25	Materials and Supplies 151.157, 163 [j]				
	Less:				
26	Accumulated Deferred Investment Tax Credits/255 [j]				
27	Accumulated Deferred Income Taxes/281–283 [j]				
28	Other Accumulated Deferred Credits/253, 256–257				
29	Customer Contributions and Aid to Construction/252 [j]				
30	Other 106, 124, Various [k] [j]				
31	Total rate base				
32	Times Rate of Return @—% [d]				

SCHEDULE 2.—BONNEVILLE POWER ADMINISTRATION RESIDENTIAL PURCHASE AND SALE AGREEMENT, AVERAGE SYSTEM COST METHODOLOGY TEST PERIOD

[Weighted average cost of long term debt]

Line No.	Items	Date of issue (1)	Date of maturity (2)	Interest rate (3)	Face amount (4)	Premium (5)	Discount (6)	Issue expense (7)	Net Proceeds (8)	Interest expense (9)
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16	Weighted Average Cost of Long Term Debt									

SCHEDULE 3.—BONNEVILLE POWER ADMINISTRATION RESIDENTIAL PURCHASE AND SALE AGREEMENT, AVERAGE SYSTEM COST METHODOLOGY TEST PERIOD

[Expenses (thousands)]

Line No.	Items	Functionalization			Other
		Total to be functionalized	Production	Transmission	
	(1)	(2)	(3)	(4)	(5)
	Production:				
	Fuel 501, 518, 547				
2	Purchased Power 555				
	Operations and Maintenance:				
3	Steam 500, 502–514				
4	Nuclear 517, 519–532				
5	Hydro 535–545				
6	Other 546, 548–554				
7	Total Production Expense				
8	Transmission 560–573 [a]				
9	Distribution 580–598 [b]				
10	Customer Accounting 901–905 [c]				
11	Customer Assistance 907–910 [c]				
	Administrative and General: [c]				
	Account Number:				
12	920				
13	921				
14	922				
15	923				
16	924				
17	925				
18	926				
19	927				
20	928				
21	929				
22	930.1				
23	930.2				
24	931				
25	932				
26	Total A and G				
27	Total Operations and Maintenance				
28	Depreciation and Amortization 403–407				
29	Steam Production Plant				
30	Nuclear Production Plant				
31	Hydraulic Production Plant				
32	Other Production Plant				
33	Transmission Plant [a]				
34	Distribution Plant [b]				
35	General Plant [c]				
36	Amortization [c]				
37	Total Depreciation and Amortization				
38	Taxes Other Than Income Taxes 408, 409.1 [c]				
39	Federal Income Tax [c]				
40	State Income Tax [c]				
41	Other Expenses [c]				
	Less:				
42	Sales for Resale Rev. 447				
43	Other Operating Revenues 450–456 [c]				
44	Billing Credits [c]				
45	Total Operating Expenses				
46	Return from Schedule 1				
47	Other Adjustments				
48	Total Cost				

SCHEDULE 3A.—BONNEVILLE POWER ADMINISTRATION RESIDENTIAL PURCHASE AND SALE AGREEMENT, AVERAGE SYSTEM COST METHODOLOGY TEST PERIOD

[Taxes other than income taxes (thousands)]

Line No.	Items	Functionalization			Other
		Total to be functionalized	Production	Transmission	
	(1)	(2)	(3)	(4)	(5)
1	Federal—Insurance Contributions				
2	—Unemployment				
	State:				
3	California—Property				
4	—Unemployment				
5	Oregon—Property				
6	—Tri-Met				
7	—Lane County				
8	—Unemployment				
9	—Regulatory Commission				
10	Washington—Property				
11	—Unemployment				
12	—Generating Tax				
13	—Pollution Control Credit				
13a	—Revenue and Business				
14	Idaho—Property				
15	Montana—Property				
16	—Unemployment				
17	Wyoming—Property				
18	—Unemployment				
19	Utah—Property				
20	Local—Occupation and Franchise				
21	In-Lieu Taxes *				
22	Other				
23	Total				

NOTE:
1. Supporting workpapers are to be attached.
2. Footnotes referenced on Schedule 3 will be relied upon in determining ASC.

SCHEDULE 3B.—BONNEVILLE POWER ADMINISTRATION RESIDENTIAL PURCHASE AND SALE AGREEMENT, AVERAGE SYSTEM COST METHODOLOGY TEST PERIOD

[Other included items (thousands)]

Line No.	Items	Functionalization			Other
		Total to be functionalized	Production	Transmission	
	(1)	(2)	(3)	(4)	(5)
	Operating Revenues:				
1	Sales for Resale 447				
2	1				
3	2				
4	Total				
	Other Operating Revenues 450–456 [1]				
5	Acct. 450				
6	Acct. 451				
7	Acct. 452				
8	Acct. 453				
9	Acct. 454				
10	Acct. 455				
11	Acct. 456				
12	Total Other Revenues				

NOTE:
1. Supporting workpapers are to be attached.
2. Footnotes referenced on Schedule 3 will be relied upon in determining ASC.

SCHEDULE 4.—BONNEVILLE POWER ADMINISTRATION RESIDENTIAL PURCHASE AND SALE AGREEMENT, AVERAGE SYSTEM COST METHODOLOGY TEST PERIOD

[Average system cost]

Line No.	Items	Amounts
	(1)	(2)
	Contract System Costs	
2	Production Cost (From Schedule 3)	
3	Transmission Cost (From Schedule 3)	
4	Less Excluded Load Costs [1]	
5	Total Contract System Costs	
6	Contract System Load	
7	Total Load (MWh)	
8	Less:	
9	Nonfirm Adjustment (MWh)	
10	Other Adjustments (MWh)	

SCHEDULE 4.—BONNEVILLE POWER ADMINISTRATION RESIDENTIAL PURCHASE AND SALE AGREEMENT, AVERAGE SYSTEM COST METHODOLOGY TEST PERIOD

[Average system cost]

Line No.	Items (1)	Amounts (2)
11	Net Load (MWh)	
12	Plus:	
13	Distribution Losses (MWh) [a]	
14	Total Net Load (MWh)	
15	Less:	
16	Excluded Load (MWh) [c]	
17	Excluded Load Dist. Losses (MWh)	
18	Total Contract System Load (MWh)	
19	Average System Cost (Mills/kWh) (Line 5/Line 18)	

[a] Transmission plant and the associated cost to be used in the calculation of the average system cost (ASC) are limited to:

(1) For transmission plant in service as of July 1, 1984, transmission plant will be as defined by the Federal Energy Regulatory Commission Uniform System of Accounts and will include radial transmission lines.

(2) For transmission plant commencing service after July 1, 1984, transmission plant cost which can be exchanged are limited to transmission that is directly required to integrate resources to the transmission system grid. Specifically, transmission costs which can be exchanged are limited to the lesser of the cost of transmission facilities required to transmit power from the generating resource to the exchanging utility's system or the sum of the costs of the transmission facilities required to integrate the generating resource to the BPA system and the wheeling costs necessary to wheel the power to the exchanging utility's system. If the utility chooses to construct facilities which are more costly than the facilities required to interconnect to the BPA system, the total costs to be exchanged shall be no greater than the facility costs that would have been incurred to interconnect with the BPA system."

[b] Distribution plant means all land, structures, conversion equipment, lines, line transformers, and other facilities employed between the primary source of supply (i.e., generating station, point of receipt in the case of purchased power) and of delivery to customers, which are not includable in transmission system, as defined in footnote a(1), whether or not such land, structures, and facilities are operated as part of a transmission system or as part of a distribution system. Stations that change electricity from transmission to distribution voltage shall be classified as distribution stations.

Where poles or towers support both transmission and distribution conductors, the poles, towers, anchors, guys, and rights-of-way shall be classified as transmission facilities. The conductors shall be classified as transmission or distribution facilities according to the purpose for which they are used. Land (other than rights-of-way) and structures used jointly for transmission and distribution purposes shall be classified as transmission or distribution according to their major use.

[c] Contract System Costs shall reflect the costs and the revenues arising from conservation and/or retail rate schedules implementad to induce conservation, and for which the utility receives billing credits. These billing credit revenues shall be functionalized on the same basis as the cost of the related conservation measures.

[d] The overall rate of return to be applied to a utility's Exchange Period rate base as shown in Appendix 1 shall be equal to its weighted average cost of long term debt. The utility's overall rate of return times rate base will equal the utility's return provided that if depreciation is not used for jurisdictional ratesetting, then return will be equal to the lessor of: (1) Interest expense plus depreciation, or (2) debt service and revenue financed capital expenditures. In no event will the sum of Contract System Cost and Distribution/Other costs be greater than the revenue requirement used to set rates.

[e] A tax-exempt utility may include in-lieu taxes up to an amount that is comparable, for each unit of government paid in-lieu taxes, with taxes that would have been paid by a nontax exempt utility to that unit of government. In no event shall the utility's regional total in column 2 be greater than the amount paid or the amount used to detemine the total revenue requirement for the test period. In-lieu taxes shall be functionalized according to a direct analysis included with the Appendix 1 or to Distribution/Other.

[f] The cost of additional resources sufficient to serve any New Large Single Load that was not contracted for, or committed to, prior to September 1, 1979, is to be determined as follows:

(1) To the extent that any New Single Loads are served by dedicated resources, at the cost of those resources, including applicable transmission;

(2) In the amount that New Large Single Loads are not served by dedicated resources, at BPA's New Resources rates as established from time to time pursuant to section 7(f) of the Regional Act and as applicable to the utility, and applicable BPA transmission charges if transmission costs are excluded in the determination of BPA's New Resource rate, to the extent such costs are recovered by the utility's retail rates in the applicable jurisdiction; and

(3) To the extent that New Large Single Loads are not served by dedicated resources plus the utility's purchases at the New Resource rate, the costs of such excess load shall be determined by multiplying the kilowatthours not served under subsections (1) and (2) above by the cost (annual fixed plus variable costs, including an appropriate portion of general; plant, administrative and general expense and other items not directly assignable) per kilowatthour of all baseload resources and long term power purchases (five years or more in duration), as allowed in the regulatory jurisdiction to establish retail rates during the Exchange Period, exclusive of the following resources and purchases: (a) Purchases at the New Resources rate pursuant to section 7(f) of the Act; (b) purchases at the Federal Base System rate, pursuant to section 5(c) of the Act; (c) resources sold to BPA, pursuant to section 6(c)(1) of the Act; (d) dedicated resources specified in footnote k(1) of this methodology; (e) resources and purchases committed to the utility's load as of September 1, 1979, under a power requirements contract or that would have been so committed had the utility entered into such a contract; and (f) experimental or demonstration units of purchases therefrom. Transmission needed to carry power from such generation resources or power purchases shall be priced at the average cost of transmission during the Exchange Period.

(4) Any kilowatthours of New Large Single Loads not met under subsection (1), (2), or (3) above will be assumed to be supplied from the most recently completed or acquired baseload resource(s) or long term power purchase(s), exclusive of dedicated resources and experimental or demonstration resources or purchases therefrom, that are committed to the utility's load as of September 1, 1979, under a power requirements contract. The cost of these generation resources and long-term power purchases and the transmission cost associated with these resources or purchases will be calculated as specified in subsection (3) above.

(5) If the New Large Single Load is served on any energy or capacity interruptive basis, the utility shall prepare a calculation subject to review by BPA of the fixed (if any) and variable costs of providing such service, except that the amount excluded from ASC for the New Large Single Load shall not be less than the transmission and generation cost included in the retail rate charged the New Large Single Load.

[g] The losses shall be the distribution energy losses occurring between the transmission portion of the utility's system and the meters measuring firm energy load. Losses shall be established according to a study (engineering, statistical and other) that is submitted to BPA by the exchanging utility subject to review by BPA. This study shall be in sufficient detail so as to accurately identify average distribution losses associated with the utility's total load, excluded loads, and the residential load. Distribution losses shall include losses associated with distribution substations, primary distribution facilities, distribution transformers, secondary distribution facilities and service drops.

[h] Cash Working Capital greater than ⅛th Operations and Maintenance expenses less fuel and purchased power expenses is functionalized to Distribution/Other. The remainder of Cash Working Capital shall be functionalized on the basis of Operations and Maintenance expenses less fuel and purchased power.

[i] Conservation costs are costs of measures or resources for which power is (or is planned to be) saved by means of physical improvements, alteration, devices, or other installations which are measurable in units. A contract charge paid pursuant to BPA's long term conservation contract will be an allowable conservation cost in Average System Cost. Only conservation costs funded by the utility will be functionalized to Production in the Utility's Average System Cost. Conservation costs incurred to promote changes in consumer behavior including costs attributable to audits, brochures, advertising, pamphlets, leaflets, and similar items, or required by a government entity through building code provisions or programmatic conservation costs in lieu of building code provisions, will be functionalized to Distribution/Other. Conservation surcharges imposed pursuant to section 4(f)(2) of the Northwest Power Act, or other similar surcharges or penalties imposed on a Utility for failure to meet required conservation efforts will also be functionalized to Distribution/Other. Conservation and associated costs must be generally consistent with the Regional Council's resource plan as determined by the administrator.

[j] Functionalization: Except for those accounts that are required to be functionalized under subsection III(C) below, functionalization of each account included in the Utility's ASC shall be by either, but not both, of the following two methods:

(1) Direct analysis, or (2) according to the specific functionalization ratios applied to the various Uniform System of Accounts. These two methods are described below in subsections III(A) and III(B), respectively.

I. Rules

(A) If a Utility has previously functionalized an account by direct analysis as set forth in subsection III(a) below, the utility is not allowed to use the specific functionalization ratio method without prior approval from BPA.

(B) The Utility must submit with its ASC filing any and all workpapers, documents, or other materials that demonstrate that the functionalization under its direct analysis assigns costs based upon the actual and/or intended functional use of those items. Failure to submit such documentation will result in the entire account being functionalized to Distribution/Other.

(C) For Accounts 389, 390, 391 and 392 and Accounts 920, 921, 922, 930.2 and 932, the utility may functionalize these accounts using one, but not any combination, of the following functionalization methods, whichever assigns the highest cost to the Production and Transmission function:

1. Subsection III(A) described below;

2. Subsection III(B) described below; or

3. For publicly-owned and cooperative utilities that have neither generation facilities nor affiliated generation organizations over which the utility exercises over half of the voting rights, 10 percent of gross plant investment may be assigned directly to Production and 10 percent of labor cost assigned to Production. The remainder of Accounts 389, 390, 391, and 392 will be functionalized using Transmission and Distribution Gross Plant Ratios excluding General Plant.

The remainder of Accounts 920, 921, 922, 930.2 and 932 will be functionalized using the Labor Ratio for Transmission and Distribution, and the balance assigned to Distribution/Other.

II. Definitions

For purposes of subsections III(A) and III(B) *Labor Ratios* is defined as the ratios which assign costs on a pro rata basis using salary and wage data for production, transmission, and distribution/other functions, included in the Test Period costs on which Appendix 1 is based. If however, this information is unavailable, comparable data shall be used for the most recent calendar year as reported on the Federal Energy Regulatory Commission Form 1 (at page 355), or similar document for those utilities not required to file Federal Energy Regulatory Commission Form 1.

III. Functionalization Methods

(A) Be direct analysis which assigns costs to either the production, transmission, or distribution function of the utility. Such analysis is subject to BPA review and approval.

(B) According to the following specific functionalization methods:

Account	Functionalization method
1. Rate Base Accounts:	
310–373 (Plant in Service).	Functionalize directly according to the Federal Energy Regulatory Commission System of Accounts.
389 (Land and Land Rights).	Functionalize on the ratios of Production, Transmission and Distribution Gross Plant excluding General Plant.
390 (Structures and Improvements).	Functionalize on the ratios of Production, Transmission and Distribution Gross Plant excluding General Plant.
391 (Office Furniture and Equipment).	Functionalize Labor ratios.
392 (Transportation Equipment).	Functionalize on the ratio of Transmission and Distribution Gross Plant excluding General Plant.
393 (Stores Equipment).	Functionalize on the ratio of Production, Transmission and Distribution Gross Plant excluding General Plant.
394 (Tools, Shop and Garage Equipment).	Functionalize on the ratio of Production, Transmission and Distribution Gross Plant excluding General Plant.
395 (Laboratory Equipment).	Functionalize on the ratio of Production, Transmission and Distribution Gross Plant excluding General Plant.
396 (Power Operated Equipment).	Functionalize on the ratio of Transmission and Distribution Gross Plant excluding General Plant.
397 (Communication Equipment).	Functionalize on the ratio of Production, Transmission and Distribution Gross Plant excluding General Plant.
398 (Miscellaneous Equipment).	Functionalize to Distribution/Other.
399 (Other Tangible Property).	Functionalize on the ratio of Production, Transmission and Distribution Gross Plant excluding General Plant.
301–303 (Intangible Plant).	Functionalize on the ratio of Production, Transmission and Distribution Gross Plant excluding General Plant.
114 (Acquisition Adjustment).	Labor Ratios.
105 (Plant Held for Future Use).	Functionalize on the ratio of Production, Transmission and Distribution Gross Plant including General Plant.
120.2–120.4 less 120.5 (Nuclear Fuel).	Functionalize to Production.
186 (Miscellaneous Debits).	Labor Ratios.
252 (Customer Advances).	Functionalize to Distribution/Other.
253 (Other Deferred Credits).	Functionalize to Distribution/Other.
255 (Accumulated Deferred Investment Tax Credits).	Functionalize to Distribution/Other.
257 (Unamortized Gain on Reacquired Debt).	Functionalize on the ratio of Production, Transmission and Distribution Gross Plant including General Plant.
281–283 (Accumulated Deferred Income Taxes).	Functionalize to Distribution/Other.
151–152 (Fuel Stock).	Functionalize to Production.
153–157, 163 (Materials and Supplies.	Functionalize on the ratio of Transmission and Distribution Gross Plant including General Plant.
106 (Completed Construction not Classified).	Functionalize on the ratio of Production, Transmission and Distribution Gross Plant excluding General Plant.
124 (Other Investment).	Functionalize to Distribution/Other.
184 (Clearing Accounts).	Labor Ratios.
Other Rate Base Accounts.	Functionalize to Distribution/Other.
2. Expense Accounts:	
501–577 (Fuel, Purchased Power and Power Production Expenses).	Functionalize to Production.
560–573 (Transmission Expenses).	Functionalize to Transmission.
580–598 (Distribution Expenses).	Functionalize to Distribution/Other.
901–905 (Customer Accounts Expenses).	Functionalize to Distribution/Other.
907 (Customer Service Information Expenses-Supervision).	Functionalize to Distribution/Other.
908–910 (Other Customer Service Information Expenses).	Functionalize to Distribution/Other.
911–916 (Sales Expenses).	Functionalize to Distribution/Other.
920 (Administrative and General Salaries).	Labor Ratios.
921 Office Supplies and Expenses).	Labor Ratios.
922 (Administrative Expenses Transferred-Cr.).	Labor Ratios.
923 (Outside Services Employed).	Labor Ratios.
924 (Property Insurance).	Functionalize on the ratio of Production, Transmission and Distribution Gross Plant including General Plant.
925 (Injuries and Damages).	Labor Ratios.
926 (Employee Pensions and Benefits).	Labor Ratios.
927 (Franchise Requirements).	Functionalize to Distribution/Other.
928 (Regulatory Comm. Fees and Expenses).	Functionalize to Distribution/Other.
929 (Duplicate Charges-Cr.).	Labor Ratios.
930.1 (General Advertising).	Functionalize to Distribution/Other.
930.2 (Miscellaneous General Expenses).	Functionalize to Distribution/Other.
931 (Rents)	Functionalize to Distribution/Other.
3. Revenue Accounts:	
447 (Sales For Resale).	Functionalize to Production.
450–455 (Other Operating Revenues).	Functionalize to Production.
456 (Wheeling Revenues).	Functionalize to Transmission.
(C) The following Accounts shall be functionalized as follows:	
107, 120.1 (CWIP).	Functionalize to Distribution/Other.
108 (PIS Depreciation Reserve).	The same functionalization used for accounts 310–373, Plant in Service (PIS).
108 (General Plant Depreciation Reserve).	Functionalize according to the General Plant ratio.
111 (Accumulated Amortization).	The same functionalization used for accounts 301–303, Intangible Plant.
256 (Deferred Gain from Disposition of Utility Plant).	The same functionalization used for account 105, Electric Plant Held for Future Use.
403–407 (PIS Depreciation Expense).	The same functionalization used for Accounts 310–373, Plant in Service.
408.1 (Other Taxes).	With the exception of property taxes and labor related taxes, all taxes will be functionalized to Distribution/Other. Property taxes will be functionalized using the gross plant ratio including general plant. Labor related taxes will be functionalized using labor ratios.
409.1, 410.1, 411.1, 411.4 (Income Taxes).	Functionalize to Distribution/Other.
932 (Maintenance of General Plant).	Functionalize according to the ratio developed from the functionalized totals of accounts 390, 391, 397 and 398.
411.6, 411.7 (Gain from Disposition of Utility Plant).	The same functionalization used for Account 105, Plant Held for Future Use.

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